



*Permanent Mission of Brazil to the United Nations Office  
and other International Organizations in Geneva*

**URGENT**

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The Permanent Mission of Brazil to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and, with reference to the document OL BRA 8/2019, dated 7 June 2019, has the honor to convey herewith the Brazilian Government's response to the issues raised by the relevant Special Procedures mandate holders and by the Inter-American Commission on Human Rights in the abovementioned joint communication.

The Permanent Mission of Brazil in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, August 14<sup>th</sup>, 2019

OHCHR REGISTRY

15 AUG 2019

Recipients : ..... SPB .....  
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To the Office of the United Nations High Commissioner for Human Rights - Geneva

## RESPONSE TO OL BRA 8/2019

The 1988 Brazilian Federal Constitution Federal guarantees the full enjoyment of due process and the democratic rule of law. Its core principles are sovereignty, citizenship, the dignity of the human person and the social values of work, free initiative and political pluralism. The Executive, Legislative and Judiciary Branches are independent and harmonious and constitute a mechanism of legal checks and balances for the defense of human rights and fundamental freedoms. Within this institutional framework, the Brazilian political system provides the people a wide range of opportunities for consultation, monitoring and follow up of the public decisions and policies.

2. Over more than 30 years since the enactment of the Federal Constitution, the undeniable opening of the public power to popular and social demands has resulted in the establishment of a heterogeneous set of collegiate bodies of various forms and diverse technical quality. In 2019, the Ministry of Economy identified 2.593 collegiate bodies registered in the Organizational Information System (SIORG), many of which had been inactive for years, coexisting with unregistered internal bodies. The excessive proliferation of bodies, with mandates that often overlap, has made it difficult to manage public issues and has been costly to the Brazilian State.

3. Given the need to promote budget savings and administrative efficiency, the Government decided to enact the autonomous presidential Decree 9.759/19, on April 11<sup>th</sup> 2019. The initiative intends to rationalize and regulate the collegiate bodies at the federal level and to establish a rational and effective structure, without prejudice to the rights of citizens to participate in the drafting, follow up and monitoring of public policies. In its essence, the Decree aims to value bodies with truly participatory functions and which address topics that clearly relate to the organization of public bodies and institutions for the protection of fundamental rights, as well as to those topics that establish relevant public objectives.

4. The General Secretariat of the Presidency of the Republic is examining requests for the maintenance of collegiate bodies, in coordination with the competent Ministries. So far, all the councils that integrate the structure of the federal administration have been essentially preserved, for instance. The Brazilian Government also considers the convenience of reestablishing other human rights

entities in order to maintain all the collegiate bodies that are under the Ministry of Women, Family and Human Rights.

5. The Ministry of Women, Family and Human Rights alone has as part of its structure the following collegiate bodies: National Human Rights Council (CNDH); National Council for the Rights of the Child and the Adolescent (Conanda); National Council for the Rights of Persons with Disabilities (Conade); National Council for the Rights of the Elderly (CNDI); National Committee for the Prevention and Combat of Torture (CNPCT); National Mechanism for the Prevention and Combat of Torture (MNPCT); National Commission for the Sustainable Development of Traditional Peoples and Communities (CNPCT); National Council for the Combat of Discrimination (CNCD); National Council for Women's Rights (CNDM); National Council of Youth (Conjuve); and National Council for the Promotion of Racial Equality (CNPIR).

6. Additionally, it has been ensured the functioning of bodies such as the Intersectoral Committee for Follow-up and Monitoring of National Policy for the Homeless Population (CNPC); the National Council of Cultural Policies (CNPC); the National Commission of the Eradication of Slave Labor (Conatrae); the Executive Council of the National System of Public Security and Prison Information and Arms and Ammunition, Genetic Material, Digitals and Drugs Traceability; the National Immigration Council (CNIg); and Executive Committee of the National Policy for Women in Deprivation of Liberty and Former Prisoners, among others.

7. To a lesser extent, councils originated from the National Policy of Social Participation (PNPS) and the National System of Social Participation (SNPS) were also preserved. The operation of other collegiate bodies may still be justified due to administrative needs, but without being perpetuated or kept simply because of inertial distortions that lead to the proliferation of instances.

8. To make the councils more relevant and effective, as well as to ensure good governance, rationality and administrative efficiency, Decree 9,759/2019 also provided for measures to improve the functioning of these bodies. It defined practices aimed at addressing the root causes of malfunction and logistic difficulties of most councils, thus ensuring consistency and predictability of their operations, even in contexts of budgetary restrictions.

9. The constitutionality of the measure is under consideration of the Federal Supreme Court (STF, unconstitutionality action No. 6121/19), which decided on provisional measures on June 13, 2019. The highest court in the country acknowledged the competence of the administrative agent to decide and choose on the matter, pursuant to art. 84, VI, of the Constitution, which expressly authorizes the President of the Republic to provide for, by decree, on the organization and operation of Federal Governments services, whenever no augmentation of expenditures or creation or abolishment of government bodies are involved.

10. Furthermore, the Supreme Court suspended the effects of Art.1 §2 of Decree No. 9759/2019, as amended by Decree 9812/2019, to exclude, until the final decision on the matter, the possibility of extinction of collegiate bodies created by law in formal sense, even if reference to "the competence or composition" of the collegiate body is absent. The effects of subsequent regulatory acts which promoted, in accordance with Article 9 of Decree 9759/2019, the extinction of the bodies at issue, were also suspended.

11. The Brazilian democracy is founded on the constitutional principle of popular sovereignty, which is not limited to the formation of collegiate bodies, but rather in the highly qualified and informed public debate and the full enjoyment of the rights to adversarial proceedings. It should be noted that the collegiate bodies are not, nor could they be, by their very nature, sufficient instruments for the effective enjoyment of human rights in the country. The Brazilian political and social system has several formal spheres, legal procedures and consolidated practices that allow citizens to actively participate in the decisions made by the public authorities, as well as acting in the five dimensions of social control established by the Constitution: formulation, deliberation, monitoring, evaluation and financing.