

Mandates of the Working Group of Experts on People of African Descent; the Special Rapporteur on the right to food; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the elimination of discrimination against persons affected by leprosy and their family members; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on trafficking in persons, especially women and children; and the Inter-American Commission on Human Rights

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Excellency,

We have the honour to address you in our capacities as Working Group of Experts on People of African Descent; Special Rapporteur on the right to food; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the elimination of discrimination against persons affected by leprosy and their family members; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on trafficking in persons, especially women and children; and the Inter-American Commission on Human Rights, pursuant to Human Rights Council resolutions 36/23, 32/8, 32/32, 34/5, 35/9, 33/1, 35/5, and article 41 of the American Convention on Human Rights.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the presidential Decree n. 9759/2019 of 11 April 2019, which according to its title "extinguishes and establishes guidelines, rules and limitations" for the administration of federal public collegiate bodies, through a number of provisions reversing the mechanisms necessary for the exercise of fundamental freedoms and the participation of civil society actors in public affairs.

On 11 April 2019, the President of Brazil signed Presidential Decree n. 9759/2019 ("the Decree"). The Decree dissolves federal councils and commissions, instances in which civil society directly participates. The Decree will come into effect on 28 June 2019.

I. The scope of the Decree

Articles 1 and 2 of the Decree state that it is applicable to councils, committees, commissions, groups, teams, situation rooms, fora and other equivalent spaces that were created by decrees or inferior legislation during previous governments.

Article 3 states that inter-ministerial collegiate bodies, or collegiate bodies comprised by more than one governmental entity, or an outside entity, must be created by presidential decree, except if: (1) the external member, either a third party or a governmental entity, does not enjoy voting rights, or (2) the collegiate is established

temporarily, for a period up to one year, is composed by up to five members, all of them being part of the federal government, does not enjoy decision-making powers and deals only with internal affairs of the federal public administration, and does not require the traveling of public servants. Under the latter circumstances, the collegiate body may be created through a ministerial act.

Article 4 sets limitations on the duration of the meetings by collegiate bodies.

Article 5 provides that as of 28 June 2019, the collegiate bodies covered by the Decree whose re-establishment is not approved by the Executive Office of the Presidency (Casa Civil), in line with articles 6 and 7, will cease to function.

Consequently, the implementation of this Decree is likely to reduce spaces for dialogue between authorities and civil society actors such as those provided by the National Council on the Rights of Persons with Disabilities (CONADE); the National Council for the Combat against Discrimination and Promotion of LGBT Rights (CNCD/LGBT); the National Council on the Rights of Older Persons (CNDI); the National Council on Drug Policy (CONAD); the Council on Public Transparency and Combat against Corruption (CTPCC); the National Council on Public Security (CONASP); the National Commission on the Eradication of Child Labour (CONAETI); the National Commission on Biodiversity (CONABIO); the National Commission on the Eradication of Slave Labour (CONATRAE); the National Commission on Sustainable Development of Traditional Communities (CNPCT); the National Commission on Indigenous Policies (CNPI); the National Sustainable Development Goals Commission, amongst others.

Article 6 of the Decree limits the conditions for the establishment, re-establishment and operation of collegiate bodies by constraining them to hold meetings remotely through video conference when meetings involve members residing in more than one federated State and by allowing physical meetings only in exceptional cases, with a justifiable cause and proof of availability of funds. This article further restricts the composition of members and limits them to a maximum of seven, unless the need, convenience, opportunity and rationality of having more than seven members is explicitly established. It also bans the establishment of sub-collegiate structures in each body with very specific exceptions. Finally this article states that the mere need of meetings to debate, articulate or work in matters that involves public servants from the federal administration should not be admitted as the sole basis to establish a new body.

Article 7 provides that proposals for the re-establishment of collegiate bodies affected by the Decree must be submitted to the Chief of Staff of the Presidency of Brazil (Casa Civil) by 28 May 2019, without determining a clear criteria on the approval or refusal of requests for the creation of such instance.

Finally, Article 10 of the Decree repeals Decree n. 8.2143 of 23 May 2014.

Decree n. 8.2143 established the National Policy on Social Participation and the National System of Social Participation which was created to provide a legal backbone to

the organic structure to social participation in the country, by including the principles and general guidelines of social participation and defining the role of the State as a convener agent of the right to participation.

As a first step to implement the Decree, a list of 55 collegiate bodies that have been abolished was published through Decree n. 9784 of 7 May 2019.

II. Concerns raised by the Decree

We are seriously concerned that the adoption this Decree and its enforcement as of 28 June 2019 is likely to undermine civic space in Brazil by regulating the dissolution of a number of collegiate bodies for inter-ministerial cooperation and, most importantly, civil society participation within the federal government.

Over the years, participation from civil society actors has allowed different sectors of the population in Brazil to become more directly involved in the public administration, particularly in the design, implementation, and control over public policies. Formal participation structures, such as the committees and working groups the Decree abolishes, are considered a good practice to ensure participation in decision-making.

These participatory structures have the added benefit of reducing discrimination and inequalities, by allowing the participation of diverse sectors of society that may be marginalized or discriminated against. The elimination of these instances could reinforce the exclusion of these groups and the effects of the implementation of the Decree on participatory structures could further limit participation, opportunities and peoples' capacity to organize themselves and establish a dialogue with authorities.

We take note of that one of the justifications for this Decree is the need to rationalize the expenditures of public resources and the need to curb the participation of pressure groups with demands and views "that differ from those democratically elected"¹. However, in light of the broad scope of the Decree we are profoundly concerned at the impact its application could have on a well-established structure of civic participation and could be detrimental for Brazilian democracy, the rule of law, social inclusion and economic development.

While official figures are not available on the number of entities that may be affected by this Decree, its implementation could negatively affect the participation of a significant number of civil society actors such as representatives of non-governmental organizations, trade unions, faith-based organizations, organizations of persons with disabilities, social movements, academia and independent experts in the decision-making structures as well as in the implementation and control of public policies in a wide range of areas affecting the promotion and protection of human rights of a federated State.

¹ See explanation for the decree by the government here: http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2019/Exm/Exm-Dec-9759-19.pdf

Moreover, the Decree further undermines principles of democratic governance, such as openness, transparency and accountability, reduces the independence and autonomy of civil society and threatens the promotion and protection of human rights, including the right to participate in the conduct of public affairs and the right to access to information.

We are also concerned that the Decree could create a normative vacuum on the functioning of the collegiate bodies not affected by its applications and which would function without a clear normative framework and under significant restrictions, which could render them vulnerable to political pressure.

While the Decree allows the possibility to re-establish certain bodies or structures, we are concerned that it sets much stricter requirements for such re-establishment, which could severely limit the ability to operate and take decisions meaningfully.

With regards to the repeal of Decree n. 8.2143 of 2014, we are concerned that this decision could dismantle the result of three decades of civil society participation in decision making and policy formulation, on an equal and non-discriminatory basis.

In connection with above observations, we would like to refer your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights, acceded to by Brazil on 24 January 1992, which guarantees the right to freedom of expression and opinion to everyone, article 21 which guarantees the right to peaceful assembly, article 22 which guarantees the right to freedom of association and article 25 on the right to participate in public affairs.

The Human Rights Committee in General Comment No. 25 (1996), defines "the conducts of public affairs" as a "broad concept", covering all aspects of public administration and the formulation and implementation of policy at all levels (CCPR/C/21/Rev.1/Add.7).

Furthermore, the Human Rights Committee recognizes that direct participation is engaged in by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community, and in bodies established in consultation with government (CCPR/C/21/Rev.1/Add.7).

The Human Rights Committee establishes that "[C]itizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association." (para. 8) The implementation of the presidential Decree could have a negative effect on direct participation, which is different and complementary to electoral participation, as it could eliminate a number of well-established structures conceived to make direct participation possible.

We would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 5, 6 and 8.

The Guidelines for States on the effective implementation of the right to participate in public affairs, recognize that this rights is “as a continuum that requires open and honest interaction between public authorities and all members of society, including those most at risk of being marginalized or discriminated against, and should be facilitated continuously. In this context, collaboration with civil society actors for the identification and articulation of gaps, needs and solutions is crucial. Measures should be taken to build mutual respect, understanding and trust between public authorities and civil society actors.” (A/HRC/39/28 para. 19 (h)).

The Special Rapporteur on the rights to freedom of peaceful assembly and of association stated in his report that “a vibrant civil society helps to strengthen a State’s democratic credentials and should therefore benefit from support and protection similar to the public and private sectors to enable it to make an effective contribution (see A/70/266). Civil society acts as both a counterweight and complement to government and business in a democracy, providing avenues through which people directly or indirectly exert their influence on public affairs and matters that affect them.” (A/HRC/35/28, para.23). The role that civil society plays in the design and implementation of anti-trafficking policies in collaboration with national authorities has also been highlighted in several reports of the Special Rapporteur on trafficking in persons, especially women and children her reports. (A/HRC/38/45 para.79).

Finally the presidential Decree seems to run counter the implementation of goal 16 of the 2030 Agenda for Sustainable Development, which includes targets to ensure responsive, inclusive, participatory and representative decision-making at all levels (target 16.7) and to ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements (target 16.10). The implementation and monitoring of the 2030 Agenda as a whole rests on the meaningful participation of all actors in society in well-established States structures.

In light of the above, we urge your Excellency’s Government to repeal the Decree n. 9759/2019 of 11 April 2019 and ensure a legal framework that allows for civil society participation in public affairs in line with Brazil’s obligations under international human rights standards. We wish to reiterate that the right to freedom of association and the right to participate in public affairs, voting rights and the right of equal access to public service is a cornerstone of any democratic society.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide a list of all bodies and structures that will be affected by the application of the presidential Decree n. 9759/2019 of 11 April 2019.
3. Please provide information on how the implementation of the Decree will contribute in the rationalization of public resources in an appropriate, adequate and effective manner, according to human rights standards.
4. Please provide information on alternative means of public participation for civil society actors following the implementation of the Decree.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge your Excellency's Government to continue its cooperation with the mandates of the Special Procedures of the Human Rights Council, to take into account the concerns raised, and to avail of any technical assistance that Special Procedures may be able to provide in order to ensure the full promotion and protection of human rights in Brazil.

Please accept, Excellency, the assurances of our highest consideration.

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