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BRAZIL

The Center for Family and Human Rights (C-Fam) is a nongovernmental organization which was founded in 1997 and has held Special Consultative Status with the UN Economic and Social Council since 2014. We are headquartered in New York and Washington, D.C. and are a nonprofit, nonpartisan research and advocacy organization that is dedicated to reestablishing a proper understanding of international law, protecting national sovereignty and the dignity of the human person.

INTRODUCTION

1. In 2020, the ministers and high representatives of 34 countries met to launch the Geneva Consensus Declaration (GCD), in which they committed to promoting four objectives: improve women’s health, protect human life, strengthen the family as the basic unit of society, and defend the sovereignty of nations with regard to their laws and policies to protect life.¹ Brazil was one of the leading cosponsors of the GCD, and offered to serve as the coordinator of the GCD coalition following U.S. President Joe Biden’s decision to withdraw the U.S. from the coalition. This report focuses on Brazil’s fulfillment of its commitments to human rights in the context of the four pillars of the GCD.

THE GENEVA CONSENSUS DECLARATION

2. The language of the GCD is drawn exclusively from documents agreed by consensus, including core UN human rights treaties, the founding documents of the UN such as the Universal Declaration of Human Rights (UDHR), and major meeting outcomes such as the Beijing Declaration and Platform for Action and the Programme of Action of the International Conference on Population Development.
3. At the event launching the GCD, Brazil’s Minister of Foreign Affairs, Ambassador Ernesto Araújo, said that Brazil reaffirmed its “duty to protect human life since its conception” and denounced “any initiative favoring an international right to abortion or implying this right.” Minister of the Family, the Woman, and Human Rights Damares Alves likewise promised “protection of both pregnant women and unborn children” while denying the existence of any international human right to abortion. Both ministers reaffirmed the commitment of Brazil to the protection of the family as the natural and fundamental group unit of society, as stated in the UDHR.

PROTECTING WOMEN’S HEALTH

4. At the 1994 International Conference on Population and Development (ICPD), nations pledged “to enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.”² This commitment is echoed in the GCD, alongside reaffirmations of the importance of women’s equal rights and their contributions to society, both in terms of education, employment, and civic engagement and through the family. The unique and essential role of women as mothers was recognized in the Beijing Declaration and Platform for Action adopted at the 1995 UN Fourth World Conference on Women.³ Both of these landmark conferences, as well as the subsequent Millennium Development Goals and Sustainable Development Goals, include commitments to reduce maternal and child mortality, and while significant progress has been made around the world, critical gaps remain, especially for those in the poorest, most remote, and resource-deprived areas.
5. The maternal mortality ratio (MMR), as well as the absolute number of maternal deaths have both declined significantly since 1990 in Brazil, with reductions of 49 and 39 percent, respectively. However, the greatest declines in maternal death took place in the early 1990s, and progress has leveled off in the intervening years. The MMR in 2019 was estimated at 62.1 deaths per 100,000 live births.⁴ According to the World Health

Organization, the global MMR in 2017 was 211, and the MMR for the region of the Americas was 57.⁵ Maternal health in Brazil, as in many parts of the world, has suffered setbacks due to the COVID-19 pandemic.

6. Abortion is a crime in Brazil, with the limited exceptions of cases where the pregnancy threatens the mother's life, when the pregnancy is the result of rape, and when the fetus is anencephalic (due to a court decision in 2012).⁶ Notwithstanding these narrow exceptions, under no circumstances is abortion regarded as a right.⁷ As noted in the report of Alliance Defending Freedom International during Brazil's third UPR in 2017, the significant decreases in maternal mortality Brazil has achieved since 1990 occurred without the liberalization of abortion laws.⁸
7. In Brazil's third UPR, the Center for Reproductive Rights acknowledged that Brazil had enacted several policies to promote maternal health care, while criticizing these policies for not promoting abortion and being focused on "women who want to have children."⁹ As will be discussed in further sections, Brazil's policies for maternal health and Brazil's abortion laws are entirely in keeping with international standards adopted by consensus and in alignment with Brazil's commitments as stated in the GCD: "Improve and secure access to health and development gains for women, including sexual and reproductive health, which must always promote optimal health, the highest attainable standard of health, without including abortion."¹⁰

PROTECTING HUMAN LIFE

8. Brazil's laws protecting the life of children in the womb from induced abortion are consistent with its human rights obligations as set out in the binding human rights treaties ratified by Brazil as well as other international agreements. The 1994 International Conference on Population and Development (ICPD), as quoted in the GCD, states that "any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process."¹¹ The standard set at the ICPD has been repeatedly reaffirmed by international consensus, including at the adoption of the Sustainable Development Goals. No international human rights treaty ratified by Brazil asserts a human right to abortion, or could reasonably be interpreted as including such a right.¹²
9. As mentioned previously, Brazil's laws protect life from conception with very limited exceptions. However, illegal, clandestine abortions continue to be performed, leading to maternal injury and death in some cases. In keeping with Brazil's commitments outlined in the GCD to promote optimal health without including abortion, and the ICPD agreement that "governments should take appropriate steps to help women to avoid abortion,"¹³ efforts must be taken to identify the root causes of abortion and ensure the needs of women and their families are met when faced with crisis pregnancies.
10. When the outbreak of the Zika virus occurred in Brazil in 2015, and was linked with microcephaly in children born to mothers who were infected, Brazil received an increased level of pressure to liberalize its abortion laws, including in the context of the UPR.¹⁴ The fact that Brazil did not weaken its pro-life laws in the face of this pressure, refusing to create allowances for the elimination of persons at risk of disability, is consistent with Brazil's obligations under the Convention on the Rights of Persons with Disabilities, ratified by Brazil in 2008, which asserts that "States Parties undertake to

ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.”¹⁵

SUPPORT FOR THE FAMILY

11. The GCD reaffirms the obligations of States in regard to the family enshrined in international law, including the definition of the family as “the natural and fundamental group unit of society” and recognition that it is “entitled to protection by society and the State.” Signatories to the GCD further committed to “support the role of the family as foundational to society and as a source of health, support, and care.”¹⁶ This is likewise reflected in the constitution of Brazil, which states that “the family, which is the foundation of society, shall enjoy special protection from the State.”¹⁷
12. In Brazil’s second Universal Periodic Review, which took place in 2012, Brazil expressed support for the following recommendation from the Holy See: “Protect the natural family and marriage, formed by a husband and a wife, as a basic cell of society as it provides the best conditions for raising children,” with the caveat that “Brazilian institutions recognize other family arrangements as also eligible for protection, such as women raising children alone.”¹⁸
13. In Brazil’s third UPR, which took place in 2017, Brazil noted the Holy See’s follow-up recommendation urging continued action to “continue protecting the natural family and marriage, formed by a husband and a wife, as the fundamental unit of society, as well as the unborn.” This was one of only four recommendations noted by Brazil out of the 246 received. However, by signing the GCD and assuming leadership of its coalition, Brazil’s current government has signaled its intention to support both the family and the unborn, in line with the Holy See’s recommendation.
14. Human rights belong to all persons, regardless of their familial or household status, and the state has a special obligation to ensure that the basic needs of children are met. As the Convention on the Rights of the Child (CRC) states, the child “should grow up in a family environment, in an atmosphere of happiness, love and understanding” and has, “as far as possible, the right to know and be cared for by his or her parents.”¹⁹ Brazil’s commitment to provide social protection for children raised by single women, as stated in its response to the 2012 UPR, is entirely consistent with its obligation to protect the natural family, there is an important distinction between fulfilling the rights of children regardless of their household structure and using the means of the state to incentivize the specific structure that is optimal for the well-being of children. As recognized in the CRC, and supported by a wide range of social science findings, it is best when children, as far as possible, are raised by their own biological, married, parents.
15. While same-sex marriage has been a matter of law in Brazil since a 2013 judicial decision, the recognition of marriages between persons of the same sex is not an obligation under any human rights treaty, including those treaties to which Brazil is party. Furthermore, relations between individuals of the same sex and other social and legal arrangements that are neither equivalent nor analogous to the family are not entitled to the protections singularly reserved for the family in international law and policy.²⁰

NATIONAL SOVEREIGNTY

16. As stated in the GCD, with regard to the legal status of abortion and the protection of the unborn, it is a matter of longstanding consensus that “each nation has the sovereign right to implement programs and activities consistent with their laws and policies.” However, opposition to this sovereign right of countries has become increasingly commonplace in those parts of the United Nations system governed more by expert opinion or bureaucratic oversight than by the standard of negotiated consensus. There is no global mandate to pressure countries to liberalize their abortion laws or expand the categories for non-discrimination as a matter of international human rights law with regard to, for example, sexual orientation or gender identity, and to the extent that mandate-holders engage in such behavior, they do so *ultra vires*.
17. Nevertheless, the frequency of such pressure has only increased toward countries whose laws restrict abortion in order to protect the unborn, or which maintain a traditional view of marriage and the family, in line with the human rights obligations expressed in the binding treaties they have ratified. Such nonbinding opinions have been further elevated in many parts of the UN, although they have never been accepted nor adopted by consensus in the General Assembly.
18. The GCD, by anchoring its every assertion in a document adopted by consensus, reaffirms the centrality of the family, the rights of women and children and the fact that these rights are not upheld by abortion, and the importance of national sovereignty, especially in those places where global consensus does not exist.
19. Unlike other UN human rights mechanisms, the UPR provides a space for sovereign nations to speak to each other and provide encouragement to fulfill their human rights obligations. To the extent that this venue has been used to exert further pressure on countries to liberalize their abortion laws or redefine the family as a matter of national law and policy, it is important that global consensus on these matters be upheld and promoted in the UPR as well, particularly by those countries that have already taken a stand in this regard by signing the GCD.
20. In Brazil’s second UPR, France recommended that Brazil “continue the process of expanding the possibilities of accessing the voluntary termination of pregnancy in order to ensure the full recognition of sexual and reproductive rights.” In Brazil’s second UPR, recommendations explicitly urging further expansion of abortion access came from Switzerland, France, and Iceland. All of these recommendations were marked as supported by Brazil. In light of having signed the GCD, Brazil is encouraged to refrain from supporting further recommendations to expand abortion access, whether through decriminalization, legalization for specific grounds, or other policy changes. Even if such recommendations align with the priorities of the government of Brazil, the legality of abortion is a matter of national sovereignty, and should not be addressed through mechanisms dealing with human rights obligations.
21. Similarly, Brazil has issued recommendations that Greece “consider recognizing same-sex couples” (first UPR cycle), that Portugal “take measures in order to allow the adoption of children by same-sex couples” and Nepal “take measures to implement the Supreme Court's decision concerning same sex marriage” (second UPR cycle). Again, recognizing that the government of Brazil may have altered its position on this issue in light of signing the GCD, these are matters outside the scope of the protection of the family as stated in the UDHR, and are not human rights obligations found in any binding

treaty or multilateral agreement adopted by consensus, either for Brazil or any other sovereign nation.

CONCLUDING RECOMMENDATIONS

22. We encourage Brazil to continue protecting the natural family and marriage, formed by a husband and a wife, as the fundamental unit of society, as well as the unborn, as previously recommended.
23. Brazil should continue to improve maternal and child health outcomes, especially for those in low-resource settings, without including abortion, in accordance with its commitments in the Geneva Consensus Declaration.
24. Brazil should continue to assert the right to life of the unborn and the fact that abortion is not a human right in the context of multilateral negotiations, as well as in the Universal Periodic Review, in accordance with the Geneva Consensus Declaration, and call on its fellow signatories to do likewise.

¹ Geneva Consensus Declaration on Promoting Women's Health and Strengthening the Family, 2020. Available at <http://c-fam.org/wp-content/uploads/geneva-consensus-declaration-english.pdf>

² United Nations International Conference on Population and Development. (1994). "Programme of Action of the International Conference on Population Development," Cairo.

³ United Nations Fourth World Conference on Women. (1995). "Beijing Declaration and Platform for Action" (Annex II, Paragraph 29). Beijing.

⁴ Leal, L. F., Malta, D. C., Souza, M., Vasconcelos, A., Teixeira, R. A., Veloso, G. A., Lansky, S., Ribeiro, A., França, G., & Naghavi, M. (2022). Maternal Mortality in Brazil, 1990 to 2019: a systematic analysis of the Global Burden of Disease Study 2019. *Revista da Sociedade Brasileira de Medicina Tropical*, 55(suppl 1), e0279. <https://doi.org/10.1590/0037-8682-0279-2021>

⁵ World Health Organization (WHO), Global Health Observatory, Maternal Mortality Ratio indicator. Available at [https://www.who.int/data/gho/data/indicators/indicator-details/GHO/maternal-mortality-ratio-\(per-100-000-live-births\)](https://www.who.int/data/gho/data/indicators/indicator-details/GHO/maternal-mortality-ratio-(per-100-000-live-births))

⁶ Senado Federal, Brasil (2014). Código Penal, available at https://www2.senado.leg.br/bdsf/bitstream/handle/id/529748/codigo_penal_1ed.pdf

⁷ Lemos da Silva, Rosângela (2010). DIREITO À JUSTIÇA E A LEI MARIA DA PENHA: uma análise na visão da isonomia material e forma. doi:10.24824/978856248092.8. ISBN 9788562480928.

⁸ ADF International. Submission to the Universal Periodic Review of Brazil, held in April-May 2017. Available at https://www.upr-info.org/sites/default/files/document/brazil/session_27_-_may_2017/adf_international_upr27_bra_e_main_rev.pdf

⁹ Center for Reproductive Rights. Submission to the Universal Periodic Review of Brazil. September 2016. Available at https://www.upr-info.org/sites/default/files/document/brazil/session_27_-_may_2017/crr_cehurd_upr27_bra_e_main.pdf

¹⁰ Geneva Consensus Declaration, *ibid.*

¹¹ United Nations International Conference on Population and Development, *ibid.*

¹² See the San Jose Articles, 2011, available at www.sanjosearticles.com

¹³ United Nations International Conference on Population and Development, *ibid.*

¹⁴ As an example, see Center for Reproductive Rights, *ibid.*

¹⁵ United Nations General Assembly Session 61 Resolution 106. Convention on the Rights of Persons with Disabilities A/RES/61/106 13 December 2006. Available at https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/61/106

¹⁶ Geneva Consensus Declaration, *ibid.*

¹⁷ Constitution of the Federative Republic of Brazil. Constitutional text enacted on October 5, 1988, with the

alterations established by Revision Constitutional Amendments 1, 1994 through 6, 1994, and by Constitutional Amendments 1, 1992 through 101, 2019. English translation available at <http://www.mpf.mp.br/atuacao-tematica/sci/normas-e-legislacao/legislacao/legislacao-em-ingles/constitution-of-the-federative-republic-of-brazil>

¹⁸ Report of the Working Group on the Universal Periodic Review: Brazil, Addendum. A/HRC/21/11/Add.1. September 2012, available at <https://undocs.org/A/HRC/21/11/Add.1>

¹⁹ United Nations, Convention on the Rights of the Child, 1990. A/RES/44/25. Available at <https://www.unicef.org/child-rights-convention/convention-text>

²⁰ See the Family Articles, available at <https://civilsocietyforthefamily.org/>