

## Monitoring Human Rights: The Experience of the UPR Brazil Coalition

Fernanda Brandão Lapa et Suiany Zimmermann Bail

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S'ouvrir aux Amériques pour mieux protéger les droits humains et s'engager dans la réconciliation

Opening up to the Americas to better protect human rights and committing to reconciliation

Abriéndose a la Américas para proteger mejor los derechos humanos y comprometerse a la reconciliación

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Résumé de l'article

Cet article explore la création de la Coalition EPU Brésil (en portugais *Coletivo RPU Brasil*), un réseau de la société civile qui surveille les droits humains à l'aide de l'Examen périodique universel (EPU), un mécanisme des Nations unies. Il présente d'abord l'importance de la participation sociale pour l'État de droit et pour le système juridique démocratique brésilien. Il présente ensuite le mécanisme de l'EPU, y compris sa création en 2006, les aspects fondamentaux de son fonctionnement et les trois cycles d'examen brésiliens. L'article discute ensuite de l'engagement de la société civile brésilienne avec l'UPR, de la création de la Coalition EPU Brésil ainsi que de ses activités actuelles en tant que principal réseau qui surveille la situation des droits humains au Brésil en évaluant la mise en oeuvre des recommandations de l'UPR.

# MONITORING HUMAN RIGHTS: THE EXPERIENCE OF THE UPR BRAZIL COALITION

*Fernanda Brandão Lapa\* et Suiany Zimmermann Bail\*\**

This article explores the creation of the UPR Brazil Coalition, a civil society network that monitors human rights using the Universal Periodic Review (UPR), a United Nations mechanism. It first presents the importance of social participation for the rule of law and for the Brazilian democratic legal system. It then introduces the UPR mechanism, including its creation in 2006, the basic aspects of its operation, and the three Brazilian review cycles. The article then discusses Brazilian civil society's engagement with the UPR and the creation and current activities of the UPR Brazil Coalition, the main network that monitors the human rights situation in Brazil by means of evaluating implementation of UPR recommendations.

Cet article explore la création de la Coalition EPU Brésil (en portugais *Coletivo RPU Brasil*), un réseau de la société civile qui surveille les droits humains à l'aide de l'Examen périodique universel (EPU), un mécanisme des Nations unies. Il présente d'abord l'importance de la participation sociale pour l'État de droit et pour le système juridique démocratique brésilien. Il présente ensuite le mécanisme de l'EPU, y compris sa création en 2006, les aspects fondamentaux de son fonctionnement et les trois cycles d'examen brésiliens. L'article discute ensuite de l'engagement de la société civile brésilienne avec l'UPR, de la création de la Coalition EPU Brésil ainsi que de ses activités actuelles en tant que principal réseau qui surveille la situation des droits humains au Brésil en évaluant la mise en œuvre des recommandations de l'UPR.

Este artículo explora la creación de la Coalición EPU Brasil (en portugués *Coletivo RPU Brasil*), una red de la sociedad civil que monitorea los derechos humanos utilizando el Examen Periódico Universal (EPU), un mecanismo de las Naciones Unidas. Primero presenta la importancia de la participación social para el estado de derecho y para el sistema jurídico democrático brasileño. Luego presenta el mecanismo del EPU, incluyendo su creación en 2006, los aspectos básicos de su funcionamiento y los tres ciclos de revisión brasileños. Luego, el artículo analiza el compromiso de la sociedad civil brasileña con el EPU, la creación de la Coalición EPU Brasil así como sus actividades actuales como principal red que monitorea la situación de los derechos humanos en Brasil mediante la evaluación de la implementación de las recomendaciones del EPU.

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The main idea of this work is to present an example of successful social participation in monitoring the international human rights obligations the Brazilian State assumes. By monitoring human rights through the Universal Periodic Review (UPR), Brazilian civil society can denounce major challenges to protecting and promoting these rights in the country.

To this end, this study first discusses the relevance of strengthening civic space in a democratic country. The important role social participation can play in this has long been established in United Nations (UN) documents; since re-democratization in 1988, the Brazilian national legal framework has guaranteed civil society participation, and especially in the context of International Human Rights Law.

The UPR peer review mechanism was created in 2006 as the former Human Rights Commission was transformed into the Human Rights Council. This article includes a short history and the basic characteristics of the UPR and how it functions, as well as a brief discussion about the Brazilian State's response to the UPR.

The UPR's first cycle was in 2008. Since then, social participation has increased, largely as a result of the creation of the UPR Brazil Coalition. This Coalition was created in 2017 by 25 organizations that had already been working in the field of Brazilian foreign policy. This article includes a brief history of the Coalition and its main objectives before providing an overview of the two reports prepared in the third cycle, the Mid-Term Report (2019) and the thematic report in the context of COVID-19 (2020).<sup>1</sup>

This article concludes by indicating how the UPR Brazil Coalition's monitoring of human rights throughout Brazil can become even more relevant in the coming cycles. During the first years of operation, the Coalition developed tools and a work methodology, a process that can create a strategic space for civil society engagement. We argue that the UPR monitoring the group conducts can serve as an example for other countries, as well as act as an essential follow up to the human rights situation in Brazil.

## I. United Nations, Public Participation and Civic Space

Public participation plays an essential role in strengthening human rights and democracy in a country. Civil society's contribution to these processes is recognized in the preamble of the *Charter of the United Nations*. In article 71, the *Charter* established that the Economic and Social Council should work to support civil society's participation within the United Nations system.<sup>2</sup> And, as the report from the United Nations' High

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<sup>1</sup> Coletivo RPU Brasil, "Mid-Term Report, Civil Society - UPR 3rd Cycle: Brazil (2017-2019)" (2019), online (pdf): *UPR Info* <[www.upr-info.org/sites/default/files/document/brazil/session\\_27\\_-\\_may\\_2017/mid\\_term\\_report.pdf](http://www.upr-info.org/sites/default/files/document/brazil/session_27_-_may_2017/mid_term_report.pdf)>; Coletivo RPU Brasil, "Universal Periodic Review of Human Rights in the Context of COVID-19" (2020), online (pdf): *Plataforma RPU BR* <[www.plataformarpu.org.br/storage/publications\\_documents/QaLfpUb4pyieP0aI5cX5O9WemybRE96coWesZmbC.pdf](http://www.plataformarpu.org.br/storage/publications_documents/QaLfpUb4pyieP0aI5cX5O9WemybRE96coWesZmbC.pdf)>.

<sup>2</sup> "The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after

Commissioner on Human Rights related to procedures and practices in respect to civil society's engagement with international and regional organizations states:

Civil society organizations brought local and national concerns to the attention of the international community and advocate for change, thus connecting the international stage with local levels. Civil society had been instrumental in raising awareness of women's rights and gender equality at the regional and international levels, and in empowering and giving voice to those in the most severe situations of marginalization and vulnerability. It had also contributed to challenging social norms and the organizational culture of regional and international organizations.<sup>3</sup>

Recently, the current Secretary-General of the United Nations, Antonio Guterres, highlighted that:

Society is stronger and more resilient when women and men can play a meaningful role in political, economic and social life, contributing to policy-making that affects their lives, including by accessing information, engaging in dialogue, expressing dissent and joining together to express their views. This includes the right to freedom of thought, conscience and religion.<sup>4</sup>

To better fulfill this role, civil society needs an open, secure and safe environment, free from intimidation and harassment. "Any restrictions on such a space must comply with international human rights law (i.e. must not discriminate, must be provided for by law, and be necessary and proportionate)."<sup>5</sup>

To better guarantee human rights and democracy around the world, the United Nations has developed policies to ensure what they call the "three Ps" – *Participation* and *Protection* for civil society actors and *Promotion* of civic space.<sup>6</sup> According to the UN Guidance Note for Protection and Promotion of Civic Space, an environment that enables people and groups – or "civic space actors" – to participate meaningfully in the political, economic, social and cultural life of their societies is called civic space.<sup>7</sup>

Civil society's influence on this space may take different forms, such as (a) *advocacy and awareness-raising* – giving voice to those most exposed to human rights violations; (b) *expertise and knowledge* – civil society informs the debate and injects knowledge, including from communities, into decision-making structures and programs at regional and international levels; and (c) *implementation, monitoring and evaluation* – civil society has the added advantage of having close links with grass-roots organizations and

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consultation with the Member of the United Nations concerned." *Charter of the United Nations*, 26 June 1945, Can TS 1945 No 7, art 71.

<sup>3</sup> OHCHR, *Procedures and Practices in Respect of Civil Society Engagement with International and Regional Organizations*, HRCOR, 38th Sess, UN Doc A/HRC/38/18 (2018) 1 at 4.

<sup>4</sup> António Guterres, "The Highest Aspiration: A Call to Action for Human Rights" (2020) at 8, online (pdf): UN <[www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The\\_Highest\\_Asperation\\_A\\_Call\\_To\\_Action\\_For\\_Human\\_Right\\_English.pdf](http://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Asperation_A_Call_To_Action_For_Human_Right_English.pdf)>.

<sup>5</sup> Guidance Note of the UN, "United Nations Guidance Note on Protection and Promotion of Civic Space" (September 2020), online: OHCHR <[www.ohchr.org/Documents/Issues/CivicSpace/UN\\_Guidance\\_Note.pdf](http://www.ohchr.org/Documents/Issues/CivicSpace/UN_Guidance_Note.pdf)>.

<sup>6</sup> OHCHR, *supra* note 3.

<sup>7</sup> *Ibid.*

individuals, and could therefore help to increase the effectiveness of United Nations interventions at the local level.<sup>8</sup>

Civil society was also at the core of the development of the Sustainable Development Goals (SDGs) and should be at the center of implementation, follow-up and review processes. In particular, Goal 16 seeks to promote peaceful and inclusive societies by, inter alia, developing effective, accountable and transparent institutions at all levels; ensuring responsive, inclusive, participatory and representative decision-making; and ensuring public access to information and protecting fundamental freedoms. Goal 16 is also an enabler of all the other SDGs.<sup>9</sup>

In view of this, all the States should develop forms of ensuring the three Ps and, thus, strengthen dialogue and civil society organizations' effective participation.

## II. Social Participation in Brazilian Democracy

In Brazil, even though civic participation through national and international bodies began long before the new constitutional framework came into being, social participation expanded in 1988 and was enshrined as a principle in the *Constitution of the Federative Republic of Brazil (CRFB/1988)*. The *Constitution* says that “all power emanates from the people, that exercise it through elected representatives or directly.”<sup>10</sup>

In the international context, Amaral points out that, even during the military dictatorship and the previous Constitution, human right entities had already begun to use some international treaties for activism:

While democracy is to be placed as the ideal Regime and universal value, which occurred from the 1970s, the system of protection of human rights of the UN is gaining some visibility, and thus will be transformed into a safer sphere for the receipt of violation claims to guarantee democracy and human rights.<sup>11</sup>

Amaral cites Keck as saying that civil society has, in recent decades, also organized itself as voluntary networks characterized by reciprocal and horizontal standards of communication and exchange. Such networks became a form of contemporary organization for social movements, both domestically and internationally. These networks have engaged in activism or advocacy.<sup>12</sup>

These articulations were considerably strengthened during the drafting of *CFRB/1988* as civil society “affirm[ed] itself as one of the pillars of democracy and directly influenc[ed] the course of the country.”<sup>13</sup> In fact, there are at least 30 articles in the

<sup>8</sup> OHCHR, *supra* note 3 at 5.

<sup>9</sup> “United Nations Guidance Note on Protection and Promotion of Civic Space”, *supra* note 4 at 4.

<sup>10</sup> *Constitution of the Federative Republic of Brazil*, 5 October 1988, CRFB/1988, art 1.

<sup>11</sup> Maia Gelman Amaral, *Brazilian Civil Society in Monitoring Human Rights: Alternative Reports* (Law Master's thesis, Federal University of Santana Catarina, 2007) at 76.

<sup>12</sup> *Ibid* at 76.

<sup>13</sup> Secretaria Especial dos Direitos Humanos da Presidência da Republica, “Programa Nacional de Direitos Humanos – PDNH-3”, 3rd ed (2010) at 22, online (pdf):

*CFRB/1988* that encourage forms of social participation, whether as watchdogs and in a consultative character, institutionalized or not.<sup>14</sup>

After a series of advances and setbacks, Brazil arrived in 2010 with its third version of the *National Program of Human Rights (PNDH-3)*. The program was created with the intention of diagnosing the human rights situation in the country and establishing measures for their protection and promotion. The objective of this latest version was to integrate and enhance existing mechanisms and to create new ways of developing public policies on human rights. In particular, its guiding axis I – Democratic Interaction between State and Civil Society – discusses the importance of strengthening and guaranteeing instruments for social participation and building mechanisms to assess and monitor the effectiveness of human rights.<sup>15</sup>

There are several actions foreseen in the *PNDH-3*, but the one especially directed toward International Human Rights Law (IHRL) is Strategic Objective II, “Monitoring of international commitments assumed by the Brazilian State in the field of Human Rights”:

Programmatic actions:

- a) Prepare an annual report on the human rights situation in Brazil in participatory dialogue with civil society.
- b) Draw up periodic reports for the UN treaty entities, in the term they establish, based on the flow of information with agencies in the Federal Government and with units of the Federation.
- c) Draw up a report monitoring the relations between Brazil and the UN system that contains, among others, the following information:
  - Recommendations resulting from special rapporteurs of the UN Human Rights Council;
  - Recommendations arising out of the committees of treaties of the Mechanism of Periodic Review (UPR);

[...]
- f) Create a public database based on all the recommendations of the UN and OEA systems made for Brazil, containing the measures adopted by the various public agencies for their fulfillment.<sup>16</sup>

Since the passage of the latest version of the *PNDH-3*, the Brazilian State has been pressed by the United Nations and by Brazilian civil society to create a national monitoring plan to follow up on Brazil’s human rights commitments. Despite positive initiatives during different governments, there is still no formal national mechanism to follow up on the fulfillment, or not, of these obligations in a transparent and systematic manner.

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<[www.direito.mppr.mp.br/arquivos/File/PNDH3.pdf](http://www.direito.mppr.mp.br/arquivos/File/PNDH3.pdf)> [*PNDH-3*].

<sup>14</sup> *Ibid* at 23.

<sup>15</sup> *Ibid*.

<sup>16</sup> Secretaria Especial dos Direitos Humanos da Presidência da Republica, *supra* note 13 at 30-31.

A positive experience was the 2017 creation of the National Human Rights Institution (NHRI) of Brazil. The NHRI is a permanent committee to monitor the National Council of Human Rights' (CNDH) implementation of international obligations regarding human rights.<sup>17</sup>

Parallel to these State initiatives, Brazilian civil society, which monitors foreign policy in relation to human rights, has been developing procedures and tools to be systematically involved in the national, regional and international implementation of human rights. One of the experiences was the creation, in 2006, of the Brazilian Committee on Human Rights and Foreign Policy (*Comate Brasileiro de Direitos Humanos e Política Externa* – CBDHPE).<sup>18</sup> The CBDHPE was created because civil society organizations and State institutions felt a shared need to stimulate social participation and strengthen democratic control over Brazilian foreign policy on human rights.

Therefore, in addition to requiring open dialogue, organizations that work on various human rights themes have started establishing themselves to ensure access to information and transparency. Moreover, these non-governmental organizations (NGOs) coordinated the transmission of joint reports to different international human rights mechanisms, such as the special procedures and treaty bodies, and have engaged in the UPR process, as we will see below.

### III. The Universal Periodic Review (UPR)

#### A. From the Commission on Human Rights to the Human Rights Council

The United Nations Human Rights Council (HRC) was created by the General Assembly<sup>19</sup> to substitute the Citizens' Commission on Human Rights (The Commission), which had served as the main political body on human rights issues in the UN system for sixty years.

The Commission was a subsidiary body of the Economic and Social Council (ECOSOC), made up of 53 States elected for three-year terms by the ECOSOC, with the balance of representation from the UN's five regional groups. The Commission's key roles are standard setting in the field of human rights and monitoring compliance with human rights standards.

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<sup>17</sup> Brazil, National Council of Human Rights, *Resolução n° 6, de 22 de Junho de 2017*, 2017/38, online: <[www.gov.br/mdh/pt-br/aceso-a-informacao/participacao-social/conselho-nacional-de-direitos-humanos-cndh/Resoluon06ComissoInternacional.pdf](http://www.gov.br/mdh/pt-br/aceso-a-informacao/participacao-social/conselho-nacional-de-direitos-humanos-cndh/Resoluon06ComissoInternacional.pdf)>.

<sup>18</sup> "Sobre o Comitê", online: *Comitê Brasileiro de Direitos Humanos e Política Externa* <[www.dhpoliticaexterna.org.br/?lang=en](http://www.dhpoliticaexterna.org.br/?lang=en)>.

<sup>19</sup> The body was established and met for the first time in June 2006. Human Rights Council, GA Res 60/251, UNGAOR, 60th Sess, Supp No 49, UN Doc A/RES/60/251 (2006) 1 [*Resolution 60/251*]. See also Helen Upton, "The Human Rights Council: First Impressions and Future Challenges" (2007) 7:1 HRLJ 29.

The Commission was also the main forum for NGOs to raise human rights concerns with States and to lobby for the creation of new standards or take action on situations on the ground. NGOs accredited by the ECOSOC could participate in the Commission's session and make oral and written statements.<sup>20</sup>

A decision was made at the World Summit in September 2005 to create a new Human Rights Council. The resolution establishing the HRC was adopted by the General Assembly on 15 March 2006 by a majority vote, after five months of protracted negotiations.

The main reason for this change was the criticism of the Commission:

for its double standards and selectivity in the treatment of country situations and failure to address severe human rights violations occurring in many countries. The election of States with extremely poor human rights records of the members of the Commission weakened its credibility. Furthermore, its institutional culture, which was characterized by excessive politicization, regional alliances, and block voting, and the use of procedural provisions to prevent debate on proposed action against countries and on controversial issues weakened its functioning and ability to react to important human rights situations and fulfill its mandate.<sup>21</sup>

There are some important changes in the creation of the HRC that could be analyzed after almost fifteen years; however, our focus here is the function of the Universal Periodic Review (UPR) and its use by civil society as an additional mechanism to pressure States to improve the human rights situation in the country.

For Meghna Abraham, one of the main improvements of the transition of the Commission to the HRC was the creation of the UPR:

Taken as a whole, the key determinant of whether the Human Rights Council represents an improvement over the Commission is the UPR. If the UPR functions well, this may outweigh the losses in other areas but if it does not, there can be little doubt that the institutional design of the Council does not represent a significant improvement over that of its predecessor.<sup>22</sup>

## **B. What is the UPR**

The Universal Periodic Review (UPR) is a new mechanism established under General Assembly *Resolution 60/251*, which also created the HRC. The Resolution provides that the Council shall

undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations

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<sup>20</sup> Meghna Abraham, *A New Chapter for Human Rights: A Handbook on Issues of Transition from the Commission on Human Rights to the Human Rights Council* (Geneva: Friedrich Ebert Stiftung, 2006) at 11-12.

<sup>21</sup> *Ibid.*

<sup>22</sup> Abraham, *supra* note 20 at 45.



and commitments in a manner that ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialog, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies.<sup>23</sup>

The Commission had been criticized for selectivity and double standards in responding to the situation of human rights within countries, as mentioned above. In response, the General Assembly created this new UPR mechanism under which all countries are subject to review. *Resolution 60/251* in paragraph 5 (f) provides that the “work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialog and cooperation, with a view to enhancing the promotion and protection of all human rights.”<sup>24</sup>

Created in 2006, the UPR is a periodic mechanism because it occurs approximately every four years and universal because all State members of the UN are involved. It consists, therefore, of a review of human rights, by means of which the countries of the United Nations may examine, evaluate and issue recommendations to each other to improve the situation of human rights in the whole world.

The way it was designed, the UPR involves assessing the human rights situation of the States under Review. Thus, it seeks to stimulate cooperation and exchange between the States to strengthen their human rights policies and institutions in the short and medium term.

The UPR process occurs in four stages.<sup>25</sup> The first stage is the preparation of the three reports to be taken into account during the review: a) the Official Report sent by the State under Review (SuR); b) the UN Report, with information of the bodies and mechanisms of the UN on the SuR; and c) the Parallel Report, a document compiled and systematized by the UN based on contributions submitted by civil society.

Stage two is the Interactive Dialog. This dialog occurs during the session held in Geneva where, under the group of three Rapporteur States (called the “troika”), the Working Group examines the reports drawn up in the first stage. The Working Group is composed of 47 Member States of the HRC. The SuR presents its report orally, answers the questions raised by the States and receives recommendations for improving human rights in the country.

Stage three is the adoption of a final report containing the recommendations to be implemented by the SuR. During the Interactive Dialog, the Office of the High Commissioner for Human Rights (OHCHR) prepares a Final Report. The Final Report is formally presented in the next regular session of the HRC. This is the moment in which the SuR finally expresses if it accepts (support), rejects (take note) or accepts

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<sup>23</sup> *Resolution 60/251*, *supra* note 19 at para 5(e).

<sup>24</sup> *Ibid* at para 5(f).

<sup>25</sup> Instituto de Desenvolvimento e Direitos Humanos, “Civil Society and Human Rights: Practical Guide on the Universal Periodic Review” (2018), online (pdf): <[www.iddh.org.br/wp-content/uploads/2020/08/E-book-IDDH-EN\\_2019.pdf](http://www.iddh.org.br/wp-content/uploads/2020/08/E-book-IDDH-EN_2019.pdf)>.

with reserves each one of the recommendations. This is the only time that civil society, with consultative status, has the right to speak.

In the last stage, the implementation of recommendations occurs, as do preparations for the next review.<sup>26</sup>

Thus, in periods of four and a half years, all States are reviewed. The next review begins from the previous review's analysis of the current situation. In the period between reviews, the State should make it possible to implement the recommendations. It can, if it wishes, submit a mid-term report between the cycle that has passed and the next (i.e., after approximately two years) showing progress made and what recommendations remain challenges. This type of report can be drawn up both by the State and by civil society and presented during the HRC Session. Thus, civil society can monitor the implementation of these recommendations and also prepare and present mid-term reports on the status of the State's implementation of the recommendations.

The UPR is a different mechanism and can be described as strategic because it "combines distinctive characteristics, which should inform strategic thinking and action: Periodicity; Universality and equal treatment; InterState cooperation; Comprehensive legal framework; Required participation."<sup>27</sup> About this last characteristic, the participation of stakeholders is the central principle of the UPR. Civil society organizations and National Human Rights Institutions (NHRIs) are encouraged to formally participate in the UPR process. States are also encouraged to conduct broad consultations with all relevant stakeholders.<sup>28</sup>

Brazilian civil society has focused on the UPR mechanism since it was created. Civil society's inclusive practice resulted in the establishment of a Coalition precisely to monitor the UPR process. Social participation in each cycle is discussed below.

## C. Brazil in the UPR

### 1. BRAZIL'S 1ST AND 2ND CYCLES

Brazil was among the group of 48 countries that participated in the first UPR review in March 2008. Since then, Brazilian civil society has accompanied each UPR cycle. In the first cycle, due to lack of experience of both the Brazilian State and civil society, actions were limited and discreet. At this time, civil society participated by means of a national consultation organized by the Brazilian State prior to the drafting of the official report. Civil society entities were invited to debate the methodology to

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<sup>26</sup> *Ibid* at 7-8.

<sup>27</sup> José Parra, *Beyond the Procedure: The Universal Periodic Review as a Catalyst for Public Debate on Human Rights* (Geneva: Friedrich Ebert Stiftung, 2016) at 8-9.

<sup>28</sup> *Review of the Work and Functioning of the Human Rights Council, HRCOR*, 16th Sess, 47th Mtg, UN Doc A/HRC/RES/16/21 (2001) 1.

be adopted and to participate in an open online written questionnaire and a public hearing in the Federal Senate to discuss the preliminary version of this report.

Human rights bodies point out that it was civil society itself that suggested that the government organize public hearings to discuss the preliminary text. It became clear that the State could not present its public policies on human rights without reporting on the actual situation and challenges to these policies' effectiveness. The final version submitted to the UPR documents some improvements in this sense. Despite this, the process was marked by some structural difficulties and limitations, especially with respect to predictability, representativeness and centralization in the federal government. These also contributed to the non-involvement of states and municipalities.<sup>29</sup>

In addition to their participation in the official report, 22 entities sent reports to be included in the Parallel Report prepared by the OHCHR.

In total, 15 recommendations were received, all of which Brazil supported. The main themes were police abuse and the prison system, the justice system and rule of law, and Indigenous peoples and the environment.

Civil society also participated through the recently established Brazilian Committee on Human Rights and Foreign Policy (CBDHPE). The CBDHPE was created on 31 May 2006 "as civil society organizations and State institutions felt a shared need to encourage citizen participation and strengthen democratic control of Brazilian foreign policy as it relates to human rights."<sup>30</sup> The Committee is founded on three principles: 1) in a republic, all the branches of power should be transparent and subject to oversight by civil society; 2) in a democracy, all branches of power should be subject to the participation of civil society; and 3) under the rule of law, there is no manifestation of power that is not legally regulated, whether on constitutional or international principles.

Thus, the Committee did not aim to monitor the UPR. However, because it aimed to influence Brazilian foreign policy, it was the first coalition to work more particularly on the UPR. During the first cycle, the CBDHPE participated in three public hearings in the National Congress (two in the Chamber of Deputies and one in the Federal Senate) and sent two letters, one to the Ministry of Justice and one to the Ministry of Foreign Affairs. They sought to disseminate information about the mechanism in the country, demanding transparency from the Brazilian State and expanding the number of reports organizations and social movements submitted.

In the second cycle (2012), States and civil society participated on a greater scale around the world. In the Brazilian case, civil society sent 47 reports to be part of the Parallel Report prepared by the OHCHR (of these, 26 were joint reports) and Brazil received 170 recommendations. The main themes remained the same: police abuse and the prison system, the justice system and rule of law, and Indigenous peoples and the

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<sup>29</sup> Conectas Direitos Humanos, *Direitos Humanos: O Brasil na ONU*, Anuário 2008/09 (São Paulo: Conectas, 2009) at 107.

<sup>30</sup> "Sobre o Comitê", *supra* note 18.

environment. However, new themes were added to these, namely women, children and adolescents, social and economic rights, and, migrants and refugees. The State rejected only one recommendation (from Denmark, which suggested the demilitarization/unification of the police).<sup>31</sup>

In terms of democratic control, the entities of the CBDHPE participated through a) three public hearings in the Federal Legislative, both in the Commission of Human Rights and Minorities of the Chamber of Deputies (Nov. 2012, Mar. 2015, Dec. 2016), accompanying the theme of the UPR and monitoring the implementation of recommendations; b) participation in a video conference on foreign policy with the Ministry of Human Rights and the Ministry of Foreign Affairs (MFA, Mar. 2015); c) with the support of the office of the UN in Brazil, a workshop focused on the articulation and engagement of civil society organizations in the UPR mechanism (Aug. 2016); and d) the coordination of a round table between civil society and Embassies regarding Brazil's cycles through the UPR (Dec. 2016).<sup>32</sup>

Many countries understood the UPR process as a chance to develop a unique tool for monitoring human rights recommendations, but this was not the case in Brazil. "It [UPR] also remedies the often cited 'reporting fatigue' since the mechanism's predictability allows states to collect data and do the follow-up in a systematic manner that is relevant for reporting on all human rights obligations of the state."<sup>33</sup> However, the Brazilian State did not follow in this same direction. Although civil society had engaged in the first two cycles and requested many times that the State develop, in a dialogue with civil society, a UPR Follow-up Monitoring Plan, this has not yet occurred.

In the first two cycles, as shown, civil society followed all the UPR processes that Brazil went through, but the State was not sufficiently interested in monitoring recommendations systematically. That is why, in the third cycle, CSOs decided to build their own process to monitor the UPR.

## 2. BRAZIL'S 3RD CYCLE

Brazil's third cycle started in May 2017 and resulted in an increased number of recommendations. Two-hundred-forty-six recommendations were received, 242 of which were accepted and 4 were rejected (noted). The recommendations noted were, first, Number 20, made by the United Kingdom of Great Britain and Northern Ireland, suggesting the implementation of a national election to select national candidates for the United Nations Treaty Body in an open and merit-based process. Second, Number 110, made by the Bolivarian Republic of Venezuela that asked Brazil to "restore democracy and the rule of law indispensable for the full enjoyment of human rights, harmed by the parliamentary coup d'état against President Dilma Rousseff." Third, Number 142, also

<sup>31</sup> UPR Info, "Brazil", online: <[www.upr-info.org/en/review/Brazil/Session-13---May-2012/Civil-society-and-other-submissions#top](http://www.upr-info.org/en/review/Brazil/Session-13---May-2012/Civil-society-and-other-submissions#top)>.

<sup>32</sup> "Sobre o Comitê", *supra* note 18.

<sup>33</sup> UPR Info, "The Butterfly Effect: Spreading Good Practices of UPR Implementation" (2016) at 8, online (pdf): <[www.upr-info.org/sites/default/files/general-document/pdf/2016\\_the\\_butterfly\\_effect.pdf](http://www.upr-info.org/sites/default/files/general-document/pdf/2016_the_butterfly_effect.pdf)>.

made by Venezuela, which suggested that Brazil should extinguish Constitutional Amendment 95/2016, stopping plans to freeze social spending for the next twenty years. Venezuela argued that these policies are inconsistent with the international obligations of a State where more than 16 million people live in extreme poverty.<sup>34</sup>

The final recommendation that Brazil did not accept is Number 99, made by the Holy See, recommending the protection of the so-called natural family and marriage, formed by a husband and a wife, as the fundamental unit of society, as well as the unborn. Civil society pressured the State to reject this particular recommendation as contrary to international human rights treaties and also to Brazil's national law on the rights of LGBTQI+ people and women's rights.

Due to an increase in the number and types of recommendations, the themes also became broader. The themes presented in the previous cycles were maintained, with the addition of the focus on education, in the field of social rights and economic policies, and the fight against poverty. It is important to note that civil society engagement also increased in this cycle. In total, 54 reports were submitted, 28 of which were joint submissions.<sup>35</sup>

Another interesting consideration is the Sustainable Development Goals (SDGs) addressed in the recommendations. These are Goal 16, Promote just, peaceful and inclusive societies (addressed in 35% of the recommendation); Goal 1, End poverty in all its forms everywhere (16%); and Goal 4, Quality education (12%).<sup>36</sup> This reflects the importance of civil society participation.

We highlight two significant points regarding the government's participation: the performance of the legislative branch, via the Chamber of Deputies, and an action by the Brazilian Executive.

In the first case, on 18 February 2020, the United Nations Parliamentary Observatory for the Universal Periodic Review was launched in the Chamber of Deputies. This is a partnership between the Commission on Minority and Human Rights of the Chamber of Deputies and the United Nations High Commissioner for Human Rights. It is the first State mechanism, albeit within the legislative sphere, to monitor the effectiveness of the recommendations made. The Observatory aims to increase national involvement with human rights mechanisms, contribute to the collection of information and good practices, increase knowledge about the UN's human rights mechanisms and their relevance, and use the results of human rights' mechanisms among legislators.<sup>37</sup>

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<sup>34</sup> UPR Info, "Responses to Recommendations – Brazil" (2017), online (pdf): <[www.upr-info.org/sites/default/files/document/brazil/session\\_27\\_may\\_2017/response\\_to\\_recommendations\\_brazil\\_2017.pdf](http://www.upr-info.org/sites/default/files/document/brazil/session_27_may_2017/response_to_recommendations_brazil_2017.pdf)>.

<sup>35</sup> *Summary of Other Stakeholder's Submissions on Brazil*, HRCOR, 27th Sess, UN Doc A/HRC/WG.6/27/BRA/3 (2017) 1.

<sup>36</sup> OHCHR, "Brazil – The Universal Periodic Review" (2019), online (pdf): <[lib.ohchr.org/HRBodies/UPR/Documents/Session27/BR/BRAZIL\\_Infographic\\_27th.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session27/BR/BRAZIL_Infographic_27th.pdf)>.

<sup>37</sup> "Observatório parlamentar da revisão periódica universal da ONU", online: *Câmara dos Deputados* <[www.camara.leg.br/observatoriorpu](http://www.camara.leg.br/observatoriorpu)>.

According to the President of the Commission, Deputy Helder Salomão, Brazil is experiencing a period of significant human rights violations, the “Dismantling of public policies is underway, leading to dramatic growth, visible to the naked eye, of misery and inequality.”<sup>38</sup>

Civil society views this initiative as positive with the potential to further develop the follow-up processes of this and other international human rights mechanisms. The Executive’s participation, on the other hand, is not so positive.

The current president took office during the third cycle so his government is not responsible for supporting or noting the recommendations. It is curious to note that, even though this government has not supported multilateral policies, the current government did prepare and present a Mid-Term report. Although the initiative of presenting a Mid-Term report is considered good practice, civil society was critical of the document. Civil society pointed to problems in content as well as in the format of the public consultation. The consultation was only held online and for a short period of time.<sup>39</sup>

Examining the State’s discourse in its Mid-Term report around the topic of ‘HR defenders’ offers a useful case study. For example, recommendation 111, made by Tunisia, suggested that Brazil should continue to provide better protection to human rights defenders and strengthen civil society as an essential partner in boosting the human rights system. The Brazilian State mentions civil society’s participation in at least three paragraphs (376, 379, and 382). The text is long and the topic complex so we include only a short excerpt to illustrate our point. Below, the State mentions social participation in the Deliberative Council of the Program for the Protection of Human Rights Defenders, Communicators, and Environmentalists (PPDDH):

382. In Ordinance No. 300, enacted on September 3, 2018, the Ministry of Women, Family, and Human Rights explicitly included social communicators and environmentalists in the list of human rights defenders to be protected under the PPDDH. The latter became then the Program for Protection of Human Rights Defenders, Social Communicators, and Environmentalists, and was later approved upon the enactment of Decree No. 9,937/2019, which consolidated the change of name and established PPDDH’s Deliberative Council. Decree No. 9,937/2019 enabled the increased participation of other relevant federal entities, as well as the possibility of inviting civil society organizations to participate in groups and committees under the Deliberative Council.<sup>40</sup>

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<sup>38</sup> Lara Haje, “Lançado observatório parlamentar para revisão periódica de direitos humanos”, *Agência Câmara de Notícias* (18 February 2020), online: <[www.camara.leg.br/noticias/638252-lancado-observatorio-parlamentar-para-revisao-periodica-de-direitos-humanos](http://www.camara.leg.br/noticias/638252-lancado-observatorio-parlamentar-para-revisao-periodica-de-direitos-humanos)>.

<sup>39</sup> Pedro Calvi, “Sociedade civil critica afastamento de relatório sobre direitos humanos do governo para a ONU e denuncia intervenção no CNDH”, *Comissão de direitos humanos e minorias* (28 August 2019), online: <[www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/cdhm/noticias/sociedade-civil-critica-afastamento-de-relatorio-sobre-direitos-humanos-do-governo-para-a-onu-e-denuncia-intervencao-no-cndh](http://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/cdhm/noticias/sociedade-civil-critica-afastamento-de-relatorio-sobre-direitos-humanos-do-governo-para-a-onu-e-denuncia-intervencao-no-cndh)>.

<sup>40</sup> Ministry of Women, Family and Human Rights (Brazil), “Universal Periodic Review, Mid-Term Report: 3rd Cycle” (2019) at 123, online (pdf): *UPR Info* <[www.upr-info.org/sites/default/files/document/brazil/session\\_27\\_-\\_may\\_2017/brazil\\_thirdcyclemid-termreport.pdf](http://www.upr-info.org/sites/default/files/document/brazil/session_27_-_may_2017/brazil_thirdcyclemid-termreport.pdf)>.

However, in its assessment of the same topic and same recommendation, civil society points out that civil society does not participate in PPDDH's Deliberative Council:

Regarding the participation of civil society, Decree No 8,724 of 27 April 2016 excluded civil society from the general coordination and management of the program, thus ending the social participation that has always been one of the pillars of this public policy. [...] More recently, on July 24 [2019], the current government issued decree 9,937 regulating the order of 2018 and opening the possibility of creating working groups with the participation of civil society. Nevertheless, this decree kept civil society out of the deliberative council, despite all the articulations and appeals made by them.<sup>41</sup>

Reading the State's report, it appears that civil society can be part of the Deliberative Council, which is not correct. This can easily be verified by reading the Decree mentioned by both reports. Article Five clearly establishes that only representatives of the Ministry of Women, the Family and Human Rights and from the National Public Security Secretariat of the Ministry of Justice and Public Security are part of the Deliberative Council. Paragraph Four states that representatives of other bodies or civil society may be invited to form thematic working groups or temporary commissions.<sup>42</sup>

This is not an isolated case. In its Mid-Term report, the Brazilian State demonstrates no commitment regarding the veracity of the information included or to civil society's participation the UPR mechanism. This demonstrates why it is so important to have organized civil society groups collecting and bringing data to the Human Rights Council.

#### IV. The UPR Brazil Coalition

Brazil's third cycle marked a new moment for Brazilian CSOs' participation in the UPR. As McMahon and Johnson's analysis of the first two cycles shows, the mechanism is generating some traction in promoting human rights. Key indicators of this are the number and type of recommendations made, the issues being raised, and the levels of acceptance of the recommendations. And according to the authors, more democratic states use the UPR.<sup>43</sup>

In 2017, a few months after the start of the third cycle, more precisely during an Advanced Course on Human Rights (*Curso Avançado de Direitos Humanos – CADH*)<sup>44</sup> organized by the Institute for Development and Human Rights (*Instituto de*

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<sup>41</sup> Coletivo RPU Brasil, "Mid-Term Report, Civil Society – UPR 3rd Cycle: Brazil (2017-2019)", *supra* note 1 at 12.

<sup>42</sup> Both Brazilian State and Civil Society Mid-Term Reports are available here: "State's Mid-Term Report: Brazil", online: *UPR Info* <[www.upr-info.org/en/review/Brazil/Session-27---May-2017/Follow-up#top](http://www.upr-info.org/en/review/Brazil/Session-27---May-2017/Follow-up#top)>.

<sup>43</sup> Edward R. McMahon & Elissa Johnson, *Evolution Not Revolution: The First Two Cycles of the UN Human Rights Council Universal Periodic Review Mechanism* (Geneva: Friedrich Ebert Stiftung, 2016) at 3.

<sup>44</sup> "Primeiro dia do XIII CADH", online: *Instituto de Desenvolvimento e Direitos Humanos* <[iddh.org.br/cursos/primeiro-dia-do-xiii-cadh](http://iddh.org.br/cursos/primeiro-dia-do-xiii-cadh)>.

*Desenvolvimento e Direitos Humanos – IDDH*),<sup>45</sup> the UPR Brazil Coalition was created. The group is composed of 25 Brazilian civil society organizations that accompanied the issue of Brazilian foreign policy and the UPR since the first cycle (2008). It was only in 2017, however, that the group realized the relevance of creating a joint follow-up of UPR recommendations. The Coalition was established with the aim of collecting data about the human rights situation in the country by monitoring, even more closely and in a more organized manner, Brazil in the UPR.

Since its creation, the UPR Brazil Coalition has held annual meetings in Brasília, in partnership with the United Nations Human Rights Office in Brasília/Brazil, seeking to structure an efficient and appropriate methodology to monitor the level of implementation of the UPR's recommendations. In 2018, the UPR Brazil Coalition developed the UPR Platform, an online tool for consultation and assessment of the UPR recommendations received by the Brazilian State.

The UPR Platform was a novelty since it was the first tool that civil society had developed to monitor the State's implementation of the recommendations made. The goal is to create a space where the content of the recommendations is systematized in an accessible and practical way so it can be used by (all) Brazilian human rights defenders.<sup>46</sup>

To test methodology and check its limitations, the UPR Brazil Coalition currently systematizes data, prepares joint reports about the situation of human rights in the country and disseminates the information in national public hearings, UN side events and in dialogues with Embassies and Permanent Missions.

## **A. Mid-Term Report (2019)**

For the first time in 2019, the UPR Brazil Coalition prepared and presented a Mid-Term Report in a parallel event in the session of the HRC. The Coalition selected themes to discuss following discussions held during its previous meetings (February 2017 and May and November 2018), taking into account: a) the main themes of the recommendations Brazil received in the third cycle; b) the relevance of these human rights issues to the country; and, c) the role of the CSOs that are part of the Coalition in these themes. Thus, not all the recommendations Brazil received and accepted were evaluated in the report.

Moreover, for each evaluation, the Mid-Term Report presented: the number of recommendation(s) evaluated in each theme; the status of the implementation, visually represented as traffic lights (green – “implemented”; yellow – “partially implemented” or red – “not implemented”); suggestions to public authorities (whether Legislative, Judiciary or Executive) for each recommendation evaluated; and the relevant goal in the 2030 Agenda for SDGs.

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<sup>45</sup> “Home - IDDH”, online: *Instituto de Desenvolvimento e Direitos Humanos* <<http://iddh.org.br/>>.

<sup>46</sup> Access the UPR Brasil Platform at: <<https://plataformarpu.org.br/>>.



For the purposes of better visualization, frames were also developed<sup>47</sup> to be displayed after the text of each theme or even separately. Each frame contained the text of each recommendation evaluated; a column containing lists of themes or groups covered by the recommendation; the State that implemented the recommendation; the evaluation by the visual color of the traffic lights; and the related SDGs.

This was the UPR Brazil Coalition's first experience producing a report to assess, with quality and in brief, the highest possible number of recommendations. As already mentioned, the third cycle represented the largest number of recommendations Brazil had received to date.

In all, 163 of 242 recommendations were evaluated, i.e., 67.35% of those accepted by the Brazilian State. Of these, 87.11% (142) were considered as not implemented, 12.26% (20) were partially implemented and only 0.61% (1) were implemented.

Among those recommendations not implemented are the totality of recommendations on NHRI (7); human rights defenders (12) and migrants (2); discrimination and violence against people of African descent (5); discrimination and violence against Indigenous peoples (31); the environment (2); and business and HR (3).

Other themes included partially implemented recommendations: discrimination and violence against women and girls (13 not implemented and 1 partially implemented); discrimination and violence against LGBTI communities (2 not implemented and 5 partially implemented); the prison system (19 not implemented and 1 partially implemented); police violence (11 not implemented and 1 partially implemented); torture (5 not implemented and 3 partially implemented); health (9 not implemented and 3 partially implemented); and education (14 not implemented and 1 partially implemented). Thus, even in these cases, there is not a single theme where the majority of recommendations have been at least partially implemented. The same situation occurs in the theme of work (8 not implemented and 1 implemented), which has a 11.11% implementation rate.<sup>48</sup>

The Executive Summary of the Mid-Term Report highlights the chaotic human rights situation that Brazil is experiencing. The State was facing:

institutional setbacks, whether in terms of democratic participation, sustainable development or human rights [...] an evident increase in gender violence, discrimination, inequalities and hate speech [...] the growing lack of transparency about official data regarding social, economic and environmental policies, and also the dismantling of social participation policies, through the extinction or precariousness of councils and spaces for participation [...] cuts in the public budget to promote social rights and investments.<sup>49</sup>

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<sup>47</sup> Coletivo RPU Brasil, "Mid-Term Report, Civil Society – UPR 3rd Cycle: Brazil (2017-2019)", *supra* note 1 at 30.

<sup>48</sup> Coletivo RPU Brasil, "Mid-Term Report, Civil Society – UPR 3rd Cycle: Brazil (2017-2019)", *supra* note 1.

<sup>49</sup> *Ibid* at 7.

Its conclusion evidenced:

the risk that the project of a Democratic Brazil, developed and focused on the guarantee of human rights, is taking at the moment. But organized civil society is attentive and persistent in its goal, because as the poet Mario Quintana said “eles passarão, eu passarinho” (play on words meaning they will pass away, but I will be free as a bird, against the censorship in Brazil during the Military Dictatorship). A sustainable society is built with work and interest focused on the common good, as guaranteed by the 1988 Citizen’s Constitution. It remains for us to implement it.<sup>50</sup>

In 2019, during HRC’s 42nd Regular Session (9 September 2019 to 27 September 2019), the UPR Brazil Coalition presented its Mid-Term Report in a parallel event called “Democracy and Human Rights in Brazil: what’s happening?” (19 September 2019).<sup>51</sup> This event had a positive impact since the UPR Brazil Coalition managed to bring together other civil society entities including representatives of Indigenous movements, *quilombolas*, blacks and women. The material was then disseminated with strategic partners (e.g., The National Council of Human Rights – CNDH), embassies and other stakeholders.

## **B. UPR of Human Rights in the context of COVID-19 Report (2020)**

Due to the COVID-19 pandemic, the Coalition chose to reorganize its planned activities for 2020 and decided to prepare a thematic report entitled ‘Universal Periodic Review of Human Rights in the context of the COVID-19’. The thematic report aimed to denounce the deepening of human rights violations that had already been identified by the Coalition, as well as to record new violations that occurred during the institutional, health, and economic crises worsened by—not created by—the COVID-19 pandemic.

Though not an official report for the UPR mechanism, it responded to the United Nations Guidance on civic space participation, which highlights that:

Civil society has an essential role to play, for example, by tailoring responses to the needs on the ground and giving feedback on how responses work, building trust and amplifying the voices of those not heard. Ensuring the participation of communities most affected by the COVID-19 in national response and recovery plans is the cornerstone to fostering stronger, more resilient societies that leave no one behind.<sup>52</sup>

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<sup>50</sup> Coletivo RPU Brasil, “Mid-Term Report, Civil Society – UPR 3rd Cycle: Brazil (2017-2019)”, *supra* note 1 at 8.

<sup>51</sup> The English version is indexed on the OHCHR UPR NGOs Mid-term Reports page; the Portuguese version is available on the IDDH publications page. “UPR NGOs Mid-Term Reports”, online: *OHCHR* <[www.ohchr.org/EN/HRBodies/UPR/Pages/UPR-NGOs-Mid-term-reports.aspx](http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPR-NGOs-Mid-term-reports.aspx)>; “Publicações”, online: *Instituto de Desenvolvimento e Direitos Humanos* <[iddh.org.br/publicacoes](http://iddh.org.br/publicacoes)>.

<sup>52</sup> “United Nations Guidance Note on Protection and Promotion of Civic Space”, *supra* note 5.

The report aims to follow up on implementation levels for the third cycle recommendations already evaluated in the Mid-Term report and to identify and highlight the human rights and social groups that were most affected during the pandemic.

The document was prepared during five months of collective work and released on 12 November 2020. On this day, it was presented in the National Human Rights Council of Brazil (NHRI) plenary session<sup>53</sup> and also launched in a public live broadcast over the internet.<sup>54</sup>

After it was launched, the UPR Brazil Coalition also engaged in a round of online dialogues organized by the Canadian and Norwegian Embassies in Brazil. Sixteen entities<sup>55</sup> that are part of the Coalition were present, as were representatives of the Embassies of Australia, Canada (co-host), Chile, Denmark, United States of America, Norway (co-host), New Zealand, Netherlands and Sweden. This was an important moment of exchange between Brazilian civil society and representatives from some States that showed an interest in the civil society monitoring carried out in this and other HR UN mechanisms.

Coalition members selected 12 themes: (1) Indigenous peoples and the environment; (2) the prison system, combating torture and public security; (3) health; (4) gender and sexuality; (5) education; (6) racism, inequalities, austerity and rights; (7) adequate urban housing, city and food, and nutrition; (8) human rights and companies; (9) human rights defenders, right to transparency and information and democracy; (10) migrants and refugees; (11) work and income; and, (12) children and adolescents.

The themes with the highest number of setbacks are: (2) the prison system, combating torture and public security and (4) gender and sexuality, each with setbacks on 13 recommendations. These are followed by (1) Indigenous peoples and the environment and (6) racism, inequalities, austerity and rights, with setbacks on 11 recommendations, and (3) health and (7) adequate urban housing, city and food, and nutrition, with setbacks on 5 recommendations. Human rights defenders, right to transparency and information and democracy (9); (12) children and adolescents; (8) human rights and companies, each have setbacks on 1 recommendation.

The Coalition recognizes that this is relatively shallow data since some themes have a higher number of recommendations in the UPR than others, which directly

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<sup>53</sup> The transmission of the meeting is available here: Conselho Nacional dos Direitos Humanos, “12a Reunião Extraordinária – 12.11.20” (12 November 2020), online (video): *Facebook* <fb.watch/2ikplibeYG>.

<sup>54</sup> Available here: Justiça Global, “Lançamento do relatório 'Revisão Periódica Universal dos Direitos Humanos no contexto da COVID-19’” (12 November 2020), online (video): *YouTube* <<https://www.youtube.com/watch?v=XOTiBFhJHY0>>.

<sup>55</sup> Articulação dos Povos Indígenas do Brasil – APIB; Articulação para o Monitoramento dos DH no Brasil; Artigo 19; Associação Brasileira de Lésbicas, Gays, Bissexuais, Travestis, Transexuais e Intersexos – ABGLT; Associação Brasileira Interdisciplinar de AIDS – ABIA; CDES Direitos Humanos; Centro de Educação e Assessoramento Popular – CEAP; CLADEM; Gestos; Iepé – Instituto de Pesquisa e Formação Indígena; Instituto de Desenvolvimento e Direitos Humanos – IDDH; Instituto Migrações e Direitos Humanos – IMDH; Justiça Global; Movimento Nacional de Direitos Humanos – MNDH; Rede de Cooperação Amazônica – RCA; and, Terra de Direitos.

influences the final number of recommendations that have been set back. However, the UPR Brazil Coalition also highlighted these themes for their transversality. Issues related to the financing of rights; health not only due to the COVID-19 pandemic; racism; gender violence; discrimination against indigenous people and *quilombolas*; damage to the environment; and extreme poverty are not new challenges in Brazil.

Of the 242 recommendations supported (accepted) in the third cycle, 190 of were evaluated in the thematic report. The UPR Brazil Coalition's analysis indicates that 142 recommendations (58.68%) are not being implemented by the State. Of these, 64 recommendations were considered to have serious setbacks. Some setbacks were identified for recommendations that had not yet been implemented.<sup>56</sup> The conclusion that, as in Brazil, the mere failure to implement a recommendation does not reflect the current reality is innovative. Setbacks exist because achievements in human rights and other areas have been dismantled or reversed.

The thematic report highlighted the general panorama of human rights in Brazil, and the resulting generalized crisis worsened with EC 95/2016. This, combined with the arrival of the COVID-19 pandemic, further deepened Brazil's human rights crisis.

This means that, in addition to not implementing more than half of the recommendations, in 2020, Brazil was moving in the opposite direction with at least a third of all the recommendations. The Coalition's analysis concludes that:

if it were not for these setbacks, it could be said that almost nothing or very little has changed in this period in comparison to the previous report of 2019, drafted by this Group of civil society organizations that monitors the implementation of the UPR's recommendations [...] leading to the assumption that it is nothing more than a dead letter. [...] we hope to draw public attention, nationally and internationally, to the serious setbacks in the agenda of human rights in the country, aggravated by the COVID-19 pandemic, at the same time that we call the public powers to comply with the voluntary commitments assumed before international organizations and efforts to promote and protect the human rights of the most marginalized segments of Brazilian society. No lesser rights.<sup>57</sup>

Despite the advances made with the thematic report, the Coalition knows that it does not include all human rights violations that occur in Brazil. Even though the aim was to evaluate all of the 242 recommendations made in the third cycle, this is not the ultimate goal of monitoring. Rather, the focus is on evaluating violations strategically and collecting data to portray the human rights situation at particular moment in time.

The UPR Brazil Coalition expects to improve its methodology based on this second experience of reporting. The Coalition is still a new initiative and it combines many different kinds of CSOs that work in different areas all across Brazil. Many

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<sup>56</sup> Coletivo RPU Brasil, "Universal Periodic Review of Human Rights in the Context of COVID-19", *supra* note 1 at 26, 78.

<sup>57</sup> *Ibid* at 11.

aspects of monitoring and evaluation can and will be changed for future reports, including for the fourth UPR cycle in 2022.

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An active and strong civil society is an essential condition for democracy and the respect for International Human Rights Law. Civil society is recognized as addressing concerns that other actors may not be focusing on, and for promoting local, regional, and international human rights agendas.

Brazilian civil society understands that the UPR is the most important mechanism created in the transition from the former Commission of Human Rights to the UN Human Rights Council and so strategically committed to monitor and follow up on the recommendations of the UPR. As the UPR is a periodic mechanism that includes most human rights in the analysis, the UPR Brazil Coalition decided to concentrate resources on advocacy and monitoring.

It should be noted that, in the course of Brazil's cycles in the mechanism, there was an increase in the quantity and quality of civil society participation. More recently, with the shrinking of civic space in Brazil, monitoring and advocacy networks are increasingly important. In this context, it seemed like a good moment to share a good practice (i.e., the UPR Brazil Coalition) as a particular case of a network composed of a diverse group of organizations with different human rights agendas.

As shown, the UPR Brazil Coalition has developed its own monitoring methodology, innovative tools and new strategies to evaluate the State's implementation of the UPR's third cycle recommendations. It also has proven to be a strategic space for civil society to monitor the human rights situation in the country and provide an overview of how this situation has changed over the decades. The UPR Brazil Coalition, therefore, acts as thermometer to measure advances and setbacks.