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Submitted by Derechos Digitales and PI

privacyinternational.org

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Stakeholder Report: Universal Periodic Review 41st Session: Brazil

This Universal Periodic Review (UPR) stakeholder report is a submission
By Privacy International and Derechos Digitales

1. Privacy International (PI) is a non-governmental organization in consultative status with ECOSOC. PI researches and advocates globally against government and corporate abuses of data and technology. It exposes harm and abuses, mobilises allies globally, campaigns with the public for solutions, and pressures companies and governments to change. PI challenges overreaching state and corporate surveillance so that people everywhere can have greater security and freedom through greater personal privacy.

2. Derechos Digitales is non-governmental digital rights organization based in Latin America in consultative status with ECOSOC. Its mission is to defend, promote and advance human rights in the digital environment in order to contribute to more just, inclusive and equal societies in the region. Derechos Digitales' actions combine legal research, public policy and technology analysis, advocacy and communications outreach, as well as digital rights and digital security trainings and its work is divided in three main areas: (i) sustainable and inclusive technologies for social justice, dealing with the impact technologies may have on structural exclusion and inequalities; (ii) autonomy, dignity & control in the use of technology, which concerns how public and private practices related to technology can impact the exercise of fundamental rights, as well as personal autonomy and self-determination; and (iii) technology policy from Latin America, dedicated to strengthen Latin American participation in regional and global debates on technology and human rights.

3. This stakeholder report focusses solely on concerns related to the use of education technology ('EdTech') in Brazil, and the subsequent processing (collection, analysis, retention, and sharing) of children and teacher's data in schools.

The use of EdTech in Brazil

4. Brazil has a long history of official federal policies around education technology introduced by the federal government – the first one relating to the implementation of information and communication technologies (ICT) in public schools dates back to 1977.

5. Currently in force, Brazil's Plano Nacional de Educação (PNE – National Education Plan) was established by Law 13005 (2014) and included several goals to disseminate, certify, develop, and encourage the development of education technologies, to provide digital equipment and resources to schools, and to digitise the management of public schools and the departments of education in the states, federal districts, and municipalities.

6. Despite pioneering implementation of policies for the use of ICT in education - including investments for the creation of laboratories and the distribution of computers, several challenges remained regarding connectivity, the availability and use of equipment. First, inequalities observed in household access are also reproduced when it comes to school connectivity: in 2020, 82% of schools had access to internet in Brazil, but only 52% of the rural ones, as compared to 98% of urban schools. In the North Amazon region, only 51% of schools were connected. When it comes to access to devices, 37% of rural schools don't have any computer available and in the cases where mobile phones are allegedly used for pedagogical activities, in most cases they are personal equipment paid by administration or teachers themselves.[1]

7. According to a 2021 study by the Brazilian Internet Steering Committee only 21% of schools provided remote learning activities before the pandemic.[2] In 2019 only 14% of Brazilian public schools had a virtual learning environment available in 2019; as compared to 64% of the private ones.[3]

8. By the end of 2020, 51% of the schools had a virtual learning environment in 2020 - 45% of the public schools and 76% of the private schools had such systems available for remote learning. Schools had to quickly adapt to emergency remote learning during the pandemic. The gap opened space for private companies to offer their solutions without any further discussion on the impacts of their adoption.[4]

9. The same study showed that 87% of schools adopted at least one activity using technology during the pandemic. 79% of the schools surveyed began recording lessons and making them available to students, 65% conducted classes through video conferencing platforms such as Zoom, and 58% used virtual platforms and educational resources such as google classroom.[5]

10. The uptake in education technology hasn't just taken place within the (physical or virtual) classroom but has extended beyond it. The data also shows that schools increasingly use digital systems to organise student information. According to the survey:

    - 85% of schools use digital systems to manage information associated with student registration, such as name, address, telephone number, and date of birth;
    - 82% of schools use digital systems to manage data concerning student attendance and grades;
    - 46% of schools use digital systems to manage data on students' physical condition and health, such as weight, height, and allergies;
    - 59% of schools use digital systems to manage teacher- and staff-performance evaluation results;
    - 71% of schools use digital systems to manage data on the school's budget.

11. The uptake of education technologies has also physically materialized in the classrooms with certain initiatives unilaterally introduced by each state. One Brazillian state, Amazonas, has implemented the Ensino Médio Presencial com Mediação Tecnológica program, which developed a programme of distance learning for students in rural communities.[6] Since 2013, the Amazonas' Education Department has also loaned tablets to teachers and students in the 3rd year of high school for pedagogical use in the school environment.[7] Some schools have even begun to introduce facial recognition in classrooms.[8]

1. The recent pandemic impact on the right to access education

12. In March 2020, nearly 1.5 million children in Brazil aged 6 to 17 were not attending school (remotely or in person).[9] In addition, another 3.7 million enrolled students did not have access to school activities and were unable to keep learning at home. In total, 5.1 million were denied their right to education (as of November 2020).[10] The closing of schools during the pandemic, followed by the adoption of emergency

remote learning measures, generated a record increase of almost 200% in school dropout rates among 5 to 9 years-old children between 2019 and 2020.[11]

13. Exclusion from education in Brazil is estimated to raise the learning poverty rate from 48% to 70% and disproportionately affect the poor population. Distance learning benefited less than 50% of students in less developed regions, compared against 92% of students in richer regions of the country, which may reverse a ten-year period of steady improvements in the Human Capital Index.[12]

14. When it comes to exclusion from education, there are other factors to take into account. For example, due to gender hierarchies in a house with only one mobile, it may often result that the phone is used by the boy in that house not his sister.[13]

15. While recognizing the unique circumstances of the pandemic, the UN Special Rapporteur on the Right to Education highlighted that 'Past failures to build strong and resilient education systems and to fight entrenched inequalities have had a dramatic impact on the most vulnerable and marginalized, a situation to which no temporary measure adopted in haste could have fully responded.'[14] '[I]n Brazil, [she highlighted that] funding cutbacks and capping of public expenditure have led to a dismantling of social policies, preventing stakeholders from adopting an urgent and strong response to the pandemic.'[15]

16. Additionally, unequal access to computers and the internet across the country heavily contributed to the disproportionate impact of the pandemic measures on poor as well as socially marginalized groups. In 2020, 100% of families earning more than ten times the minimum wage in the country had access to the internet, as opposed to 68% of families earning the minimum wage or below. The same difference can be identified in different regions of the country: while the Southeast, the richest region, has internet access for 86% of households, in the Northeast, the number is 79%. Finally, the number also varies between urban areas (86%) and rural areas (65%).[16]

17. This scenario affects the pedagogical possibilities of content production, academic research and autonomous use for e-learning.[17] Racial and ethnic factors also affect connectivity and, as a consequence, access to emergency remote education during the pandemic. Black and Indigenous children and young people in public schools represented more than 70% of students without household broadband or 3G/4G Internet access in 2018.[18]

18. In addition to the difficulties of accessing the internet, there is a problem regarding the quality of access. According to 2019 data from the Regional Center for Studies for the Development of the Information Society (CETIC), the most used device for internet access was the cell phone, which corresponded to 99% of total users, followed by the computer (42%). Access via desktop was 23% and via notebook the proportion was 28%.[19]

19. According to an ICT Household Survey from 2020, 83% of people in the lower income band uses the internet exclusively through a mobile device, as compared to 10% in the highest.[20]

20. Thus, most of the Brazilian population accesses the internet exclusively through mobile devices. The cheapest internet plans available for mobile devices in Brazil, which are the most used, give unrestricted access only to applications (such as Facebook, WhatsApp, Instagram, etc.), while data for accessing websites is very limited. The most accessible forms of internet, for economically and socially vulnerable populations, is limited by the device used (mostly the cell phone), and by the quality of internet access. When it comes to online education, these access difficulties significantly restrict the right to education of the most vulnerable children and adolescents.

21. Article 28 of the UN Convention on the Rights of the Child ('UNCRC') provides that children and young people have the right to education no matter who they are: regardless of race, gender or disability; if they're in detention, or if they're a refugee. States have a positive obligation to take necessary steps to ensure the enjoyment of this right.

2. Right to privacy and access to education

22. The enjoyment of the right to education cannot be understood in isolation of the other rights of the UNCRC, including the right to privacy.[21] Article 16, UNCRC provides that "No child shall be subjected to arbitrary or unlawful interference with [their] privacy". Any interference should be in accordance with law, necessary to achieve a legitimate aim, and the legal framework should provide adequate and effective safeguards against abuse. The best interests of the child should be a primary consideration (Article 3, UNCHR).

23. We are concerned that the use of EdTech poses unique and grave threats to children's privacy and their right to access to education should not be conditional

on the loss of their privacy. As the UN CRC Committee has underlined 'Children do not lose their human rights by virtue of passing through the school gates'.[22] The use of EdTech without adequate safeguards can have significant harms.

2.1. Lack of appropriate procurement procedures

24. While, on the one hand, hardware (including computer devices etc.) was largely contracted for through Brazil's procurement procedures (though some cases were exempted from bidding procedure, mainly due to COVID-19 pandemic), the teaching platforms, on the other hand, were obtained through cooperation or donation agreements. This happened both in wealthier and in poorer states in Brazil.

25. In Brazil cooperation terms should be used when both parties have a common interest (which should be aligned with public interest) and no transfer of resources is permitted. However, the case of EdTech platforms is special because their business model, most of the time, works not on direct payment, but on data processing that, indirectly, generates profit. It is important to highlight that, in terms of consumer protection, the Brazilian Superior Court of Justice recognized that the consumption relationship exists even when the service provided is free of charge. This is because remuneration must be understood in a broad way, in order to include the indirect gain of the supplier.[23] This transfer was either not considered or wasn't considered seriously enough to prevent cooperation terms being used for the procurement of these technologies.

26. States ought to adhere to formal processes for procuring and assessing the services of private companies for delivery of public duties.[24]

27. It is also concerning that global tech corporations, sometimes in partnership with local startups, reach to local or school administration directly with proposals of standardized agreements. This compromises transparency and increases the difficult of monitoring the advance of such agreements in the country.

2.2. Lack of impact assessments

28. We are concerned that the use of different EdTech solutions in Brazil may be violating the right to privacy of those student who must interact with them. Before introducing any EdTech solution, states should assess its impact on students' right to privacy.

29. However, the right to privacy isn't even a criteria being used by Brazilian states in choosing what education technologies to use. In response to information requests made to the departments of education of the central government, Amazonas, Maranhão, Rio de Janeiro, and São Paulo and the federal district none mentioned privacy and data protection as criteria used in choosing technology.[25] As the Special Rapporteur on education has underlined 'That education is provided through public-private partnerships does not change the nature of the right to education and the related obligations.'[26]

2.3. Unfettered access and transfer of data

30. We are particularly concerned at the lack of care being taken in examining and choosing these technologies, and the apparent lack of understanding around the data processing and transfer.

a. Unfettered access by private actors

31. Companies providing EdTech services seem to have often unfettered access to data generated and processed by these technologies. One company for example, IP.TV, has produced apps including Centro de Mídias SP in São Paolo, Aula Paraná in Paraná, Mano in Amazonas and Pará.[27]

32. But a report by The Intercept found several problems after analysing IP.TV's privacy policies.[28] It appears that IP.TV had access to data from the education departments, such as the student's name, e-mail, and grades. The app also asked for permissions to access the photo album, microphone, and messages in chat groups, which can be kept for up to six months. The mobile app can further display advertising to users.

33. Such public-private partnerships often lack sufficient transparency, which is core to and a preliminary requirement of any exercise and protection of human rights. When personal data is envisaged to be processed as part of an EdTech partnership, any provisional or final documentation should include details of prospective and actual data processing activities.[29]

34. Another problem is what will be done with data after the partnership eventually ends. This encompasses at least two issues. First, for how long companies will retain students' data. Second, what could be done with the content stored on these systems going forward. Without clear limits and safeguards sharing,

targeting and the resultant harms and invasion of privacy could continue even long after a student has left school. No-one's school attendance record, for example, should follow them to their adult life.

b. Lack of transparency in data processing and third-party data sharing

35. It has also been difficult to uncover the degree of interference with privacy rights and assess where and when privacy violations are taking place. For instance, there is a strong presence of Google Workspace for Education,[30] which includes Google classroom,[31] and other collaboration tools for teachers and students, in the country, which was detected in all states and the Federal District.[32]

36. To use the platform, it is mandatory to sign adhesion contracts that cannot be negotiated by the public administration.

37. Brazilian researchers have already identified several problems with the platform's terms of use and privacy policy.[33] For example, Google does not specify which legal bases they use to process student data and does not inform users with which partners the data is shared. In addition, many of the documents attached to the contract are in English, which is mostly inaccessible to school administrators, teachers, parents, and students in Brazil.[34]

38. Finally, it is difficult to understand how data flows between the main and additional applications within the platform. This is extremely important, as in the main app there is no targeted advertising, while this is allowed in the additional services (an additional service widely used in schools, for example, is YouTube). n associated concern when it comes to the separation of educational and non-educational uses of services has to do with how information collected from private and personal uses are incorporated into educational profiles, especially when the adoption of Google's Workspace for Education is combined with the distribution of Chromebooks, and the consequences not only for privacy, but for students' rights to access to information, freedom of thought and expression, of association, among others.[35]

39. Students have been obliged to sacrifice their fundamental right to privacy in order to access their fundamental right to education. They have had to install these app on their - or their families' - mobile phones, potentially sharing a significant amount of additional personal information with Google, and other companies involved in EdTech. That information may then be added to profiles that these companies sell

or use to sell advertising. Children's right to education shouldn't be held to ransom for their right to privacy and their personal data.

2.4. Facial recognition in schools

40. Several Brazilian states have also introduced facial recognition technologies (FRT) into public schools.[36] Facial Recognition is a technology that matches captured images with other facial images held, for example, in databases or "watchlists". It is an extremely intrusive form of surveillance and can seriously undermine our freedoms and eventually our society as a whole.[37] It appears that one facial recognition company operated in 19 out of 26 Brazilian states as of November 2021.[38] Occasionally, the system was rolled out without informing parents or students in advance, this lack of information has been reported in at least two public schools in Mata de São João.[39]

41. One of the justifications for the use of the technology was 'the monitoring of the attendance of students at schools without the need to take roll call'.[40] It is vital to understand that the Bolsa Familia, a social assistance programme which ran until December 2021 was tied to children's attendance in school - if they had too many absences then their family's social assistance funding was stopped. Facial recognition is disproportionate, inaccurate[41], and discriminatory[42] and should never mediate access to social welfare.

42. The use of FRT by both public and private actors has a seismic impact on the way our society is monitored. The roll out of such intrusive technology does not only pose significant privacy and data protection questions, but also ethical questions around whether modern democracies should ever permit its use. For example, the radical introduction of FRT will inevitably result in the normalisation of surveillance across all societal levels and accordingly cast a "chilling effect" on the exercise of fundamental rights, such as our freedom of expression or our right to protest.

43. The introduction of FRT in public schools in Brazil without prior human rights risk and impact assessment, without an appropriate proportionality assessment and an appropriate legal framework violates the right to privacy.

3. Right to development and education

44. Finally, we are seriously concerned that the EdTech solution employed by Brazil violates children's rights to development and education.

45. For example, the *Frente Contra o Ensino Remoto* (Front Against Remote Teaching), a group formed by teachers from state schools in Rio de Janeiro, highlighted several problems with EdTech use in schools, when they demonstrated at the entrance of the Secretary of Education of Rio de Janeiro in 2020. They were particularly focused on problems in the Applique-se application created by IP.TV, which works as an intermediary app between students and Google Classroom. Teachers concerns included:

    a. the pedagogical content inside the application, which was reportedly extremely problematic and reportedly included racist and homophobic content; and
    b. the choice of the software itself, which they complained threatens their freedoms with regard to the exercise of their professional duties as teachers, in view of the impossibility of not agreeing with the terms of use of the application.[43]

46. The UN CRC Committee has underlined the links between Article 29 (1), CRC and the struggle against racism, racial discrimination, xenophobia and related intolerance. Article 29 CRC includes the obligation to ensure the provision of education which promotes respect for differences, and challenges all aspects of discrimination and prejudice.[44]

47. We are further concerned about reports that the federal government is introducing in EdTech applications that have been used to circumvent social media blocks and spread misinformation during elections. IP.TV is the company responsible for the mobile applications used by the states of Amazonas, Rio de Janeiro and São Paulo amongst others. Until the pandemic, IP.TV had developed only one successful application: Mano. [45] This was a video streaming application created in 2018 that was used during Jair Bolsonaro's campaign for president. It happens that the same company is providing services for the aforementioned states and, in some of them, as in the case of Amazonas and Pará, TV Bolsonaro is already automatically included in the educational application (as of June 2020), since the educational part is included in the same application.[46]

48. Recommendations

- We recommend that Brazil takes all necessary measures to ensure that all children and young children enjoy their right to education regardless of race, gender or disability.
- We suggest that Brazil as a matter of urgency, adopts special, targeted measures, including through international cooperation, to address and mitigate the impact of the pandemic on vulnerable groups, as well as on communities and groups subject to structural discrimination and disadvantage. All relevant actors, including civil society, should be part of that process.
- We urge Brazil to put in place policies and measures to ensure education preparedness in cases of future emergency.
- We recommend Brazil must review its legal framework to ensure it effectively regulates the authorization and the use of EdTech for the intended legitimate purpose and includes robust and effective safeguards.
- We urge Brazil to ensure that robust human rights due diligence processes (including data protection impacts assessments) are in place, that include into their scope the early stages of the design and development of an EdTech technology, as well as stages of deployment and use. Details of the processes in place should be made public and available for review.
- We recommend that Brazil, when awarding a contract to an EdTech company, must demonstrate adherence to formal public procurement processes and must put in place formal documentation governing the partnership.
- We recommend Brazil bans the use of facial recognition technologies in schools.
- We recommend that Brazil should make public all the specifications of each EdTech company's access to data, and provide for corresponding safeguards to ensure security and proper handling of the data, taking into consideration the best interests of the children.
- We recommend Brazil to take all necessary measures to remove any racist and homophobic content from educational material (online and offline) and include teachers in designing education technologies.

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