



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

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The Permanent Mission of Brazil to the United Nations and other International Organizations in Geneva presents its compliments to Office of the United Nations High Commissioner for Human Rights – Special Procedures Division – and, with reference to letter OL BRA 9/2020, dated 16 September 2020, has the honor to transmit the attached observations from the Brazilian government in response to the concerns presented by the relevant Special Procedure mandate holders in the abovementioned 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, 18 September, 2020

To the

Office of the United Nations High Commissioner for Human Rights (OHCHR)  
Palais des Nations CH-1211 Geneva 10, Switzerland

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In reference to the joint communication OL BRA/9/2020, dated 16 September 2020, the Brazilian government would like to make the following clarifications.

The Ministry of Health Ordinance nº 2.282, dated 27 August 2020, updates Ordinance nº 1.508/2005 in subjects related to the procedure of justification and authorization of termination of pregnancy in cases provided for by law.

It is important to clarify that the Brazilian Ministry of Health had previously received several inquiries from the Public Defender's Office and civil society organizations with a view to updating the 2005 Ordinance, after the entry in force of Law nº 13.718, of September 24, 2018, which mandates the criminal prosecution of sexual crimes and of sexual crimes against the vulnerable.

In this regard, the Ministry of Health carried out studies on how the Ordinance could be brought in line with the new legal provisions, as well as the recommendations of the Public Defender's Office, respecting the prerogatives from other branches of government.

The Ministry of Health is the federal body in the Executive branch responsible for the organization and elaboration of plans and public policies focused on the promotion, prevention and assistance in health to Brazilians.

In summary, the procedures outlined in Ordinance nº. 2.282/2020 can be divided in four phases, which are registered in the confidential medical records of the patient. In first phase, the pregnant woman herself informs the circumstances of the case before two professionals from the health service. They elaborate a Circumstantiated Reporting Term, containing the location,

day and approximate time of the fact, type and form of violence, description of the aggressors, if possible, and identification of witnesses, if any.

In the second phase, the responsible physician carries out physical and gynecological examinations and issues a technical opinion. The pregnant woman also receives specialized attention and evaluation by a multi-professional health team, composed of an obstetrician, anesthetist, nurse, social worker and / or psychologist. Three members of this team will subscribe the Terms of Approval of the Pregnancy Termination Procedure, which should be consistent with the technical opinion issued by the physician.

The third phase consists of the signing of the Terms of Responsibility by the pregnant woman, which contains express information about the relevant Brazilian legislation.

Finally, the fourth phase ends with the signing of the Terms of Free and Informed Consent, which must contain the express declaration on the voluntary and conscious decision of the pregnant woman to terminate the pregnancy. For this, the woman must be informed, in accessible language, about the procedures and risks involved in the medical intervention, as well as the confidential nature of the medical records, among other matters.

The Ordinance determines that doctors, health professionals or those in charge of a health facility should notify the police about cases where there is evidence or confirmation of rape, as previously provided for by law. In addition, these professionals must preserve possible material evidence of the crime of rape, to be immediately delivered to the police authority, in order to support a possible criminal investigation.

It should be emphasized that the 2020 Ordinance does not contain procedural or criminal innovations, given that Law 10.778/2003 already determines the compulsory notification to the police of cases of violence against women who seek public or private health services. If a woman receives medical care in a hospital, emergency room, health center, office, etc., whether public or private, and there is evidence - conclusive or otherwise - of sexual violence, health professionals are obliged to inform the competent police authorities.

With the enactment of Ordinance n° 2.282/2020, the Ministry of Health did not create any rights or obligations, nor did it innovate with relation to the current legal norms in place in Brazil. The Ordinance is a means to comply with other applicable law already in force, guiding and protecting health professionals of the Brazilian National Health System (SUS) on how to proceed in compliance with the current legislation.

The text of Ordinance GM/MS No. 2.282/2020 itself already provides clear elements to respond to any claim of alleged illegality, restriction to, or disenfranchisement regarding the rights of women and girls who are victims of sexual violence. In effect, Ordinance GM/MS n° 2.282/2020 contains only minor changes in relation to the revoked Ordinance n° 1.508/2005, with a view to bring the health regulations into line with the legal norms in force.

In conclusion, GM/MS Ordinance n° 2.282/2020 does not affect the availability of health services to the victims of sexual violence. It takes into account the important role played by the health services in people's lives, especially women that face a situation of violence, and is consistent with Brazil's human rights obligations.

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