

# Violence against Women in Brazil

## A Report to the Committee on Economic, Social and Cultural Rights

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## 1. Preliminary Observations

The submission of alternative country information on violence against women to the UN Committee on Economic, Social and Cultural Rights forms part of the World Organisation Against Torture's (OMCT) programme on Violence against Women. One of the aims of the programme is to integrate a gender perspective into the work of the five "mainstream" human rights treaty monitoring bodies. OMCT's reports on violence against women examine the effects of gender on the form that human rights violations take, the circumstances in which these abuses occur, the consequences of these violations and the availability and accessibility of remedies.

OMCT appreciates the fact that the report submitted by Brazil to the U.N. Committee on Economic, Social and Cultural Rights<sup>1</sup> underlines certain gaps in Brazilian policies and lists the legislative measures taken to remedy these problems. OMCT recognizes the efforts, mentioned in the report, that have been made during the past decade to bring the country up to international standards regarding the human rights of women and violence against women, and the frankness with which Brazil recognizes that a lot more needs to be done. OMCT appreciates the close partnerships established between institutional and civil society organizations to deal with certain issues, and encourages the government to pursue these participative governance activities. More actions, especially in terms of information and education of the population, are necessary for a change of mentalities to take place regarding women's place in society.

OMCT is concerned that many measures taken at a federal level trickle down rather slowly before reaching a state level, and many measures are lost before indeed reaching their destination. Coordination between states is needed in order to implement effective legislation. Contrasts in such a wide country are to be expected, but not to their current extent, which is appalling in many cases. More homogeneity throughout the regions and a greater effort to implement laws directly into the rural areas are two main objectives that the government should strongly pursue.

In line with the overall objectives of OMCT's programme on Violence against Women, this alternative report will focus on Brazil's obligations in relation to the prevention and eradication of violence against women.

After an initial introduction on the status of women in Brazil, the report will examine violence against women in the family, violence against women in the community and violence against women at hands of State agents. It also contains a chapter on violations of women's reproductive rights. The report ends with a series of conclusions and recommendations for future action.

### ***1.1 Background Information on Brazil***

Brazil is a Constitutional Federal Republic composed of 26 states and the Federal District. The population is about 172.8 million inhabitants. Women account for roughly half of the population. The socio-demographic profile<sup>2</sup> of the Brazilian woman is quite heterogeneous and varies considerably across regions.<sup>3</sup> 84% of women live in urban areas, of which 52% grew up in town while 32% grew up in the countryside. Of the 16% who live in the rural areas, the great majority already grew up there, and only 3% came from the cities. Roughly one out of four women live in state capitals. Urbanization rates vary considerably from North (around 70%) to South (around 90%).<sup>4</sup>

The population is racially mixed with roughly 40% of Brazilian women having black and white ascendance and another 12% adding indigenous roots to both those ascendances, while 9% have white and indigenous origins. Again distribution varies across regions, with around 70% women from black and mixed origins inhabiting the North and North East, 47% in the Centre West and only 34% in the South East. This rate drops even lower in the South at 15%.<sup>5</sup>

With respect to religion, almost 70% of women in Brazil are Catholic, though only 40% declare an active practice. Evangelism is the second main religion with 20% of women adherents. Roughly 10% of women profess other religions, of which 1% is camdomblé or umbanda.

Marital status is still quite important in Brazil, with 57% of women being married, 36% legally and 21% informally. Only 8% of women are separated or divorced. Maternity is equally important, with 3 out of 4 women being mothers.

## *1.2 Brazil's International Obligations*

Brazil acceded to the International Covenant on Economic, Social and Cultural Rights on 24 January 1992. With regard to other international human rights instruments, Brazil is also State Party to the Convention on the Elimination of All Forms of Discrimination against Women (ratified on 1 February 1984) as well as its Optional Protocol (ratified on 28 June 2002); the International Covenant on Civil and Political Rights (acceded on 24 January 1992); the Convention on the Elimination of All Forms of Racial Discrimination (acceded on 27 March 1968); the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (ratified on 28 September 1989); and the Convention on the Rights of the Child (ratified on 24 September 1990).<sup>6</sup> OMCT notes with concern that Brazil has neither signed nor ratified the Optional Protocols to the International Covenant on Civil and Political Rights and signed, but not ratified, the two optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. Moreover, Brazil has recognised the competence to receive and process individual complaints of the Committee on the Elimination of Racial Discrimination but not of the Committee against Torture.

Within the inter-American human rights system, Brazil has ratified the American Convention on Human Rights, which prohibits, in Article 1, discrimination on the basis of, inter alia, sex, in guaranteeing protection of the human rights contained in the Convention. Article 24 of the same Convention determines the right of each person to equal protection of and before the law. Article 17.4 establishes the obligation of the State to “take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses” with respect to marriage or its dissolution. In 1995, Brazil ratified the Interamerican Convention to Prevent, Punish and Eradicate Violence against Women, established in Belém, in the State of Pará, in 1994.

The applicability of international law in Brazil is rather slow, since treaties which have been ratified must be approved by Congress through a Legislative Decree and then promulgated through an Executive Decree in order to be applicable internally. This process is normally very time-consuming since it involves the approval by both Congressional Houses.

## 2. General Observations on the Status of Women in Brazil

### 2.1 *Legal Status of Women*

The Brazilian Constitution<sup>7</sup> details in its five chapters individual and collective rights and duties, social rights, nationality, political rights and political parties. Article 5 establishes the equality of all people before the law, and sets forth that men and women have equal rights and obligations. It also determines the punishment by law of wrongful discrimination with respect to individual rights and freedoms.

OMCT recognizes current initiatives aiming at the modernization of domestic law in order to bring domestic legislation in conformity with international obligations. Since 2001, 44 law projects regarding violence and human rights are transiting through the National Congress. OMCT appreciates the fact that many of these deal specifically with gender-related issues. In particular, four law projects address crimes against sexual freedom, six deal with sexual crimes against minors, ten address measures against discrimination, two deal with the conditions of women in detention, five regard domestic violence and six 6 deal with other violence-related issues.

The new civil code, which has been in force since 11 January 2003, embodies the Constitutional principle of equality between men and women. OMCT underlines the revocation of the ancient provision which allowed the husband to file annulment if he was not aware that his wife was not virgin before marriage.<sup>8</sup>

The current Brazilian Civil Code introduces the concept of “family entity” to describe an informal and stable union between spouses, regardless of having obtained legally married status. Therefore, the civil code abandons the discriminatory concept of “legitimate” marriage, becoming thus more adjusted to the current Brazilian reality, since there has been a great increase in the number of informal rather than legal marriages in the past years, especially among persons under 45 years old.<sup>9</sup>

Prior to 1988, married women were legally subordinate to their husbands and under the former Brazilian Civil Code, dated 1916, women were considered perpetual wards, like minors and some elderly.<sup>10</sup> Divorce was only made legal in 1977.<sup>11</sup>

However, the provisions regarding rape under the Penal Code still severely discriminate against women as is dealt with in depth in section 4 of this report.

OMCT appreciates the fact that new rights regarding women status were conquered with the approval of more than 30 laws during the 1990s, and encourages this growing process where more than 200 law projects regarding equal gender status have been submitted in the past few years to the National Congress and are now awaiting approval. Nevertheless, OMCT is concerned that despite the fact Brazil ratified most international conventions regarding equal gender status, legislation follow-up is rather slow. Though the legislative body is mostly in agreement with women's demands regarding their rights, gender status does not yet seem to have become a priority as far as political themes go. Even issues that have gained a relatively high level of parliamentary consensus<sup>12</sup> take very long to be approved, because of lack of political will. According to a 1999 survey<sup>13</sup> by CFEMEA, the Fourth World Conference on Women (also known as the Beijing Conference) Platform for Action needs to gain greater visibility amongst members of parliament, since 35% of those who answered the survey were not aware of its existence. Amongst those who acknowledged its existence, gender differences are astounding, since 75% of women were aware of it while only 5% of men were aware of it.

## *2.2 Women's Educational Opportunities*

Despite the enormous progress that has been achieved over the past decades, there is no equal access to education in Brazil. Though many women now have access to education, according to a 2001 study,<sup>14</sup> 7% of women have never been to school and 60% did not even reach high school. The dropout-rate is high, reaching 18% both at primary and early secondary levels. Amongst the 60% of women who never go beyond primary education level, only 10% do in fact complete it. According to Article 28 of the Convention on the Rights of the Child, States should make primary education compulsory and available free to all.

More discrepancies appear in high school, with only 27% of women starting this level of education, while only 16% of these eventually achieve a

secondary education degree. Most preoccupying is the extremely low level of higher education, with only 6% of women gaining access to university, of which only 3% receive a bachelor's degree. In the end, only 1% of Brazilian women pursue post-graduate studies.<sup>15</sup>

Though nowadays there is a considerable increase in female-headed households, these also happen to be the poorest in more than 30% of the cases. More than half of the women at the head of a household are very poorly educated.<sup>16</sup>

### *2.3 Women's Employment Opportunities*

Article 7 of the Constitution puts forward specific rights of female workers, such as maternity leave and protection of female job market. Though most women can now achieve the same level of education as men, at least in theory, and professions traditionally dominated by men are now becoming more balanced in terms of gender, this is still not reflected in access to actual jobs in the field and senior positions within the companies.

As a consequence of the *de facto* exclusion of women from education, women have difficulties entering the formal labour market. Thus, only 17% of women are employed in the formal market, while 23% recur to informal opportunities and 12% remain unemployed. 30% of women have an official status of housewives, though this figure climbs up to 46% when adding the students, unemployed and retired women who also declare to practice this function at home.

There is still a considerable wage gap between men and women, particularly pronounced in regions such as the Northeast. According to 1998 statistics established by the International Confederation of Independent Unions, women are paid, on average, 44% less than men. According to the government's statistics for the same year, women with a high-school education earn, on average, 63% less than men with the same education level. Black women earn even less, barely reaching 26% of a male salary.<sup>17</sup> Reportedly, only 10 to 20% of these differences can be explained by education or experience. For the most part, the wage gap reflects discriminatory practices.<sup>18</sup>

Furthermore, the family income is still extremely low for a great majority of women. 42% of women live with less than two minimum salaries,<sup>19</sup> and another 34% live with less than five minimum salaries. Only 2% live with more than 20 minimum salaries, around 1'300 USD.

Women are still most commonly employed as domestic servants. OMCT notes with concern that many domestic servants are children, who thus fail to get an education. According to the Government's institute for Applied Economic Research, in 1998 there were approximately 800'000 girls between 10 and 17 years old working as domestic servants.<sup>20</sup> According to the ILO, 20% of girls under 14 work as domestic servants, and these figures may rise as high as 35% in rural areas.<sup>21</sup> More than 70% of the active women working in the formal sector are employed in the services sector, as opposed to 42% men, and women are underrepresented in agricultural and industrial activities.<sup>22</sup> A study on business-women carried out in 2000<sup>23</sup> points out that there are still major gender differences in attempting to gain independent status. Married women and women with children start their own business less often than men in the same situation, while divorced women work in their own enterprise twice as much as divorced men. Women tend to feel the disruptions these independent activities bring into the family organisation, especially in relation to house maintenance, having meals at home and educating their children.

With respect to entrepreneurship, age does not seem to be a major discriminating factor,<sup>24</sup> nor the degree of instruction alone. Yet crossing this factor with being the head of the household shows a certain increase of small business enterprises amongst women who have not achieved their primary or secondary studies. The pressure to provide the whole family income encourages them to find alternative solutions to the strained employee status and the very low income they could possibly get in the formal labour market. These independent businesses are more often than not small structures aimed at survival on a daily basis, not reaching a break-even point allowing long-term growth.

OMCT is concerned that only 1% of the women, and 1,5% of men, have benefited from government measures of encouragement in setting up their own business. OMCT strongly encourages the government to increase such measures in order to help future entrepreneurs create their own companies, while taking into account gender issues. As far as financial

support goes, women tend to resort less to loans, and when they do, they apply for financial help mostly from Banco do Brasil (26,3 against 16,5) and Caixa Econômica Federal (8,5 against 3,2), while men mostly obtain their funding from private banks (4,9 against 30,4). No one applied for funding at Banco da Mulher, the women's bank. This lack of demand is worrisome and shows the necessity to promote existing structures amongst the population or else evaluate their adequacy in responding to actual needs.

#### ***2.4 Representation of Women in Politics and the Judiciary***

Though women have full political rights under the constitution, and have gained the right to vote since 1933, women are still widely underrepresented in active politics, especially at the country level. The percentage of women in politics and government does not correspond to their percentage amongst the population. Cultural, institutional and financial barriers continue to limit women's participation in political life. The Supreme Electoral Court (TSE) reported that there were over 70,000 female candidates for the municipal elections nationwide in 2000. At 18.3 percent of the total number of candidates, this was a 40 percent increase from the last municipal elections in 1996. In December 2000, the first woman took her seat on the country's highest court, the Supreme Federal Tribunal. The first female senator was elected only recently, in 1991, the first elected governor in 1994,<sup>25</sup> and at that date women made up only 7% of Congress. Ten years later the situation has not shown much improvement. In the last elections in 2002, only one woman was elected in the 1<sup>st</sup> poll, and only 4 ran for the 2<sup>nd</sup> poll.

### **3. Violence against Women in the Family**

Contrary to men, who are usually victims of violence by strangers in public places, women are subject to violence most of all by their companions or close relatives within the domestic sphere. Violence in Brazil is still deeply engrained in habits, customs and other socio-culturally induced behaviours.

### 3.1 *Domestic Violence*

The Brazilian Constitution, in its article 226 §8, ensures State assistance to the family and determines that mechanisms to suppress violence in family relationships shall be created. In spite of the protection created by the law and the engagement of the State responsibility in the Constitutional text, the rates of crimes against women have not been reduced. Most of the cases concerning harmful physical assault against women occur in the domestic environment.<sup>26</sup>

The figures of São Paulo city in 1992 registered cases of domestic violence against women portray this reality: 81,5% of the registered cases of domestic violence correspond to harmful physical assault, 4,47% are cases of rape or attempted rape, 7,77% are cases of threats and 1,53% to sexual harassment.<sup>27</sup> A survey in Rio de Janeiro in 1999 regarding violence in the domestic sphere shows women have been 4 times more aggressed than men in cases of minor physical assault and 2 times more aggressed in cases of major physical assault.

In April 2001, the Inter American Commission for Human for the first time ruled on a case of domestic violence against women. In the case of Maria da Penha Maia Fernandes, who was left paraplegic as a consequence of continuous beating by her husband, the Commission recommended the prosecution of the perpetrator and the compensation of the victim. The recommendations to the government requested the “end [of] the condoning by the State of domestic violence.”<sup>28</sup>

In fact, besides the few articles applicable to domestic violence in the Brazilian Constitution and the Penal Code and related laws, there is no specific legislation dealing with domestic violence.<sup>29</sup> Legislation considers domestic violence as a minor crime (law 9.099/95) and the current judicial practices tend to punish perpetrators of violence against women very lightly. OMCT recognizes a first step has been made through approving legislation that speeds up the possibility of obtaining a restraining order.<sup>30</sup>

The overflow of violence cases in Brazilian courts has led to the creation of Special Courts in order to speed up procedures when the tried cases call for light punishment sentences not exceeding one year. Almost all domestic violence cases are run through these Special Courts, where

penalties are very rarely applied, and where they are applied, they remain extremely light.<sup>31</sup> Lack of court follow-up limits the power of police stations in dealing effectively with domestic violence, since initial punitive action is usually not pursued.

The special courts are not the only reason why domestic violence remains un-addressed. Police and judiciary policies applicable against violence cases still tend to disregard the gravity of violent acts that occur within the domestic sphere. In cases of first or deemed minor offences, when the penalty does not exceed one year imprisonment, the offender may receive suspended sentences with no jail term whatsoever.<sup>32</sup> Women therefore tend to drop charges since there is no effective punishment at stake. Furthermore, since a fine is usually imposed rather than seclusion, women who still have to share the same household with their companions, for lack of alternative housing and/or financial means, end up being equally punished by a sentence that reduces the family's global income. These financial restrictions seriously affect women of the poorest classes who also happen to be frequent violence victims, and fear of this unwanted result may lead them to withdraw the case. OMCT is concerned that overall the present system is simply not aimed at punishing these types of crimes or protecting the victim.<sup>33</sup>

OMCT acknowledges the fact that the government has made substantial efforts to set up special police stations (“delegacias da mulher”)<sup>34</sup> to process cases regarding rape, other sexual crimes and domestic violence and abuse. Indeed their numbers have risen from 125 in 1993 to 307 in 1999. Yet, OMCT is concerned that these numbers should not mask the fact that less than 10% of more than 5'000 municipalities in Brazil possess these facilities, and of those of do, 61% are situated in the Southeast and 16% in the South, while the North, the Northeast and the Central East are clearly underrepresented with respectively 11%, 8% and 4%. Furthermore, most of the existing special police stations are ill-equipped to respond to the needs of women victims of domestic violence.<sup>35</sup> The lack of human resources, especially well-trained personnel to deal with cases of violence perpetrated against women on the one hand, and the inadequate infrastructure and non-exchange of information between the offices on the other hand, are the main reasons of their incapacity to solve the problem. Furthermore, the special police stations have low status amongst the police and frequently receive old or inefficient equipment.

Services not directly related to the police, such as therapy and social services, are not considered essential, despite having been clearly demonstrated as an important part of the help process.

OMCT appreciates the fact that since these special structures have been set up women reportedly seek help sooner and more often, and the number of aggressions seems to have diminished. However 70% of the cases have been filed without criminal pursuit,<sup>36</sup> more often than not because the victim herself withdraws the case, either because her companion, who is also her aggressor, promises to change, or because her socio-economic status makes her too dependent on him to be able to leave. More disturbing though is the fact that the justice system contributes towards impunity: in 21% of the cases of domestic violence, the accused have been acquitted.<sup>37</sup> Only 2% of complaints regarding domestic violence against women lead to convictions.<sup>38</sup> The light penalties and the lack of follow-up and monitoring of the aggressors' conduct reinforces the sense of impunity regarding these crimes.

Lack of adequate housing for themselves and their children is one of the main reasons that restricts women from leaving an intolerable situation of violence within the domestic sphere. To address this problem, the government created another special structure under the form of shelters (Casas Abrigo) that provide hospitality and protection to women victims of domestic violence. Though these are in high demand, questions arise as to their effectiveness in protecting the women against their partners, especially since these are only temporary solutions. Women in shelter homes usually lose touch with their references: neighbours, family, work, social gatherings. In the absence of integrated policies, the shelters fail to provide them with the economic and social bases that would substitute these vital links and allow them to reconstruct their lives. For all of these reasons, most women are forced to go back to their previous lives, and many situations of chronic violence evolve into fatal situations.<sup>39</sup> Nevertheless, the initiative of the government of Rio de Janeiro city should be recognized. In March 2001, a centre for victims of domestic violence was created, where psychological and legal assistance is provided to 130 women per month.<sup>40</sup>

Regarding domestic violence committed against children and adolescents, though there are no national statistics, it is assumed that at least each

minute a child is victim of domestic violence in Brazil.<sup>41</sup> There is an increase in age that reaches a peak between 4 and 11 years old, this age range accounting for 53% of the cases. Violence affects equally girls and boys and is perpetrated mainly by the mother (52), followed by the father (27%). Sexual abuse, on the other hand, which accounts for 13% of all domestic violence, is perpetrated on girls in 80% of the cases, by a masculine aggressor in 90% of these cases. Most of the victims are extremely young, ranging between 2 and 5 years old in half of the cases, followed by a remaining 33 % between 6 and 10 years old.

### ***3.2 Marital Rape***

Marital rape and violent sexual assaults within the home are not specifically addressed in Brazilian law. Such charges would have to undergo the same procedures as general rape, though in practice such criminal procedure is almost unheard of, and the outcome might well result in much lighter penalties since women's complaints probably will not be taken seriously by courts. Society still largely admits a conservative view whereby it is a woman's duty to submit to her husbands sexual desires.

Half of the women who have reported marital rape are between the ages of 30 and 40, and 30% are between 20 and 30. In 50% of the cases, the couple has been together for 10 to 20 years, and in 40% between 1 and 10 years. After reporting marital rape to the police, 60% of the couples continue together. Nevertheless, it should be noted that 70% of the cases are dropped on the request of the woman who changes her views due to the promises of her husband towards a change in the relationship.

### ***3.3 Crimes against Women Committed in the Name of Honour***

Crimes committed in the name of honour are not specifically addressed by Brazilian legislation and are covered in the Penal code under titles such as violent physical assault or murder. Intentional homicide in Brazil is set out by article 121 of the Penal Code as a crime, which may be classified as either simple or qualified/aggravated. When aggravated, it carries a sentence of 12 to 30 years in prison. Reductions of up to one-half may be obtained for first-time offenders. Most men are sent to jail for killing

their wives for the first time are likely to obtain this reduction and serve very little time because it is usually their first offence. Men convicted of killing their spouses serve an average of four years in prison.

When the homicide is committed in self-defence, it is not punished in Brazil, as long as the person uses the “necessary means with moderation” to respond to “unjust aggression [...] to his right or someone else’s”.<sup>42</sup> In wife-murder cases, the prosecution usually claims that the murder was an intentional homicide, while the defence characterises it as an unintentional or “privileged” homicide. In legitimate defence of honour cases, in which the defence seeks to obtain acquittal for the crime, the defence of honour is equated with legitimate self-defence.<sup>43</sup> However, it should be noticed that the Brazilian law does not equate a threat to a man’s honour with the danger of a physical attack.

The honour defence has deep historical roots that go back to Portuguese colonial law. When Brazil became independent and created its own penal code, the honour justification was not included. Defence lawyers used instead the argument of crime of passion and temporary insanity. The 1940 Penal Code, however, specifically states that violent emotion cannot be used to exculpate the defendant, but only as a mitigating factor reducing the sentence of up to a third.<sup>44</sup> “Honour”, on the other hand, used as if it were the equivalent of legitimate self-defence, leads in case of a successful defence trial to a total discharge of criminal liability.<sup>45</sup>

Despite the 1991 Supreme Federal Court ruling against an honour defence in the murder case of João Lopes, this thesis is still prevalent in Brazil, especially in the inner regions, to discharge men of their crimes against their own spouses. This Supreme Court decision carries no precedential force, and although in general lower courts tend to follow the decisions of the Supreme Court, this is not so in the honour defence ruling. Because homicides are tried by a jury rather than a judge, in most cases social prejudices and stereotypical attitudes towards women prevail. As a result courts are still reluctant to prosecute and convict men, as soon as they claim they have acted to defend their honour against the woman’s infidelity. In many cases, though, infidelity remains a mere suspicion and is not even proven. Even if it were proven, infidelity would be no excuse for murdering, since the use of self-defence in that case is clearly not in proportion of the attack.

Adultery, while still being considered as a crime by article 240 of the penal code, only calls for a light sentence of 15 days up to six months. This charge cannot be brought if the couple is separated or divorced.

In the state of Pernambuco, 70% of the 415 women killed in 1992 were murdered by a male intimate. In 1998 the National Movement for Human Rights estimated that female murder victims were 30 times more likely to be killed by current or former husbands and lovers than by other people.<sup>46</sup> In a research regarding 110 honour crimes' trials in the state of Rio Grande do Norte,<sup>47</sup> the great majority refer to husbands and companions not contented with their spouses' decision to separate, or out of jealousy.

In 1995 in Upanema, a jury composed of seven women absolved a man charged with stabbing his wife and mother of their five children to death, upon her accusation of him "not being a man." In 1993 a husband stabbed his wife to death because he was being "betrayed," after 27 years of married life. Sentenced to 7 years in jail in part-time imprisonment, he is under conditional liberty since he has accomplished a third of his penalty.

In another case, an accused married to the victim for five years used to beat her until she left him. He then came to her mother's house and shot her in the head. The crime was proven to be premeditated and the accused was sentenced to 18 years in full-time imprisonment. After spending 4 years and 2 months in jail, which corresponds to 1/6<sup>th</sup> of the sentence, he was allowed a part-time regime in 1995, and since 1997 he has been granted conditional liberty.

According to other relevant data provided by the research in the state of Rio Grande do Norte,<sup>48</sup> quite a few murders happen in retaliation to women's complaints at the special women police stations for being beaten. Even when the crime has been witnessed by several people the murderers are able to run away, receive permission to await trial in liberty or get short penalties. The relative impunity of homicidal husbands in Brazil contributes to the perception that men are able to exercise control over their wives, particularly over their sexual freedom, as if they were their "property", since the jury tends in quite a few cases to support this view and approve infidelity or neglect by the women as justification for their death.

## 4. Violence against Women in the Community

### 4.1 Rape and Other Forms of Sexual Violence

Certain provisions in the Penal Code dating from 1940 regarding rape and assault are clearly discriminatory against women and contrary to the instruments that Brazil has undertaken in the international level. Firstly these types of crimes are classified under the Brazilian Penal Code as crimes against customs (articles 213 to 234) rather than against a person. Articles 213, 215, 216 and 217 deal with the crime of rape, article 214 deals with sexual assault and article 218 with minor corruption. To be considered as a crime, rape is defined as “*To constrain a woman to a carnal conjunction upon violence or serious menace.*” Punishment for rape is imprisonment for a period of 6 up to 10 years. In accordance with article 5 of the Constitution, rape and violent sexual assault are considered by law 8.072/90 as “crimes hediondos” and are therefore not subject to amnesty, bail or conditional freedom. In addition, the Penal Code increases by one-fourth the sentences for those sexual crimes where the offender is an ascendant, adoptive parent, stepfather, brother, tutor or healer, guardian or maintains any other type of authority over the victim.

In cases of minor sexual assault, if the offended is a “mulher honesta” (an honest woman with irreproachable moral standards) that has been constrained to intercourse by means of fraud, than the sentence is of 1 up to 3 years of imprisonment.<sup>49</sup> This kind of moral judgment is an open door to defence lawyers to criticise the victim’s behaviour in order to excuse or diminish the seriousness of the aggressor’s crime. This term is clearly discriminatory and no woman, as “dishonest” as she may be considered, should have to bear to see such a crime go unpunished because of a reference to her moral behaviour.

Brazilian law is harsher in its protection of minors from sexual violation. If the victim is a minor between 14 years of age and 18 years of age and/or still a virgin, than the sentence is increased proportionally to 2 up to 6 years of imprisonment.

The new article 163 of the Penal Code, if approved by the National Congress, will modify the current article 124a by extending rape punishment to all carnal conjunction with minors under 14 years of age,

mentally-ill women and women incapable of offering resistance, regardless of the presence or not of any presumed violence in connection with the act. Imprisonment sentences will also become harsher, from 8 to 12 years. OMCT is concerned that the setting of the age of consent at 14 offers insufficient protection to children from sexual violence.

OMCT is particularly concerned by the fact that article 107, § VII of the Brazilian Penal Code provides that in case the aggressor decides to marry the victim, he will not face charges. This reparatory provision, perpetrates impunity and closes the door to the Judiciary system to address the human rights of women victims of rape. Furthermore, this provision may lead to a woman being pressured into marrying her rapist in order to preserve her family's "honour."

Data on rape cases registered in 2000<sup>50</sup> throughout Public Security State Secretaries shows higher rates in the North, Centre West and South and Southeast regions with figures between 9.18 and 11.96 per 100'000 inhabitants. The Northeast region, with 5.66, is the only region where this rate is lower, the national average for Brazil being of 8.78 per 100'000 inhabitants.

Absolute figures show that the Southeast region accounts for nearly half of all the rape cases in the country, with 6'632 cases out of a total of 14'881. The Northeast and South regions come next with respectively 2'699 and 2'619 cases, and the North and Centre West regions have the lowest figures with respectively 1'542 and 1'389 cases.

OMCT is concerned that more than 40 women are still raped per day in Brazil, of which 11 are in the state of São Paulo alone. Rio Grande do Sul, Rio de Janeiro and Bahia are the three other states where rape rates exceed 1000 per year, with respectively 1392, 1261 and 1196 cases, and though these states are more densely populated than others, percentage rates remain high, corresponding to 13.67, 8.78 and 9.15 cases per 100'000 inhabitants.

Conversely, low absolute figures, particularly when they regard sparsely populated states, do not necessarily mean a low percentage of rape cases. Thus Amapá, Rondônia, the Federal District, Amazonas and Mato Grosso do Sul, to name a few states with relatively low absolute rates of less than 500 cases, have the highest percentage rates in the country with respectively 30.05, 25.98, 15.56, 14.54 and 13.20 per 100'000 inhabitants.

Regarding sexual assault, figures for state capitals show an increase from 1999 to 2001 for all the regions. The North presents the highest rate with 114% increase, followed by the Northeast and the Center West with respectively 77% and 54% increase. The South and the Southeast on the other hand present much lower rates with respectively 4% and 16% increase.<sup>51</sup> According to these same statistics, rape cases have globally decreased in state capitals over the same period, with – 9% in the North, – 14% in the Southeast and – 13% in the South. On the contrary it was on a rise in the Northeast and the Center West with respectively 22% and 13% increase.<sup>52</sup>

A socio-juridical study<sup>53</sup> of rape data between 1985 and 1994 has collected 50 judicial cases and 101 jurisprudence illustrations from all over the country, and establishes the following profiles for rape crimes: Women and female children are the main victims of rape. Convicted rapists are usually young men under 30 years old of low social status. The socio-economical and ethnic profile of the victim coincides in most cases with that of the assailant. The victim and aggressor usually knew each other prior to the crime, being parents, friends, neighbours or acquaintances. The majority of the victims were minors and virgins, many of them being repeatedly violated by their own father or stepfather. Psychological intimidation and greater physical strength were in most cases the only weapons men used to constrain women.

Judicial procedures in Brazil remain rather slow. Though most cases lasted for 3 years, other cases had lengthy trials, some lasting for more than 8 years. Prejudice and discrimination against women interfere in judicial practices, in particular the demand that women conform to certain moral standards. Moral judgment of the victim's behaviour intervene against an objective analysis of the facts, and judges, lawyers and police alike usually do nothing to prevent this discrimination, and sometimes even actively disqualify the victim's behaviour and dignity.

In 1998, the São Paulo Center for Assistance to Female Victims of Sexual Violence reported that 400 women sought their intervention in rape cases after receiving no help from the police. In 2000, there were more than 8'000 complaints of violence against women filed with the police Delegate to the protection of women, an increase of 40% over 1999.<sup>54</sup>

## **4.2 Sexual Harassment**

The Beijing Conference platform of action, which Brazil signed, defines fear of violence, including sexual harassment, as a permanent constraint that limits women mobility and access to activities and resources essential to their welfare. Therefore the platform recommends that governments set up and enforce a legal framework to eliminate sexual harassment and discrimination against women in their working place. OMCT is pleased that Brazil has complied recently with this demand, since a bill outlawing sexual harassment was just passed in 2001. Law 10.224/01, added to the penal Code under article 216a,<sup>55</sup> sets detention sentences of up to two years for cases in which a person uses his or her hierarchical superiority to gain sexual advantage over another. Detention though does not mean reclusion. Penalties therefore can be applied in a semi-open or an open system or even be commuted to alternative community service sentences.

The Brazilian bill embodies the provision of the CEDAW, ensuring the equality between man and women and the elimination of the discrimination against women in the exercise of their civil, political, economical, social and cultural rights. OMCT praises the substantial progress brought by this law in considering sexual harassment at the workplace as a crime. Nevertheless, the law remains very difficult to implement in practice, mainly because most people are still not aware of the implications of this change of legislation for their rights. The victims suffer extreme pressure to remain silent in order not to lose their jobs. OMCT encourages the government to take measures to publicize this bill and make people more aware of their rights regarding sexual harassment. Furthermore, the government should take measures to protect victims of sexual harassment from being fired after filing a complaint.

## **4.3 Trafficking and Prostitution of Women**

The majority of Brazilian trafficking victims are women and girls who are trafficked for the purpose of sexual exploitation to Europe, Japan, Israel, and the United States.<sup>56</sup> An estimated 75'000 women from Brazil<sup>57</sup> work abroad in the sex industry, though it is not clear how many of these women are victims of trafficking.

From 1990 to 1995, 100 women were trafficked for prostitution from remote villages in Brazil to London, where they were held under debt bondage.<sup>58</sup> In 2000, the federal police arrested a person connected to a trafficking ring that brought women from the state of Goiás to Spain. Four women were with the suspect at the time of arrest. Following this event the police unmasked a travel agency in Goiás which had recruited and sent at least 20 women to Spain to work as prostitutes. The two agency owners are now in prison awaiting trial, but the recruiters have not been caught.

Trafficked women suffer human rights violations as they are denied the right to liberty, the right not to be held in slavery or involuntary servitude and the right to be free from violence. The right to health<sup>59</sup> is also at stake as involvement in the sex industry is a risk factor for sexually transmitted infections and HIV/AIDS. Unwanted pregnancies may result in further risks being taken with illegal abortions in harsh conditions, since these women have no access to health care. According to victims' testimonies traffickers exercise control by restricting the victims' movements and recurring to violence as a means of intimidation and punishment, while physical assault and rape are commonly used to initiate women into the sex industry.<sup>60</sup>

OMCT is concerned with the lack of anti-trafficking legislation in Brazil. Apart from article 231 (on the international trafficking of women for prostitution) and articles 227, 228, 229 (on the exploitation of the prostitution of women) in the Brazilian Penal Code, there is no specific legislation concerning trafficking in individuals. Thus, the penal law limits the trafficking of persons to the sexual exploitation of women and prostitution, leaving aside, for instance, the trafficking of children. In fact, it was legally dealt with after the entering into force of the statute on children and adolescents (ECA), in 1990 (article 244-A concerns the submission of children to sexual exploitation and prostitution).

Though penalties for trafficking in persons include fines and prison sentences ranging from 1 to 12 years, in practice traffickers are seldom caught, because they must be caught in the act of travelling with the victims, and the fear of reprisals keeps women from seeking police intervention or from testifying against their persecutors.

#### 4.3.1 *Child Trafficking, Abuse and Exploitation*

To call attention to the issue of Sexual Exploitation of children, the government declared a National Day against the Sexual Exploitation of Children and Adolescents and took measures to launch the first national pilot program to combat child prostitution.

The statute on children and adolescents (ECA), dating from 1990, devotes several articles to fight child abuse and exploitation, namely article 82 that prohibits hosting children or adolescents in hotels except when accompanied by their parents or an adult responsible for them, and article 250 that installs a fine of up to the equivalent of 20 minimum salaries and a 15-day closure for those who infringe the law. Articles 240 and 241 do not allow filming, photographing nor publishing any sort of sexual or pornographic scene involving children or adolescents. Law 8.069/90 changes the status of children and adolescents.

Despite the laws rendering these activities illegal, child abuse and exploitation in Brazil has continued to expand over the past few years. In Brazil, an estimated 1 million children are believed to enter the sex market each year.<sup>61</sup> According to CECRIA (Centro de Referências, Estudos e Ações sobre Crianças e Adolescentes), there are an estimated 500'000 girl prostitutes throughout Brazil, many of these trafficked internally.<sup>62</sup> The range of illicit activities varies widely across Brazil. According to Brazilian Center for Childhood and Adolescents (CBIA), a major destination are the gold mining regions in the Amazon. Data as of 1999 points out that in the North miners in particular ("garimpos") are responsible for a substantial amount of violent sexual exploitation including keeping the children captive, mutilations, selling and trafficking, especially at the borders. This is particularly worrisome since government programs to address the situation have great difficulties in penetrating these remote areas. For instance, the International Labour Organization reported that observers have cited over 3'000 girls who were subject to debt servitude and forced into prostitution in the state of Rôndônia. Girls brought to the mines are reportedly auctioned for as much as 4'000 USD each. In 1999, 150 child prostitutes were found in the Araras mine.<sup>63</sup>

According to ECPAT International, Brazil is a favoured destination for pedophile sex tourists from Europe and the United States.<sup>64</sup> In the Northeast coastal regions sex tourism prevails through an organised crime

network including travel agencies, taxi drivers and hotels. While researching sex tourism in this region NGO O CHAME has discovered connections between traffickers and sex tours organizers.<sup>65</sup> A recent phenomenon in these regions consists in delocalising child prostitution from the coast to the “Sertão,” which makes it even harder to control. In the south, exploitation of street children is most frequent. Child trafficking connected with drug trafficking is also quite common. In the Southeast sexual tourism and private prostitution houses where children are secluded are both on the rise.

## 5. Violence against Women by the State

Brazil made only limited progress in dealing with problems such as police brutality, and inhumane prison conditions. A recent positive step has been the passage of a renewed National Human Rights Program to fight against discrimination and protect the rights of minority groups, including blacks, indigenous people, lesbians and gay men, and the elderly. However, OMCT is concerned that not much progress has been achieved in practice since its first implementation in 1996. Another positive step was the opening of police archives containing information on abuses committed during the 1964-1985 dictatorship, though these can only be consulted by families and a special commission in charge of examining those abuses.<sup>66</sup>

The Special Rapporteur on Torture concluded in its report on his visit to Brazil that training and professionalism of police and other personnel responsible for custody are often inadequate, sometimes to the point of non-existence. A culture of brutality and, often, corruption is widespread.<sup>67</sup> The few rich suspects, if deprived of liberty at all or even convicted, can purchase tolerable or at least less intolerable treatment and conditions of detention than the many who are poor and usually black or mulatto or, in rural areas, indigenous.<sup>68</sup>

He concluded further that torture and similar ill-treatment are meted out on a widespread and systematic basis in most of the parts of the country. He found evidence of torture and ill treatment at all phases of detention: arrest, preliminary detention, other provisional detention, and in penitentiaries and institutions for juvenile offenders. It does not happen to

all or everywhere; mainly it happens to poor, black common criminals involved in petty crimes or small-scale drug distribution. And it happens in the police stations and custodial institutions through which these types of offenders pass. The Special Rapporteur stated that the purposes range from obtaining of information and confessions to the lubrication of systems of financial extortion.<sup>69</sup>

Despite widespread police abuses, only four of Brazil's twenty-six states (São Paulo, Pará, Minas Gerais, and Rio de Janeiro), and the Federal District, have a police ombudsman's office to respond to complaints of police brutality. In 2000, the São Paulo police ombudsman received 481 complaints alleging torture, abuse, mistreatment or neglect, and believes many more cases are not reported.<sup>70</sup> There is widespread corruption and violence among police forces, reinforced by harsh work conditions such as low wages, poor training and inadequate equipment.

OMCT notes that Brazilian law prohibits arbitrary arrest and detention. Although the government generally observes this prohibition, police continues at times to arrest and detain persons arbitrarily. The Constitution limits arrests to those caught in the act of committing a crime or those arrested by order of a judicial authority. Though the authorities generally respect the Constitutional provision for a judicial determination of the legality of detention, many convicted inmates are detained beyond their sentences due to poor record keeping. The law permits provisional detention for up to 5 days under specific conditions during a police investigation, but a judge may extend this period. However, groups that work with street children claim that the police sometimes detain street youths illegally without a judicial order or hold their suspects incommunicado. Defendants in criminal cases arrested in the act of committing a crime must be charged within 30 days of their arrest, depending on the crime. Other defendants must be charged within 45 days, although this period can be extended. Defendants for all but the most serious crimes have the right to a bail hearing. Human rights monitors alleged that civil and uniformed police regularly detain persons illegally to extort money or other favours.

Violence, torture and exactions against rural workers remain widespread and sometimes involve police participation. According to the Pastoral Land Commission (Comissão Pastoral da Terra, CPT) a total of 1,548 rural workers were killed in land disputes in Brazil from 1988 to August

2002. In 2002 alone, at least sixteen rural laborers were murdered in land conflicts and seventy-three people received death threats. Cases of rural violence, including killings, were rarely prosecuted, and criminal prosecutions rarely ended in convictions, mainly because local interests at stake exercise too much pressure on local courts.

### *5.1 Torture and Ill-treatment*

Torture is considered a crime by law 9455/97. Assimilated to other “crimes hediondos,”<sup>71</sup> punishment of torture consists therefore of 3 up to 6 year-imprisonment, not subject to amnesty, bail or conditional freedom.

State Police are divided into two forces: (a) the civil police, who has an investigative role and the (b) uniformed police, know officially as the “military police,” both responsible for the maintaining of public order. One of the main characteristics of the uniformed police is the fact of having a separate judicial system.

The lack of accountability and the inefficiency of the criminal justice system are major problems.<sup>72</sup> Some examples are stated below:

In October 2000, the authorities arrested two civil guards in São Paulo and accused them of the sexual assault of three teenage girls caught trespassing in a cemetery. Police authorities began an internal investigation into the matter, but no further information was available on the status of the case.<sup>73</sup>

A prominent case of torture was reported in Rio de Janeiro in January 2001, where two women were taken into custody by private security guards after allegedly shoplifting sunblock lotion from a department store of the Carrefour chain. Instead of turning the women over the police, the security guards called in local drug traffickers who beat the women. Police have charged three Carrefour employees and four alleged gang members in the case.

### *5.2 Women in Custody*

With respect to criminal legislation, several remedies for the defense of threatened rights are foreseen by law, as follows: (a) habeas corpus; (b)

habeas data; (c) writ of mandamus; (d) collective writ of mandamus; (e) writ of injunction; (f) popular action and (g) public civil action. Women facing charges have the right to be represented by a lawyer and have full access to these remedies.

The Brazilian Constitution contains explicit guarantees for the protection of the inmate population.<sup>74</sup> Certain State Constitutions have similar provisions. The Constitution of the State of São Paulo provides, for example, that “state prison legislation will guarantee respect for the United Nations Standard Minimum Rules for the Treatment of Prisoners [and] the [right to] defence in cases of disciplinary infractions.”<sup>75</sup>

The most detailed statement of Brazil’s prison rules – or at least of its aspirations for the prison system-can be found in the Law of the Execution of Sentences (*Lei de Execução Penal*, hereinafter the “national prison law”). Adopted in 1984, the national prison law evidences respect for prisoners’ human rights and contains numerous provisions mandating individualized treatment, protecting inmates’ substantive and procedural rights, and guaranteeing them medical, legal, educational, social, religious and material assistance. Viewed as a whole, the focus of the law is not punishment but instead the “resocialization of the convicted person.” Besides its concern for humanizing the prison system, it also invites judges to rely on alternative sanctions to prisons such as fines, community service, and suspended sentences.

The Minimum Rules of the Treatment of Prisoners in Brazil (*Regras Mínimas para o Tratamento do Preso no Brasil*), which dates from 1994,<sup>76</sup> consists of sixty-five articles largely modelled after the U.N. Standard Minimum Rules, the rules cover such topics as classification, food, medical care, discipline, prisoners’ contact with the outside world, education, work, and voting rights.

Despite the recent progress within the legislation, in reality, the country’s penal system lacks the physical infrastructure needed to ensure compliance with the law. The living conditions of many of Brazil’s penitentiaries, jails, and police lockups remain inhumane, and violence against prisoners is widespread. A central problem remains the overcrowding of Brazil’s prisons, especially in the states of São Paulo, Rio de Janeiro, Bahia, Rio Grande do Sul, and Pernambuco. According to official figures, as of April 2002, Brazil’s 903 penal institutions housed 235,000 inmates,

well above the system's capacity of 170,000. Of these, 8,510 are female inmates, constituting about 4% of the inmate population. The lack of space, combined with an underfunded and understaffed penal system, led to frequent prison riots and other outbreaks of violence.<sup>77</sup> More than 32'000 prisoners, most of them already convicted, remain in temporary holding facilities in police stations.

A positive step was taken in September 2002, when São Paulo state authorities shut down the largest prison in Latin America, the Casa de Detenção, in the Carandirú prison complex. Prisoners have been transferred to smaller and more modern penitentiaries in the state's interior. However, many prisoners complain about the transfer because they can no longer receive visits from family as it is too far away from their homes.

Women's facilities in São Paulo's penitentiary system are even more overcrowded than those for men. Certain facilities are said to hold more than 500 inmates above the capacity limit and the state's expansion program for Brazilian penitentiaries does not envisage the building of new female facilities.

Women in custody in Brazil are also reportedly subjected to ill-treatment in some facilities. For instance in April 2001, civil police were called to put down a rebellion that occurred in São Paulo city. A representative of a human rights organisation claimed to have seen women with severe head injuries. Police reportedly have beaten pregnant inmates and there has been no investigation against the responsible officers.<sup>78</sup>

Consistent with international rules, Brazil's national prison law stipulates that women prisoners must be supervised by women guards.<sup>79</sup> In practice, some women's prisons employ both male and female guards, although they normally impose restrictions on which areas of the facility male guards can enter, so that men do not venture into the more private areas. Women prisoners in several facilities report, nonetheless, that male guards often enter these areas, what may lead to sexual abuse and extortion of sexual favors. In the States of São Paulo and Rio de Janeiro, for instance, prisons destined for the holding of females are served by male officers. Women in João Pessoa Women's Penitentiary also complained about verbal abuse, particularly from the male guards. Similar complaints of verbal abuse were voiced at the São Paulo Women's Penitentiary, where women inmates said that male guards occasionally refer to them as "prostitutes."

At the Manaus prison, women stated that male guards had entered several times to verbally and physically abuse a mentally ill woman prisoner.<sup>80</sup>

Another reported problem is the lack of gender segregation within the same detention facilities. In Rio de Janeiro state, for instance, there are only two police districts in which women in lockup are held in gender-segregated short-term jail facilities.

Women in custody have limited recreational facilities with respect to men and face discrimination in conjugal visiting rights. Unlike the men's prisons, most women's prisons do not have very large exercise areas. Many of them include only small paved patios, allowing women inmates almost no space to exercise. In Brazil intimate visits of women in custody are not seen as a right<sup>81</sup> but as a benefit. Only two prisons allow these visits, one in Porto Alegre, in the state of Rio Grande do Sul, and the other in São Paulo. In the one located in Porto Alegre the anachronism on the regulation of male and female intimate visits is made very clear: female intimate visits are allowed only to partners with legal married status and only twice a month,<sup>82</sup> while male intimate visits are allowed 8 times a month without the requirement of marriage.

Equally, most prisons do not observe the Law of Criminal Executions regarding the obligation of creating kindergartens for children under 6 years old if they are to remain without care<sup>83</sup> following their mothers' detention. This situation is made worse by the fact that the vast majority of women in prison are mothers and heads of their household.

Despite the fact that women prisoners usually have more medical needs than men prisoners, medical care is often extremely deficient in penal facilities for women.<sup>84</sup> HIV/AIDS is a serious threat to the health of women prisoners: indeed, studies indicate that the disease strikes an even higher percentage of incarcerated women than men. Twenty percent of the women prisoners tested for the AIDS virus at the Women's Penitentiary in São Paulo were found to be HIV-positive. Medical staff at the Women's Penitentiary in Porto Alegre, Rio Grande do Sul, said that they believed at least 10 percent of inmates at that facility to be HIV-positive.

## 6. Women's Reproductive and Sexual Rights<sup>85</sup>

OMCT recalls that the Committee on Economic Social and Cultural Rights adopted General Comment 14 on the right to the highest attainable standard of health at its 22<sup>nd</sup> Session, in 2000.<sup>86</sup> With regard to gender, “the Committee recommends that States integrate a gender perspective in their health-related policies, planning programmes and research in order to promote better health for both women and men.” With regard to women and the right to health, the Committee notes in paragraph 21 that “to eliminate discrimination against women, there is a need to develop and implement a comprehensive national strategy for promoting women’s right to health throughout their life span.” The same paragraph states: “A major goal should be reducing women’s health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence.” Moreover, the Committee stresses that “it is also important to undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms that deny them their full reproductive rights.”

Despite the continuous demand of women’s organisations and health care professionals’ coalitions to legalize pregnancy interruption, abortion still remains illegal except under severe circumstances, such as when the mother’s life is threatened or in case of rape, as stated in article 128 of the Penal Code, introduced by law 2848 in 1940. There exists a law project on abortion, still to be approved by the National Congress, PL 1135/91 and annexes, which would modify articles 124, 125 and 126 of the Penal Code dating from 1940 that consider abortion caused by the mother or with her consent as a crime.<sup>87</sup>

In the wake of the first program of legal abortion initiated in 1989 by the Woman’s health Assessor (Assessoria da Saúde da Mulher) in a public hospital through the approval of the Sao Paulo municipal law 692/89,<sup>88</sup> and following the increasing demand of women for these services in other areas, the Ministry of Health published in 1999 the first edition of the Technical Standard regarding the prevention and treatment of the ill resulting from sexual violence, which guarantees abortion services in the two cases legally admitted in the Penal Code offered by the Single Health Care System (SUS).<sup>89</sup> It took a resolution of the Constitutional Committee for Justice, barely obtained by 24 votes against 23 in 1997, to

implement this measure. The decision also encountered much criticism from opponent pro life and religious groups in the civil society, and even amongst health professionals, despite the appalling figures of illegal abortion cases and the very high rates of post medical treatment needed to patch up sequels due to interventions made in poor conditions, facts which underline the necessity of such a measure.

In 1999, abortion in the cases of sexual violence was, though allowed in the law, possible only in 8 public hospitals in Brazil.<sup>90</sup> The technical guidelines set forth by the Ministry of Health for the prevention and treatment of victims of sexual violence bring relevant changes since providing, among other issues, for the legal and medical procedures required for the performance of an abortion in all Brazilian public health establishments in the cases stated in the law.<sup>91</sup> Though the guidelines are not mandatory, since their publication, 48 hospitals part of the Single Health Care System (SUS) have adopted them and offer such interventions to women victims of sexual violence.<sup>92</sup>

Illegal abortions in Brazil are estimated at around a million per year, based on an estimate extrapolated from the Single Health Care System (SUS) interventions.<sup>93</sup> Among the factors leading to illegal abortion are poverty, exclusion, inequity, undesired pregnancy, unsafe sex practices and gender inequality.

Abortion is the fifth main cause for turning to public health services and the third cause of maternal death in the country. Eighty-five percent the Single Health Care System (SUS) interventions are related to aggravations due to clandestine abortions. In 2000, there were more than 247'000 cases of women accessing SUS services for abortion-related issues, of which 67 resulted in death.<sup>94</sup>

To address this particularly acute situation, as of 2001, there were already 27 public hospitals applying the Technical Standard and offering free abortion services in cases responding to the legal requirements. OMCT notes that the implementation of the Technical Standard has been quite successful but stresses the fact that these numbers are clearly not enough, especially since the existing services are not evenly distributed throughout and within the regions. Northern regions in particular, being the most deprived of health care equipment, show the highest rates of abortion.

A survey on legal abortion in Brasilia<sup>95</sup> points out that services provided by the Medical legal institute of the Federal District to women victims of rape only deal with the criminal part of the problem, leaving the social and psychological issues aside. While women victims of rape are in need of an effective and humane health service, they encounter a lack of specially trained professionals and prejudice-tainted attendance. Most interviewed women did not receive orientation regarding their rights on legal abortion or AIDS prevention and treatment.

The fecundity rate in Brazil remains quite high at 2.3 children per woman.<sup>96</sup> Furthermore, this average is not highly representative since fecundity rates vary considerably according to the women's level of education and across regions.<sup>97</sup> As recently as 1998,<sup>98</sup> a surprisingly high number (38,4%) of women gave birth to their first child when they were under 19 years old. In the North, this figures overpasses 51%, while in the Northeast and Center West values attain respectively 41.7% and 43.2%. In 1998 almost one out of every four mothers had not yet reached her 20<sup>th</sup> birthday,<sup>99</sup> and this figure has been on the rise since 1994, when that age group concerned one out of every five mothers.<sup>100</sup> More alarming is the fact that almost 2% of women become mothers when they are between 10 and 14 years old. This figure rises to 3.4% in the North, 2.3% in the Northeast and 2.4% in the Center West.

## **7. Conclusions and Recommendations**

Brazil has, in recent years, introduced several initiatives aimed at promoting and protecting the human rights of women. The new Civil Code of 2003 embodies in full the Constitutional principle of equality between women and men. However, violence and other forms of discrimination against women remain problems in the country. Women continue to face inequality in many aspects of their lives such as high levels of unemployment, unequal representation in government, unequal educational opportunities as well as discrimination in the family sphere.

OMCT is deeply concerned by the prevalence of domestic violence in Brazil. In spite of the fact that domestic violence is a punishable act, domestic violence against women has not been reduced. As well as constituting a violation of articles 3, 10 and 11 of the ICESCR, the high rates

of domestic violence in Brazil are directly linked to failures to adequately guarantee the rights contained in articles 6 and 7 of the Covenant. Women suffer from higher levels of unemployment than men in Brazil and when they are employed, they frequently work in precarious and less well remunerated jobs, which makes them more economically dependent on their male partners and therefore unable to leave violent relationships. In addition, the shortage of adequate housing including emergency shelters for victims of domestic violence has created a situation whereby women who are victims of domestic violence often have little choice than to continue co-habiting with the perpetrators of this violence. Moreover, when the women report the violence, the police and the judiciary do not take the crime seriously. Reportedly, only 2% of complaints relating to domestic violence lead to convictions, and when convicted, the penalties are very light. As a result, there is a sense of impunity of these crimes in Brazil.

OMCT believes that more effective legislative and policy measures need to be taken in order to address the issue of domestic violence in Brazil. Moreover, the Penal Code should be amended to explicitly criminalize rape in the context of marriage and consideration should be given to the drafting of additional, comprehensive legislation for the prevention and eradication of domestic violence. These measures should be based on the guidelines proposed by the Special Rapporteur on Violence Against Women (U.N. doc. E/CN.4/1996/53, Add.2) and should include the development of quasi-judicial remedies such as restraining and protective orders as well as the allocation of increased resources for the housing and reintegration of women who have been victims of domestic violence. In addition, a systematic training and awareness-raising programme for all law enforcement officials and members of the judiciary in relation to the investigation, prosecution and punishment of domestic violence should be developed. OMCT would also like to emphasise the need to provide legal aid to women wishing to pursue complaints. OMCT urges the Brazilian government to extend the number of women police stations, the Delegacias da mulher, in order to make them available to women in all parts of the country.

OMCT is gravely concerned about crimes committed against women in the name of “honour” in Brazil. Perpetrators of crimes against women committed in the name of “honour” – in most cases (ex) husbands or (ex) boyfriends who suspect their (ex) wife or (ex) girl friend of infidelity,

often receive reduced sentences. The defence of “honour” is equated with legitimate self-defence.

Trafficking in girls and women remains a serious problem in Brazil and OMCT would urge the government to make a binding commitment to preventing and combating trafficking by ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the UN Convention against Transnational Organized Crime. OMCT would also urge the government to consider using the Recommended Principles and Guidelines on Human Rights and Human Trafficking (UN Doc. E/2002/68/Add.1) as adopted by the Economic and Social Council in July 2002 as the basis for the development of a comprehensive legislative and policy response to the issue.

In relation to the prevention of trafficking, OMCT would recommend that the government make further efforts to address some of the root causes of trafficking through, *inter alia*, ensuring that women’s economic, social and cultural rights are protected and respected in practice. To this end, effective measures to prevent and eradicate discrimination against women in employment, to facilitate access to affordable housing and to prevent and combat gender-related violence need to be adopted.

OMCT would recommend that the government give serious consideration to the adoption of comprehensive anti-trafficking legislation that enshrines the rights of trafficking victims to appropriate protection and assistance.

OMCT notes with concern that the Penal Code still discriminates severely against women, particularly in relation to rape. Article 107, para. VII of the Brazilian the Penal Code stipulates that a man who rapes a woman will be exempt from punishment if he offers to marry her (“reparatory marriage”) and article 215 of the Brazilian Penal Code contains the criteria for punishment of a minor sexual assault that the victim is an “honest” woman. OMCT would urge the government of Brazil to repeal these discriminatory provisions as soon as possible.

The moral judgements towards victims of sexual violence by members of the police and the judiciary have lead to a lack of confidence in the law enforcement response to acts of violence against women and thus to the subsequent under-reporting of rape and other forms of violence against women in Brazil. For this reason, OMCT would recommend that

all references to “honest” women are repealed from the legislation and that all law enforcement personnel and members of the judiciary be given appropriate gender-sensitive training in responding to cases of rape and other forms of violence against women. OMCT would further recommend that greater numbers of female police officers be recruited and that these officers be, as a priority, assigned to specialised units created to respond to cases of violence against women.

OMCT is concerned about the situation of women in custody. There are reports of women inmates being abused by the prison officers who are supposedly responsible for their custody. A particular problem is the overcrowding of prisons in Brazil and the fact that women are not always guarded by women. OMCT would recommend that the government to ensure that immediate action is taken to guarantee that the prison conditions meet minimum international standards as laid down in the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, and the Basic Principles for the Treatment of Prisoners. In addition and in line with international standards on detention, OMCT would recommend that detained women are only supervised by female prison staff and that all detainees are granted access to effective and confidential complaints mechanisms.

OMCT is concerned about the high mortality rate during illegal abortions. Particularly in the northern regions, where women are the most deprived of health care equipment, rates of abortion are very high. OMCT urges the government to implement the Technical Standard throughout the country.

OMCT believes that all persons should have the right to decide freely and responsibly about the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. This also includes the right to make decisions concerning reproduction free of discrimination, coercion and violence. OMCT would recommend the elaboration of adequate family-planning programmes.

Finally, OMCT would insist on the need to fully implement all provisions of the Convention on the Elimination of Discrimination against Women,

the Declaration on the Elimination of Violence against Women as well as the Beijing Platform of Action, in Brazil as these are the most relevant international instruments concerned with all forms of violence against women.

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- 1 U.N. Doc. E/1990/5/Add53.
  - 2 The information gathered under this chapter was taken from the research of Fundação Perseu Abramo, “A mulher brasileira nos espaços público e privado” (The Brazilian woman in public and private space), available at <http://www.fpabramo.org.br/nop/mulheres/perfil.htm>, (consulted December 16, 2002).
  - 3 Brazil is divided into 5 regions: North, North-east, South, South-East, and Center-West, hereafter CW. Statistical results tend to vary widely across these regions, therefore Brazilian averages should be considered with caution.
  - 4 IBGE and Seade foundations, values taken from the 2000 demographic census, available at [http://www.mj.gov.br/sedh/cndm/genero/demografia/RG\\_pop003.htm](http://www.mj.gov.br/sedh/cndm/genero/demografia/RG_pop003.htm), (consulted December 1, 2002).
  - 5 *Ibid.*
  - 6 Furthermore, Brazil is Party to, *inter alia*, the International Convention for the Suppression of The Traffic in women of Full Age (1933), and the International Convention on the Suppression of the Traffic in Women and Children (1921), as amended by the Protocol signed in Lake Success (1947); Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, and Final Protocol (1950) and the Convention on the Political Rights of Women (1953).
  - 7 Adopted on 5 October 1988.

- 8 Article 219 IV.
- 9 Though the number of legal marriages has continued to slightly increase, from 36.8% in 1991 to 40.2% in 1995, the number of informal marriages has equally increased, from 11.4% in 1991 to 15.5 % in 1995, though the rates soar above 20% for the 20 to 35 years old. IBGE and Seade foundations, values taken from the 1991 Demographic Census, *Ibid.*; PNAD 1995 – Pesquisa Nacional por Amostra de Domicílios, available at [http://www.mj.gov.br/sedh/cndm/genero/demografia/RG\\_car004\\_1995.htm](http://www.mj.gov.br/sedh/cndm/genero/demografia/RG_car004_1995.htm), (consulted December 1, 2002).
- 10 Articles 241 and 242.
- 11 Jone Johnson Lewis, Brazil – Women, available at [http://www.womenshistory.about.com/library/ency/blwh\\_brazil.htm](http://www.womenshistory.about.com/library/ency/blwh_brazil.htm), (consulted November 25, 2002).
- 12 Consensual issues include sexual violence, with 95% of parliament members in favour of legislation binding the public health system into offering free physical and psychological care services to women victims of sexual violence and covering abortion throughout the country in all the cases accepted by law. 91% of parliament members are in favour of legislation aiming at including sexual education courses in schools, 87% of parliament members are in favour of giving protection to women in the job market, and 76% of parliament members are in favour of considering sexual harassment as a crime requiring fine and detention. Abortion legislation is still widely considered as controversial with only roughly one out of two parliament members in favour of extending abortion possibilities.
- 13 Almira Rodrigues, *Legislativo Federal e os Direitos das Mulheres: não falta sensibilidade e sim vontade política*, Jornal da Rede Feminista de Saúde - nº 21 - Setembro 2000, available at [http://www.redesaude.org.br/jornal/html/body\\_jr21-almira.html](http://www.redesaude.org.br/jornal/html/body_jr21-almira.html), (consulted December 16, 2002).
- 14 Fundação Perseu Abramo, “A mulher brasileira nos espaços público e privado” (The Brazilian woman in public and private space), <http://www.fpabramo.org.br/nop/mulheres/perfil.htm>, consulted 16.12.02.
- 15 *Ibid.*
- 16 Of a total of 55%, 20% have received no education and 35% received only between 1 year and 4 years of education, corresponding to primary school. Compared to the national mean at 20%, SE and South drop to less than 15% for uneducated women, while the NE bursts out at 32%. Instituto Brasileiro de Geografia e Estatística, *Distribuição percentual de mulheres de 10 anos ou mais de idade, responsáveis pelos domicílios, por classes de anos de estudo, segundo as Grandes Regiões*, available at <http://www1.ibge.gov.br/home/estatistica/populacao/perfiladmulher/tabela/072000> (consulted December 16, 2002).
- 17 U.S. Dep’t of State, Human Rights Report 2001 (2002), Brazil, available at <http://www.state.gov/drl/rls/hrrpt/2001/wha/8305.htm>.
- 18 Jone Johnson Lewis, *Ibid.*
- 19 In April 2003, the minimum salary in Brazil is of 200 reais per month, corresponding approximately to 65 dollars per month.
- 20 U.S. Department of State, *Ibid.*
- 21 ILO-IPEC, (1999), Mainstreaming Gender in IPEC Activities.
- 22 Jone Johnson Lewis, *Ibid.*

- 23 This was the second study SEBRAE (Serviço Brasileiro de Apoio às Micro e Pequenas Empresas) dedicated to women who have founded their own business. A sample of 1000 small companies equally headed by male and female entrepreneurs has been compared. SEBRAE/UED, II Sondagem Sebrae 2000 “A Mulher Empresária.”
- 24 The great majority for both sexes is between 30 and 50 years old and most age groups show the same results regardless of gender, except the percentage of women between 30 and 40 years which is significantly higher than that of men (38,5 against 30,7), while that of women above 50 years old is significantly lower (13,4 against 20,9). This could show a trend of change favourable to entrepreneurship amongst the younger generations, and OMCT hopes this trend will be reinforced by policies of encouragement addressed to young women.
- 25 Jone Johnson Lewis, *Ibid.*
- 26 Domestic violence, occurring between intimate partners, accounts for 65% to 80% of reported cases of violence against women. In Brazil, around a third of hospital emergencies are related with domestic violence. A Polícia , o Judiciário, as Mulheres, a Violência, available at [http://www.redesaude.org.br/html/body\\_viol-02-5.html](http://www.redesaude.org.br/html/body_viol-02-5.html), (consulted December 16, 2002).
- 27 Domestic violence survey taking into account data from the special women police stations. Profiles regarding the couples involved show that many women subject to violence are quite young, with more than 30% between 20 and 30 years old and more than half between 30 and 40 years old. One in every two couples have lived together for more than ten years, and after the complaint 60% of the couples remain together. This situation calls for reconsidering the kind of intervention most suitable to address violence situations which are very likely bound to reoccur when there is no adequate follow-up with the couple. For more details, see [www.redesaude.org.br](http://www.redesaude.org.br).
- 28 Inter American Commission for Human Rights, case n. 12.051, Maria da Penha Maia Fernandes and Brasil, available at <http://www.cidh.oas.org/annualrep/2000sp/capituloiii/fondo/brasil12.051.htm>., (consulted December 16, 2002).
- 29 Law 10.455/02, Universo da Mulher, Legislação da Mulher, available at <http://www.universodamulher.com.br/default.asp?page=materia&VCodMateria=165>, (consulted April 21, 2003).
- 30 A Polícia , o Judiciário, as Mulheres, a Violência, *Ibid.*
- 31 Fines are particularly low, often consisting in the donation to social institutions of the equivalent of a minimum salary in nature (60 R\$, around 30 US\$) or serving the community through short-term tasks.
- 32 U.S. Dep`t of State, *Ibid.*
- 33 See Samantha Buglione, *A mulher enquanto metáfora do Direito Penal*, available at <http://www1.jus.com.br/doutrina/imprimir.asp?id=946>, (consulted December 1, 2002).
- 34 When questioned on their capacities of response, 74% of these offices claim they do not have sufficient human resources, 53% say their officers are not sufficiently trained to deal with cases of violence perpetrated on women. 46% announce their infrastructure is not adequate, with 32% claiming the lack of weapons and 19% the lack of cars. 61% claim they do not have enough information circulating between the offices.

- 35 Oliveira, Eliany, “Os direitos das mulheres e as políticas públicas”, in *Jornal On-Line Noolhar.com*, November 24, 2001, available at <http://www.mj.gov.br/sedh/cndm/artigos/eliany.htm>, (consulted December 1, 2002).
- 36 The special police station of Londrina, for instance, points out that since its founding in 1986 it has registered nearly 20’000 cases, of which only 10% have led to a legal inquiry, available at <http://www.redesaude.org.br>.
- 37 Only one out of every ten men is considered guilty at the end of a lengthy trial process. These meagre results may strongly discourage women to carry out with the legal proceedings. A significant portion of women declare there is no point in seeking help because they feel they won’t be recognized as victims.
- 38 U.S. Dep’t of State, *Ibid*.
- 39 A Polícia , o Judiciário, as Mulheres, a Violência, *Ibid*.
- 40 A hotline was installed that encourages women to register complaints. The rising demand of women and their children to stay in the shelters exceeds capacity and the Rio state government began construction of additional facilities already during the past year.
- 41 Reports received by Abrapia’s SOS Children service regarding 1169 cases of domestic violence between 1998 and 1999.
- 42 Article 25 of the Penal Code.
- 43 Human Rights Watch, *Criminal Injustice, Violence against Women in Brazil*, p. 19.
- 44 Article 121, §1º, relating to murder and article 129, §4º, relating to violent physical assault, of the 1940 Brazilian Penal Code.
- 45 Silvia Pimentel e Valéria Pandjjarjian, “Defesa da honra: tese superada?”, *Folha de S. Paulo*, (September 12, 2000), available at <http://www.observatoriodaimrensa.com.br/artigos/iq200920003.htm>, (consulted April 21, 2003).
- 46 U.S. Dep’t of State, *Ibid*.
- 47 Teixeira, Analba and Grossi Miriam, Honour Crimes: the murder of women in the state of Rio Grande do Norte.
- 48 *Ibid*.
- 49 Article 215 of the Brazilian Penal Code.
- 50 All the data included in this paragraph regarding rape rates is taken from MJ/SENASP/DECASP/Coordenação de Estatísticas e Acompanhamento das Polícias, <http://www.conjunturacriminal.com.br/dados/est-estupro.htm>, consulted 12.02.03.
- 51 Statistics from the Ministry of Justice, available at [http://www.mj.gov.br/Senasp/senasp/estat\\_atentado.htm](http://www.mj.gov.br/Senasp/senasp/estat_atentado.htm).
- 52 Statistics from the Ministry of Justice, available at [http://www.mj.gov.br/Senasp/senasp/estat\\_estupro.htm](http://www.mj.gov.br/Senasp/senasp/estat_estupro.htm).
- 53 Silvia Pimentel, Ana Lucia Pastore Schritzmeyer, Valéria Pandjjarjian, *Estupro, direitos humanos, gênero e justiça*, available at [http://www.uol.com.br/cultvox/revistas/usp/\\_silvia.htm](http://www.uol.com.br/cultvox/revistas/usp/_silvia.htm), (consulted February 12, 2003).
- 54 U.S. Dep’t of State, *Ibid*.

- 55 Article 216a of the Penal Code, available at [http://www.dji.com.br/codigos/1940\\_dl\\_002848\\_cp/cp213a216.htm](http://www.dji.com.br/codigos/1940_dl_002848_cp/cp213a216.htm), (consulted February 12, 2003).
- 56 U.S. Department of State, (2001), Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report, available at <http://www.state.gov/g/inl/rls/tiprpt/2001>.
- 57 *Ibid.*
- 58 Michael Hoskins, Trafficking in women for Sexual Exploitation, Metropolitan Police Service, 1996
- 59 Defined as “the highest level of physical, mental and social well-being” by the OAS in the protocol of San Salvador, article 10. See Alison Phinney, Trafficking of Women and Children for Sexual Exploitation in the Americas, OAS, CIM, 2000, available at [www.oas.org/cim/English/Proj.Traf.AlisonPaper.htm](http://www.oas.org/cim/English/Proj.Traf.AlisonPaper.htm).
- 60 Alison Phinney, *Ibid.*
- 61 Child Prostitution, ECPAT Bulletin, Vol. 4/1, 1996-97
- 62 Center for Reference, Studies and Action for Children and Adolescents (CECRIA), (2000), Tráfico de Mulheres, Crianças e Adolescentes para Fins de Exploração Sexual no Brasil, CECRIA, Brasília, Brazil
- 63 Coalition Against Trafficking in Women, The Fact Book on Global Sexual Exploitation (1999).
- 64 ECPAT International, available at <http://www.ecpat.net/eng/index.asp>, (consulted April 22, 2003).
- 65 O CHAME, (1998), O que é que a Bahia tem: o outro lado do Turismo em Salvador. Projeto CHAME/NEIM/UFBa, Salvador, Brazil.
- 66 For more details, see Human Rights Watch, Brazil Report, available at <http://www.hrw.org/wr2k3/americas2.html>, (consulted March 13, 2003).
- 67 U.N. Doc. E/CN.4/2001/66/Add.2.
- 68 *Ibid.*
- 69 *Ibid.*
- 70 U.S. Dep’t of State, *Ibid.*
- 71 Law 9455/97, available at [http://www.dji.com.br/leis\\_ordinarias/1990-008072-ch/8072-90.htm](http://www.dji.com.br/leis_ordinarias/1990-008072-ch/8072-90.htm), (consulted February 12, 2003).
- 72 In 1999 the Globo Newspaper in Rio de Janeiro published the results of an investigation into the allegations of torture against state police. The police opened a total of 53 investigations regarding complaints of torture against authorities between 1997, when the torture law came into effect, and 1999. Only one of the inquiries, which had been suspended, had been officially concluded.
- 73 U.S. Dep’t of State, *Ibid.*
- 74 Constitution of Brazil, art. 5, sec. XLIX. The Brazilian Penal Code also states that prisoners “retain all rights, except those that are not included because of the loss of liberty,” and that the authorities are under “the obligation to respect [prisoners’] physical and moral integrity.” Penal Code, art. 38.
- 75 São Paulo Constitution, art. 143, sec. 4.
- 76 Ministry of Justice, Conselho Nacional de Política Criminal e Penitenciária, *Regras mínimas para o tratamento do preso no Brasil*, Brasília: Conselho Nacional de Política Criminal e Penitenciária, 1995

- 77 Human Rights Watch, Brazil Report, available at <http://www.hrw.org/wr2k3/americas2.html>, (consulted March 13, 2003).
- 78 Jornal da Trade, available at <http://www.jt.estadao.com.br/editorias/2001/04/28/ger156.html>, (consulted April 23, 2003).
- 79 Lei de Execução Penal, art. 77, sec. 2. The provision makes an exception for specialized technical personnel such as doctors. Similarly, article 53 (3) of the Standard Minimum Rules states: Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women. In additions, article 53 (2) of the U.N. Standard Minimum Rules bars male staff members from entering women's facilities or sections outside of the presence of a female officer.
- 80 Human Rights Watch, O Brasil atrás das grades, available at <http://www.hrw.org/portuguese/reports/presos/detentas2.htm>, (consulted April 22, 2003).
- 81 U.N. Standard Minimum Rules, rule 8; Penal Reform International, *Making Standards Work*, The Hague: Penal Reform International, 1995.
- 82 Only 13% of female prisoners declared receiving intimate visits. From those who didn't, 20% affirmed it was to difficult to obtain and 14% said they were ashamed of asking. Though a simple written confirmation of the companion allows the male prisoners to receive their visit up to twice a week, female prisoners must see their companions for four months in a row on regular visits without having sex before being allowed to a maximum of two intimate visits per month. In these circumstances many women become homosexual by the force of circumstances, especially if they remain in prison for longer than a couple of years (20% over the first year, 52% after four years). Data from an inquiry made at Penitenciária Feminina Madre Pelletier in Porto Alegre/RS in 1997, available at <http://www1.jus.com.br/doutrina/imprimir.asp?id=946>, (consulted December 1, 2002).
- 83 *Ibid.*
- 84 The women's prison in João Pessoa, Paraíba, for example, lacks an infirmary and a doctor; medical care is provided by a nurse who visits three mornings a week.
- 85 More public attention was drawn to this issue recently as Rede Saúde held for a period of 2 years (2000-2002) the coordination of the 28th September Regional Campaign for abortion liberalisation in Latin America and the Caribbean. This Campaign, held since 1993, is supported by hundreds of NGOs in 18 countries.
- 86 UN Doc. HRI/GEN/1/Rev.5, General Comment No. 14 of the UN Committee on Economic, Social and Cultural Rights.
- 87 *Dossiê Aborto Inseguro, Direito ao aborto: um debate contínuo e crescente*, available at [http://www.redesaude.org.br/dossies/html/body\\_ab-direito.html](http://www.redesaude.org.br/dossies/html/body_ab-direito.html), (consulted December 9, 2002)
- 88 Aborto Legal por Estupro – Primeiro Programa Público do País, available at <http://www.cfm.org.br/revista/bio1v2/abortleg.html>, (consulted February 12, 2003).
- 89 Sistema único de saúde, public single health care system.

- 90 JB Online, Brazil, *Norma técnica da Saúde aumenta aborto legal*, available at <http://jbonline.terra.com.br/papel/brasil/2001/12/01/jorbra20011201005.html>, (consulted April 22, 2003).
- 91 Alessandra Casanova Guedes, *Cooperation Program on the Regulatory Framework on Family Health, Maternity, Woman and Indigenous Populations*, available at <http://165.158.1.110/english/hpp/downloads/brasil.pdf> , (consulted April 22, 2003).
- 92 In August 2002, the Ministry of Health published the 2nd edition of Technical Standard regarding the prevention and treatment of the ill resulting from sexual violence, available at <http://www.aids.gov.br/final/assis/norma.pdf>, (consulted April 22, 2003).
- 93 Estimate of the Rede Nacional de Saúde e Direitos Reprodutivos, available at <http://www.redesaude.org.br>, (consulted December 09, 2002).
- 94 Dossiê Aborto Inseguro, available at [http://www.redesaude.org.br/dossies/html/body\\_ab-internacoes.html](http://www.redesaude.org.br/dossies/html/body_ab-internacoes.html), (consulted December 9, 2002).
- 95 Costa, A. M.; Moura M. A. V., *Aborto legal: o desafio de se cumprir a lei*, Nesp/Ceam/UnB, Brasília, 1999.
- 96 Ministry of Justice, Brazil, available at [http://www.mj.gov.br/sedh/cndm/genero/saude/BR\\_nfm007\\_1999.htm](http://www.mj.gov.br/sedh/cndm/genero/saude/BR_nfm007_1999.htm).
- 97 Thus the less studies women have accomplished, the higher this rate becomes. Women who have only achieved up to 3 years of studies have a fecundity rate of 3.7, while for women who have studied more than 7 years this rate drop as low as 1.6. From North to South there are considerable differences as well. For instance in the North uneducated women have a fecundity rate of 5.1, while educated women still attain more than the national average at 1.9. The South, Southeast and Center West regions all have rates under the national average, even when comparing the values for uneducated women. Black women, at an average of 3.4, tend to have a higher fecundity rate than white women, at 2.4.
- 98 Ministry of Justice, Brazil, available at [http://www.mj.gov.br/sedh/cndm/genero/saude/BR\\_nfm004\\_1998.htm](http://www.mj.gov.br/sedh/cndm/genero/saude/BR_nfm004_1998.htm).
- 99 *Ibid.*
- 100 *Ibid.*

# *Committee on Economic, Social and Cultural Rights*

**THIRTIETH SESSION – 5 - 23 MAY 2003**

**CONSIDERATION OF REPORTS SUBMITTED  
BY STATES PARTIES  
UNDER ARTICLES 16 AND 17 OF THE COVENANT**

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**CONCLUDING OBSERVATIONS OF THE COMMITTEE ON ECONOMIC,  
SOCIAL AND CULTURAL RIGHTS: BRAZIL**

1. The Committee on Economic, Social and Cultural Rights considered the initial report of Brazil on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/1990/5/Add.53) at its eight, ninth and tenth meetings, held on 8 and 9 May 2003 (E/C.12/2003/SR.8, 9 and 10), and adopted, at its twenty-ninth meeting held on 23 May 2003, the following concluding observations.

## **A. Introduction**

2. The Committee welcomes the submission of the initial report of Brazil, which has been prepared in conformity with the Committee's guidelines, but regrets the late submission of the report and the absence of written replies to its list of issues (E/C.12/Q/BRA/1).
3. While welcoming the frank nature of the dialogue with the delegation, the Committee regrets that there were not enough experts in the delegation in the field of economic, social and cultural rights, who could provide more information to the Committee on the concrete measures taken by the State party to implement its obligations under the Covenant.

## **B. Positive aspects**

4. The Committee notes with appreciation that the Federal Constitution adopted in 1988 incorporates a wide range of human rights, including a number of the economic, social and cultural rights enshrined in the Covenant. The Committee also takes note that under article 5 of the Constitution, the rights and guarantees in international treaties to which Brazil is party, are considered part of the national law.
5. The Committee welcomes the adoption of the new civil code in year 2002 which replaced the one of 1916 and established the principle of equality between men and women.
6. The Committee welcomes the adoption of a National Human Rights Programme in May 1996 and the creation of a Secretariat of State for Human Rights to monitor its implementation.
7. The Committee welcomes the new programmes adopted by the State party to combat discrimination, including the establishment of a National Council on the Rights of Women, a National Council to Combat Discrimination and affirmative action programmes for Afro-Brazilians, in particular women.
8. The Committee also welcomes the progress made in combating racial prejudices and barriers, which is illustrated by the appointment of persons of Afro-Brazilians origin to positions of high public office, on the basis of their professional merits and qualifications.
9. The Committee welcomes the program “Fome Zero” undertaken by the State party aimed at eradicating hunger which affects a substantial portion of the population.
10. The Committee takes note with appreciation the efforts made by the State party to reduce the rate of mortality caused by HIV/AIDS by 50 per cent since 1996.
11. The Committee notes with appreciation Constitutional Amendment No. 14 (adopted on 12 September, 1996), which established the National Fund for Primary Education Development and Enhancing the Value of the Teaching Profession (FUNDEF), reorganized the primary education system and earmarked more resources to education.

12. The Committee welcomes the creation within the State party of independent Special Rapporteurs responsible for monitoring of economic, social and cultural rights, particularly the right to food, to health and to education.
13. The Committee welcomes the positive position of the State party in relation to the draft optional protocol to the ICESCR.
14. The Committee welcomes the pro-active participation of civil society in monitoring the implementation of the Covenant, including the provision of a large amount of information to the Committee.

### **C. Factors and Difficulties Impeding the Implementation of the Covenant**

15. The Committee notes that the persistent and extreme inequalities, and the social injustice prevailing in the State party have negatively affected the implementation of the rights guaranteed by the Covenant.
16. The Committee notes that the recent economic recession along with certain aspects of the structural adjustment programmes and economic liberalization policies, have had some negative effects on the enjoyment of economic, social and cultural rights as enshrined in the Covenant, in particular by the most disadvantaged and marginalized groups.

### **D. Principal Subjects of Concern**

17. The Committee notes with concern the persistent and extreme inequalities among the various geographic regions, states and municipalities and the social injustice prevalent in the State party. The Committee is also concerned about imbalances in the distribution of resources and income and access to basic services in the State party.
18. The Committee is concerned that there is a gap between the constitutional and legislative provisions and administrative procedures set up to implement the Covenant rights and the absence of the necessary

effective measures and remedies, judicial or otherwise, to uphold these rights, especially with regard to the disadvantaged and marginalized groups.

19. The Committee is concerned about the lack of adequate human rights training in the State party, in particular with respect to the rights enshrined in the Covenant, especially among the judiciary, law enforcement officials and other actors responsible for the implementation of the Covenant.
20. The Committee is concerned about the widespread and deeply-rooted discrimination against Afro-Brazilians, indigenous people and minorities groups such as Gypsies and the Quilombo communities.
21. The Committee notes with concern that equal opportunities for persons with disabilities are hampered by physical barriers and lack of appropriate facilities.
22. The Committee is concerned about the widespread discrimination against women, in particular, in their access to the labour market, to equal pay for work of equal value and to an adequate representation at all levels of decision-making bodies of the State party.
23. In spite of the State party's successful efforts to release many workers from forced labour, the Committee is deeply concerned about the persistence of forced labour in Brazil, which is often close to slavery, particularly in the rural areas.
24. The Committee is concerned that the national minimum wage is not sufficient to ensure an adequate standard of living for workers and their families.
25. The Committee notes with concern the killing of landless farmers and the members of trade unions defending them and the impunity of those responsible for committing these crimes.
26. While takes note of the concern expressed by the State party in relation to the need for better policy coordination for children and young people, the Committee requests the State party to include, in its next periodic report, information on measures taken to improve the functioning of services of children and young people.

27. The Committee notes with concern the high rate of maternal mortality due to illegal abortions, particularly in the northern regions where women have insufficient access to health care facilities. The Committee is also concerned about the persistence of forced sterilization.
28. The Committee is concerned that some articles of the Penal Code discriminate against women. In particular, it is concerned that article 215 of the Code requires the victim of a minor sexual assault to be an "honest woman" in order to prosecute the offence.
29. The Committee notes with concern that sexual and domestic violence are widespread and not being sufficiently denounced in Brazil.
30. The Committee is deeply concerned about the high incidence of trafficking in women for the purpose of sexual exploitation.
31. The Committee notes with concern the high concentration of land in the hands of a minority, and its negative effects on the equitable distribution of wealth.
32. In spite of the efforts taken by the State party to reduce poverty, the Committee is concerned about the persistence of the poverty in the State party, especially in the North-East and in rural areas, and among the Afro-Brazilians and the disadvantaged and marginalized groups.
33. The Committee notes with concern that, according to the State party's report, at least 42 per cent of families currently live in inadequate housing facilities without adequate water supply, waste disposal and trash collection. It also notes that 50% of the population of major urban areas live in informal urban communities (illegal settlements and homes, as stated in paragraph 512 of the State party's report).
34. The Committee notes with concern that the State party has not facilitated the access to, and adequate provision of, housing credit and subsidies to low-income families, especially the disadvantaged and marginalized groups.
35. The Committee is deeply concerned that State party does not provide sufficient protection for indigenous peoples, who continue to be

forcibly evicted from their lands and face threats to their lives and even executions. The Committee also notes with concern that the rights of indigenous peoples to land ownership are not respected and that mineral, timber and other commercial interests have been allowed to expropriate with impunity, large portions of land belonging to indigenous peoples.

36. The Committee is concerned about the forced eviction of the Quilombo communities from their ancestral lands, which are expropriated with impunity by mineral and other commercial interests.
37. The Committee notes with concern about the living conditions of prisoners and detainees in the State party, especially with regard to provision to access to health care facilities, adequate food and safe and drinking water.
38. Although the State party has reduced HIV/AIDS related mortality, the Committee is concerned that, despite these efforts, there has been a significant increase in cases among women and children.
39. The Committee is concerned about the high rate of illiteracy in Brazil which, according to the State party's report, was 13.3 per cent in 1999, reflecting the social and economic inequalities still prevalent in the country.

## **E. Suggestions and Recommendations**

40. The Committee recommends the State party to take immediate remedial action to reduce the persistent and extreme inequalities and imbalances in the distribution of resources and income and access to basic services among various geographical regions, states and municipalities, including speeding up the process of agrarian reform and of granting land titles.
41. The Committee urges the State party to take immediate remedial action to ensure that all the Covenant rights are effectively upheld and that concrete remedies, judicial or otherwise, are provided to those whose economic, social and cultural rights are infringed, especially in relation to the disadvantaged and marginalized groups. In this regard,

the Committee draws the attention of the State party to its General Comment No. 9 on the domestic application of the Covenant.

42. The Committee recommends that the State party improve its human rights training programmes in such a way as to ensure better knowledge, awareness and application of the Covenant and other international human rights instruments, in particular among the judiciary, law enforcement officials and other actors responsible for the implementation of the Covenant.
43. The Committee strongly recommends that the State party's obligations under the Covenant should be taken into account in all aspects of its negotiations with the international financial institutions to ensure that the enjoyment of economic, social and cultural rights, particularly by the most disadvantaged and marginalized groups, are not undermined.
44. The Committee urges the State party to take all effective measures to prohibit discrimination on the basis of race, colour, ethnic origin or sex in all fields of economic, social and cultural life. It further recommends that the State party undertake urgent measures to ensure equal opportunity for Afro-Brazilians, indigenous peoples and minority groups such as Gypsies and the Quilombo communities, especially in the field of employment, health and education. The Committee also requests the State party to include in its second periodic report detailed and comprehensive information, including comparative and disaggregated statistical data on these matters.
45. The Committee urges the State party to adopt all effective measures to ensure equality between men and women as provided for in articles 2 (2), and 3 of the Covenant. The Committee also requests the State party to adopt in its relevant policies the principle of equal pay for work of equal value as provided for in the Covenant; to reduce the wage gap between men and women; and to provide detailed information on these matters in the State party's second periodic report.
46. The Committee urges that the State party adopt concrete measures to enable persons with disabilities to enjoy fully the rights guaranteed by the Covenant.

47. The Committee urges the State party to implement its National Plan for the Eradication of Slave Labour and to undertake urgent measures in this regard, especially through the imposition of effective penalties.
48. The Committee calls upon the State party to ensure that the minimum wage enables workers and their families to enjoy an adequate standard of living.
49. The Committee urges the State party to take legal action against those who are responsible for committing crimes against landless farmers and members of trade unions and to take effective and preventive measures to insure protection to all farmers and members of trade unions.
50. In light of the indication given by the State party that the reform of the social security system foresees an improved role for the State in fundamental areas of social development, the Committee recommends to the State party in this regard that the social security system and the social development measures take into account the needs of disadvantaged and marginalized groups.
51. The Committee requests the State party to undertake legislative and other measures, including a review of its present legislation, to protect women from the effects of clandestine and unsafe abortion and to insure that women do not resort to such harmful procedures. The Committee requests the State party to provide in its next periodic report detailed information, based on comparative data, about maternal mortality and abortion in Brazil.
52. The Committee calls upon the State party to repeal all discriminatory provisions contained in the Penal Code, in particular article 215.
53. The Committee calls upon the State party to take all effective measures, including the enforcement of existing legislation and the extension of national awareness campaigns, to eliminate all forms of violence against women. The Committee also recommends that the State party insure that the police are trained to handle violence against women in addition to the “delegacias da mulher” in all parts of the country.

54. The Committee recommends the adoption by the State party of a specific anti-trafficking in persons legislation and to insure its effective implementation.
55. The Committee urges the State party to take effective measures to combat the problem of poverty, including the setting up of a National Plan of Action against Poverty integrating economic, social and cultural rights. In this regard, the Committee refers the State party to its Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights adopted on 4 May 2001 (E/C.12/2001/10).
56. The Committee urges the State party to give effect to its National Housing Policy and its Federal housing programmes and to adopt nation wide policies in order to insure that families have adequate housing facilities and amenities. In this respect, the Committee draws the State party's attention to its General Comment No. 4 on the Right to Adequate Housing.
57. The Committee urges the State party to provide access to housing credit, and subsidies to low-income families and the disadvantaged and marginalized groups.
58. The Committee calls upon the State party to ensure that indigenous peoples are effectively protected from threat and danger to their lives and eviction from their lands. The Committee particularly urges the State party to seek the consent of the indigenous peoples concerned prior to the implementation of timber, soil or subsoil mining projects and of any public policy affecting them, in accordance with ILO Convention No. 169.
59. The Committee urges the State party to adopt measures to guarantee the ancestral lands of the Quilombo communities and in case of forced eviction to insure that this is carried out in compliance with the guidelines set out in General Comment No.7 of the Committee.
60. The Committee urges the State party to take effective measures, including policies, programmes and specific legislation aimed at improving the living conditions of prisoners and detainees.
61. The Committee urges the State party to undertake appropriate measures to insure effective realisation of agrarian reform.

62. The Committee urges the State party to continue its prevention and health care efforts, by providing sexual and reproductive health services to the population, with particular emphasis on those for women, young people and children.
63. The Committee requests the State party to adopt effective measures to combat illiteracy and to provide, in its next periodic report information on the measures undertaken by the State party and on the results of these measures. The Committee also requests the State party to include disaggregated and comparative statistics in its periodic report.
64. The Committee requests the State party to disseminate the present concluding observations widely at all levels of the society and, in particular, among State officials and the judiciary and to inform the Committee, in its next periodic report, of all steps undertaken to implement them.
65. The Committee also encourages the State party to continue to consult with non-governmental organizations and other members of the civil society when preparing the next periodic report.
66. The Committee requests the State party to submit its second periodic report by 30 June 2006.

