10 Human rights mobilisation in São Paulo’s policy response to COVID-19

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Introduction

In São Paulo, Brazil, the Pacaembu Stadium is a soccer arena run by the City Hall. It was inaugurated in the heart of one of the country’s richest regions, as an art-deco postcard inspired by the Berlin Olympic Stadium where Jesse Owens memorably won a gold medal in the 1936 Olympic Games. Over its 80 years old history, Pacaembu has witnessed countless soccer matches and pop music concerts, most of which with over 70,000 people worth of paying audience. However, maybe the most impressive record in its trajectory has only taken place recently, as its carefully cut grass welcomed a 200 beds emergency field hospital for Sars-CoV-2 patients.

In Brazil, the COVID-19 pandemic prompted consequences beyond the realm of epidemiology, providing context for the dynamics of Brazilian politics. The fierce discussion held among State authorities, health-care experts and civil society about the correct policy responses to the pandemic triggered a discursive battle with deep political implications for the President of Brazil, State Governors and Mayors. A standpoint which bears particularly useful insights into how such discursive battle played out is the one of human rights in the urban landscape: its legitimacy as a moral value, its appropriateness as a policy compass, its essential content in the concrete case of making policy to fight the pandemic. Focusing on this particular case-study, this chapter delves into the human rights mobilisation of São Paulo City Hall’s policy responses to the COVID-19 pandemic, arguing that the case of São Paulo illustrates how different human rights discursive choices made by state authorities informed the practice of such a phenomenon.

Human rights, cities and COVID-19

Despite the recent phenomenon of the pandemic, it has already become established in scholarship that ‘the COVID-19 pandemic in itself threatens the enjoyment of human rights, most prominently the right to life and the right to health. It also highlights how human rights are

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interdependent while at the same time reflecting competing interests that are sometimes hard to reconcile (Spadaro 2020). Moreover, scholars have been associating a human rights-based approach to the policy effort against the pandemic as a relevant proxy for distinguishing populist from non-populist discourse in public health (Scheinin and Mølbæk-Steensig 2021, p. 19), pointing out that denialism towards the reality of the virus or the unwillingness of governments to address the suffering brought about by it is unacceptable from a human rights standpoint. The case of Brazil’s Bolsonaro emerges in that discussion as a text-book example of how the lack of human rights-based policies against COVID-19 aggravates the epidemiological problem as well as the social consequences of the diseases (ibid, p. 20; Kirkpatrick and Cabrera 2020).

The story of the COVID-19 pandemic is also one about people in cities. According to the United Nations, cities have borne the brunt of the crisis (United Nations 2020b). In the context of urban areas, the pandemic imposed some of its most severe consequences, especially in the early days of outbreaks, when non-pharmaceutical interventions such as social distancing policies were the fundamental tool to fight and prevent COVID-19. A rising research agenda focuses on the patterns of intergovernmental interaction in the policy effort against global health emergencies such as the COVID-19. Faced with the challenge of COVID-19, many local governments came up with alternatives to the approaches enacted by governments at all levels, from national, federal or central instances to local, regional, state or municipal instances. About 90% of the reported cases happened in urban areas (United Nations 2020a, p. 5), and a generous portion of the collective action that addressed the pandemic’s challenges was led by governments and, especially, subnational governments. From New York City to Nairobi and São Paulo, Mayors played a significant role in enforcing critical dimensions of the overall national policy response.

It was not long before it became clear that the pandemic was an urban phenomenon. While the outbreaks imposed overwhelming hardships for human rights everywhere, the virus thrived predominantly in large unequal urban communities – and such an unprecedented landscape provided an exceptional stage for local and State governments to thrive or fail in their politics and policy. Wuhan, China, the first urban area hit by Sars-CoV-2, the policy response was led by China’s central government, but its implementation was the responsibility of the provincial and local governments (UNCDF 2020, p. 4).

On the one hand, over the past decades, the rise of decentralised paradigms of governance and a shift in the international human rights agenda from codification towards realisation was already bestowing upon cities the burden of realising human rights (Oomen 2016, p. 2). On the other hand, in 2020, such a historical process was stretched to its limits,
as the emergency solution for a pandemic – a global problem by definition – was framed primarily in terms of local actions, such as social distancing, lockdowns and other limitations in the right to the city.

Human rights in law, cities and beyond

The concept and handling of human rights in this chapter

A concept of human rights

Our hypothesis is that the human rights discourse contained within the policies that São Paulo City government enacted to fight the pandemic provides insights into the dynamics of Brazil’s local and national politics. The analytical key to grasping such discourse is to frame human rights beyond its explicit manifestation in written law, but as language-structure, following O’Byrne’s (2012a, 2012b) concept. By using sociology in order to understand human rights, it becomes possible to study it as a language, ‘an institutional framework within which meanings are negotiated and practices formalised (2012a, p. 832)’, while also enabling the study of power struggles inherent in such negotiation of meaning and even how specific actors operate within that framework (ibid). By mobilising such a sociological approach, therefore, we can frame more accurately how each political actor engaged – the City Hall, the City Council, the federal government and civil society – made the choices for policies and words in the midst of a fierce political struggle during the pandemic.

Also, from the standpoint of human rights theory, this chapter associates the concept of human rights to a social-constructionist perspective, in which human rights is a social institution and, as such, is framed in history, culture and politics, following Waters (1996) general definition.

Human rights and discourse analysis

To operationalise the approach to human rights as a social institution, we employ critical discourse analysis. In our effort, São Paulo’s policy response to the pandemic and its human rights component are framed as discursive events. Such a framing of human rights in terms of discourse is long and rich in scholarship. Grigolo (2019, p. 8), for instance, argues that the very process of signifying human rights and attributing human rights meaning to a given social fact is a discursive process. Borrowing theoretical ground from Foucault (2008) and Bourdieu (2014), Grigolo links the concept of human rights to discourse, stressing the importance of apprehending the social conditions of discourse production as a fundamental input to discourse analysis at large (Bourdieu 2014, p. 15). At the same time, Grigolo also notes how Bourdieu and Foucault (2008,
p. 19) acknowledge discourse as both descriptive and constitutive of social reality.

In studying the practice of human rights by states – namely São Paulo City Hall, a local government institution – the concept of discourse can also be useful in allowing the identification of discourse in public policy. Operationalising the notion of discourse in policy studies, Schmidt’s (2008, 2010) discursive institutionalism identifies discourse as a set of ideas and their context, which manifest either as policies proposed by policymakers; or as programmes that gather paradigms orienting policies; or as philosophies that convey worldviews which orient policies and programs. Fischer (2003) frames the very notion of public policy as a discursive construct, invoking the concept of discourse in an effort to bring policy studies closer to the reality of politics and away from an excessively objectivist approach of empiricism (p. 68) which would render policy analysis useless.

But it is through the lens of Fairclough’s (1992) text-oriented critical discourse analysis (TODA) that it is possible to better grasp the human rights substance contained in language, in this case, the legal text of São Paulo’s policy responses. In Fairclough, discourse is necessarily tied to language, whereas Foucault’s concept of discourse entails many other manifestations of social institutions. Despite such meaningful differences, crucial theoretical assumptions of TODA, such as the role of intertextuality as a crucial shaper of meaning and the power of discourse to constitute reality while also describing it are contributions from Foucault’s (1971) early archaeological work. In Fairclough’s TODA, moreover, critical discourse analysis focuses on discursive events as its unit of analysis, which are essentially three-dimensional. As such, discursive events, the object of critical discourse analysis, take the form of a piece of text, where language elements of discourse are more obviously assessed; while also being part of a discursive practice, where the circumstances of text production and distribution are perceivable and part of a social practice, where one is able to draw information about the social, cultural and institutional circumstances of discursive events (p. 4).

Fairclough’s critical discourse analysis has been successfully employed in studying the human rights discourse in the context of Brazilian politics. Cavalcanti and Ferreira (2020) have parsed the human rights content of President Jair Bolsonaro’s speeches by combining Fairclough’s (1992, 2003) and Laclau and Mouffe (2015) analytical tools to conclude that, at least in the selected corpus, President Jair Bolsonaro is actively trying to attribute new meaning to human rights through discourse.

In this inquiry, we are dealing primarily with the human rights behaviour of a governmental actor, namely São Paulo City Hall. It is useful to emphasise that, while the concept of human rights mobilised in this study encompasses the discourse, the language and practice of human rights beyond its explicit manifestation in written law, this study does
rely on legislation as one crucial empirical input for the assessment of São Paulo’s policy responses to the COVID-19 pandemic. In this methodological approach, therefore, analysing written municipal legislation is useful, not as the exclusive substance of human rights discourse, but as one of the ways through which one particular state actor – the São Paulo city government – speaks human rights as a language.

**The politics and policy of localising human rights**

This chapter bases the issue of localising human rights on two fundamental theoretical perspectives. First, while we do not forfeit the vast scholarship on the human rights mobilisation by urban actors, such as social movements and right to the city advocates analysed in Friendly (2017), Landy (2013), Stammers (1999) and Riethof (2017), this study looks at the local mobilisation of human rights in the context of COVID-19 from the standpoint of duty-bearers, namely São Paulo City Hall. The crucial inspiration comes from Ulrich (2011) and the research on the challenges of integrating human rights within mainstream bureaucratic cultures (p. 338). In particular, this chapter relies on the premise that human rights localisation is a matter of ‘building a human rights perspective into public policy making and administrative procedures at all levels of governance (p. 337)’. Ulrich’s perspective becomes suitable when dealing with the concrete challenges of realising human rights in the context of the local governance of a developing country. Moreover, the case in point, a big city (São Paulo) in a developing country (Brazil), presents the particular challenge of localising human rights within a political context in which the scepticism of which Ulrich (p. 341) talks about is the official ideology of the federal government.

In this sense, this study offers contributions to the framing of how human rights is practised in the realm of public administration, by the hand of policymakers and street-level bureaucracy. This ‘top-down approach’ to the localisation of human rights focuses specifically on its practice on contexts not explicitly demanded by written administrative law. Ulrich links such perspective with the broader research agenda on the mainstreaming of human rights, also mentioning how the focus on human rights integration has not been particularly looked at through the lenses of human rights localisation:

> Given the central role attributed to policy makers, public office holders and other actors in positions of power, this overall agenda may be described as a top-down approach to the localisation of human rights, and it may accordingly be argued that a comprehensive human rights strategy requires a combination of bottom-up and top-down strategies with a central focus on the grey zone in between where actions may or may not succeed in linking up.

(Ulrich 2011, p. 343)
Our effort, therefore, merges research agendas on the phenomenon of mainstreaming human rights, looking into the practice of human rights by a governmental actor (a ‘duty-bearer’), and the localisation of human rights, by focusing on São Paulo as a human rights city.

Second, once the duty-bearer in point is a city government, this Chapter also uses the concept of human rights cities as laid out by Oomen and Baumgärtel (2014), as ‘an urban entity or local government that explicitly bases its policies, or some of them, on human rights as laid down in international treaties, thus distinguishing itself from other local authorities (p. 710)’. The concept shifts the centre of the human rights discourse from its enunciation in written law to its realisation in public policy, rising urban landscapes and the street-level bureaucracy of their governments to prominence. This study’s focus on human rights realisation within public policies, thus beyond the legal codification process that is typical of national legislative bodies, also singles out the city as the preferred locus of observation, once ‘cities increasingly form the level at which rights need to be realised (Oomen and Van Den Berg 2014, p. 166)’. Similar to the concept of human rights here invoked, human rights cities are not a formal concept, but also a social institution, a practice (Grigolo 2019, p. 14). Throughout the discourse analysis deployed, the concept of human rights cities will also arise in the form of one of the Foucaultian orders of discourse to inform the enunciative modalities of São Paulo’s policy response to COVID-19.

Social theory and public policy scholarship have noticed that globalisation and contemporary urbanisation have been transforming cities into privileged places for autonomous policy-making in transnational agendas. Besides human rights realisation, other meaningful examples are climate change and economic development (Barber 2013). Among the reasons for that trend, cities in different national realities can be very similar in many of their challenges and opportunities (ibid, p. 40). It is within that context that recently Koh (2018) has invoked the example of US cities in resisting in counterstrategy against Donald Trump’s policy to withdraw from the Paris Climate Agreements, drawing from the concept of transnational legal process (Koh 1996), modernly defined as ‘a hybrid body of international and domestic law developed by a large number of public and private transnational actors (Koh 2018, p. 6)’. Similarly, when it comes to human rights in the urban landscape, cities rise to prominence, among other reasons, for being perceived as an instance of government particularly close to issues and communities around which human rights are mobilised (Grigolo 2019, p. 14). The growing trend is to see cities as the main stage of development and inequality. The context of the COVID-19, a global problem with profound local implications, proved to be a privileged opportunity for cities to engage in policies aligned to international human rights law consensus but divergent from national policies towards the disease.
Methodology and data

The empirical input for our discourse analysis comprises 491 pieces of municipal legislation enacted by City Hall between March and October 2020 with the specific goal of tackling the pandemic. In order to better grasp the meanings within that corpus, a compilation of the shorthand notes for 114 City Council plenary floor sessions held within that timeframe helps the interpretation of the political struggles that culminated in actual policy. The municipal legislation's data was collected from São Paulo City Hall’s official legislation portal, a website for cataloguing the whole body of norms that governs the City’s administration. The corpus includes Municipal Laws (statutory norms produced by the City Council and enacted by the Mayor); Decrees (administrative measures enacted by the Mayor); Ordinances (or ‘Portarias’, administrative measures issued by the City Hall’s Departments and Secretariats); Normative Instructions (administrative measures issued by Secretaries); Resolutions (administrative measures issued by the City’s collegiate organs); Notices and Announcements, (or ‘Comunicados’ and ‘Anúncios’, messages formalised by the City’s Departments); Technical Notes (technical messages formalised by the City’s Departments); Internal Orders issued for internal management of the City’s administration; Legal Opinions issued by the Secretariat of Justice or the Office of the City Attorney General. The Legislation Portal from which the corpus was collected is run by the Secretariat of Civil House (‘Secretaria da Casa Civil’), the City’s department with the mandate to engage in dialogue with the City Council and manage the norms that govern the City’s administration. The shorthand notes were collected from São Paulo City Council’s newly inaugurated database of City Council people’s speeches, SPRegistro Consulta. The corpus includes Ordinary Sessions, Extraordinary Sessions and Free Tribune sessions.

Before diving further into this Chapter, it is essential to acknowledge that so far, there is not enough evidence to assess the long-run impact or effectiveness of the policies enacted by any governmental actor against COVID-19. At this point, there is not enough data to assess if São Paulo’s policy effort did mobilise human rights to its fullest extent possible.

Finally, it is also crucial that the Author clearly states his positionality as an observer of Brazilian and São Paulo’s politics. The Author of this study has spent time working as a policy-maker at São Paulo City Hall, at the Secretariat of Human Rights and Citizenship and at the Secretariat of Sports and Leisure, between 2017 and 2019, and has also been a registered member of the Party of Brazilian Social Democracy (PSDB), Mayor Bruno Cova’s political party.

São Paulo as a human rights city

While the Brazilian Constitution does not explicitly mention human rights as a municipal attribution, the competency for the realisation of a number of fundamental rights is either shared with municipalities or
attributed exclusively to city governments. Federal, State and Municipal governments share the powers ‘to provide for health and public assistance, the protection and safeguard of handicapped [sic] persons’ and ‘to fight the causes of poverty and the factors leading to substandard living conditions, promoting the social integration of the unprivileged sectors of the population (Supreme Federal Court)’. However, it is in the exercise of municipalities’ competence to legislative on ‘matters of local interest’ (ibid) that cities like São Paulo exercise the bulk of their human rights mobilisation.

The first formal acknowledgments of human rights as an informative framework of São Paulo City Hall’s policymaking date back to the early 1990s. In 1991, Mayor Luiza Erundina’s administration (1989–1993), the first under the new constitutional regime, created the Special Advisory for Human Rights and Citizenship with the mandate to inform policies for women, black people, elderly people, disabled people, children, youth and ‘other segments of the populations vulnerable to social discrimination.’ Throughout the following administrations, virtually every Mayor authorised substantial improvements to the City’s human rights policy framework, from right-wing Paulo Maluf’s (1993–1997) support to legislation including ‘Basic Human Rights studies’ in the curricula of São Paulo’s schools, to Mayors José Serra (2005–2006) and Gilberto Kassab (2006–2013) enactment of human rights realisation policies such as the Reference Center for Human Rights in the Prevention against Racism and the City’s Commission for the Eradication of Child Labour. It was in 2012, however, under Mayor Fernando Haddad’s administration (2013–2017) that São Paulo’s Human Rights Commission and the City’s Department of Participation and Partnerships were merged to form the Secretariat of Human Rights and Citizenship (SMDHC), currently the highest level of governance of São Paulo City Hall human rights policy.

Under the leadership of SMDHC, the governance of São Paulo’s human rights policy refers to international human rights law and relies heavily on international partnerships. The organising Decree for SMDHC explicitly determines that the City’s human rights policy must observe ‘the international covenants which Brazil is a signatory’ and authorises the establishment of partnerships ‘public and private entities, national and international, with a view to promoting projects aimed at the realisation of human rights, citizenship and social participation, in the areas related to their attributions’.

SMDHC acts in partnership with the Secretariat of International Relations (SRI) to manage São Paulo’s commitment to many international human rights treaties and global city networks, such as the United Cities and Local Governments Committee on Social, Inclusion, Participatory and Human Rights and the ‘Rainbow Cities’ network. The City Hall also has an established tradition of partnerships with international organisations in policy implementation, such as Technical
Cooperation Agreements (e.g. the partnership with UNICEF for policies for vulnerable children and adolescents in urban areas, in the context of the Urban Centres Platform).

From a political perspective, São Paulo's tradition in international human rights policymaking has historically laid context for the City's engagement in world affairs, sometimes contrasting with the Federal government’s approach. Among the most recent examples on the health-care front, São Paulo commits to the Paris Declaration against the HIV-AIDS pandemic, which aims at achieving the 90-90-90 Targets and positioning cities on a trajectory towards getting to zero new HIV infections and zero AIDS-related deaths (Covas 2019).

São Paulo’s policy responses to COVID-19

**Actions by São Paulo City government**

The first confirmed case of Sars-CoV-2 in Brazil happened in São Paulo in late February (Rossi and Oliveira 2020). Although the World Health Organisation still had not labelled the spread of Sars-CoV-2 as a pandemic at the time, São Paulo’s Secretariat of Health (SMS) was engaged in structuring and preparing for an unknown event as early as January 10. As the ultimately responsible for governing on matters of local interest in São Paulo, the City Hall enacted strict social distancing measures as early as March, when the first municipal rules suspended on businesses such as stores, markets, service providers, allowing only for take-out or delivery services. Ordinances consolidated individual recommendations for essential services, and demanded that hand sanitisers were made available in every essential service business still operating. On the health-care front, the Secretariat of Health issued a plethora of specific, technical norms with instructions for primary health care in the City’s public hospitals. São Paulo City Hall made a 35 million BRL investment in the construction of two emergency Field Hospitals in the Pacaembu Stadium and in the Anhembi Conventions Center, run by Albert Einstein Beneficent Society, a Social Organisation (OS), with 2,000 (two thousand) low complexity beds destined exclusively to COVID-19 patients.

The Secretariat of Human Rights and Citizenship played a transversal role across the entire set of policies enacted against COVID-19, by both enacting its own policies and providing human rights orientation in the policymaking process by other branches of the City’s administration, specially through Normative Instructions and Ordinances with recommendations to other branches of the city government. For instance, through a set of Ordinances, SMDHC issued specific orientations for dealing with COVID-19 in nursing homes and preventing infections in older persons. Mindful of more vulnerable demographic groups, the Secretariat of Health issue technical documents with specific recommendations for
preventing and controlling the virus in disabled people, invoking the Brazilian Law of Inclusion (Federal Law 13146/2015), which imposed on the Brazilian State – federal, state and local governments – the responsibility for human dignity of the disabled person throughout all of their life.

The City’s educational system anticipated school vacations, while making sure students at home would keep getting the food supply they were entitled to in school, also structuring some level of curricula continuity in future, socially distanced sessions. In September, as Mayor Covas considered the reopening of schools, again the Secretariat of Human Rights and Citizenship was called to take action, signing a Public Note with the City’s Council for the Rights and Children and Adolescents (CMDCA, a social participation instance with budgetary powers for child-care policies), stating that ‘the right to life is inviolable according to our Constitution and the Statute of the Children and Adolescent and for these reasons we defend that the reopening of public and private schools be postponed to a moment in which the minimum criteria established by the World Health Organisation is met (São Paulo 2020)’. In the meantime, the Secretariat of Education designed a focalised emergency policy for providing parents with the money to buy the food that their children would get while in school. The organising Normative Instruction for the policy referred to São Paulo’s Municipal Policy Plan for Early Childhood. With the input of UNICEF, SMDHC also issued specific protocols to Tutelary Councillors (elected street-level bureaucracy entitled with the mandate to enforce welfare policies for children and adolescents).

Almost as intensive as the immediate health related measures, the economic relief effort led by the City Hall also addressed the side effects of social distancing measures on lives and livelihoods, echoing the approached endorsed in UN’s human rights risk assessment. Garbage collectors were kept being paid and allowance duties for social rent housing were put on hold. Aware of the negative impact that stay at home measures have on domestic violence indicators, the City’s administration started demanding from future contractors that at least 5% of its personnel was composed of women participants in the ‘There is a Way Out’ program (‘Tem Saída’), a previously existing policy for women victims of domestic violence, while also creating an emergency focalised policy of rent subsidies for poor women victims of domestic violence. Tax debts were temporarily suspended.

Interaction with other city stakeholders

In early April, the City Hall formalised its participation in the Solidary City Project, a basic supplies and foodstuff donation program led by São Paulo’s civil society to help the most vulnerable people in the face of the pandemic. The Executive Secretariat of the project was entitled
to SMDHC, and its Managing Committee was made of representatives from the city government, private and non-profit sectors. The project management was funded both by the City’s budget and private donations. Private donations were targeted through the focalising framework of the previously existing Food Bank Program under the management of São Paulo’s Secretariat of Labor and Economic Development (SMDET). The organising Decree of Solidary City authorised the City Hall to perform a partnership with the Red Cross for boosting the initiative’s storage or distribution capacity, and placed the program – and its Managing Committee – as the manager of the donations made through a Public Call Notice issued under the very Municipal Decree that declared a state of emergency in the City. Also in the context of the Solidary City Program, the Secretariat for Disabled People (SMPED) engaged in active listening with the NGO’s that manage the City’s programs for disabled people and upgraded the City’s BSL (the Brazilian sign language) app, providing quality information on COVID-19 for deaf people. As previously mentioned, the City Hall’s participation in the Solidary City was regulated in a Decree that put together a Management Committee made of almost 20 of Brazil’s leading non-profit organisations. The Secretariat of Health also established a Technical and Scientific Committee composed by publicly known physicians.

In order to bolster the political support of the City’s policy effort, a number of ad hoc participatory fora was enacted, to provide the City Hall with political and technical advice. A Technical Desk, composed by professional associations and unions such as the government employees union (‘SINDSEP’), professional associations of nurses (‘COREN’ and ‘SEESP’), physicians (‘CRM’ and ‘SIMESP’), community health agents (‘Sindicomunitário’), physiotherapists and occupational therapists (‘Crefito’) pharmaceuticals (CRF), as well as the Brazilian Bar Association (‘OAB’), was put together for the discussion and monitoring of the development of the pandemic and with the explicit goal of ensuring collective support to the effort of fighting COVID-19. A Chamber of Institutional Integration was assembled for consolidating dialogue between public authorities, including the Mayor’s top aides, such as the Chief of Staff, and the Secretaries of Government, Justice and Health, and the leadership of the city’s legislative body, and the whole body of Councilmen from the Municipal Audit Court (‘TCM’). Among the several ad hoc participatory fora were also the Inter-Secretariat Executive Group, which served as a quick-response cluster within the City administration for planning and monitoring São Paulo’s response. The Secretariat of Sub-prefectures put together a Data Management Group for the analysis and proposition of indicators to support the decision-making process regarding the funerary services, composed by professors from the University of São Paulo (USP), the Federal University of ABC (UFABC) and the State University of São Paulo (UNESP).
The Secretariat of Transportation (SMT) assembled a Task Force to address preventive and repressive measures against COVID-19 in the city’s public bus system, made of staff from SMT, the City Hall public company that provides the bus system (SPTrans) and the city’s contractors (‘Grupo Local de Distribuição’). When the time came to regulate Federal Law 14017/2020 that provided emergency economic relief for the cultural industry, the City Hall gathered a Commission for Monitoring and Execution the city’s compliance to the statute, made of civil society representatives and government representatives.

As for the transparency policies, the City Hall imposed on each public and private hospital in the city the duty to provide information on the number of operational and occupied ICU beds, as well as the suspected and confirmed COVID-19 cases through a digital platform, on a daily basis. The City Council enacted a Municipal Law regulating the City Hall’s compliance to data privacy principles, such as the anonymity of data, simple language and establishing the City Hall’s obligation to publish updated information on the overall indicators of the pandemic, such as the number of suspected cases, the amount of PPE, tests and ICU beds available, prevention protocols, the number of daily burials, among others.

**São Paulo City Parliament**

Complementary analysis from the City Council’s floor meetings indicates that the parliamentary body of São Paulo city engaged in the policymaking process of responding to COVID-19 on the local level, providing commentary and policy recommendations to the city government. The Mayor’s legislative agenda conquered the Council’s support in the overwhelming majority of votes, which does not necessarily indicate the chamber’s proportional support to each and every one of the policies enacted, but rather that the city parliament followed the historical success rate pattern laid seen in Brazilian national parliament (Limongi 2007). The most insightful evidence on the Councilmen and Councilwomen’s thoughts on the City Hall’s policies against COVID-19 is drawn from the lack of consistent and procedural opposition to the city government’s bills addressing the pandemic during debates held on the chamber’s floor. Notable exceptions include the left-wing opposition to the re-opening of schools, mostly voiced by representatives of the Socialism and Liberty Party (Partido Socialismo e Liberdade – PSOL), such as Councilmen Celso Gianazzi. On the right-wing side, Councilman Rinaldi, from President Bolsonaro’s former party PSL – Social Liberal Party (Partido Social Liberal), engaged in criticism of the City Hall’s strict social distancing enforcement policies. Meaningful criticism was also drawn after Mayor Covas’ experimental policy of expanding limitations to the circulation of vehicles based on their licensing plates, especially by Councilmen Camilo Cristofaro, from PSB – Brazilian Socialist Party.
Throughout the timeframe analysed, research on the City Parliament’s discussions log indicates that the policy debate which most actively mobilised Councilmen and Councilwomen dealt with the implementation of a Universal Basic Income (UBI) policy provided by the municipality. After a national debate led by Jair Bolsonaro’s opposition at Brazil’s National Congress managed to enact a monthly emergency stipend for the country’s poorest citizens, the agenda spread across state and municipal politics. Months after it was sanctioned into law by President Bolsonaro, São Paulo’s parliament engaged the policymaking of its own monthly emergency aid. In São Paulo, however, unlike the initial debate held in Brasília, the merit of the policy was never seriously challenged by either political forces in Parliament. Rather, it was the authorship of the city’s stipend policy and the amount of money that should be made available for each citizen that triggered partisan struggle between city government-aligned lawmakers and the opposition. Albeit UBI policies were the historical and most distinctive talking point in the agenda of one of the opposition’s most prominent lawmakers, Councilman and former Senator Eduardo Suplicy, the bill wound up approved in the terms of the city government’s choices, due fundamentally to formal legislative initiative rules on the topic, which required it to be proposed by the city government only.

Human rights discourse in São Paulo’s policy response to COVID-19

Critical discourse analysis provides the theoretical tools for understanding the complexity of political discourse through language. When it comes to policy enacted in written law, drawing from Fairclough’s social theory of discourse enables us to see the dialectical relationship between discourse and social structure, as they both constitute each other. Using Fairclough’s (1992) three-dimensional approach to discourse analysis, São Paulo’s policy response to the pandemic can be framed as a discursive event. The political and ideological struggle that followed the country’s social unrest over the unpredictability of COVID-19 constitutes its social practice, and the municipal legislation that enacted São Paulo’s response is one of its discursive practices, which is textually expressed in the selected corpus.

The social practice

Like previously mentioned, the works of Cavalcanti and Ferreira (2020) have helped understand the context that defines the social practice within which human rights play a key role in Brazilian political dynamics. O’Byrne (2019) lays the investigative groundwork for the hypothesis that what he calls neopopulism – the ideology of leaders like
Donald Trump and, in this chapter, Jair Bolsonaro – is engaged in a ‘war on human rights’ rooted in its commitment to deglobalisation. At the heart of the ‘war on human rights’, the discursive struggle to change the meaning of human rights towards ‘a signifier for a broader culture of inclusion that puts ‘the Other’ on a par with everyone else (p. 11)’.

Ever since 2019, Brazilian Federal government under President Jair Bolsonaro has slammed human rights discourse as ‘globalist’ and ‘leftist’ conspiracies (Casarões 2020, p. 83). The hostile rhetoric is ranted especially in international fora, as Brazil’s several actions targeting ‘non-governmental organisations and humanitarian activists’ and reversing Brazil’s vote on reproductive health rights and gender issues (ibid, p. 84) illustrates. The efforts of Brazilian courts and National Congress to resist the Federal government’s ‘anti-rights agenda’ that would ‘put vulnerable populations at greater risk’ have been duly noticed by experts (Human Rights Watch 2020, p. 83).

In the case of the COVID-19 pandemic, Brazil’s Federal Government downplayed the seriousness of the pandemic and faced strong international and domestic backlash. Health-care experts have criticised Brazil’s lack of seriousness (The Lancet 2020), as the Federal Government’s discourse framed the hazards of COVID-19 fundamentally in terms of the economic downturn prompted by the social distancing measures to prevent and control the spread of the disease, to the detriment of immediate health-related concerns.

As background context, the Brazilian constitution frames access to health as a fundamental right and also bestows upon municipalities the burden of providing primary attention and basic health care. The policy arrangement reached above the average results, as Brazil’s Unified Health System (‘SUS’ or ‘Sistema Único de Saúde’) vastly did manage to provide primary health care to citizens on the local level, an impressive accomplishment even for developed world standards (Varella 2019).

Nevertheless, only now, more than thirty years after federal legislation started setting the standards of SUS, would the health-care structure of São Paulo face its toughest test.

The discursive practice

On a second, discursive practice-driven analysis, while the corpus shows no significant manifest intertextuality with São Paulo’s human rights law (as different Decrees and Municipal Laws refer mostly to the policy effort itself), the politics of São Paulo’s policy response to the COVID-19 pandemic cannot be properly understood without a careful look into the constitutive intertextuality – or interdiscursivity – that characterises the discursive practice of the legislation that enacted it. For Fairclough, the concept of interdiscursivity relates to how a given discursive event draws its meaning from external orders of discourse, following Foucault’s (1971, p. 15)
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definition for the term. Such interdiscursivity draws from two different orders of discourse: the dynamics of contemporary Brazilian politics and São Paulo’s policy framework as a human rights city.

In April, when Brazil’s toll of COVID-19 related deaths exceeded that of China, President Jair Bolsonaro ranted an aggressive response in a press conference on the topic after being told the news: ‘So what? I am sorry. What do you want me to do? I am Messiah, but I don’t do miracles’, Bolsonaro (2020). In another press conference, when asked how many people had already died from the disease in Brazil, the President’s angry answer was that he was not a ‘gravedigger’. Just a few days after, Mayor Bruno Covas issued a Decree formalising an official 3-day mourning period in São Paulo for the victims of COVID-19, as the city beat the record of 1,000 deaths from Sars-CoV-2.

When talking about the dynamics of discursive distribution and consumption, Fairclough (p. 85) sets precisely the example that government departments usually produce text in a way that anticipates their distribution, transformation, consumption and their potentially multiple audiences. In that sense, while São Paulo’s bureaucracy was indeed the ‘addressee’ (those directly addressed, ibid, p. 87) of the legislation that enacted the municipality’s response, other stakeholders such as Brazilian national media played the part of ‘hearer’ (those not addressed directly, but assumed to be part of the audience), to the extent that it reported on the City’s policies to the public. At the same time, both the media and public opinion also functioned as of ‘over-hearers’ (those who do not constitute part of the ‘official’ audience but are known to be de facto consumers), to the extent that the difference between the approaches from São Paulo and Brasília was noted and commented on in Brazil’s media outlets.

Again, with Fairclough (p. 80), the interpretation and consumption of a discursive practice is a multilevel or ‘bottom-up-top-down’ process. Lower-level units of the discourse help inform the interpretation of its higher-level units and vice-versa. In the case of the legislation that enacted São Paulo’s policy response to COVID-19, the interpretation of lower-level units, such as every individual Ordinance and Decree, relied on predictions about the meaning of higher-level units that existed before them, such as São Paulo’s vast array of previously established human rights policy framework.

When it comes to the corpus’ coherence as the feature of a text whose constituent parts are meaningfully related (ibid, p. 83), São Paulo’s previously established commitment as a human rights city shaped the interpretation of the legislation that enacted the City’s policy response to COVID-19, providing the city’s bureaucracy with ideological assumptions that overcame ambivalences in the text. In that sense, the analysed 491 pieces of legislation became additions to a previously existing ‘chain of speech communication’ (in Bakthin 1986, p. 94) about human rights
law and language in the city’s policies. Even more significantly, in terms of distribution, the corpus was communicated as part of a stable and already established network of municipal regulations.

The text

Finally, on a text-driven dimension, a detailed look at the corpus’ choices of grammar, cohesion and, especially, vocabulary explains how São Paulo City Hall made the political choice of mobilising human rights in their policy response against COVID-19. While President Bolsonaro refused to wear a mask in public and failed to enforce such preventive measure among his supporters, Mayor Covas took the opportunity to issue Decrees ‘recommending’ masks to the citizens of São Paulo, even though municipalities have no powers to enforce such measures under the Brazilian constitution. Further Decrees also recommended that private businesses allowed employees over 60 years old to stay at home, and that grocery stores made sure that products were delivered fully packaged to customers. The choice for recommendations, rather than impositions or any other enforceable statement, could suggest the City’s willingness to fill a policy vacuum left by the Federal government in one of the most crucial dimensions of the human rights impact of COVID-19.

To the extent that it did have constitutional enforcement powers, however, the City Hall issued continuous norms imposing the use of masks for passengers and employees of the City’s public transportation system, urban cleaning and infrastructure contractors, garbage collection service employees contractors and general administrative contractors. As the ultimate responsible for governing on matters of local interest in São Paulo, the City Hall enacted strict social distancing measures as early as March, when the first municipal rules suspended in-person activities on businesses such as stores, markets, service providers, allowing only for take-out or delivery services. Ordinances consolidated individual recommendations for essential services, and demanded that hand sanitisers were made available in every essential service business still operating.

Conclusions

The São Paulo City Hall mobilised the human rights discourse in its policy responses to the COVID-19 pandemic, both as a political statement of opposition against Brazil’s Federal government approach to the very same challenge, and as a tool for the legitimisation of the city’s administration choices. A particular focus on the social practice dimension of the discursive event shows significant interdiscursivity as evidence of the city government’s engagement with its own previous human rights legislation. Conditions put in place before the outbreaks, such as Jair Bolsonaro’s hostile rhetoric against the human rights discourse, and
São Paulo’s international positioning as a human rights city helped the City’s engagement in a more explicitly human rights-based discourse as a critical informative input of his politics. The human rights discourse was mobilised not only as a policy compass – a philosophy, following Schmidt’s (2008) terminology – but also as a political statement.

At the end of the day, São Paulo city government engaged in the effort of addressing the pandemic from its multiple dimensions, from immediate health-care actions to an economic relief agenda and ad hoc participatory fora in its policymaking process, virtually complying with the majority of the United Nations’ human rights risk assessment concerns. Because of the multilevel, ‘bottom-up-top-down’ nature of discourse interpretation and consumption, the human rights mobilisation in São Paulo’s punctual policy response to COVID-19 also culminated in the strengthening of the City’s broader status as a human rights city as one of its side effects.

While São Paulo City Hall prioritised the health-care effort of the response to COVID-19, to the detriment of the economic impact of such measures in the lives and livelihoods of Brazilians living in São Paulo, the Federal government did the exact opposite, prioritising the health of Brazil’s economy, to the detriment of the immediate health-care emergency. One could argue that both Covas and Bolsonaro’s choices are correlated with the public’s perception of the different administrative responsibilities of each public authority. On the one hand, Bolsonaro’s Federal government is overwhelmingly perceived as the ultimate responsible for the country’s economic policy – unemployment, purchasing power, exchange rates. On the other hand, Covas’ City Hall, along with State and other City governments, are tasked with health-care (e.g. the availability and quality of hospitals), education (the management of school’s closures) and matters of regional or local interest (issuance of permits and licenses). To a relevant extent, Mayor Bruno Covas had his sights set in his reelection campaign later in 2020, and so did President Bolsonaro acted considering the electoral impact of his choices in his 2022 reelection bid.

From the standpoint of discourse analysis, to a certain extent, the moment of COVID-19 offered a unique opportunity of what Fairclough (1992, p. 230) regards as a ‘moment of crisis’, moments in which practices which would normally be naturalised be seen as more visible, making the sampling of the corpus more intuitive. In São Paulo, the relevance of its previously established policy framework as a human rights city was brought to the spotlight by an unprecedented pandemic, a humanitarian crisis and a political contest. One could reasonably argue that other historical framings would not drive enough scholarly attention, as such moments ‘make visible aspects of practices which might normally be naturalised, and therefore difficult to notice; but they also show change in process, the actual ways in which people deal with the problematisation of practices’ (Fairclough 1992, p. 230).
Finally, it is remarkable to notice that the Federal’s Government opposite approach to the global health emergency happened despite the vast and multiple and complex connections of the Brazilian national state with the international human rights system, a policy legacy of previous federal administrations. On the other hand, the concentrated effort made by São Paulo City Hall against Sars-CoV-2 turned out to also bolster São Paulo’s status as a human rights city. As previously mentioned, Fairclough’s view of as a multilevel process in which not only higher-level units orient the interpretation of future lower-level units of discourse, but also the other way around was perceivable.

The future holds new discourses and social practices in the face of COVID-19, in a growing plethora of intertextuality contexts. As for now, the only undisputed truth is that the potential and limitations of human rights mobilisation in urban contexts must not be taken for granted. It is time both practice and scholarship learned the lesson offered by the history of COVID-19 in our time.

Notes


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References


