

v. 9 • n. 17 • Dec. 2012  
Biannual  
English Edition

## DEVELOPMENT AND HUMAN RIGHTS

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**SUR - International Journal On Human Rights** is a biannual journal published in English, Portuguese and Spanish by Conectas Human Rights. It is available on the Internet at <<http://www.surjournal.org>>

SUR is covered by the following abstracting and indexing services: IBSS (International Bibliography of the Social Sciences); ISN Zurich (International Relations and Security Network); DOAJ (Directory of Open Access Journals) and SSRN (Social Science Research Network). In addition, SUR is also available at the following commercial databases: EBSCO, HEINonline, ProQuest and Scopus. SUR has been rated A1 and B1, in Colombia and in Brazil (Qualis), respectively.

SUR. Revista Internacional de Direitos Humanos / Sur – Rede Universitária de Direitos Humanos – v.1, n.1, jan.2004 – São Paulo, 2004 - .

Semestral

ISSN 1806-6445

Edições em Inglês, Português e Espanhol.

1. Direitos Humanos 2. ONU I. Rede Universitária de Direitos Humanos

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ABSTRACT

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This article analyzes the Brazilian State treaty-reporting system, particularly its role as monitoring the realization of the right to health. We conducted a thorough study of the Brazilian system by analyzing the legal competencies of the agents responsible for the treaty-reporting process and the governmental agents' perception of this process. Finally, we analyze the two Brazilian Reports (2001 and 2007) submitted to the Committee on Economic, Social and Cultural Rights (CESCR). Our analysis focuses on article 12 (right to health) and is structured according to the report's contents and based upon General Comment No. 14. We conclude there is a gap between the CESCR's requirements and the content of Brazil's reports. We stress that, in the public health field, Brazil has not adequately accomplished its reporting commitments. Consequently, effective measures must be adopted to address these deficiencies in order to avoid the conclusion that Brazil's human rights commitments are nothing more than a political strategy attempting to occupy relevant international positions in a cosmopolitan arena.

Original in English.

Received on October 2012. Accepted on November 2012.

KEYWORDS

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Treaty-reporting system – Right to health – National Human Rights Institutions



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# RIGHT TO HEALTH IN BRAZIL: A STUDY OF THE TREATY-REPORTING SYSTEM

Aline Albuquerque and Dabney Evans

## 1 Introduction

Although the United Nations (UN) human rights system is made up of internationally recognized instruments and organs, it faces a problem regarding the monitoring and evaluation of human rights—especially the right to health established by the International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 12. Within the UN human rights system there are different human rights monitoring mechanisms that can be understood as charted-based or treaty-based bodies. Many criticisms have been made by researchers about the efficacy of States' commitment to the reporting, individual complaints and other procedures, which monitor human rights. In this research we focus on one organ of the treaty-reporting system.<sup>1</sup> Specifically, this study is based on the reports that States must submit to the Committee on Economic, Social and Cultural Rights (CESCR), in accordance with the provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR). While acknowledging that other monitoring mechanisms are important to guarantee human rights compliance, we understand that the treaty reporting system is fundamental to human rights culture—mainly because nongovernmental organizations share this mechanism—and support the participation of civil society in the process of human rights implementation.<sup>2</sup>

One of the fundamental problems with this system is the lack of material and human resources guidance from the treaty bodies, as well as state disregard and misinterpretation of the expectations of the reporting process. More specifically with regards to the right to health, although reports are a cornerstone tool, they “are frequently incomplete and do not follow a consistent pattern in discussing state obligations resulting from Article 12” (TOEBES, 1999). Further, it is often observed that “in their reports States parties are not unlikely to present a distorted

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*Notes to this text start on page 138.*

picture of the (health) situation in their country, possibly in order to circumvent difficult questions of the Committee” (TOEBES, 1999).

In addition, Article 12 of the ICESCR, dealing with the right to the highest attainable standard of health, contains its own unique set of challenges. First, “the issue of monitoring the right to health raises more questions than answers” because various factors interfere in it, for instance, the contentious nature of the right to health and the notion of progressive implementation which guides resource allocation (WORLD HEALTH ORGANIZATION, 2002). Health is an important human condition because it permits the development of all human capacities. According to Sen, liberties and capacities depend on our health realizations (SEN, 2010). Here we study in detail the processes by which states prepare reports with an eye towards building national level capacity to fulfill the right to health.

Given this purpose, the current study has the capacity to contribute to improving the reality of the right to health globally; to test our theory we have chosen the state of Brazil. Brazil is an important case, given that it has both ratified the ICESCR and maintained a constitutional amendment<sup>3</sup> on the right to health. The Brazilian Supreme Court has established that the right to health is justiciable, as such the Brazilian model “is characterized by a prevalence of individualized claims demanding curative medical treatment (most often drugs) and by an extremely high success rate for the litigant” (FERRAZ, 2009). Furthermore, Brazil ranks 84<sup>th</sup> in the Human Development Index and its rates of health index shows that the Brazilian government has been failing to face underlying determinants of health, such as childhood nutrition, potable water, and sanitary conditions (KLIKSBERG, 2010). The health indicators and the mandatory aspect of the right to health—which is reflected in the individual demands taken to the Judicial Power—show that Brazil still has a long way to go towards successful right to health implementation. This is also evident in the country’s failure in monitoring this right by means of the reports sent to the CESCR, a subject that will be dealt with in this article.

With an eye towards the ICESCR reporting system and the right to health, this article highlights the lack of state structures to cope with the reporting process, specifically the fact that there is no agency mandated with this kind of task and the scarcity of human resources qualified to support this task. We investigate the process by which the Brazilian government has been drawing up its reports to the CESCR, and whether Brazil has been implementing the recommendations of reports submitted to Brazil by the CESCR, with particular attention to the right to health. This study does not focus on the processing of reporting procedure inside the CESCR, as the processing of reports, including backlog of reports, sources of information and rapporteurs and working groups are not within the scope of this analysis. The major purpose of this study is to observe and constructively evaluate the participation and compliance efforts of Brazilian state mechanisms to improve its human rights performance, specifically in regards to the right to the highest attainable standard of health.

The methodological approach was as follows: first, we examined how

the process of comparing other countries to Brazil can lead to a reflection on the latter's treaty-reporting system; second, we analyzed interviews with government actors who are experts in the Brazilian treaty-reporting process in order to gather information about the scope of elaborate reports and follow-up recommendations; third, we propose a model to the Brazilian treaty-reporting system by analyzing specific parts of Brazilian CESCER reports concerning the right to health; finally, we copy with the Brazilian state treaty-reporting system in the field of health.

## 2 An overview of the global treaty-reporting system

Before dealing specifically with the Brazilian government's treaty-reporting, we will start with a general review of the treaty-reporting system. The aim here is solely to illustrate how other states have handled their reporting obligations and follow-up recommendations. This is not a quantitative study and large inferences are not made based on this. The comparison of treaty-reporting mechanisms allows us to develop a contextual description and classification (LANDMAN, 2002). Contextual description allows one to learn about how states have faced this obligation to create reports and implement human rights recommendations. Classification may simplify the object of examination of the organization. In this section, comparisons are made between a few countries, focusing on the similarities and differences among their classifications (LANDMAN, 2002). We begin with a contextual description based on our research and afterwards we propose a classification.

In order to gain knowledge about the treaty reporting system process in different parts of the world, National Human Rights Institutions (NHRIs) were contacted by electronic message, including the National Human Rights Institutions Forum and its global list of NHRIs.<sup>4</sup> NHRIs were chosen because, according to the Principles relating to the Status of National Institutions (The Paris Principles), which were adopted by the U.N. Commission on Human Rights and by the General Assembly in 1993, such institutions have the responsibility to contribute to the reports which states are required to submit to UN bodies and committees. In fact, NHRIs are defined as bodies, which are established by states under their constitution, or, by law or decree, and their functions are specifically related to promote and protect human rights (REIF, 2000). Considering that NHRIs have specific competence in the human rights field and do not have information that other national bodies possess, they were the best sources of information about state treaty-reporting process.

The list of NHRIs provided by the Office of the High Commissioner for Human Rights (OHCHR) includes 18 NHRIs in Americas, 33 in Europe, 25 in Africa and 21 in Asia-Pacific. The total is 90.<sup>5</sup> A questionnaire was sent with three questions to all NHRIs registered in the Forum asking: 1) which agency holds the competency and authority to make and submit reports to the CESCER; 2) which agency holds the competency and authority to follow-up on and measure the implementation of recommendations made by the CESCER; 3) if the state has

law, rule or policy that defines the process of reporting. The questionnaire was sent in four languages: English, Portuguese, Spanish and French. Nine NHRIs answered our questionnaire.

It is not easy to gather information from NHRIs. For instance, the OHCHR conducted a survey through questionnaires distributed to NHRIs around the world in January 2009, to capture data on NHRIs. The OHCHR received responses from 61 NHRIs out of roughly 90 around the world: 19 from Africa, 9 from the Americas, 12 from the Asia-Pacific and 21 from Europe (UNITED NATIONS, 2009b). Although our response rate was low, the responses did come from NHRIs located in each of the four global regions: Americas, Europe, Africa and Asia-Pacific. In the Americas, Paraguay and Peru sent information; in Europe, Portugal and Spain; in Africa, Namibia, Mauritius and Nigeria; in the Asia-Pacific, Jordan and East Timor. Therefore, given the number of NHRIs that now exist, the examples provided in this study can only provide a limited view of contemporary treaty-reporting processes.

The nine questionnaires returned showed that, in relation to agency competency, states did not have one specific body to make and submit reports to the CESCR, the only exception to this being Portugal. Both the Ministry of Justice and the Ministry of Foreign Affairs hold such competency in Nigeria, Peru, and East Timor. The Ministry of Foreign Affairs alone holds this competency in Spain Paraguay and in Jordan, a country where the Human Rights Committee integrates the process of human rights reporting. In Mauritius, the Attorney General's Office holds this power and in Namibia it is delegated to the Ministry of Justice attached to the International Cooperation Unit.

Only Spain and Portugal show a distinctive aspect concerning their NHRIs. In Spain, the NHRI, called "Defensor del Pueblo," has been participating in the reporting process by gathering data and contributing separate information on the issue object of the CESCR report. For example, during the process of preparing the Universal Periodic Review, the Spanish NHRI gathered human rights records separately from the Ministry of Foreign Affairs and produced its own report. Concerning the CESCR report, the Spanish state presented its report to the CESCR and is now waiting for the CESCR review. In Portugal, the Human Rights Commission is linked with the Ministry of Foreign Affairs and holds the competency to coordinate the work of Ministries related to treaty-reporting systems. The composition of the Human Rights Commission encompasses all Ministries involved in the reporting process. The Portuguese NHRI, called "Provedor de Justiça", intervenes in the reporting process by sending information to governmental authority about human rights issues; participating in the Human Rights Commission meetings; and cooperating with the United Nations.

East Timor is a unique case because it is a recent state; its dependency was established in 2002, and it ratified the majority of human rights treaties in 2003. Because it lacks human and material resources, East Timor has only presented two reports to the UN, and has not yet presented any CESCR reports. The OHCHR is helping the East Timor government speed up its reporting process.

Alternatively, with regard to follow-up related to implementation of recommendations made by the CESCR, not a single state had a special body devoted entirely to monitoring the CESCR's recommendations. Some states utilize one body to provide, among other things, follow-up to CESCR recommendations. For example, in Jordan, besides the Ministry of Foreign Affairs, there is a Human Rights Department that was established within the following Ministries: the Ministry of Interior, Ministry of Foreign Affairs, Ministry of Labor and Ministry of Justice. There is also a Human Rights Committee, which is composed by representatives of the Ministries above and whose responsibility is to follow-up on recommendations of international human rights bodies. Another specific case is Paraguay. In that country, there are inter-institutional bodies made up by all people charged with human rights issues in each Ministry and coordinated by one of them. In Spain, the NHRI holds the competency to follow-up on CESCR recommendations. In Portugal, the Human Rights Commission holds such competency and the Portuguese NHRI contributes to follow-up actions developed by governmental agents.

Concerning the last question, whether the state has law, rule or policy that defines the process of reporting, NHRIs have answered in the negative. Nonetheless, Paraguay's NHRI has mentioned the National Constitution, which includes a supranational legal order that ensures human rights validity. In Nigeria there is no particular law either, but the NHRI cited obligations inferred from UN treaties. Although the Spanish and Portuguese NHRIs answered that no specific law or rule on the process of reporting exists, both countries have special bodies which hold competencies to prepare human rights reports and monitor follow-up on recommendations. As a result, there are specific rules that state such competencies. As we can see, the majority of states do not have a specific law or rule on the process of reporting, but some of them have particular rules that are related to singular bodies in the human rights field.

Studies about state treaty-reporting processes are scarce, especially research on governmental bodies and rules concerning this issue. Therefore, in the context of new research areas, mapping data is extremely important because it permits the construction of a panorama about the theme. Given these points, one sees that, while some states have been attempting to comply with their human rights treaty obligations, the majority of states do not count on a specific agency or rule. Hence, there are examples, such as Spain and Portugal, where NHRIs have a distinctive role in reporting processes and follow-up recommendations. The Jordanian government has been making efforts to improve human rights influence within state bodies.

With this in mind, countries may be classified as: treaty-reporting system based on a specific agency, and treaty-reporting system based on general agencies, presuming that the first treaty-reporting system has a stronger link with human rights culture, and the second, a weaker link. The Brazilian model of treaty-reporting process may be framed as a treaty-reporting process based on general agencies. Consequently, the Brazilian government ought to take action towards this model, as Spain and Portugal have been doing.

### 3 Case study: the Brazilian State treaty-reporting system

We are not aware of any other research trying to provide a contextual description on the Brazilian treaty-reporting process, either the initial report or follow-up of recommendations. Thus, we designed a study to obtain this information. Given the research goals, three questions were defined: 1) is there a standard process for the treaty-reporting process; 2) is such process necessary to outline the treaty-reporting process and to measure; 3) has the Brazilian state been following up CESCR recommendations?

Three Brazilian governmental agents were recruited to act as participants in our study based on their expertise on human rights issues, on their concrete experience on treaty-reporting system and on their governmental background.<sup>6</sup> The survey aimed solely at gathering information about the Brazilian treaty-reporting process. Because its goal was limited, we applied the following methodology: first, we identified the response contents connected with our questions; second, considering such contents, we identified four common issues among the three governmental agents: 1) the current treaty-reporting process; 2) the normative gap; 3) the specific body; 4) follow-up on the CESCR recommendations; after that, we analyzed these issues. We then organized the responses according to themes; and, finally, we propose a model for the reporting of the Brazilian State.

#### *3.1 Governmental agents' considerations*

##### 1 Current treaty-reporting process

According to governmental agent 1, hereafter referred to as GA1, the Secretary of Human Rights holds competency to coordinate the process of human rights reporting and the Ministry of Foreign Affairs performs a secondary role in this process. As a rule, the Secretary of Human Rights convenes an array of meetings with all governmental agencies which have thematic involvement with the report. The Ministry of Foreign Affairs focuses on the procedural aspects of the treaty-reporting process and the Secretary of Human Rights on the substantive aspects. Nonetheless, although the Ministry of Foreign Affairs knows that the Brazilian state is obligated to present periodical reports, it does not have power to impose that duty on other agencies because there is not a Brazilian law or decree which establishes that duty. So, GA1 suggests that the Ministry of Foreign Affairs has developed an internal policy and political dialogue by showing to all agencies and bodies implicated that reporting is a state commitment and if they do not participate seriously Brazil could look bad on the international scene.

Furthermore, GA1 pointed out that, concerning the most recent CESCR report, the majority of bodies involved were unclear about what their task entailed and as a result there was a discrepancy between information provided by different bodies and agencies. Also, broadly speaking, bodies involved have seen the reporting process solely as an accountability process; without fully comprehending this misunderstanding, the agents could not broaden their perception of the reporting process.

With regard to governmental agent 2, hereafter referred to as GA2, the Secretary of Human Rights has been coordinating the reporting process with the cooperation of Ministry of Foreign Affairs. Since 2003, the Secretary of Human Rights has not had staff in charge of preparing reports and for this reason it has hired external consultants to accomplish this task. In the opinion of GA2, this solution has not worked because consultants have not had satisfactory knowledge of public policies and programs, nor have they had the authority to demand official information. Sometimes they have produced a report more similar to shadow reports. Despite recognizing human resources problems the Secretary of Human Rights has not yet solved this issue. Consequently, some Brazilian reports were delayed, as the CESCR has reported. In the past, according GA2, reports only reflected governmental policies and programs; they rarely presented outcomes, challenges and negative data. As for the process of elaborating bygone reports, he stressed that each reporting process demanded new efforts to make people conscious of human rights obligations because people have changed. Many Brazilian bodies and agencies are not aware of the importance of human rights culture; as a result, they consider that human rights do not have anything to do with their ordinary jobs. They treat human rights as an issue pertaining solely to the Secretary of Human Rights, they do not perceive it as a transversal theme. In addition, they consider international obligation as a state duty. Consequently, it is not their obligation.

Governmental agent 3, hereafter referred to as GA3, noted that, broadly speaking, bodies and agencies involved in reporting processes are incapable of identifying either relevant information or their role in the overall treaty-reporting system. Many times they sent inaccurate information because it was non-strategic or it was merely copied from existing documents. Also, they sometimes sent information on policies and programs without referring to their aims or outcomes. GA3 underscored the fact that the reporting process is time consuming and costly, mostly because it demands the participation of large sections of Brazilian Ministries. He highlighted the difficulties in the lead up to Legislative and Judiciary Power human rights culture as well as state-members and Municipalities. Moreover, GA3 underlined that the current reporting process does not have a methodology to gather information or make contact with the bodies and agencies involved. For this reason, the process becomes unprofessional and characterized by undesirable procedures.

## 2 Specific body which holds competency to coordinate treaty-reporting system

In order to address the necessity of creating a specific body which holds competency to coordinate the treaty-reporting process and follow-up on CESCR recommendations, GA1 suggested a permanent working group which could be established by an infra legal rule and should be composed of qualified professionals. GA1 opined that the reporting process requires adequate human and material resources and it demands time. It's difficult for governmental bodies and agencies to realize the positive impact of the reporting process on their own activities. Moreover, given their day-to-day tasks, they do not have enough time to prepare accurate information.

GA 2 asserted that a specific body is a prerequisite because it gathers all bodies

and agencies involved in a report process. Since information is indispensable for any report, a single body or working group is essential to spreading the idea that the reporting process is a state obligation; all agencies and bodies must be committed to providing accurate information. The most difficult aspect of the reporting process is obtaining accurate information from bodies and agencies. GA2 noted that in 2002 the Federal Executive Power created a Tutorship Commission on Human Rights, which holds competencies related to the Inter-American Human Rights System, but this Commission has never functioned (BRASIL, 2002).

GA3 affirmed that it is crucial to create a body with such competency. GA3 proposed an inter-ministerial committee composed of representatives from ministries and agencies members. Moreover, such a body must make uniform all reporting processes and responses to follow-up recommendations. It is necessary to institutionalize reporting process. However, creating a new body is not sufficient because past experiences show that political commitment is also essential. Government and public agents have to lead this sort of task within their work routine by formal rules and procedures.

### 3 Normative gap: weakness of current Brazilian treaty-reporting process

GA1 asserted that a normative gap makes the current Brazilian treaty-reporting process weak. The Ministry of Foreign Affairs and the Secretary of Human Rights do not have enough power to demand information from other agencies and bodies. Thus, it is necessary to adopt legislative measures; with them it is difficult to require information. Legislative measures involve institutionalization of the treaty-reporting process. It means that rules or law must regulate, as authoritative guidelines, social behavior in the state context. Also, GA1 pointed out that a manual could be developed by the Brazilian state in order to standardize governmental procedures related to the reporting process. Institutionalization will lead to better fulfillment of treaty obligations and allow bodies and agencies to profit from the reporting process. GA1 recognized that starting the process requires political capital, but this effort must be made because nowadays states' transparent behavior is not enough; mechanisms and tools are required to improve human rights protection.

GA2 observed that a law on internalizing human rights judicial decisions or recommendations is necessary, not only for UN recommendations, but also for the OAS and the Inter-American Court of Human Rights.<sup>7</sup> The Secretary of Human Rights, aware of his responsibility, established in 2010 a working group to discuss a proposal for institutionalizing internal mechanisms for monitoring human rights, but this working group was not successful.<sup>8</sup> If there are people engaged the result would likely be satisfactory, but without them the outcome has been inadequate. Such a lack of institutionalization reflects that this topic is not a priority within the Brazilian government, because it involves a political commitment and this implies a necessary allocation of financial resources, qualified staff and a permanent body.

GA3 stressed that, although one could consider human treaties as internal legal norms, a specific rule is necessary to translate it into concrete commands. Brazil has committed itself to present annual reports to the Human Rights Council as well as to create internal tools for the national monitoring of human

rights.<sup>9</sup> Brazil adopted the Third National Human Rights Program in 2009, which establishes that the Federal Executive Power, through the Secretary of Human Rights, shall draft periodic reports to submit them to UN committees and shall institutionalize the flow of information by defined bodies and agencies responsible for drafting reports and following up recommendations. Given this policy, GA3 points out that, in fact, there are rules in Brazil, but that they are not capable of imposing order to states-members and Municipalities. GA3 affirmed that taking into account international commitments and internal achievements in the human rights field, the Brazilian government has been two-faced. On the one hand, it has been making strong international commitments, and on the other hand, it has been failing to adopt legal and administrative measures to fulfill its human rights obligations.

#### 4 Follow-up to human rights body's recommendations

According to GA1, the Brazilian state does not have a formal and institutionalized mechanism to cope with human rights. Consequently, the Brazilian government has not been evaluating the CESCR's recommendations, let alone incorporating them in programs, policies and laws. GA1 emphasizes one exception: the Committee's recommendations were taken into consideration during the process of elaborating the Third National Human Rights Program. Despite this success, GA1 reminded that such a victory does not eliminate the necessity to constitute a specific body to tackle follow-up tasks. Such a body would hold the competency to evaluate the Committee's recommendations and to examine how they could be incorporated in programs, policies and rules.

GA2 pointed out that until the Third National Human Rights Program the Brazilian government had not systematized the Committee's recommendations. Their recommendations were merely inserted in the Third National Human Rights Program; as a result, GA2 affirmed that implementation control of human rights recommendations is linked with the implementation control of the Third National Human Rights Program.

### *3.2 Model proposal to Brazilian State treaty-reporting system*

Given the experience of foreign agents and Brazilian government representatives we will propose a model for the Brazilian state treaty-reporting system. First of all, taking into account a treaty-reporting system based on specific agency and a treaty-reporting system based on general agencies classification, we notice that the first model has more capacity to strengthen human rights commitments and to improve state monitoring actions. Assuming that the treaty-reporting system based on specific agency is more adequate to spread human rights culture, we will ground our model on this conception.

It is possible to infer from governmental agents' considerations that the model should be founded on an Inter-Ministerial Human Rights Committee (IMHRC) made up of members representing the main agencies and bodies involved in the human rights reporting process, as well as from the National

Human Rights Institution (if it comes into existence). This is supported by GA3: “the solution would be to create an inter-ministerial committee” and by GA1: “I think that it must have a working group”. Likewise, GA2 emphasized that “an inter-ministerial group is necessary”. Such an IMHRC should hold the competency to, at a minimum: 1) coordinate the human rights treaty-reporting process; follow-up on CDESCR recommendations and creating a methodology to develop this task; 2) require from Union, state-Members and Municipalities and non-state entities information and data connected with the human rights treaty-reporting process and follow-up recommendations; 3) gather and systematize information related to the human rights treaty-reporting process and follow-up recommendations; 4) manage a computerized system on data related to human rights 5) convene meetings; 6) elaborate human rights reports coordinated by its representatives; 7) follow up on recommendations made by UN and OAS human rights bodies; 8) present biannual reports on activities to the President of the Republic; 9) propose legislative, administrative and other measures to comply with human rights obligations. Furthermore, the IMHRC should be created by a law, not by a decree. As governmental agents have suggested, such a committee must have legislative and judiciary power as well as the power to compel state-members and municipalities. This is only possible with a law. GA2 supported this assertion: “it’s good to have an explicit law which shows that human rights obligations are also a federal state burden.” By the same token, the IMHRC should be coordinated by a representative of the Secretary of Human Rights because of the Secretary’s role in national human rights policy and his expertise in involving internal actors. Notably, GA2 suggested: “the group must be coordinated by the Secretary of Human Rights because such Ministry deals with victims and public policies beneficiaries more closely.”

The model for the Brazilian State treaty-reporting system should be based on legal duties; consequently, the law should require that all public and private entities have to cooperate with the IMHRC. In particular, the law should establish an Executive Secretary to provide administrative support and should require budget forecasting to support human and material resources. Although GA2 deals with the effectiveness of Inter-American condemnatory sentences as a correlative issue, we recognize that law on the IMHRC does not create the same challenges.

Based upon the governmental agents’ narrative, we affirm that the range of efforts attempting to establish a treaty-reporting system were not successful, including the working group created in 2010 by the Secretary of Human Rights, a Tutorship Commission on Human Rights in 2002 and a Follow-up and Monitoring Committee created in 2009 in the Third National Human Rights Program. The Third National Human Rights Program recognized NHRI importance and its Guideline 3 and Strategic Goal 2 handled mechanisms to monitor and evaluate human rights implementation. Specifically, Programmatic Actions (b) and (d) dealt with the treaty-reporting system. Under those circumstances, we should wonder if proposing the creation of an additional body would be just another legal measure disconnected with political set. Answering these questions assumes a large study on aspects of power relationships, involving those associated with social and

economic power (EVANS, 2001). Although we acknowledge this fact, we should take into account that proposing a model grounded only on legal foundations is superficial. All governmental agents have mentioned political elements: GA1 says: “proposal and being successful in implementing human rights body implies political capital... a political mobilization;” GA2 asserts: “State has a short-term vision, treaty-reporting system is not a priority;” GA3 affirms: “the Brazilian State has a constructive international discourse, but internally there is no implementation. There is a variability of political willingness.”

Evans developed three overlapping discourses on human rights with their own languages, concepts and normative aims: philosophical, legal and political (EVANS, 2001). Given the scope of this study, we will deal with legal and political perspectives. The legal discourse focuses on a large body of international law and at the core of this discourse is the Universal Declaration of Human Rights and the major covenants. “The legal discourse provides the most visible sign of human rights activity,” although the connection with legal instruments and efficacy is not necessarily clear (EVANS, 2001). Legal discourse creates the false impression that “the protection of human rights can be guaranteed provided we exercise diligence and reason when drafting and interpreting international law” (EVANS, 2001). On the one hand, “law is the means through which practical applications of the human rights aspiration are made real”; on the other hand, human rights involve the political communities in which they must operate (GEARTY, 2006). The political discourse attempts to contextualize the legal discourse (EVANS, 2001). Political discourse is concerned with the power relationships; social and economic features linked with the human rights sphere. Human rights instruments and their implementation flow out of politics in the first place because international law might exert influence on state practices, but the central dynamics would be the state’s preferences, in the context of external imperatives (GOODMAN; JINKS, 2003). For instance, issues of human rights may be subordinated to the imperatives of globalization, defined as the principles of free market capitalism and of economic progress. Consequently, the potential of human rights instruments is severely limited when its achievement depends on the capacity of the state to intervene in important areas of political economics (EVANS, 2001).

In sum, a model of the Brazilian State treaty-reporting system based on a bill on an Inter-Ministerial Human Rights Committee, merely a legislative measure, does not encompass a comprehensive approach on this issue. As showed above, it is essential to have a political commitment, which must be expressed in concrete actions, such as laws on IMHRC approval and budget forecasting, as well as skilled and qualified human resources. We stress, broadly speaking, that the Brazilian State has been adopting an ambiguous form of human rights political behavior. In the international arena, Brazil assumed in 2008 voluntary commitments, such as creating a national system of human rights indicators and elaborating annual reports on the situation of human rights, and yet, simultaneously, it does not have a National Human Rights Institution or an organized treaty-reporting system. Creating an IMHRC would be a welcome move because it would show a commitment to changing Brazil’s human rights behavior.

### *3.3 Monitoring right to health in Brazil based on its treaty-reporting system*

#### **3.3.1 Monitoring right to health: CESCER parameters**

We chose to analyze the right to health to illustrate the problem stated in this research study, namely the Brazilian state treaty-reporting system. Right to health was chosen because it imposes challenges related to implementation and monitoring of economic, social and cultural rights.<sup>10</sup> Moreover, it is a fact that the right to health's content is imprecise, even though there were efforts made by CESCER, through General Comment No.14 (2000), to demarcate the right to health (RIEDEL, 2009). Additionally, health is an essential and fundamental tool for people to enjoy other goods and human rights, including rights to food, housing, work, education, human dignity, life, non-discrimination, equality, privacy, access to information, the prohibition against torture, and the freedoms of association, assembly and movement (UNITED NATIONS, 2000).

Dealing with the right to health in Brazil is complicated because the Brazilian situation is a paradox. On the one hand, there is a significant jurisprudence concerning the right to health and the State's obligation to fulfill it—mostly related to treatments and new drugs. On the other hand, there are a number of unresolved issues due to the lack of an organized reporting system in the Ministry of Health. As a consequence of the lack of a specific Brazilian board to deal with human rights monitoring, we face serious problems in primary health care, inexcusable deficiencies in medical services and high rates of infant and maternal mortality (PAN AMERICAN HEALTH ORGANIZATION, 2011).

We are confident that with the improvement of the reporting system in Brazil, including the quality of reports and monitoring of the CESCER Concluding Observations of Reports, Brazil can “conduct a comprehensive review of the measures it has taken to bring its national law and policy into line with the provisions of the treaties to which it is a party” (STEINER; ALSTON; GOODMAN, 2008).

Based upon CESCER reports, we seek to analyze Brazilian reports, specifically the parts concerning the right to health and CESCER recommendations. Such analysis takes into account General Comment No. 14, which highlights the implementation of the right to the highest attainable standard of health, and article 12 of the ICESCR, which “provides the most comprehensive article on the right to health in international human rights law” (UNITED NATIONS, 2000). Also, it considers the Revised General Guidelines regarding the form and contents of reports to be submitted by states parties under articles 16 and 17 of the ICESCR: 17/06/91 and The CESCER Guidelines on Treaty-Specific documents to be submitted by States Parties under articles 16 and 17 of ICESCR, elaborated on 24 March 2009.<sup>11</sup>

General Comment No. 14 is a cornerstone document, since it “is based on the Committee's experience in examining States parties' reports over many years” (UNITED NATIONS, 2000). Regarding the purposes of our study, we will focus

more on General Comment No. 14 than on the Revised General Guidelines and The CESCR Guidelines on Treaty-Specific documents, as it was adopted in 2009, after the Brazilian CESCR reports.

The CESCR provides reporting guidelines to advise States parties on the form and content of their reports so as to facilitate the preparation of reports and ensure that reports are comprehensive and presented in a uniform manner. Thus, reporting guidelines ultimately aim to standardize the subjects and style of reports and to guarantee that reports present an adequate level of information.

Considering CESCR Guidelines in the light of General Comment No. 14, we notice that some elements were highlighted by the CESCR, such as: 1) in general, a core obligation to adopt and implement a national public health strategy and plan of action; 2) providing information on the measures taken to ensure physical and economic accessibility; acceptability and quality; 3) providing information about the measures taken: core obligations concerning reproductive, maternal (pre-natal as well as post-natal) and child health care; sanitation, and an adequate supply of safe and potable water; immunization against the major infectious diseases occurring in the community; to provide essential drugs; 4) specific health issues: abuse of alcohol and tobacco, and the use of illicit drugs and other harmful substances; HIV/AIDS and other sexually transmitted diseases and mental health.

We stress that evaluating state reports concerning Article 12 of ICESCR should take into account CESCR Guidelines and General Comment No. 14, especially the aspects we have previously emphasized. In order to do so, we will begin with the Brazilian CESCR report concerning Article 12 and CESCR recommendations.

### **3.3.2 The Brazilian reports and the CESCR recommendations: a critical constructive view**

We have analyzed the two Brazilian Reports submitted to the CESCR, one in 2001 and the other in 2007. Our analyses focused on Article 12 (the right to health) and were structured according to the report's contents and based on General Comment No. 14. We have taken into account the aspects highlighted above. Therefore, in methodological terms, we have followed the reports configuration and the aspects of General Comment No. 14 as it has been noted.

Brazil submitted its initial report under Articles 16 and 17 of the ICESCR in August 2001; as a consequence, the CESCR mentioned in its list of issues the late submission of the report and the absence of written replies.<sup>12</sup> The first draft of the report was prepared on the basis of work elaborated by the Applied Economic Research Institute (IPEA).

With regard to Article 12, the report is excessively long and prolix. According to the UN, initial treaty-specific documents should not exceed 60 pages.<sup>13</sup> There are 46 pages only concerning Article 12, with a range of programs and policies, tables and too many details on medical concerns and specific diseases. First, we point out that the report does not follow any logical organization, as unrelated matters were

set in sequence, and the same topic was mentioned in disconnected paragraphs. For instance, paragraphs 558 and 614 mention the Brazilian Law on Health.<sup>14</sup> Additionally, the report does not present disaggregated indicators and outcomes, and so, health facilities, goods and services are not evaluated according to the AAAQs.<sup>15 16</sup>

The report begins with a general reference to central laws and operating standards. It does not deal with their content nor does it not mention national health strategies or national plans of action. The report is organized around diseases, so it starts with communicable diseases, from paragraph 578 to paragraph 593, and continues with a list of re-emerging communicable diseases, such as AIDS, Hantavirus, and Yellow Fever. Besides this, the report hints at the National Immunizations Program—which contains outcomes and some measures related to budget allocation—without contextualizing them in the national health strategies and plans of action or showing their efficacy in terms of the right to health.

To a large extent the report encompasses public policies descriptions, many of them lacking details, as the reference to the inter-municipal consortium formation process. Likewise, the report does not address the right to health facilities, goods and services. As a result, there is no data on provisions of equal and timely access to basic preventive, curative, rehabilitative health services and health education.

With regard to special topics for broad application—such as non-discrimination and equal treatment, gender perspective, children and adolescents, elderly people, people with disabilities, and indigenous people—the report mentions the elderly, but it covers only the promulgation of Federal Law No. 8.842 in January 1994, which established the National Policy for the Elderly and the Brazil's National Health-Care Policy for the Elderly.

Regarding core obligations, we stress that the report does not cover: the right to access health facilities, goods and services on a non-discriminatory basis; to ensure access to the minimum essential food; to ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water; to provide essential drugs; to ensure equal distribution of all health facilities, goods and services; and to adopt and implement a national public health strategy and plan of action. However, the report did allude to some examples of the effects of sanitation activities on health.

Also, the report enumerates again a list of diseases. Thus, we notice that the report focuses on diseases and general measures adopted to fight them. In the end, the report enumerates some mechanisms adopted to disseminate the right to health, for instance, the Health Channel.<sup>17</sup> But it does not connect their content to a human rights framework or to the state's obligation to provide education and access to information concerning the main health problems in the community, including methods of preventing and controlling them.

As for Brazil's initial report, concerning exclusively Article 12, we can say that:

- 1) a disease approach (BUSS; PELLEGRINI, 2007) was adopted; there is a list of diseases in the beginning and in the end. So, we can infer from such disease focus that health was understood as the absence of disease and the right to

health as a right to be healthy. This stands in contrast to the right to health as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health (UNITED NATIONS, 2000);

- 2) the report limits itself to listing or describing legal and administrative instruments, and it does not indicate how these measures have impacted the population's health;
- 3) the report does not acknowledge problems and challenges related to implementation of the right to health; Brazil does not make an effort to report any "factors and difficulties" that have affected the realization of the right to health, for example, corruption or bad management practices (ALSTON, 1997);
- 4) though required, the report does not mention vulnerable populations, for instance, indigenous people, people with disabilities, children and adolescents, minority groups such as the Quilombo communities, and it does not adopt a non-discrimination and equal treatment approach and gender perspective;
- 5) the report does not allude to national health strategies and it does not identify appropriate right to health indicators and benchmarks;
- 6) the report does not provide information on appropriate training for health personnel, including education on health and human rights.

Corroborating our analysis, the CESCR requests the State party to include, in its second periodic report, detailed and comprehensive information, including disaggregated and comparative statistical data, as well as information on measures taken to improve the functioning of services for children and young people. Also, the CESCR recommends that Brazil undertake urgent measures to ensure equal opportunity for Afro-Brazilians, indigenous peoples and minority groups such as Gypsies and the Quilombo communities, especially in the fields of employment, health and education. The Committee requests that Brazil undertake legislative and other measures to protect women from the effects of clandestine and unsafe abortion and to ensure that women do not resort to such harmful procedures. The CESCR requests Brazil to provide, in its next periodic report, detailed information based on comparative data about maternal mortality and abortion, and recommends that Brazil continue its prevention and care efforts in the field of health by providing sexual and reproductive health services to the population, with particular emphasis on those for women, young people and children.

Brazil submitted its second report under Articles 16 and 17 of the ICESCR in August 2007, but it should have been submitted by June 2006.<sup>18</sup> The second Brazilian report on the implementation of the ICESCR was prepared by an Intersectorial Working Group coordinated by the Ministry of Foreign Affairs, the President's Office Special Secretariat for Human Rights, and the Applied Economic Research Institute.

Regarding Article 12, the report does not begin by mentioning general aspects on the right to health, as national health strategies and plans of action, but by covering the main causes of death, such as neoplasias and respiratory diseases. Next, the report covers mortality rate among children, then nutrition and maternal mortality. So, we realize that, unlike the initial one, the report does not have a logical structure, and the information does not flow logically from one section to the next.

The report mentions mortality rate among children and maternal mortality rate, but not disaggregated by sex, age, and population groups; it disaggregates only by region. The report acknowledges that child and maternal mortality are still serious health concerns. Nonetheless, it does not point out measures to counteract them.

In addition, the report covers the “measures adopted for the progressive implementation of the right to health”. It starts with the Federal Constitutional Article and theoretical concepts on equity in health and provision of integral care. The report does not state if there is a national or political strategy, plans or framework legislation. Next, the report talks about child mortality again, and also about health vigilance and the National Public Health Laboratory Systems. It does not show health results or impacts on the population or any information on the *de facto* situation with regard to the implementation of right to health. We believe that the main focus of the report was to show public investments and formal measures, in contrast to illustrating how these efforts have changed the population’s living conditions.

With an eye towards primary health care, the report identifies significant improvements in the implementation of the Family Health Strategy. Although the report presents data on availability and physical accessibility (though not disaggregated) it still focuses on *de jure* information, for instance, program goals and investments. As for all the programs and policies, there is no data on AAAQs – only general information on availability and not disaggregated.

In addition, the report provides *de jure* information on national policies. Concerning reproductive, maternal (pre as well as post-natal) and child health care, the report describes legal and administrative measures. Nonetheless, it does not provide information on the measures being taken to identify and fight against the high maternal mortality rate, especially those found in more remote regions where access to health facilities is very restricted, even though the CESCR requires this of Brazil in its list of issues.

With regard to vulnerable groups, the report talks about indigenous people in four lines. There is no information on AAAQs related to health facilities, goods and services. However, the report does provide information on adolescents and youth, the elderly and the imprisoned population, and it demonstrates that there are public policies and programs concerning such vulnerable groups. We can see that it is an improvement compared to the initial report.

When addressing mental health, abuse of alcohol and tobacco, and the use of illicit drugs and other harmful substances, the report refers to a range of public policies and programs. However, there is no information on availability, accessibility, acceptability and quality of health facilities, goods and services and statistical data.

Brazil's second report shows an improvement in relation to the initial report, especially if we take into account the following topics:

- 1) the second report is not disease-oriented, so it does not focus on diseases, but on general policies and programs;
- 2) the second report emphasizes more vulnerable populations; although it does not give satisfactory attention to indigenous people and Afro-Brazilians;
- 3) the second report exposes to a greater extent the obstacles that must be overcome to result in effective changes, such as reduction of the infant mortality rate and revision of the current legislation centered on the criminalization of drug use.

At the same time, the second report, unlike the first one, maintains the non-human rights framework pattern. In other words, the right to health is not understood as the right to enjoy a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health. Consequently, we summarize the key points:

- 1) AAAQs are ignored. For instance, there is no information on health services availability, population access, quality or acceptability;
- 2) broadly speaking, the report does not go beyond describing the legal formalities of the situation, and it does not provide statistical data, right to health indicators or benchmarks;
- 3) despite showing more challenges and difficulties, the second report does not sufficiently face structural problems, which necessary steps have not been taken and why is it important to implement the right to health (WISEBERG, 1997). For example, one of the most serious health problems in Brazil not mentioned in the reports is the lengthy lines the population has to face to get access to health services (OLIVEIRA et al., 2009);
- 4) although we notice a broader treatment for vulnerable populations, the report does not provide accurate information on indigenous people and Afro-Brazilians. For example, since 1999 there has been a Health Sub-System devoted specifically to indigenous people and an array of measures to address such communities;
- 5) the report does not mention any national health plan or strategy, or any legal framework; 6) the report does not provide disaggregated and comparative data;
- 7) there is no allusion to the right to a healthy workplace environment or the right to health facilities, goods and services;
- 8) the report does not deal with non-discrimination, equal treatment, or a gender perspective;
- 9) concerning core obligations, we realize that some of them are not mentioned

in the report, such as access to essential drugs; access to health facilities, goods and services on a non-discriminatory basis, education and access to information concerning the main health problems in the community, including methods of preventing and controlling such problems; and appropriate training for health personnel, including education on health and human rights.

Finally, considering that the document should include information on the steps taken to address issues raised by the CESCR in its concluding observations in the State party's previous report, there is no accurate information on:

- 1) measures to ensure equal opportunity for Afro-Brazilians, indigenous peoples and minority groups such as Gypsies and the Quilombo communities;
- 2) legislative and other measures to protect women from the effects of clandestine and unsafe abortion and to ensure that women do not resort to such harmful procedures;
- 3) measures to disseminate the present concluding observations widely at all levels of the society and, in particular, among state officials.

Taking into account these aspects, the CESCR, in its list of issues, has asked Brazil about the high rate of clandestine abortions and its causes, measures taken to guarantee effective access to health-care facilities, goods and services for the most vulnerable groups, including indigenous communities and persons of African descent, and educational preventive measures being taken to combat HIV/AIDS and to eliminate discrimination against persons with HIV/AIDS. Brazil responded to these questions in its replies submitted in March 2009 to the CESCR.

Similarly, we must remember that the CESCR identified some recommendations related to the second report, for example that the State party take all appropriate measures to address the discrepancy between life expectancy and poverty levels of the black and white population, through a more direct focus on health and poverty eradication programs for the former. In addition, the CESCR requested updated information and data on life expectancy, disaggregated by region and ethnic group. The CESCR recommended that Brazil intensify its efforts to control the spread of HIV/AIDS and the CESCR is concerned that the maternal mortality rates remain extremely high and that the risk of maternal death disproportionately affects vulnerable communities, particularly Afro-Brazilians, indigenous women and women from rural areas. Identically, the CESCR reiterates the recommendation made in its observations about Brazil's initial report – that the State party undertake legislative and other measures to protect women from the effects of clandestine and unsafe abortions. Furthermore, the CESCR recommends that Brazil take measures to ban the promotion of tobacco products and enact legislation to ensure that all enclosed public environments are completely free of tobacco.

In light of this study, we highlight another key aspect of CESCR recommendations. The Committee recommends that Brazil take into account the Committee's General Comment No. 14 (2000) on the Right to Health, particularly the following contents:

- 1) strengthen measures to reduce maternal mortality rates;
- 2) increase health-care funding for disadvantaged populations;
- 3) ensure that the people living in poverty have access to free primary health care;
- 4) establish community-based maternal health-care systems and referral systems for obstetric emergencies;
- 5) ensure the equitable availability of health-care facilities, particularly obstetric facilities, among the economically disadvantaged populations;
- 6) ensure that economically disadvantaged populations have equitable access;
- 7) provide, in its next periodic report, detailed and updated information, including disaggregated statistical data and indicators, in order to assess the level of progress achieved in that area.

In sum, we notice that, in both reports, Brazil has not incorporated a human rights perspective in writing its reports, especially in the parts referring to the right to health. Consequently, the Committee's General Comment No. 14 (2000) on the Right to Health was not considered as a parameter or guideline to produce reports. By using this General Comment as a parameter, Brazil could give emphasis in the reports, for example, to the use of human rights indicators—disaggregated in terms of vulnerable groups—to monitor the right's implementation as a core obligation. This would also serve as an instrument of accountability and participation in public healthcare.

Then, reports would present a narrative description and would emphasize formal and legal measures, as the adoption of a specific public policy or program and investment. In contrast, they do not demonstrate how effective these policies and programs are to the population, in particular to vulnerable groups and regions. Moreover, a key point reported is that the allocated resources are not enough; the report must address central problems in public health in Brazil, such as bad management practices, market concentration, corruption, and misuse of public funds. Therefore, we conclude that the Brazilian reports must be improved in the portions addressing the right to health. This requires a revision in the drafting process and it demands a change in public health professionals' conceptions of human rights.

## 4 Conclusions

The treaty-reporting process is a great opportunity to foster a favorable human rights environment and to bring about concrete changes in the ordinary practice of state bodies and agencies. Although the reporting system is not an enforceable mechanism its power to embarrass and constrain states cannot be denied. By acknowledging its importance to foster a cosmopolitan human rights culture and internal advances, we sought to demonstrate how important it is to establish a serious and committed

treaty-reporting system, with participation of all bodies and agencies involved in the reporting process, including the National Human Rights Institution, coordinated by a unique body – the Inter-Ministerial Human Rights Committee.

In other words, the creation of a treaty-reporting system based on a specific agency is crucial to improve the state's responses addressed to the UN Human Rights System. We highlighted that the reporting process is time consuming and costly. In addition, it demands material resources, engaged and qualified professionals, as well as specific budget allocations.

To ensure these cornerstone elements, it is crucial to have some political commitment, not only in a theoretical approach through speeches in favor of human rights, but also by practical actions, which must be reflected in law implementation. Legislative measures are a step in the right direction; however, they are not enough to face structural problems and to cause a break in the current power relationships. It is clear that creating efficient and serious mechanisms and cultural awareness is necessary to guarantee human rights.

Taking into account the Brazilian experience related to elaborating CESCR reports, specifically concerning the right to health, we concluded that there is a gap between CESCR requirements and the contents of Brazil's reports. We attribute this gap to the absence of a treaty-reporting system in Brazil, in other words, to the lack of a fully operating Inter-Ministerial Human Rights Committee, and to the distance among state bodies, especially those with public health professionals, and the absence of a human rights framework, in particular to General Comment No. 14 (2000).

Therefore, the Brazilian treaty-reporting process has deficiencies both procedurally and substantively. Concerning the former problem, Brazil should adopt a legislative measure to address the creation of an Inter-Ministerial Human Rights Committee, and the Ministry of Health should revive the Health and Human Rights Committee. With regard to substantive aspects, efforts must be made to elevate public agents' human rights qualifications and to introduce rights-based approaches (BERACOCHEA; WEINSTEIN; EVANS, 2011) in the Ministry of Health. Otherwise, the treaty-reporting process will be merely a formal and bureaucratic procedure, as the public health professionals will see it as a "paper process" only, without any practical effect. Under the current regime, despite Brazil being able to affirm in an international arena that the Country has been complying with its human rights commitments, we wonder how these commitments have been implemented.

We stressed that, in the public health field, Brazil has not been accomplishing its reporting commitments well enough. Consequently, effective measures must be adopted to prove that Brazil's human rights commitments are more than a political strategy attempting to occupy relevant international positions in a cosmopolitan arena. Similarly, Santos (2007) states that Brazil is a "heterogeneous State" that acts in a manner contradictory to the field of human rights. Brazil's "policies are ambiguous and contradictory", having State agents that work for the fulfillment of human rights obligations in some cases, while others totally ignore them and disregard the international commitments made by Brazil.

In the case studied here, Brazil's ambiguity is evident. Brazil formally commits itself to provide mechanisms for monitoring the relevant UN human rights treaties, such as the report system of the ICESCR, but the Country does not institutionalize the process of writing these reports, nor does it provide the necessary resources – material or human – to achieve this goal. Consequently, a serious political opportunity to change the population's living conditions, in particular the health standards of vulnerable groups, is placed at risk.

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## NOTES

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1. We use in this article the name "treaty-reporting system" as it was proposed by Donnelly in his book "International Human Rights" (DONNELLY, 1998).
2. We don't intend to deal with the role of nongovernmental organizations in the process of human rights monitoring, although we recognize their vital influence on human rights issues, mostly related to the fact that nongovernmental organizations produce "shadow reports" to present alongside the State's official reports. This choice is based on our aim to study the government role in the activity of monitoring human rights because there are few studies about that and our purpose is to contribute to Brazilian government in this field. We also note this choice is made because the system is designed around the relationship of the Nation State to individuals and groups of citizens.
3. "Article 6<sup>th</sup> Education, health, work, habitation, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute, are social rights, as set forth by this Constitution." (BRASIL, 1988).
4. National Human Rights Institutions are classified according to the Paris Principles.
5. This information was accessed on Jun. 2011 (UNITED NATIONS, 2009a).
6. Considering that confidentiality applies to information obtained directly from subjects, researchers have a legal and ethical obligation to keep personal records confidential. As a result we have referred to governmental agents as: governmental actor 1, governmental actor 2 and governmental agent 3.
7. There are a number of Bills on this topic, for instance Bill No. 4667/04 deals with legal effects flowing from International Human Rights Bodies.
8. The Rule passed in April 7, 2010 by the Secretary of Human Rights establishes this Working Group.
9. In accordance with the Report of the Working Group on the Universal Periodic Review Brazil (A/HRC/8/27, 22 May 2008 – Human Rights Council): "Brazil reinforced its commitment to create new tools for the internal monitoring of human rights. This would include a national system of human rights indicators and the elaboration of annual reports on the situation of human rights, taking into account, among other aspects, a follow-up of the UPR exercise." (UNITED NATIONS, 2008, p. 16).
10. "The very imprecision in problems of definition as well as measurement, monitoring, and enforcement have been roadblocks to applying useful economic, social and cultural rights." (SMITH, 2005).
11. The CESCR Guidelines on Treaty-Specific documents to be submitted by States parties under articles 16 and 17 of ICESCR, elaborated on 24 March 2009, replaced the Revised General Guidelines (E/C.12/1991/1).
12. Brazil ratified the ICESCR in 2/24/1992 and its initial report, in accordance with article 17 of the Covenant and Council Resolution 1988/4, should be submitted within two years of the entry into force of the Covenant and thereafter periodic reports at five-year intervals. (UNITED NATIONS, 1993).
13. "Information which a State considers relevant to assisting the treaty bodies in understanding the situation in the country should be presented in a concise and structured way. Although it is understood that some States have complex constitutional arrangements which need to be reflected in their reports, reports should not be of excessive length. If possible, common core documents should not exceed 60-80 pages, initial treaty-specific documents should not exceed 60 pages, and subsequent periodic documents should be limited to 40 pages." (UNITED NATIONS, 2006).
14. The Law No. 10.683/03 (BRASIL, 2003) states the general competency of the Ministry of Health and Decree No. 7.797/2012 establishes the Ministry of Health structure (BRASIL, 2012).
15. Editor's note: According to General Comment N° 14 (UNITED NATIONS, 2000, para. 12) all health related facilities, goods and services must be available, accessible, acceptable, appropriate and of good quality (the so-called AAAQ framework).
16. Infant mortality rates were informed by region and Life expectancy at birth - expected life span by gender, region, and state.
17. Editor's note: Health Channel (*Canal Saúde*, in Portuguese) is a broadcast of the Public System of Health (SUS), hosted by Oswaldo Cruz Foundation (Fiocruz). See: <<http://www.canal.fiocruz.br/>>. Last accessed on: Dic. 2012.
18. In March 2009 Brazil sent to the CESCR a reply to the CESCR's list of issues (E/C.12/BRA/Q/2), but we have not analyzed it because it was the result of a CESCR provocation and not was derived from spontaneous reporting activities.

## RESUMO

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Este artigo analisa o sistema de envio de relatórios aos comitês de monitoramento de tratados da ONU e particularmente o seu papel como monitor do cumprimento do direito à saúde. Executamos um estudo aprofundado sobre o sistema brasileiro, por meio de análises das competências legais dos agentes responsáveis pelo processo de envio de relatórios e da percepção dos agentes governamentais sobre o processo mencionado. Por fim, analisamos os dois relatórios brasileiros submetidos ao CDESC (2001 e 2007). Centramos nossa análise no Artigo 12 – direito à saúde – e a estruturamos de acordo com o conteúdo do relatório e com base no Comentário Geral nº 14. Concluímos que existe uma lacuna entre os requisitos do CDESC e o conteúdo dos relatórios. Salientamos que, no campo da saúde pública, o Brasil não vem cumprindo seus compromissos referentes aos relatórios de maneira suficiente. Consequentemente, medidas eficazes devem ser adotadas para provar que os compromissos de direitos humanos assumidos pelo Brasil são mais do que uma estratégia política para que o país ocupe posições internacionais relevantes em um auditório cosmopolita.

## PALAVRAS-CHAVE

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Sistema de apresentação de relatórios aos comitês de monitoramento de tratados – Direito à saúde – Instituições nacionais de direitos humanos

## RESUMEN

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El presente artículo analiza el sistema brasileño de presentación de informes sobre tratados, en particular su papel en la vigilancia del ejercicio del derecho a la salud. Llevamos a cabo un exhaustivo estudio sobre el sistema brasileño, analizando las competencias jurídicas de los órganos responsables del proceso de presentación de informes y la percepción que los funcionarios de gobierno tienen de dicho proceso. Por último, analizamos los dos informes presentados por Brasil ante el CDESC (2001 y 2007) submetidos al Comité de Derechos Económicos, Sociales y Culturales (CDESC). Nuestros análisis hacen foco en el artículo 12, sobre el derecho a la salud, y están estructurados de acuerdo con los contenidos del informe y sobre la base de la Observación General N° 14. Concluimos que existe una brecha entre los requisitos del CDESC y el contenido de los informes. Señalamos que, en el ámbito de la salud pública, Brasil no ha dado suficiente cumplimiento a sus compromisos relativos a la presentación de informes. Por lo tanto, deben tomarse medidas efectivas para demostrar que los compromisos asumidos por Brasil respecto de los derechos humanos son algo más que una estrategia política tendiente a ocupar una posición de relevancia ante un auditorio internacional.

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