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Human Rights Violations in Brazil

AN NGO REPORT TO THE UNITED NATIONS
HUMAN RIGHTS COMMITTEE

INCLUDING THE COMMITTEE'S CONCLUDING OBSERVATIONS

A project presented by

Fundação Interamericana
de Defesa dos Direitos Humanos

and coordinated by

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Foreword

Writing alternative reports is one of the primary activities of the World Organisation Against Torture (OMCT) and a vital source of information for the United Nations Treaty Bodies including the Human Rights Committee (HRC). This activity is complementary to providing direct assistance to victims.

These alternative reports are a valuable source for Independent Experts who analyse the implementation of the United Nations Human Rights Instruments. With these reports, it is possible to see the situation as objectively as possible and to take a critical look at government action to eradicate torture and other cruel, inhuman or degrading treatment or punishment.

Under the aegis of the European Commission and the Swiss Confederation, the "State Compliance" programme presented this report on Human Rights Violations in Brazil at the 85th session (17th October – 3rd November 2005) of the Human Rights Committee, during which the official Brazilian State Report was reviewed.

This report was jointly prepared by three national human rights non-governmental organisations (NGOs) in collaboration with OMCT:

CEDECA/BA – The Yves de Roussan Defence Centre for Children and Adolescents

CLADEM – The Latin American and Caribbean Committee for the Defence of Women's Rights

FIDDH - Inter-American Foundation for the Defence of Human Rights

Representatives from these NGOs attented the HRC session, briefed the members of the Committee on the human Rights situation in Brazil and presented the alternative report.

AUTHORS OF THE REPORT

FIDDH

The Inter-American Foundation for the Defence of Human Rights (FIDDH) is a non-governmental organisation whose mission is to fight for the respect of regional international human rights norms in the Americas.

The FIDDH contribution to this report was produced under the coordination of Dr. Hélio Bicudo, president of the Inter-American Foundation for the Defence of Human Rights, by Dr. Paulo de Mesquita Neto (text and research), senior researcher at the Centre for the Study of Violence - University of São Paulo, Danilo D´Addio Chammas and Luis Alberto Cantoral Benavides (research), Inter-American Foundation for the Defence of Human Rights.

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CEDECA

The Yves de Roussan Defence Centre for Children and Adolescents (CEDECA-BA) is a non-governmental organisation whose mission is to oppose all forms and displays of violence against children and adolescents and, above all, against life and physical and psychological integrity.

Using their Defence and Promotion of Children and Adolescents' Rights Programme, CEDECA/BA develops secure mechanisms for legal-social protection, prevention and assistance directly to children, adolescents and their families who are at risk of sexual violence and murder.

CEDECA's contribution to this report was produced under the coordination of Maria Aparecida de Roussan and Maurício Freire, attorney-in-law for CEDECA, with information provided by ANCED (Associação dos Centros de Defesa da Criança e do Adolescente).

For more information, visit the web site : www.cedeca.org

CLADEM Brazil

CLADEM - The Latin American and Caribbean Committee for the Defence of Women's Rights is a women's and women's organisations network in all Latin America and the Caribbean who are committed to unite efforts to achieve an effective defence of women's rights in the region.

CLADEM Brazil is a national articulation made up of IPE, THEMIS and eight members on an individual status. CLADEM's contribution to this report was produced under the coordination of Flávia Piovesan and Virgínia Feix (national coordinator) by a research team composed by Akemi Kamimura, Helena Pires, Laura Davis Mattar and Tamara Amoroso.

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INTRODUCTION

This alternative report, while recognizing the advances, obstacles, and challenges regarding the implementation of the civil and political rights set out in the Covenant, as described in the Second Brazilian Report, focuses attention on the omissions of the Brazilian State in fulfilling the obligations undertaken by Brazil when the country ratified the ICCPR.

In the last three years, there was a set back in the situation of civil and political rights in Brazil. The lack of action by the Federal and State Governments has contributed to the persistence of a high level of impunity in cases of human rights violations, the continuity of violence practised by State agents, the growth of corruption, and the expansion of organised crime. It is possible to point out two partial exceptions to this scenario. First, the approval of the Disarmament Statute ("Estatuto do Desarmamento", Law 10,826, of 22 December 2003; Decree 5,123, of 1 July 2004) - however, there has been a lack of action by the Federal Government in the implementation of the National Plan for Public Security (Instituto da Cidadania 2002) following the resignation of the National Secretary for Public Security, Luiz Eduardo Soares, in October 2003. Second, the Federal Government's Plan for the Eradication of Slave Labour (Brazil, Ministry of Agrarian Development, INCRA 2003 and 2005), which is still in the process of implementation.

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PART I

LEGAL BACKGROUND

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HUMAN RIGHTS VIOLATIONS IN BRAZIL

1. International Background

International instruments ratified by the country

Instrument	Signature	Ratification	Entry into force	Reservations (articles)
International Convention on the Elimination of All Forms of Racial Discrimination	07/03/1966	27/03/1968	04/01/1969	NONE
International Covenant on Economic, Social and Cultural Rights		24/01/1992	24/04/1992	NONE
International Covenant on Civil and Political Rights		24/01/1992	24/04/1992	NONE
Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	23/09/1985	28/09/1989	28/10/1989	NONE
Optional Protocol to CAT	13/10/2003			
Convention on the Elimination of All Forms of Discrimination Against Women	31/03/1981	01/02/1984	02/03/1984	Article 29
Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women	13/03/2001	28/06/2002	28/09/2002	NONE
Convention on the Rights of the Child	26/01/1990	24/09/1990	24/10/1990	NONE
Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography	06/09/2000	27/01/2004	27/02/2004	NONE

National Decrees Corresponding to the Relevant International Instruments[1]

Instrument	Date	Promulgation	
	(instrument)	Decree No.	Date
International Convention on the Elimination of All Forms of Racial Discrimination	07/03/1966	65810	08/12/1969
International Covenant on Civil and Political Rights	19/12/1966	592	06/07/1992
International Covenant on Economic, Social and Cultural Rights	19/12/1966	591	06/07/1992
Convention on the Elimination of All Forms of Discrimination Against Women	18/12/1979	4377[2]	13/09/2002
Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	10/12/1984	40	15/02/1991
Convention on the Rights of the Child	20/11/1989	99710	21/11/1990
Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women	06/10/1999	4316	30/07/2002
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	25/05/2000	5007	08/03/2004

1 Source : Ministério das Relações Exteriores do Brasil (Ministry of Foreign Affairs of Brazil), at : http://www2.mre.gov.br/dai/dhumanos.htm , visited on September 6, 2005.

2 Decree No. 4.377, of 13/09/2002 revoked Decree No. 86.460, of 20/03/1984.

Due, received, examined and overdue reports by Committee[3]

CERD	Due Report	Received	Examined	Overdue Report
Initial report	04/01/70	16/02/70	31-08-70 12-04-71 12-04-72	-
Second report	04/01/72	31/01/72	16-04-73	-
Third report	04/01/74	15/03/74	09-03-74	-
Fourth Report and Fifth reports	04/01/76	10/03/78	31-07-78	-
Sixth report	04/01/80	17/07/79	31-03-80	-
Seventh report	04/01/82	11/08/82	16-03-83 17-03-83	-
Eighth and ninth reports	04/01/84	24/02/86	10-03-87	-
Tenth, Eleventh, Twelfth and Thirteenth reports	04/01/88	23/11/95	05-08-96 06-08-96	-
Fourteenth, Fifteenth, Sixteenth, Seventeenth reports	04/01/96	27/06/2003	25-02-2004 26-02-2004	-

HRC	Due Report	Received	Examined	Overdue Report
Initial report	23/04/93	17/11/94	10-07-96 11-07-96	-
Second report	23/04/98	15/11/2004		-
Third report	23/04/2003			1

CERC	Due Report	Received	Examined	Overdue Report
Initial report	30/06/94	21/08/2001	08-05-2003	

3 Source : UN Treaty Body database, available at : http://www.unhchr.ch/tbs/doc.nsf/NewhvVAllSPRByCountry?OpenView&Start=1&Count=250&Expand=24#24, visited on October 5, 2005.

CEDAW	Due Report	Received	Examined	Overdue Report
Initial report	02/03/85	07/11/2002	01-07-2003	-
Second report	02/03/89	07/11/2002	01-07-2003	-
Third report	02/03/93	07/11/2002	01-07-2003	-
Fourth report	02/03/97	07/11/2002	01-07-2003	-
Fifth Report	02/03/2001	07/11/2002	01-07-2003	-
Sixth Report	02/03/2005			1

CAT	Due Report	Received	Examined	Overdue Report
Initial report	27/10/90	26/05/2000	08-05-2001 09-05-2001 16-05-2001	-
Second report	27/10/94			1
Third report	27/10/98			1
Fourth report	27/10/2002			1

CRC	Due Report	Received	Examined	Overdue Report
Initial report	23/10/92	27/10/2003	14-09-2004	-

Total number of overdue reports: 5

Concluding Observations	
HRC	CCPR/C/79/Add.66; A/51/40,paras.306-338
CERD	CERD/C/64/CO/2
CRC	CRC/C/15/Add.241
CAT	A/56/44,paras.115-120
CESCR	E/C.12/1/Add.87

The 1998 Rome Statute, which established the Permanent International Criminal Court (ICC), was signed by the Brazilian Government on 7 February 2000, ratified by the National Congress (Legislative Decree 112, of 6 June 2002) and promulgated by the President of the Republic (Decree 4,338 of 25 September 2002).

Brazil also recognised the jurisdictional competence of the Inter-American Court of Human Rights (Legislative Decree 89, of 3 December 1998).

The International Labour Organisation (ILO) Convention 169, in effect since 1991, was ratified by the National Congress in 2002, after eleven years under discussion. It was promulgated by Decree 5,051, of 1 April 2004, and became effective in Brazil after the publication of the decree in the Union's Official Diary ("Diário Oficial da União") on 20 April 2004. The effective incorporation of ILO Convention 169 in the Brazilian legal system, however, still requires the revision of the Statute of Indigenous Peoples, approved in 1973 on the basis of ILO Convention 107.

2. Institutional Background

2.1 Structure of the Criminal Justice System

The structure of the criminal justice system was recently reformed by the Constitutional Amendment 45, of 30 December 2004, which established both the National Council of Justice and the possibility of crimes against human rights being judged by the Federal Justice, as well as the autonomy of the Public Defender Office ("Defensoria Pública").

In 2003, Brazil had 13,660 judges, including 9,956 in the Common Justice System, 2,507 in the Labour Justice System, 1,121 in the Federal Justice System and 76 in the Supreme Federal Court, Superior Justice Court, Superior Labour Court and Superior Military Court (Brazil/Ministry of Justice 2004). With a population of 176,876,443 inhabitants, Brazil had 1 judge per 12,948 inhabitants and, in the Common Justice System, 1 judge per 17,765 inhabitants.

In the same year, the proportion of new cases to cases judged in the Common Justice System varied from 96% in the State of Paraíba to 25% in the State Amazonas. In the states of São Paulo, Rio de Janeiro, Rio Grande

do Sul and Minas Gerais, which registered the largest number of cases in the country, the proportion of new cases to be judged was 78%, 46%, 68% and 55% (Brazil/Ministry of Justice 2004).

2.2 Domestic Provisions Guaranteeing Core Human Rights

Constitutional Amendment 45, of 30 December 2004, established the possibility of crimes against human rights being judged in the Federal Justice System, which was a proposal of the National Programme for Human Rights. However, it restricted to the Republic's General Attorney the possibility of requesting the transference of the competence to judge crimes against human rights from the Common Justice System to the Federal Justice System.

The Public Prosecutor Offices and civil society organisations, such as the Brazilian Bar Association ("Ordem dos Advogados do Brasil" – OAB) and the Brazilian Press Association ("Associação Brasileira de Imprensa" – ABI), cannot directly request the transference of the competence to judge crimes against human rights from the Common Justice System to the Federal Justice System. In addition, according to Constitutional Amendment 45, the requests should be made to the Superior Justice Tribunal rather than the Supreme Federal Tribunal – a measure that delays the judgment of the case and increases the chances of impunity.

The Inter-American Foundation for the Defence of Human Rights petitioned the Republic's General Attorney requesting the transference from the Common Justice System to the Federal Justice System of the competence to judge police officers accused of involvement in two cases of serious human rights violations. First, the summary execution of 12 members of a criminal organisation travelling by bus on the highway "Senador Antônio Ermírio de Moraes", known as "Castelinho", on 5 March 2002. Second, the summary execution of seven homeless individuals in the downtown area in the City of São Paulo, on 19-21 August 2004 and 2 September 2004. In both cases, the Republic's General Attorney denied the request.

Brazil has a national institution for the protection and promotion of human rights, the National Council for the Defence of the Rights of the Human Person ("Conselho Nacional de Defesa dos Direitos da Pessoa Humana", CDDPH), established in 1964. This institution, however, is not structured

in accordance with the Paris Principles. In 1994, the Federal Government presented to the National Congress a proposal to transform the structure of the CDDPH (Law Project 4,715/1994), renaming it National Council for Human Rights ("Conselho Nacional de Direitos Humanos"). The proposal strengthens the CDDPH, but does not restructure it in accordance with the Paris Principles. In particular, if created as proposed, the CNDH would not be independent from the Government, as a result of its limited legal and operational autonomy, limited resources and limited participation of civil society organisations and representatives in its composition. The proposal has been considered by four parliamentary commissions, but has not yet been voted by the National Congress.

During the IX National Conference of Human Rights, 29 June – 2 July 2004, the Federal Government, with the support of the National Movement of Human Rights, presented a proposal for the creation of the National System of Human Rights which transforms the CDDPH and the National Conference of Human Rights into deliberative forums which are controlled by the government and in which civil society organisations have a subordinated position, in contradiction with the Paris Principles (Carbonari 2004). The proposal was strongly criticised by human rights organisations and groups before the IX National Conference (Bicudo, Mesquita Neto e Almeida 2004) and the debate nearly disrupted the IX National Conference of Human Rights (Instituto de Estudos Socioeconômico, 2005).

2.3 Domestic Provisions Restricting Core Human Rights

Constitutional Amendment 45 also established that international treaties and conventions will have the same status of constitutional norms only when approved by 3/5 of the votes, in two rounds, in the Chamber of Deputies and in the Senate. This provision restricts the scope of article 5, item 78, paragraph 2 of the 1988 Federal Constitution, which establishes that the rights and guarantees provided by the Constitution do not exclude others provided by international treaties in which Brazil is a party, and makes it extremely difficult to provide international treaties and conventions with the same status of constitutional norms.

In the Chamber of Deputies, Law Project 4,667, of 15 December 2004, sought to resolve the problem, establishing that "The decisions of International Human Rights Organisations whose competence has been

recognised by the Brazilian State produce immediate juridical effects in the Brazilian juridical order". Law Project 4,667/2004 has been approved by the Commission on Human Rights and Minorities, but has not been approved by any other commission in the Chamber of Deputies. The approval of Constitutional Amendment 45 killed the chances of approval of Law Project 4,667.

Brazil adopted Complementary Law 117, of 2 September 2004, modifying Complementary Law 97/1999, which regulates the organisation, preparation and employment of the armed forces, and establishing that "the preparation and employment of the armed forces in the guarantee of law and order are considered military activity" (Complementary Law 117, article 15, paragraph 7). This complementary law in practice restricts the scope of the Common Justice System to examine crimes against human rights practiced by the military, and serves as an incentive for the employment of the armed forces in the area of public security. It is in contradiction with the objective of the Law 9,299/96, which transferred from the Military Court System to the Common Court System the competence to judge intentional crimes against life practiced by military police officers in the exercise of preventive and ostensive policing.

PART II

IMPLEMENTATION OF THE ICCPR

1. Right to Self Determination (article 1)

The 1988 Federal Constitution recognised the "social organisation, costumes, languages, beliefs, traditions" of indigenous peoples "and the rights to the lands that they traditionally occupy, having the Union to demarcate them, protect and guarantee the respect of all their possessions" (1988 FC, article 231).

According to the "Instituto Socioambiental", a non-governmental organisation that monitors government policies on indigenous peoples, 144 indigenous lands are still "in the process of identification", 39 are "identified", 35 have their limits "declared" by the Minister of Justice, 14 are "reserved", 70 are "approved" and 326 are "registered" as indigenous lands. Many conflicts have delayed the process of demarcation of indigenous lands, including con-

Indigenous Lands: Legal Situation*

Situation	No Ils	Extension (hectars)
To be identified	45	
Being identified	97	153,713
Restricted use	2	926,000
Total	**144 (22,93%)**	**1,079,713 (1.01%)**
Indentified/Approved	39 (6.21%)	6,561,323 (6.16%)
Declared	35 (5.57%)	6,492,344 (6.16%)
Reserved	14	103,713
Homologated	70	9,170,876
Registered	326	83,358,819
Total	**410 (65.29%)**	**92,633,408 (86.76%)**
Total	**628 (100%)**	**106,766,788 (100%)**

Source: Socioambiental Institute (www.socioambiental.org)
* Date: September 6, 2005

flicts with the military, groups exploring minerals and timber, as well as conflicts between the limits of indigenous lands, lands protected for environmental reasons, and lands explored by farmers and agrobusinesses.

The following table shows the process of demarcation of indigenous lands by the Government from April 1985 to September 2005, indicating that the process of demarcation lost momentum during the transition between the government of Fernando Henrique Cardoso to the government of Luis Inácio Lula da Silva.

Indigenous Lands: Declaration and Homologation by Government*				
	ILs Declared		**Ils Homologated**	
President/Period	**No**	**Extension (hectars)**	**No**	**Extension (hectars)**
Saney (Mar 85-Mar 90)	39	9,786,170	67	14,370,486
Collor (Mar 90-Sept 92)	58	25,794,263	112	26,405,219
Itamar (Oct 92-Dec 94)	39	7,241,711	16	5,432,437
Cardoso (Jan 95-Dec 02	118	33,900,910	145	41,043,606
Lula (Jan 03-Apr 05)	15	4,625,027	54	9,166,064

Source: Socioambiental Institute (www.socioambiental.org)

* Date: September 6, 2005

During the National Conference for Land and Water, on 22-25 November 2004, indigenous leaders from 35 ethnic groups issued a manifest denouncing the omission, lack of dialogue and retreat in the defence of the land and the rights of indigenous people during the government of Luis Inácio Lula da Silva. The manifest points out the invasion and attacks perpetrated by farmers and members of private militias in the indigenous area of Raposa do Sol (State of Roraima, in 2004) and the impunity of miners that invaded the indigenous area of the Cintas-Largas (State of Rondônia, in 2000). It also points to the revision and reduction of the limits of demarcated indigenous

areas and the advance of environmental destruction caused by the expansion of agro-business in the Centre-West region of the country (National Conference for Land and Water, 2004).

In April 2004, 29 people died during an attack by indigenous groups in an area of illegal mining within the indigenous area Roosevelt, of the Cintas-Largas (State of Rondônia). The conflict between Cintas-Largas and miners intensified after the invasion of the Cintas-Largas' indigenous area in the year 2000, the killing of Cintas-Largas leaders Carlito in December 2001 and César in April 2002, and a new attempt by miners to invade the area in October 2003.

In February-April 2005, 17 Guarani-Kaiowá children died as a result of malnutrition in the indigenous area of Dourados (state of Mato Grosso do Sul). The Chamber of Deputies established a commission to investigate the death of indigenous children as a result of malnutrition in the states of Mato Grosso and Mato Grosso do Sul. The commission reported that the problem of malnutrition in indigenous areas in these states is due not only to the lack of food and poverty but also and mainly to the lack of land and the violence to which the indigenous groups are submitted.

2. Constitutional and Legal Framework in which the Covenant is Implemented, Right to an Effective Remedy and Measures to Combat Impunity (article 2)

2.1 National Policies Adopted to Implement the Provisions of the ICCPR

Brazil adopted the National Human Rights Programmes I and II, through decrees 1,904, of 13 May 1996, and 4,229, of 13 May 2002, respectively. The two programmes reflected the demands and expectations of civil society and made the protection and promotion of human rights an objective of public policies in Brazil. In particular, the National Human Rights Programme II incorporated more fully the protection and promotion of economic, social and cultural rights as objectives of human rights policies in Brazil.

In May 1997, the Federal Government created the National Secretary for Human Rights, within the Ministry of Justice, with the responsibility of coordinating the implementation of the National Human Rights Programme.

In 1999, the National Secretary, renamed State Secretary for Human Rights, was transferred to the Presidency of the Republic and gained the status of Special Secretary.

In May 2002, the Federal Government created the State Secretary for Women's Rights and the policies for the protection and promotion of women's rights were removed from the sphere of the State Secretary for Human Rights.

In 2003, the State Secretaries for Human Rights and for Women's Rights were renamed, becoming Special Secretary for Human Rights and Special Secretary for Women's Policies, remaining under the Presidency of the Republic (Law 10,683, of 28 May 2003). The Federal Government also created the Special Secretary for Policies Promoting Racial Equality, and the policies for the protection and promotion of racial equality were also removed from the sphere of the Special Secretary for Human Rights (Provisory Measure 111, of 21 March 2003; and Law 10,678, of 23 May 2003).

However, in 2005, the Federal Government lowered the status of the Special Secretary for Human Rights, removing its status of special secretary and transforming it into the Subsecretary for Human Rights, under the General-Secretary of the Presidency of the Republic (Provisory Measure 259, of 21July 2005).

In addition, the Federal Government reduced the budget of the Special Secretary for Human Rights in 2003 (R$ 37,9 million), comparatively to 2002 (R$ 66,3 million), and matched the budget of 2002 in 2004 (R$ 66,8 million). In this period, the Special Secretary for Human Rights invested a total of R$ 116,1 million in 586 contracts with state and municipal governments and civil society organisations for programmes and actions aimed at protecting and promoting human rights. The number and value of these contracts were reduced from 284 contracts and R$ 51,2 million in 2002, to 137 contracts and R$ 27,7 million in 2003, and 148 contracts and R$ 37,1 million in 2004 (Loche and Mesquita Neto 2005).

According to a recent study by the “Instituto de Estudos Socioeconômicos” – INESC, the Federal Government suppressed, in the Pluriannual Plan 2004-2007, 30 of the 887 programmes for protecting human rights included in the Pluriannual Plan 2000-2003, in particular programmes related to the protection of economic, social and cultural rights (Instituto de Estudos Socioeconômicos, 2005). In 2005, until August, 19 programmes had executed less than 10% of their estimated budget and only 4 programmes had executed more than 50% of their estimated budget. In August, the Subsecretary for Human Rights had executed only 12,9% of its R$ 77,6 million budget for 2005. The Special Secretary for Women’s Policies had executed 21,04% of its 24,5 million budget and the Secretary for the promotion of Racial Equality had executed only 27,99% of its 12,5 million budget.

WOMEN CONCERN:

There is increasing awareness amid Brazilian society about all kinds of gender-based violent behaviours. This change is due to the great efforts that have been made by civil society in partnership with governmental bodies during the past three decades. Despite this, the figures of violence against women show a sad picture reflected in all strata of social and economic development and demand a greater commitment of the State of Brazil to overcome this situation. This report will address two main issues that need to be examined in order to a general view of the whole picture: the current attempt to pass a *specific law to deal with violence against women* and to *review the punitive legislation against abortion.* These two important battles of the Brazilian women’s movement are paramount to the ability of women to be free from the structural obstacles to exercising their rights: the tutorial proceedings established to avoid the recognition of their condition as subject of rights, which are intrinsically related to their bodies.

One of the challenges, however, in tackling the specific violations of women’s human rights is the fact that official domestic information available on the situation of violence against women and girls is insufficient, as the government itself has acknowledged[4]. The lack of national official data regarding the incidence of violence against women makes the accurate evaluation of Brazilian reality impossible, as there is no

4 CEDAW/C/BRA/1-5 of 2002, p. 49.

existing adequate monitoring and evaluation mechanisms that can provide for a national understanding of this phenomenon. Furthermore, the absence of such mechanisms hinders both the proposal and fulfilment of national policies aimed at guaranteeing women's rights. In addition to this lack of information, there is a gap in analytical figures divided by sex that impedes an accurate overview of violence against women.

Despite a party to the "Belém do Pará Convention" since 1995, Brazil has not yet a specific legislation regarding prevention, punishment and eradication of violence against women.

The bill presented by the government to the National Congress for approval pursuant to the state's international commitments to enact a *specific law to deal with violence against women* aims at: defining the problem, establishing ways to avoid the impunity of perpetrators and to protect the victims, as well as establishing State responsibility to prevent violence and change culture that perpetuates it among society through public policies.

The second main issue related to the State of Brazil's international commitments is the need to *review the punitive legislation against abortion*. In spite of the criminalization of abortion since 1940, recent research and studies point out that abortion is a general practice among women of all social classes. The fact that an estimated amount of one million abortions occur each year in Brazil shows, on the one hand, the lack of effectiveness of the penal law to protect the life of the foetus and, on the other hand, the grave offence to the rights of women to health, to freedom of choice and to reproductive autonomy. The reality is also perverse when one realises that the criminalization of abortion is a problem of social justice, since the poor and mainly black women are much more affected by the unsafe conditions of unlawful abortions, experiencing grave consequences concerning their reproductive health and even life.

Pressed by its commitments stemming from the Cairo and Beijing Conferences and ratified international conventions, and by the demands of the women's movement at the First National Public Conference on Women held by the Federal Government itself in the year 2004, the latter created a special commission composed by three entities: the National Congress, civil society and executive branch bodies. The target was the drafting of a bill presented to the Commission of Social Security and Family at the House of Federal Deputies in September 2005. The bill aims at the decriminalization and legalization of abortion.

2.2 Access to Justice

To ensure the right of access to justice for all, the 1988 Federal Constitution created the institution of the Public Defender Office ("Defensoria Pública"), which has been installed in the Federal District and in 23 Federal States – the exceptions are São Paulo, Santa Catarina and Goiás (Brazil/Ministry of Justice 2004). In the State of São Paulo, the Complementary Law Project for the creation of the Public Defender Office is currently under discussion in the Legislative Assembly (Complementary Law Project 18/2005).

There are significant differences regarding the structure and functioning of the Public Defender Office in the Federal District and the Federal States. However, in all cases, the Public Defender Office does not have autonomy in relation to the Executive Branch, which limits the scope of their actions and capacity to perform its constitutional role (Brazil/Ministry of Justice 2004).

In addition, in the majority of the Federal States, there are judicial districts which are not covered by the services of the Public Defender Office. In the State of Maranhão, only 4.1% of the judicial districts are covered by the Public Defender Office. The average coverage of the Public Defender Office in the Federal States and the Federal District is 53% of the judicial districts. The coverage tends to be lower than the average in the poorest states, where the services of the Public Defender Offices are more necessary (Brazil/Ministry of Justice 2004).

To expand the right of access to justice, governmental and non-governmental organisations have supported the creation of legal counselling and conflict mediation programmes and services in low-income communities where the population has limited access to legal services, such as Legal Desks ("Balcões de Direito"). In 2004, there were 67 programmes in the country aimed at providing legal counselling and conflict mediation services to the population, including 33 managed by governmental institutions, 32 managed by non-governmental institutions and 2 managed by universities (Brazil/Ministry of Justice 2005).[5] Twenty-seven programmes (40.29%) are located in the Southeast Region, the majority of them in the states of Rio de Janeiro (11 programmes) and São Paulo (ten programmes). Among the 33 programmes managed by governmental organisations, 20 are managed by the Judiciary, ten by the Executive, two by the Public Defenders

5 This figure does not include services provided by the Special Criminal and Civil Courts (Law 9,099/95) as well as private sector organisations.

Office and one by the Public Prosecutors Office. Among these programmes managed by governmental organisations, 27 were developed in partnership with non-governmental organisations (Brazil/Ministry of Justice 2005).

The creation of legal counselling and conflict mediation services is still incipient in Brazil, and the institutionalisation of these services, regarding their continuity, financial and human resources is far from assured. Forty-seven programmes have less than five years (72.2%), 11 programmes have from five to ten years (16.4%) and only eight programmes have more than 10 years (11.9%). They are concentrated in the largest cities and provide services to a limited number of people. One-third of the programmes (32.8%) sponsor less than 500 cases per year. One-fourth of the programmes (25.3%) sponsor from 500 to 1,500 cases by year and 25.4% of the programmes do not have information on the number of cases sponsored by year (Brazil/Ministry of Justice 2005).

WOMEN CONCERN:

Since 1985, Special Police Stations for Assistance to Women have been established to process cases regarding rape, other sexual offences, domestic violence and abuse. In 2003, 340 Police Stations for the Defence of Women existed, the so-called "Delegacias da Mulher". In 2003, 289 Delegacias da Mulher recorded 425,935 occurrences of offences.[6] The number of reported cases of violence against women has increased while the number of investigated and punished offences is small. Moreover, these women police stations are only present in 10% of Brazilian municipalities: 40% are located in the state of São Paulo, 61% are situated in the Southeast and 16% in the South, while the North, the Northeast and the Central-West 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 female victims of domestic violence.[7] The

6 Ana Flávia Pires Lucas d'Oliveira and Lilia Blima Schraiber: Violence against women in Brazil: overview, gaps and challenges. Expert paper prepared for the UN Division for the Advancement of Women, Expert Group Meeting "Violence against Women: a statistical overview, challenges and gaps in data collection and methodology and approaches for overcoming them", 11-14 April 2005, Geneva.

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. In addition, the special police stations have de facto lower 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. It is all the more worrying that most health centres in the country are not yet prepared to assist women victims of violence, especially in cases of sexual violence – for instance, the number of public hospitals which provide services for interruption of pregnancy due to rape is very small, although this service is set out by law (see infra item 5 on torture).

Besides these special police stations, the government also operates a toll-free hotline to address complaints of violence against women. Moreover, Law 10.778/2003 requires health services to contact the police if they deal with a case in which a woman was harmed physically, sexually, or psychologically[8]. Nevertheless, the majority of health centres is not yet prepared to provide assistance to victims of violence, especially rape, and not well trained in gender-sensitivity. This includes pregnancy interruption services, which are only provided by a small number of public hospitals even though this service is set out by law.[9]

7 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). 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.

8 US Department of State: Brazil. Country Reports on Human Rights Practices 2004. Available at: http://www.state.gov/g/drl/rls/hrrpt/2004/41751.htm (consulted 25/05/2005).

9 CEDAW/C/BRA/1-5 of 2002, p.50. See provisions of Administrative Act of the Ministry of Health issued in 1999 on “Prevention and Treatment of the damages resulted from sexual violence against women and teenagers”.

3. Gender Equality and Prohibition of Discrimination (articles 2, 3 and 26)

WOMEN CONCERN:

Article 5 of the Brazilian Constitution 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. The new civil code of 2003, which has been in force since 11 January 2003, embodies the constitutional principle of equality between men and women (Article 1511). One should note the revocation of the ancient provision, which allowed the husband to file annulment if he was not aware that his wife was not a virgin before marriage (Article 219 IV).

Practice

The government admitted that in cases of sexual violence against adult women the defence of the offender as well as the prosecutor might reverse the situation so that the victim has to prove that the rape took place without her consent and that she is not guilty.[10] Moral judgment of the victim's behaviour intervenes 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 Centre 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. It can be pointed out that this attitude towards victims of sexual violence by members of the police and the judiciary have led 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.

10 CEDAW/C/BRA/1-5 of 2002, p. 51.

4. Right to Life (article 6)

Summary Executions and Death Squads

There is no official data on summary executions, but the Centre for the Study of Violence at the University of São Paulo has collected information on summary executions published in the main national newspapers since 1980. According to data collected by the Centre for the Study of Violence, the press published information on 7,088 cases of summary executions in the States of São Paulo, 1,828 summary executions in the state of Rio de Janeiro and 256 summary executions in other Federal States from 1980 to 2003.[11]

Among the cases of summary executions reported by the press in which there was at least some information about or identification of the aggressors, São Paulo had 32 aggressors that were suspected of participating in death squads (out of a total of 1,006 aggressors), Rio de Janeiro 133 (out of a total of 646 aggressors), and the other Federal States 42 (out of a total of 157 aggressors).

On 31 March 2005, a death squad killed 29 people in the cities of Nova Iguaçu and Queimados, in the State of Rio de Janeiro. The Federal Police initiated a criminal investigation, together with the military and the civilian police. There was an indication that the killings in Nova Iguaçu and Queimados were a response to the punishment of eight military police officers of the 15th Military Police Battalion accused of killing two persons in the City of Duque de Caxias.

Police officers are often involved in cases of summary executions and death squads, frequently linked to land conflicts and organised crime. A Parliamentary Commission of Inquiry investigated and registered the presence of private militias and death squads in all states of the Northeast. The final report concluded that organised crime, including drug trafficking, cargo robbery, private militias and death squads, does not prosper without the involvement of public officials, including police officers, penitentiary officials, public prosecutors, judges, members of parliament and government

11 It is important to observe that the newspapers that are the source of the information are published in the States of São Paulo and Rio de Janeiro.

officials (Brazil, Chamber of Deputies, Parliamentary Commission of Inquiry to Investigate Summary Executions in the Northeast 2004).

A Special Commission to Investigate the Action of Death Squads in the State of Ceará, established by the CDDPH in May-June 2005, concluded that there was a death squad formed by military police officers, illegally employed in irregular private security services, providing security services to a certain chain of drugstores. The Commission also concluded that the intervention of the Federal Police and the Federal Prosecutor Office was crucial for demonstrating the existence of death squads in the state of Ceará, given that the civilian police did not investigate the cases of summary execution. The Federal Public Prosecutor Office presented three cases to the Judiciary, involving more than thirty homicides, with similar characteristics, out of eight cases under investigation (Brazil, CDDPH 2005).

CDDPH created another Special Commission to Investigate the Action of Death Squads in the Cities of Ribeirão Preto and Guarulhos, both in the State of São Paulo, in April-September 2003. The commission concluded civilian and military police officers illegally provided security services to local commercial business and could be responsible for homicides of people suspected of committing crimes against commercial business and businessmen. The commission also concluded that civilian and military police officers abused their authority and were responsible for excessive use of force and homicides, particularly against adolescents and young adults, involved or not in the practice of crimes or infractions (Brazil, CDDPH 2003).

Another Parliamentary Commission of Inquiry, which functioned in November-December 2002, investigating and registering cases of torture or ill-treatment practised by police officers. However, being installed at the end of the Legislature (1999-2002), the commission only had time to initiate investigations in the states of Rio de Janeiro and Espírito Santo, and recommended to the Chamber of Deputies the creation of a new Parliamentary Commission in the next Legislature (2003-2006) – a recommendation which has not yet been implemented (Brazil, Chamber of Deputies, Parliamentary Commission of Inquiry to Investigate Cases of Torture and Practiced by Public Agents 2002).

Deaths in Land Conflicts

According to information from the Agrarian Ombudsman, since 1995, the number of deaths of rural workers as a result of land conflicts has oscillated up and down, as shown in the following table. The highest number happened in 1996 (54) and the lowest in the year 2000 (10). In the following years, the number of deaths increased until 2003 (42) and decreased again in 2004 (16).

Deaths in land conflicts	
1995	41
1996	54
1997	30
1998	47
1999	27
2000	10
2001	14
2002	20
2003	42
2004	16

Source: Agrarian Ombudsman 2005

The Agrarian Ombudsman classifies deaths of rural workers in areas subject to land conflicts in three categories: 1) deaths which are proved to result from land conflicts; 2) deaths which are proved not to result from land conflicts; and 3) deaths which are under investigation. From January to July 2005, for example, the Agrarian Ombudsman registered six deaths resulting from land conflicts, 17 not resulting from land conflicts and 27 deaths under investigation, for a total of 50 deaths (Brazil, Ministry of Agrarian Development, Agrarian Ombudsman 2005).

There has been also an oscillation in the number of land occupations, as shown in the table below. Even though both the number of deaths in land conflicts and the number land occupations increased in 2003, it is not possible to establish a direct relation between the number of land occupations and the number of deaths resulting from land conflicts.

Land occupations	
1995	145
1996	397
1997	455
1998	446
1999	502
2000	236
2001	158
2002	103
2003	222
2004	327

Source: Agrarian Ombudsman 2005

The Land Pastoral Commission (Comissão Pastoral da Terra – CPT) reports that, in 2003, the number of land conflicts reached 1,100, involving 1,139,086 people, a record high since 1985 (Land Pastoral Commission 2004). In the same year, the number of land occupations and rural workers' camps reached 676, 172,5% more than in 2002. And the number of homicides of rural workers reached 73 (against 42 registered as resulting from land conflicts by INCRA), 69.8% higher than in 2002, and the highest number since 1990.

The intensification of land conflicts and the increase in the number of rural workers camps may have contributed to the increase in violence and homicides of rural workers in 2003. In addition, however, there was an increase in the number of families evicted from occupied land due to judicial decisions (354%), the number of prisons (74%) and the number of families forced to leave occupied land by private militias (130%). Finally, in the same year, there was a small decrease in the Institute of Colonization and Agrarian Reform's (Instituto de Colonização e Reforma Agrária – INCRA) executed budget (0.35%), in relation to 2002, followed by a significant increase in 2004 (74.05%)[12].

Despite the persistence of homicides of rural workers in regions of land conflicts, the perpetrators go generally unpunished. From 1985 to 2003, CPT registered 1,003 homicides in areas of rural conflicts. Only 75 cases were judged, in which 65 individuals accused of homicides were convicted and 44 were not convicted. In relation to individual's accused of contracting the homicides, 15 were convicted and six were acquitted.

WOMEN CONCERN:

Honour Crimes

Crimes committed in the name of honour are not specifically addressed by the 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 sentenced to terms of imprisonment for killing their wives are likely to obtain this

12 INCRA, Executed Budget, 2000-2004
2000: R$ 1.158.628.564,98
2001: R$ 1.151.580.355,38
2002: R$ 1.250.273.632,70
2003: R$ 1.245.836.100,24
2004: R$ 2.168.465.863,41
Source: Brazil, Agrarian Development Ministry, INCRA (2005)

reduction and serve very little time because it is usually their first offence. Men convicted for killing their spouses serve an average of four years in prison.

In wife-murder cases, the prosecution usually claims that the murder was an intentional homicide, whereas the defence characterizes 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.[13] However, it should be noticed that Brazilian law does not equate a threat to a man's honour with the danger of a physical attack. Nevertheless, the 1940 Penal Code 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.[14] "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.[15]

Despite the 1991 Supreme Federal Court ruling against an allegation of legitimate defence of honour in the murder case of João Lopes[16], it 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 precedent weight; in general, lower courts tend to follow the decisions of the Supreme Court but it has not been the case in honour defence rulings. Indeed, homicides are tried by a jury rather than a judge, and in most cases social prejudices and stereotypical attitudes towards women prevail. As a result courts are still reluctant to prosecute

13 Human Rights Watch, Criminal Injustice, Violence against Women in Brazil, p. 19.

14 Article 121 item 1, relating to murder and Article 129 item 4, relating to violent physical assault, of the 1940 Brazilian Penal Code.

15 Silvia Pimentel and Valéria Pandjiarjian, "Defesa da honra: tese superada?", Folha de S. Paulo, (consulted 12/09/2000), available at http://www.observatoriodaimprensa.com.br/artigos/iq200920003.htm, (consulted 21/04/2003).

16 João Lopes murdered his wife and her lover in Apucarana, Paraná State. At a first trial, 6 of the 7 jury members found him innocent upon the allegation of honour defence; following an appeal filed by the prosecutor, the first trial was annulled and a new jury was ordered by the Supreme Court in March 1991. However, at the second trial by the jury João Lopes was again found innocent on the grounds of "legitimate defence of honour" (http://copodeleite.rits.org.br/apc-aa-patriciagalvao/home/noticias.shtml?x=32).

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 proportional to the attack.

According to other relevant data provided by research carried out in the state of Rio Grande do Norte,[17] 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, they receive permission to await trial in liberty or obtain 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 women as a justification for their death.

CHILD CONCERN:

Different issues currently worry the civil society regarding the violation of children's right to life and passivity of the authorities to address problems.

(1) In October-November 2003, in Sao Paulo, a 16 year-old boy was accused of having raped and stabbed one girl aged 16 years old and of shooting her 19 year-old boyfriend. Following this double murder, protests rose from the Brazilian population who were asking for harsher punishments and even the death penalty for juvenile offenders.[18] Indeed, a big part of the population is not aware that the life of a large number of Brazilian children is marked by the total absence of rights, violence and discrimination. This leads to the false idea that measures to fight violence should necessarily include the exemplar punishment of teenagers who have infringed the law, and to the perception that these

17 Teixeira, Analba and Grossi, Miriam, Honour Crimes: the murder of women in the state of Rio Grande do Norte.

18 For a more complete description of the case : http://www.brazzil.com/content/view/1165/27

teenagers are dangerous and have not been properly punished. These ideas prevent people from seeing the real motives that have been driving girls and boys to criminality, namely, the insufficiency and inefficiency of social policies.

(2) There is a high rate of homicide, including many children, in Brazil. A high proportion of these are killed by police officers. However, only a few authors are prosecuted, judged and then condemned. Many of the cases reveal that people are killed for meaningless reasons. Drug trafficking has also been contributing to an increase in the rates of homicides of youngsters, especially in Rio de Janeiro, where this crime is organised.

Violence against children and teenagers, including killings, in Brazil reached the level of a public calamity, an endemic illness which is due to underdevelopment and that remains as such because of the lack of political will to tackle the problem. Moreover, there is no public commotion in face of the tragedy of every day killing of boys and girls, victims of extermination groups, lost bullets, during police searches or in view of the inaction of the government with the children.

UNESCO recently issued a document called “Map of the Violence 3”, based on data provided to it by the Brazilian Institute of Statistics and Geography (IBGE) and SIM/DATASUS. The research shows that in 2000 an increase in 77% in the number of teenagers killed compared with data of the 90’s, while there was an increase in this population by 50,2%. In some capitals such as São Paulo, Rio de Janeiro and Vitória, homicide corresponds to 50% of the total death rate of youngsters.

The city of Salvador reflects this reality. In the last 15 years, in spite of the strengthening of the systems of guarantees provided for by the Child and Adolescent Statute with the creation of special courts to judge crimes against children and teenagers, the numbers of murders committed against these populations have been escalating in the metropolitan region. Research conducted by CEDECA-BA during the last few years illustrates the problem of impunity. According to the research, from 1997 to 2003, 946 homicides of children and teenagers have been reported in the metropolitan region of Salvador, according to the “Instituto Médico Legal Nina Rodrigues”. However, the office of the Public Prosecutor in Bahia has filed only 108 indictments. Of the total of the indictments, 81 lawsuits were pronounced in the 1st and 2nd

Special Criminal Courts and sent to the Jury Tribunal. Of this total, 23 were judged[19], resulting in 22 convictions and one acquittal.

This impunity is notably due to the lack of resources in police stations and the lack of interest in judging crimes whose victims are poor and black. This is evident in the case of murdered teenagers.

According to CEDECA-BA most of the perpetrators are part of extermination groups, formed by urban "justice makers" and by groups of military policemen who act as civilians. Thus, the involvement of military policemen in these crimes becomes an element aggravating the situation of impunity because of the fear of relatives to keep on with investigations due to threats and intimidation.

Research conducted by CEDECA-BA in the late 90's enabled the profiling of the victims[20]: most of the victims were between 12 and 17 years old, 93% of them were black, 95% lived in the outskirts of the city, 98% had a low level of education. Moreover, 99% of the boys murdered lived with their families and did not have any previous criminal records; showing that, contrary to what the major population is thinking, these teenagers are generally not involved with criminality and do not live in the streets.

(3) Another problematic trend is the cases of young girls who are killed by their boyfriend for senseless purposes such as jealousy.

5. Torture and Prohibition of Cruel, Inhuman or Degrading Treatment or Punishment (article 7)

Brazil received the visit of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Sir Nigel Rodley, from 20 August to 12 September 2000 (UN document E/CN.4/2001/66/Add.2, 30 March 2001). The purpose of the visit was to enable the

19 Of the 23 juries, 14 cases have been followed by CEDECA-BA.

20 The research was conducted in 1998 in the metropolitan region of Salvador and in 13 municipalities of the state of Bahia.

Special Rapporteur to collect first-hand information from a wide range of contacts in order to better assess the situation of torture or ill-treatment in Brazil. During his mission the Special Rapporteur visited the Federal District/Brasilia, and the states of São Paulo, Rio de Janeiro, Minas Gerais, Pernambuco and Pará.

Following the recommendations made by Sir Nigel Rodley in his report, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, visited Brazil from 16 September to 8 October 2003 (UN document E/CN.4/2004/7/Add.3, 28 January 2004). The visit was aimed at allowing the Special Rapporteur to investigate *in situ* allegations he had received over the last few years relating to violations of the right to life, including extrajudicial executions by the police and deaths of individuals under state custody. During his mission, the Special Rapporteur visited the Federal District/Brasília and the states of Bahia, Pernambuco, Pará, São Paulo, Espírito Santo and Rio de Janeiro.

Following the visit of the Special Rapporteur on torture, the Federal Government organised a National Seminar Against Torture, in which representatives of the Judiciary, Legislative, Executive and Civil Society Organisations signed a National Pact against Torture. Following the seminar and the pact, the Federal Government and the National Movement for Human Rights developed a Permanent National Campaign against Torture, announced in July 2001 and initiated in October 2001, with the establishment of a hotline to receive complaints about torture (SOS Torture).

Police Violence

Both Special Rapporteurs' reports, as well as the First and the Second National Report on Human Rights in Brazil (Pinheiro and Mesquita Neto 1999; Mesquita Neto and Affonso 2002), point to the persistent excessive use of force, unlawful killings and torture or ill-treatment employed by civilian and military police officers.

Only two states, São Paulo and Rio de Janeiro, regularly publish (in a monthly basis) the number of civilians killed by police officers and police officers killed. In these two states, the Legislative Assembly approved laws making mandatory the production and publication of statistical data on crimes and deaths in police action, and the State Secretary for Public

Security developed mechanisms to improve data collection and analysis on crimes and police actions. In most states, however, the Legislative Assembly has not adopted similar laws and/or the State Secretary for Public Security has not developed the capability to collect and produce such data. There has been an effort by the Ministry of Justice, through the National Secretary for Public Security, to improve data collection and analysis in the Federal States, but such efforts have so far produced limited results.

There are significant differences in the data produced and publicised in the two states regarding deaths in police actions, due to the lack of national norms or standards regarding statistical data on crimes and police actions. While the state of São Paulo publishes the total number of deaths, including deaths resulting from actions by police officers on duty and off duty, the State of Rio de Janeiro publishes only the number of deaths resulting from actions by police officers on duty which are registered as deaths following resistance to prison ("auto de resistência").

In the State of São Paulo, the number of civilians killed by police officers increased from 647 in 1999 to 975 in 2003, and decreased to 739 in 2004. The number of police officers killed decreased from 371 in 1999 to 125 in 2004. The ratio of civilians to police officers killed increased from 1.74/1 in 1999 to 7.74/1 in 2003 and decreased to 5.91/1 in 2004. However, the majority of civilians are killed by police officers on duty, in cases registered as deaths following resistance to arrest ("resistance followed by death"), whereas the majority of police officers killed are military police officers off-duty, in many cases working in private security – a practice which is illegal but widely tolerated in São Paulo and in other states in Brazil. Counting only the deaths of civilians killed by police officers on duty and the deaths of police officers on duty, the proportion of civilians to police officers killed was 21.74/1 in 2004.

In the State of Rio de Janeiro, the number of civilians killed by police officers reached 1,199 in 2003 and 1,058 in 2004, while the number of police officers killed reached 46 in 2003 and 51 in 2004. The ratio of civilians killed by police officers on duty, whose deaths are registered as resulting from "resistance to prison", to police officers killed on duty was 26.07/1 in 2003 and 20.75 /1 in 2004. In the states of Pará, Bahia and Rio Grande do Sul (January-October), there were 54, 112 and 24 civilians killed by police officers, respectively, in the year 2001 (Mesquita Neto and Affonso 2002).

The high level of deaths resulting from police actions is due to a number of factors, including the persistence of an authoritarian police culture and practice, insufficient and/or inadequate police training, but also a high level of impunity due to the protection by police in police investigations of excessive use of force and killings by police officers, the lack of autonomy, human and material resources of forensic institutions to effectively collect and analyse material evidence on cases of excessive use of force by police officers, and the tolerance of inadequate investigations by the Public Prosecutor Office and the Judiciary (Affonso 2004).

In all Federal States, forensic institutions ("Instituto Médico Legal" and "Instituto de Criminalística") face similar difficulties to different degrees. The major problems, identified in the report "Structuring and Modernizing Forensic Institutions in Brazil" (Mota 2004), written to the Ministry of Justice/National Secretary of Public Security by a working group composed of professionals and experts on forensic institutions, are:

- Disrespect of basic procedures for the preservation of crime scenes;
- Lack of criteria for the allocation of service;
- Lack of integration of information and coordination of activities;
- Lack of incentive for the qualification of professionals working in forensic institutions;
- Inexistence of partnerships with universities and public and private institutions;
- Lack of communication among forensic institutions in different federal states;
- Existence of laboratories for chemical and toxicological analysis only in state capitals;
- Lack of norms, standard procedures and methodologies for forensic institutions;
- Lack of computers, excessive number of cases by professional, and delays in the production of reports by forensic institutions;
- Unsafe, improper, under-staffed and under-equipped installations;
- Lack of hygiene;
- Improper maintenance of archives and documents;

- Insufficient number of vehicles;
- Improper procedures for the removal and identification of corpses;
- Inadequacy of photographic services;
- Insufficiency and/or insufficient maintenance of laboratory equipment;
- Need to expand and integrate databases for digital identification of people;
- Inexistence of specialised libraries; and
- Inexistence of incentives to scientific and technical research.

Several measures were adopted in the last years to reduce the impunity of police officers, the excessive use of force and homicide in police actions, including:

a) the approval of Law 9,299/1996, which transferred the intentional crimes against life practised by military police officers from the military court system to the common court system;

b) the approval of Law 9,455/1997, which typified the crime of torture and established a punishment of three to six years in prison, not subject to bail, conditional freedom or amnesty;

c) the creation of Police Ombudsman Offices in the States of São Paulo (1995), Rio de Janeiro (1999), Minas Gerais (1997), Pará (1996), Rio Grande do Sul (1999), Rio Grande do Norte, Pernambuco, Bahia and Paraná[21];

d) the establishment of Witness Protection Programmes in sixteen Federal States, and also a Federal Witness' Protection Programme which covers the Federal States which do not have their own programme, with the objective of providing protection to victims and witnesses of crimes threatened as a consequence of their participation in criminal investigations and judicial processes (Law 9,807, of July 13, 1999).

However, these measures have not been adequately implemented and have not reached their objective. Police Ombudsman Offices do not have the

21 The State of Paraná has an Ombudsman for the entire State Government, who also receives and monitors the investigation of complaints against the police.

necessary level of political, financial and administrative autonomy and the capability to receive public complaints and effectively monitor police practices and investigations. Witness Protection' Programmes are poorly funded in most states.

Human rights courses for police officers have been developed in many states, for high-ranking and low-ranking police officers, and even included in the structure of basic training programmes in police academies. However, these courses and basic training programmes have not yet been able to substantially change police culture and practises.

In addition to a high level of lethality in police actions, the practice of torture or ill-treatment persists in Brazil (E/CN.4/2001/66/Add.2, 30 March 2001). In 2004, the Police Ombudsman received 42 complaints of torture in the State of São Paulo (1.26% of the 3,334 complaints received), 12 complaints of torture in the State of Rio de Janeiro (0.6% of the 1,728 complaints received) and 57 complaints of torture in the State of Minas Gerais (3.2% of the 1,742 complaints received).[22]

Since the approval of Law 9,455/1997, very few cases of torture have been prosecuted and resulted in the punishment of the aggressor. According to the Attorneys General National Council (Conselho Nacional de Procuradores de Justiça), since the approval of Law 9,455, in April 1997, to July 2001, 502 cases of torture were presented to the Judiciary by the Public Prosecutor Offices (240 from April 1997 to December 1999; 262 from January 2000 to July 2001), and there were only 18 convictions. The visit of UN Special Rapporteur, Sir Nigel Rodley, increased the number of complaints of torture in the country. From the date of his visit, August-September 2000, to July 2001, 446 new cases were presented to the Chamber of Deputies' Commission of Human Rights by the Christian Action for the Abolition of Torture (Magalhães 2001).[23] However, cases of torture continue to be frequently investigated, prosecuted and judged as body injury, illegal constraint or abuse of authority, as happened before Law

22 See the Police Ombudsmen's reports on their websites: www.ouvidoria-policia.sp.gov.br; www.direitoshumanos.rj.gov.br/estrutura_e_programas/op.htm; and www.ouvidoriadapolicia.mg.gov.br).

23 The 502 cases presented to the Judiciary by the Public Prosecutor Offices reflect more the actions of the Public Prosecutor Offices than the actual occurrence of torture in the states: 112 in Minas Gerais; 71 in Amazonas; 62 in Rio Grande do Sul; 38 in Bahia; 26 in Goiás, 25 in São Paulo, 5 in Rio de Janeiro.

9,455. In October 2001, Brazil began a National Campaign Against Torture and Impunity established a phone line (SOS Torture) to receive complaints about torture. From October 2001 to July 2003, SOS Torture registered 1,558 complaints of torture, 1,336 of them against police officers (National Movement of Human Rights 2003). The states with the highest number of complaints were Minas Gerais (213), São Paulo (210) and Pará (130). The complaints involved the practice of torture to obtain confessions (36.8%), torture as a form of punishment (21.5%) and torture against prisoners (22.1%).

Of the 1,336 complaints against police officers, 1,026 were directed to the Public Prosecutor Offices (778), the Internal Affairs Offices of the Civilian Police (336) and the Internal Affairs Offices of the Military Police (220). The others were classified as having "insufficient information".

Of the 778 complaints received by the Public Prosecutor Office, 489 did not produce any action, 201 cases were under investigation, 37 cases were returned to SOS Torture due to insufficient information, 20 cases were terminated due to the lack of evidence and only 31 complaints resulted in judicial actions against the aggressor, with six convictions and four non-convictions.

Of the 336 complaints directed to the Internal Affairs Offices of the Civilian Police, 173 resulted in no action, 35 were retuned to SOS Torture due to insufficient information and two due lack of competence, 75 were under investigation, 48 were terminated due to absence of evidence, and only three complaints resulted in punishment of the aggressors.

Of the 220 complaints directed to the Internal Affairs Offices of the Military Police, 116 resulted in no action, 13 were returned to SOS Torture due to insufficient information, 33 were under investigation, 50 were terminated due to absence of evidence and only eight complaints resulted in punishment of the aggressors.

The final report of the Permanent National Campaign Against Torture and Impunity does not present information on particular or relevant complaints of torture. The report recognises that many complaints did not present sufficient information for legal action, but also observed the lack of interest of the Military Police, Civilian Police and Public Prosecutor regarding the investigation of the complaints (National Movement of Human Rights, 2003).

The periodic reports of Police Ombudsman Offices and the Final Report of the National Campaign Against Torture show the difficulties in presenting, investigating and prosecuting cases of torture and specially in convicting police officers accused of this practice. Even in cases in which there was sufficient evidence to prove the practice of torture, as the famous case of the Urso Branco Penitentiary in the state of Rondônia, the aggressors were not convicted due to "lack of evidence".

OMCT Urgent Appeal - Case BRA 10.06.05

The International Secretariat of the OMCT was informed of the excessive use of force against protesters by members of the police and of the arbitrary detention of three students identified as**: Marcelo Verger, Flora Muller** and **Andre Moro Hierro** and of 16 other students (whose names have not been disclosed), as well as of the ill-treatment suffered by them while in detention, in Florianópolis, state of Santa Catarina.

According to information provided by the "Grupo Tortura Nunca Mais/RJ", a member organisation of OMCT's SOS-Torture network, on May 30, 2005 the students Marcelo Verger, Flora Muller and Andre Moro Hierro were detained by the police when heading home soon after having participated in a protest march. According to the information received, these three students, Marcelo Verger, Flora Muller and Andre Moro Hierro, who belong to the movement "Free Pass" (*Movimento Passe Livre*), which advocates for the exemption of fees for students in the public transportation system, were kept in detention, two of them in the same cell as detainees convicted for ordinary crimes and were moreover charged with "participation in a criminal group", damage to public transportation and incitement to crime; they were finally released in the morning of May 31, on R$ 1.500,00 bail (Brazilian currency), equivalent to 500 US Dollars.

According to the information received, on Thursday, June 2, 2005, 16 other protesters**,** 12 men and 4 women, all of them university students and among them journalism students who were covering the demonstration, were arrested and placed in detention, without an arrest warrant or evidence against them, and charged with vandalism.

According to the information provided, these students were subjected to torture, including the obligation to knee naked on the cold floor during more than one hour, position in which they were beaten on the head. Moreover, the prison guards tortured them psychologically telling the men that they would be made the "women of the other detainees" [interpreted as a rape threat]. They would also reportedly tell the other detainees that the youngsters were the ones responsible for the prohibition of visits of the unit during that weekend, and incited the other detainees to sexually violate them. In addition, according to the information received, the youngsters were kept detained in the worst section of the prison, where were incarcerated the highly dangerous detainees and those infected with tuberculosis.

These students were released after staying 24 hours in detention and on bail of R$ 1.500,00 (Brazilian currency) each. They also have been charged for the following crimes: damage to essential public services and incitement to crime. According to the denunciations, up to this moment [as of 10 June 2005], the 19 students arrested in Santa Catarina prison were released on bail, but they remain charged with crimes they did not commit and still under the risk of being again arrested, case in which they would not have the right to be released on bail again.

Context of the Situation

According to information received, on May 30, 2005, a series of peaceful demonstrations started to take place in Florianópolis, aiming to protest against the increase in the price of the public transportation fees, especially because in the last eight years such increases totalled 238%. Up until the moment this Urgent Appeal was filed, these demonstrations kept on taking place. According to the information received, since day one police had employed excessive force, throwing tear gas bombs randomly at the protesters and shooting rubber bullets. According to this same information, when the protest of May 30 finished, a group of 20 people who were heading home through the city centre streets were arbitrarily arrested by the police. The State deputy, Mr. Afrânio Boppré, member of the Brazilian Labour Party (PT), who was with the students at the moment, was allegedly thrown to the floor when trying to argue against the arbitrary detentions.

WOMEN CONCERN:

Cases:

The lack of accountability and the inefficiency of the criminal justice system are major problems. Moreover, the judiciary is often subjected to intimidation and political and economic influences i.e. corruption, particularly at the state level. 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 teenager 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.[24]

- 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 sun-block lotion from a department store of the Carrefour chain. Instead of turning the women over to 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.

- In April 2003, a woman and her husband living in the Sapopemba district, city of São Paulo, were beaten in front of their children and arrested without being informed about the crime they had supposedly committed. At the police station, the couple was put in cells that were then filled with pepper spray. Eventually, they were released with the simple explanation that they were not the people the police was looking for.[25]

Rape and Other Forms of Sexual Violence

Certain provisions in the Penal Code of 1940 regarding rape and assault are clearly discriminatory against women. Firstly, these types of crimes are classified under the Brazilian Penal Code as crimes against custom (articles 213 to 234) rather than against a person. 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 of 1990 as "crimes hediondos" and are therefore not subject to

24 U.S. Dep't of State, Brazil Country Reports on Human Rights Practices 2001.

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. However it does not qualify rape as a form of torture.

On 28 March 2005, Law number 11,106 was approved, amending some provisions of the Penal Code, particularly those under the section "On crimes against custom" included in its Title VI. The first main change refers to the suppression of the term "honest woman" as a quality of the victim in crimes of sexual possession through fraud (article 215 of the Penal Code), indecent attack through fraud (article 216 of Penal Code) and kidnapping through violence or fraud (article 219 of Penal Code). This means that, for the legislator of 1940, only the "honest" woman could be victim of these crimes and the crimes were classified through broad penal definitions, which depended on the judge's interpretation. [26]

Another significant change that came with the Law mentioned above is the suppression of the term "virgin woman" as a necessary characteristic of the woman victim of seduction (article 217 of Penal Code).

25 Rede Social de Justiça e Direitos Humanos: 2003 Human Rights Report at http://www.social.org.br/relatorio2003ingles/relatorio021.htm (24/05/05). Proceedings were initiated by the Civil Police Ombudsman (Corregedoria da Polícia Civil) but they were subsequently closed in February 2004 due to alleged insufficiency of evidences. In January 2004, a complaint on this case was filed against two police superintendents of the Anti-kidnap Department (Divisão Anti-seqüestro) and four detectives, all of them accused of torture. The 22nd Vara Criminal at the city of São Paulo rejected the demand of preventive detention of the alleged perpetrators and declared the case as "judiciary secret" – which makes it difficult for civil society to follow the proceedings. The Public Ministry addressed the São Paulo State Court (Tribunal de Justiça de São Paulo) so that it takes up the case but no decision has been made so far and the case remains under secrecy.

Since January 2004, when the complaint was filed, the victims and their family members have been subjected to death threats and they have been included in the protection of threatened victims and witnesses programme (PROVITA).

26 See Nery, Daniel Christianini. Acabaram as "mulheres honestas"? Revista Autor – Política, Economia, Internacional, Cultura e Direito. Ano V, n. 45, March, 2005. Available at: www.revistaautor.com.br/artigos/2005/45dcn.htm (consulted on 08/08/2005). And Gomes, Luis Flávio. Reforma Penal dos Crimes Sexuais (I). Available at www.mundolegal.com.br/?FuseAction=Artigo_Detalhar&did=16472 (consulted on 08/08/2005).

The new legislation has also revoked cases in which punishment could be extinct if the victim married either the agent of the crime or another man. The idea behind such a provision was that the woman victim, when marrying after the occurrence of the crime, recovered her honour and, then, there was no more need to punish its agent. The concern, thus, was not about the woman herself, about the suffering caused by the criminal act or about the consequences that resulted from the crime, but about the harm caused to honour.

However, despite the positive recent changes, the expression "On crimes against custom" was maintained in Title VI of the Penal Code, even if the feminist movement has insisted in changing it to "crimes against the person", to the extent that what is to be protected is the judicial good of human dignity and not of social customs.

The state government also reported that indigenous women are being sexually abused by military men stationed in lands of the Ianomami People in the state of Roraima, and of the Tukano People in the region of the High and Low Negro River, in the state of Amazonas.[27]

On 21 May 2005, a group of armed men invaded the Guajajara indigenous community at Aldea Kamihaw, in a zone called "Bacurizinho", Municipality of Grajaú, Maranhão state. They murdered the community's leader, cacique **João Araújo Guajajara**, raped his daughter **D. S.** and shot at his son **Wilson Araújo Guajajara** in the head. The latter had tried to protect their father. [28]

Abortion in Cases of Pregnancy Resulting from Rape

Another important issue considered by the women's human rights movement as a form of Human Rights Violations against women, which can be recognised as a form of torture or ill-treatment, is the lack of State health policies to implement the so called "legal abortion" in cases

27 CEDAW/C/BRA/1-5 of 2002 p.54.

28 See Urgent Appeal of the Observatory for the Protection of Human Rights Defenders, a joint programme of OMCT and FIDH (International Federation for Human Rights), BRA 001 / 0705 / 050. Available at:
http://www.omct.org/base.cfm?page=article&num=5555&consol=close&kwrd=OMCT&cfid=2479569&cftoken=99851802&SWITCHLNG=ES

of pregnancy resulting from rape. Adding to the low number of health institutions that offer the abortion procedure, there are administrative obstacles imposed by the health system to women in the exercise of their rights. The Criminal Law through the Penal Code of 1940, secures to a woman the right to decide if she wants to prosecute the rape perpetrator or not (as a "crime against custom" it requires private penal action not state action). In spite of this, the Ministry of Health, in August 2005, withdrew its own administrative rules[29] which were aimed to suppress the requirement to present a police registration of the sexual assault in order to allow the abortion procedure in the health system. Under a lot of pressure against this measure, the government changed its position again in September 2005, confirming the non requirement of police notification to allow the procedure. Although the procedure of abortion is allowed in any case of sexual violence, it is sometimes denied, even challenging judiciary orders, as happened in the south of Brazil, in the city of Bagé, state of Rio Grande do Sul: In the case of G.T., a 13 year old girl, who was raped by a 33 year old man, the local hospital denied the judicial decision allowing the pregnancy interruption given in April 2005, showing the resistance based on religious fundaments of Brazilian culture.

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's 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. In 2001, a bill outlawing sexual harassment was finally passed: Law

29 The administrative act is " Norma Técnica para Prevenção e Tratamento dos Agravos Resultantes da Violência Sexual contra Mulheres e Adolescentes", issued in 1998 by the Ministry of Health, to regulate article 128 of the Penal Code, which defines the allowance of non state punishment of abortion in cases of sexual violence. Lately the text was changed aiming to facilitate women to access the service and there was a strong repercussion in society, mainly among jurists, medical doctors and health professionals influenced by the Catholic Church, which probably can explain the withdrawal of the new Health Ministry.

10.224 of 2001, added to the Penal Code under Article 216a,[30] 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 incarceration. Penalties therefore can be served in a semi-open or an open system, or even be commuted to alternative community service sentences.

Law 10.224/2001 embodies several provisions of the ICCPR, ensuring the equality between men and women and the elimination of the discrimination against women in the exercise of their civil, political, economic, social and cultural rights (in particular articles 3 and 26). The substantial progress brought by this law in considering sexual harassment in the workplace as a crime is positive. 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. Moreover, the law only applies in hierarchical situations where the harasser is of higher rank or position than the victim.

Women Visiting Inmates in Detention Centres

It is important to identify as a matter of Human Rights Violations against women under article 7 of ICCPR the obligation imposed by the state on prison authorities regarding the rules for external visitors. The body search of visitors is largely practiced in the name of security in Brazilian prisons. Taking into account that the largest number of visitors are women (mothers, wives, grandmothers, sisters and daughters), there is a clear gender-based discrimination. In the state of Rio Grande do Sul visitors were obligated to show their genitals to the female security guard who would try to look for the presence of drugs or guns. Women and human rights activists protested strongly against this practice showing its arbitrary and illegal dimension against human dignity and privacy, as well as a violation of constitutional rights and rights established in many international human rights conventions.

30 Article 216a of the Penal Code, available at http://www.dji.com.br/codigos/1940_dl_002848_cp/cp213a216.htm, (consulted February 12, 2003).

The fact was denounced to the UN Special Rapporteur on Violence Against Women Radhika Coomaraswamy, during her visit to Brazil in July 1996. Many years passed until a new regulation was passed. According to the State of Rio Grande do Sul Legislative Assembly report on human rights (Relatório Azul 2000/2001) an administrative act (Portaria 004/01) was issued on 29 October 2001, prohibiting the usual practice of body search, although some relatives of inmates still bring up isolated situations and facts that shows the culture of ill-treatment and physical violence against women that still remains.

CHILD CONCERN:

Specific legislation

There is no specific legislation offering a larger protection to children against torture and other cruel, inhuman or degrading treatment or punishment. Children do not seem to be more protected than adult victims of such acts. For instance, lodging a complaint for a child victim of torture is not facilitated either in law or in practice. The only difference is the fact that when the victim is a child, the author should be more severely sentenced.

Practice

In August 2004, based on information received from the FIACAT, OMCT issued an urgent appeal on the torture of a teenage girl: on July 27 2004, around 2 a.m., several security military members from 5th Company of 5th Battalion allegedly entered violently into nine apartments from the housing complex known as “Sao Joao”, 665, Rua Tenente Amaro Felicíssimo de la Silveira street, in the Pequeno Novo Mundo area. During the operation, they attacked and tortured a 15-year-old girl named Ana Claudia Ferreira. They undressed her and obliged her to bend down and stand up several times; finally, a police officer beat her with a broomstick. It seems that this act of serious violence against a child happened in response to a public hearing of June 17, 2004, where the inhabitants from the above mentioned neighbourhood asked public authorities to react against arbitrary acts carried out by security military, as well as to end the connection between police and organised crime members.

6. Prohibition of Slavery or Forced or Compulsory Labour (article 8)

In May 2005, the Federal Government announced the *State Plan for the Eradication of Slave Labour* (Brazil, MDA/Incra 2005), updating the plan launched in March 2003, with proposals of actions for 2005-2006. In this plan, it is estimated, based on data from the CPT, that there are approximately 25,000 people working in regimes similar to slavery in Brazil, mainly in the states of the North and Northeast regions of the country (Pará, Maranhão and Piauí). The objective of the State plan is the eradication of slave labour, adopting to this end four main strategies: 1) reduction of the vulnerability of people who may be subjected to slavery and prevention of "aliciamento", 2) repression of the use of slave labour, 3) social inclusion and guarantee of citizens rights for people formerly subjected to slave labour, and 4) dissemination of information and engagement of governmental and non-governmental organisations in the plan for the eradication of slave labour.

As part of the strategy of dissemination of information and engagement of governmental organisations in the prevention and repression of slave labour, the Ministry of Labour and Employment began publishing a "black list" (Portaria 540, 15 October 2004), which includes the names and properties of people found to be employing people in a condition similar to slavery, in the expectation that each government organisation take adequate action against those named in the list.

On 8 September 2005, the "black list" had 188 names, from the states of Pará, Rondônia, Maranhão, Piauí, Tocantins, Mato Grosso, Bahia and Minas Gerais, 13 of which had been excluded from the list due judicial decisions (http://www.mte.gov.br/Noticias/download/lista.pdf). There is not yet any information on the criminal investigation and judicial decisions involving the people detailed on the "black list".

From March 2003 to June 2004, 118 people were prosecuted by the Federal Public Prosecutor Office for employing slave labour. (Brazil, Ministry of Agrarian Development, Incra 2005). There is no information on the number of people convicted for using forced labour.

According to the Ministry of Labour and Employment, 5,893 workers were freed from slavery conditions from 1995 to 2002 and more than 10,000

were freed since 2003
(http://www.mte.gov.br/Noticias/Conteudo/5773.asp), as a result of a series actions including:

- Creation of the National Commission for the Eradication of Slave Labour, with the participation of 18 governmental and non-governmental organisations;
- Intensification of the inspections of employers using slave labour;
- Expansion of the Programme Legal Desks to rural areas;
- Creation by the Labour Justice of "itinerant courts", which travel to areas where there is incidence of slave labour;
- Creation by the Public Ministry Office of a task force for prosecuting people accused of employing salve labour;
- Development of campaigns against slave labour in the states of Pará, Maranhão, Mato Grosso and Piauí;
- Commitment between steel companies in the North Region and Institute Ethos of Social Responsibility, through which they no longer negotiate with companies using slave labour to produce vegetal charcoal;
- Intensification of CPT's actions against slave labour; and
- Development of Reporter Brazil, a non-governmental organisation dedicated to study and research on slave labour (www.reporterbrasil.com.br).

Human Trafficking and Sexual Exploitation

National legislation

Article 231 of the Brazilian Penal Code, recently changed by Law 11.106 approved on 28 March 2005, deals particularly with human trafficking aimed at sexual exploitation. This change in law has been a significant achievement by Brazilian civil society. Until 2005, article 231 of Penal Code only envisaged the act of facilitation or international trafficking of women aiming at commercial sexual exploitation. As from 2005, the victim of this crime can be any person with no regard to their

sex. Domestic human trafficking has also been included in the law. The changed penal definition now states: "article 231 – to promote, intermediate or facilitate either the entrance in national territory of person who comes to practice prostitution, or the exit of a person to exercise it in a foreign country"; and "article 231-A – to promote, intermediate or facilitate, within the national territory, the recruitment, transportation, transference, housing or sheltering of person who comes to practice prostitution".[31] In spite of this important reform, article 231 is inserted yet under the title VI of Penal Code, "On crimes against custom".

PESTRAF (Pesquisa sobre Tráfico de Mulheres, Crianças e Adolescentes para Fins de Exploração Sexual Comercial no Brasil) - Research on Women, Children and Adolescent Trafficking for the Purpose of Sexual Exploitation in Brazil -, points out a close relationship between poverty and commercial sexual exploitation, as trafficking routes are set in the poorest regions of the country[32]. The Northern region shows the greatest concentration of trafficking routes (76), followed by the North-eastern region, with a small difference in the total number of routes found (69). Next, come South-East (35), Central-West (33) and South (28) regions.

The research found a total of 241 trafficking routes. Aimed at domestic trafficking (inter-municipal and inter-state) there are 110 routes, 93 out of them involving mainly adolescents. International trafficking, in its turn, accounts for 131 routes, 120 out of them involve exclusively women[33]. That means routes designed toward other countries are rather aimed at adult women trafficking, while domestic routes have adolescent girls as privileged focus.

Among the identified cases of women and girls trafficked in Brazil, 53% were adult women, mostly aging from 23 to 24 years old; and 47% were adolescents aging predominantly between 16 and 17 years old[34].

Although PESTRAF has indicated that the major concentration of trafficking routes for sexual exploitation are in the North and Northeast, among all denunciations received by ABRAPIA (Associação Brasileira Multiprofissional de Proteção à Infância e à Adolescência), 50.75% come

31 Unofficial translations.

32 PESTRAF, p. 57.

33 PESTRAF, p. 110.

34 PESTRAF. Page 61.

from the South-eastern region and 26.48% from the Northeast[35].

Moreover, ABRAPIA found that 13.28% of the denunciations inform that the exploiter is a relative of the victim and more often his/her own mother[36].

In practice, traffickers are seldom caught because they must be caught in the act of travelling with (trafficking) the victims and the fear of reprisals keeps the victims from seeking police intervention or from testifying against their persecutors. The judicial measures are primarily aimed at curbing the crime and punishing the exploiter/trafficker while neglecting protection and assistance to the victim[37].

CHILD CONCERN:

Child Labour and Child Exploitation in Brazil

Legislation

Brazil ratified both the ILO 138 on the Minimum Age Convention (1973) on June 28th, 2001 and the ILO 182 on the Worst Forms of Child Labour Convention (1999) on 2nd February 2000.

According to the Federal Constitution, children under 18 years of age are not allowed to do work at night or in any dangerous or unhealthy job; children under 16 cannot be allowed to work at all, except as apprentices, from the age of 14.

Practice

The report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Juan Miguel Petit, for the 59th Commission on Human Rights (06.01.2003) particularly mentions (at page 9) the "phenomenon of commercial sexual exploitation and domestic sexual abuse of girls, including the situation of street children, many of whom resort to

35 http://www.abrapia.org.br/antigo/a_noticia_comentada/noticias_comentadas/A%20Rede%20Nacional%20de%20Combate%20%E0%20Explora%E7%E3o%20Sexual%20de%20Crian%E7as%20e%20Adolescentes.htm 09/08/2005

36 Ibid.

37 CEDAW/C/BRA/1-5 of 2002, p. 104.

prostitution for survival, including the situation of girls working at home or in guest-houses, apartments and brothels." He also mentions the issue of sex tourism. [38]

According to PESTRAF recent figures show that, in Brazil, a major part of domestic trafficking involves adolescents (93 of 110 routes). Among the identified cases of women and girls trafficked in Brazil, 47% were adolescents aging predominantly between 16 and 17 years old.[39] Moreover according to ABRAPIA, as for exploited children, 78.56% are female, 71.66% aged between 12 and 18 years old and, and in 7% of the cases they are under 11 years old.[40]

To have an idea of the phenomenon, in its Trafficking in Persons Report of June 2005, the US Department of State has listed Brazil in the Tier 2 category which group countries whose governments do not fully comply with the US Victims of Trafficking and Violence Protection Act of 2000's minimum standards, but are considered by the State Department as making significant efforts to bring themselves into compliance with those standards. According to the 2005 report, "Brazil is a source and destination country for men, women, and children trafficked for the purposes of sexual exploitation and forced labour". Moreover, several tens of thousands of children, mostly girls, are used as domestic workers and are vulnerable to different kind of abuse. Young Brazilians are also victims of sexual commercial exploitation, including sex tourism, and trafficking for forced agricultural labour. Despite this situation Brazil still lacks strong criminal penalties for trafficking.[41]

Regarding the government action to tackle child trafficking, the Special Department on Human Rights of the Federal Government undertook in 2003 the coordination of the National System for fighting Children and Adolescent Sexual Exploitation, which was established in 1997 and maintained since then by the Brazilian Multi-professional Association for Protection to Childhood (Associação Brasileira Multiprofissional de Proteção à Infância e à Adolescência - ABRAPIA). This programme has a

38 E/CN.4/2003/79.

39 See p.61 of the PESTRAF Research.

40 www.state.gov/g/tip/rls/tiprpt/2005/46613.htm

41 http://www.abrapia.org.br/antigo/a_noticia_comentada/noticias_comentadas/A%20Rede%20Nacional%20de%20Combate%20%E0%20Explora%E7%E3o%20Sexual%20de%20Crian%E7as%20e%20Adolescentes.htm 09/08/2005

toll-free hotline available for denunciations. Until 2001, the system counted 10,102 (ten thousand, one hundred and two) calls, 1,796 out of them with information enough for moving an inquiry which, consequently were immediately referred to the public security departments of the 27 federal state units. Twelve states reported the measures adopted in the cases denounced.

7. Liberty and Security of the Person - Treatment of Prisoners (articles 9 and 10)

The population in Brazilian prisons and penitentiaries in December 2004 was of 336,358 individuals (Brazil/Ministry of Justice, National Secretary of Justice, National Penitentiary Department 2005). Only in the state of São Paulo, there were 129,098 persons in prisons and penitentiaries (38% of the total population in prisons and penitentiaries). Of the total number of prisoners in Brazil, 262,710 were in penitentiaries and 73,648 were in prisons administered by the State Secretaries of Public Security. Of the 262,710 prisoners in the penitentiary system, 189,062 had been convicted and 78,592 were still in the process of judgment and had not yet been convicted.

The population in prisons and penitentiaries has increased substantially in the last 15 years. Brazil had 83,2 prisoners per 100,000 inhabitants in May 1993, 134,9 in December 2000 and 187,8 in December 2004. In 2003, there was a deficit of 128,815 places in prisons and penitentiaries (*Folha de S. Paulo*, 10 July 2004, p. C1).

In addition to the shortage of space, the prison population is divided in prisons that are part of the penitentiary system and prisons under the administration of the secretaries of public security. By law, only convicted criminals should stay in the penitentiary system and only individuals under temporary arrest should stay in prisons administered by state secretaries of public security. However, due to the shortage of space in the penitentiary system, convicted prisoners often remain in prisons under the administration of the state secretaries of public security.

The weakness of the organisations responsible for the execution of penal law and prison administration has contributed to the increase in violence and

corruption in the penitentiary system. It has contributed also to the control of prisons by criminal organisations, which are behind a series of escapes, rebellions, killings and torture of prisoners, in most cases due to conflicts between prisoners and criminal organisations (Salla 2005).

Examples of such rebellions and killings are the rebellion of February 2001 in the state of São Paulo, in which a criminal organisation organized a simultaneous rebellion in 29 prisons, which led to the death of 19 prisoners; the "tentativa de fuga" and conflict between prisoners of 29-31 May 2004, in Casa de Custódia de Benfica, state of Rio de Janeiro, which led to the death of 30 prisoners; and conflicts in the Urso Branco prison in the state of Rondônia, which led to the death of 27 prisoners in January 2002 and 14 prisoners in April 2004 (Salla 2005).

According to research conducted by Julita Lemgruber (2004), 826 prisoners died in 2002 (498 were victims of natural death; 303 victims of homicides committed by other prisoners; four victims of homicides committed by penitentiary agents and 21 victims of suicide). In the same year, 18 penitentiary agents died (15 were victims of natural deaths; one victim of homicide within prison; two victims of homicide outside prisons). There were 233 rebellions and 4,422 escapes.

The omission and connivance of the authorities responsible for prison administration provide the conditions for the expansion of criminal organisations within prisons, and the increase in disorder, violence and corruption in the prison system. At the same time, it makes more difficult for governmental and non-governmental organisations to be involved in the protection and promotion of human rights within prisons (Salla 2005).

The criminal policies adopted by the Federal Government and most State Governments, centred on the imprisonment of most convicted criminals, rather than investing on different prison regimes and alternatives to prison, has led to the increase in the prison population and the shortage of prison space – despite major investments in the construction of prisons in the last few years. Another factor contributing to an increasing prison population, and the shortage of space in the prison system, is the long time spent in police investigations and criminal processes. During this time, many prisoners accused of crimes remain under the custody of the state.

Monitoring the Penitentiary System

There are six main mechanisms to monitor the conditions of the prisoners in the penitentiary system: the National Council of Criminal and Penitentiary Policy, National Penitentiary Department, State Penitentiary Council, Community Council, Judiciary and Public Prosecutor Office. However, the National Council of Criminal and Penitentiary Policy monitors prison conditions in only eight states. The National Penitentiary Department monitors state conditions in 13 states. The State Penitentiary Council, in 19 states. The Community Council, in 12 states. The Judiciary in 22 states and the Public Prosecutor Office in 21 states (Lemgruber 2004). Non-governmental organisations are represented in the National Council of Criminal and Penitentiary Policy, State Penitentiary Councils and Community Councils, but they do not have regular access to the penitentiaries and prisons.

Ombudsman

An important instrument for the limitation and control of violence and corruption in the penitentiary system is the Penitentiary Ombudsman, which receives complaints of illegal actions within the prisons and directs them to the internal affairs units of the penitentiary system and the Public Prosecutor Office. However, only nine states have a Penitentiary Ombudsman (Lemgruber 2004) and the Penitentiary Ombudsman often lacks political, administrative and financial autonomy to fulfil their mission (Salla 2005).

WOMEN CONCERN:

According to official data, as of April 2002, women constituted about 4% of the Brazilian inmate population (8,510 female inmates out of a total of 235,000 at the time), most of them in São Paulo state. And out of the 6,157 women detained in São Paulo in 2003, 3,802 stayed in police lockups.[42]

42 Felippe, Kenarik Boujikian. Indulto de 2004, uma nova história para as mulheres encarceradas. Texto base da participação em audiência pública realizada em setembro de 2004, no Conselho Nacional de Política Criminal e Penitenciária, Ministério da Justiça. Available at http://www.ajd.org.br/ler_noticiad.php?idNoticia=60 (consulted on 8 August 2005).

Moreover, 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 programme for Brazilian penitentiaries does not envisage the building of new female facilities. Moreover, it is not always possible to hold pre-trial detainees separately from convicted criminals[43]. 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 break up 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 to identify the responsible officers.[44] In May 2004, a female prison rebellion occurred in Santos and in August in Carandirú, both times the protest was directed against poor conditions and overcrowding.

Consistent with international rules, Brazil's national prison law stipulates that women prisoners must be supervised by women guards.[45] 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, which may lead to sexual abuse and extortion of sexual favours. 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 (state of Paraíba) also complained about verbal abuse, particularly from

43 US Department of State. Brazil. Country Reports on Human Rights Practices. 2004. Available at http://www.state.gov/g/drl/rls/hrrpt/2004/41751.htm (25/05/2005)

44 Jornal da Tarde, available at http://www.jt.estadao.com.br/editorias/2001/04/28/ger156.html, (consulted 23/04/2003).

45 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.

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 (Amazonas state), women stated that male guards had entered several times to verbally and physically abuse a mentally ill woman prisoner.[46]

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

Women in custody have limited recreational areas when compared 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.

If there is one factor that tends to favour women in the prison system it is job opportunity.[47] The best example is São Paulo state, where the rates of male and female prisoners who do not work are, respectively, 41% and 28%. Such a difference is mainly due to a quite significant participation of employer firms in feminine prisons: 45.6%.

In Brazil intimate visits of women in custody are not seen as a right but as a benefit[48]. 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 while male intimate visits are allowed eight times a month

46 Human Rights Watch, O Brasil atrás das grades, available at http://www.hrw.org/portuguese/reports/presos/detentas2.htm, (consulted 22/04/2003).

47 Human Rights Watch. O Brasil atrás das Grades. 1998. Disponível em http://www.hrw.org/portuguese/reports/presos/detentas.htm (consulted on 08 August 2005).

48 U.N. Standard Minimum Rules, rule 8; Penal Reform International, Making Standards Work, The Hague: Penal Reform International, 1995.

without the requirement of marriage[49]. If, on the one hand, this leads to a lower number of women prisoners that receive intimate visits in comparison to men, on the other hand, it is possible to assert that the dramatically different treatment given to women and men concerning the concession of these visits constitutes a discrimination based on sex.[50]

Female prisoners are granted the constitutional right to have their children with them in the nursing period.[51] However, most prisons do not observe the Law of Criminal Executions regarding the obligation of creating kindergartens for children under six years old if they are to remain without care following their mothers' detention[52]. Only the jails of Capital and Butantã in the city of São Paulo have adopted these rules. The impact of mothers' imprisonment on children, according to a doctoral research by Claudia Stella, is that "In childhood, [there is] little availability for learning, low school productivity, multiple repeat, low motivation and temporary or permanent school desertion. In the adult phase, [there is] difficulty in establishing affective relationships and delay in entering the labour market"[53]. 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. 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. Moreover, HIV/AIDS is a serious threat to the health of women prisoners: indeed, studies indicate

49 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 01/12/2002).

50 Human Rights Watch. O Brasil atrás das Grades. 1998. Available at: http://www.hrw.org/portuguese/reports/presos/detentas2.htm (consulted on 08 August 2005).

51 Article 5, L; Law 9,046 of 1995.

52 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 01/12/2002).

53 Jornal da PUC-SP, dated 01 April 2005, number 245, p. 7, available at http://www.pucsp.br/publique/media/edicao245_pagina7.pdf (consulted on 9 August 2005).

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.

Finally, it can be added that the discrimination against women deprived of their freedom goes beyond prison borders. In December 2004, the Group of Studies and Work on Women Prisoners[54] sent a proposal to the Ministry of Justice and to the Prison Council that women in prison should be part of the criminal policy applied by means of pardon by the President of the Republic. The document requested that the 2004 pardon consider gender specificities aiming at women: a) convicted for an offence related to the Drug Law with sentences lower than 5 years and single conviction, provided that their role in the crime was just being transporters; and b) with children under 18 years. The movement conducted by the group was successful, as, after many years, a pardon declaration included in some way the gender issue (Decreto 5295/2004)[55].

54 The group's objective is to discuss the reality of women in prison, their prison conditions, their strong profile of social exclusion, the emergency in addressing their rights, gender violence, developing proposals for changing this situation. The group was initially constituted by Associação Juízes para a Democracia, ITTC, Colibri and Comissão de Direitos Humanos e da Mulher Advogada da OAB/SP (Woman Lawyer Human Rights Commission), and later included other organisations from civil society such as Comissão Teothonio Vilela de Direitos Humanos, Pastoral Carcerária, ILANUD, CLADEM, Centro Dandara de Promotoras Legais Populares, Movimento do Ministério Público Democrático, among others.

55 Felippe, Kenarik Boujikian. Indulto de 2004, uma nova história para as mulheres encarceradas. Basic text of participation in the public hearing held in September, 2004, at Conselho Nacional de Política Criminal e Penitenciária, Ministério da Justiça. Available at: http://www.ajd.org.br/ler_noticiad.php?idNoticia=60 (consulted on 8 August 2005).

CHILD CONCERN:

Children and Arrest, Police Custody and Pre-trial Detention

Summary of the legislation

Regarding the reasons and circumstances for the arrest and detention of a child, proceedings before the trial, police custody and pre-trial detention (Child and Adolescent Statute: articles 112 to 125, article 145, articles 171 to 190):

Minimum age of criminal responsibility

According to the Child and Adolescent Statute, a person aged less than 18 years old is not criminally punishable. However, from the age of 12 years old, minors can be subject to specific measures laid down in the Child and Adolescent Statute (listed in article 112): juveniles convicted of having infringed the penal law could be sentenced to socio-educational measures (admonition, obligation to repair the damage, rendering of community service, assisted freedom, inclusion in a system of semi liberty, internment in an educational institution, any of the measures specified in article 101, I to VI) if they are between 12 and 18 and could only be subject to protection measures if they are below 12. Minors aged over 12 when they committed the offence, may be sentenced to detention only in serious cases.[56]

However, the application of socio-educational measures is far from being respectful of the dignity of children and adolescents and from assuring the integral protection of teenagers committing infractions.

Proceedings following the arrest of a minor

When a juvenile is arrested on the basis of a judicial order, he should be immediately remitted to the relevant judicial authority (article 171 Child and Adolescent Statute). Whereas when a juvenile is arrested

56 See section on article 10 ICCPR.

while committing the offence, he should be brought immediately to the proper police authority (article 172 Child and Adolescent Statute). In the latter case, the arrest should be registered (article 173 Child and Adolescent Statute).

If the parents or legal guardians are present, the juvenile should be released immediately by the police (article 174 Child and Adolescent Statute).

In cases where the juvenile is not released, the police authority should promptly send him to the representative of the Office of the Attorney General (OAG). If an immediate presentation to the OAG is not possible, the juvenile should be presented within 24 hours to the OAG by an assistance entity or a specialised police officer if such an entity does not exist in the area. If there is neither assistance entity nor specialised police office, the juvenile should wait in police premises, but no more than 24 hours (article 175 Child and Adolescent Statute).

Once the juvenile has been presented and after the examination of the relevant documents, the OAG should proceed immediately and informally to the hearing and, if possible, to the testimony of his parents or guardian, victim and witnesses. The OAG may decide to see the permanent filing of the records, grant remission or present the case to the judicial authority for application of a socio-educational measure (article 179 Child and Adolescent Statute).

If the judicial authority approves the OAG conclusions, it should determine application of the measure. If it disapproves the OAG conclusions, the case should be presented to court (article181 Child and Adolescent Statute).

Police custody

A juvenile may remain in police custody if it is necessary for his personal security or the maintenance of the public order, due to the gravity of the infraction and its social repercussion (article 174 Child and Adolescent Statute). Moreover if the juvenile cannot be transferred immediately to the nearest pre-trial centre, he can stay in the police premises for a maximum of 5 days.

Grounds of pre-trial detention

The juvenile may be detained temporarily but the period should not exceed 45 days. The proceedings should thus be concluded within this period (article 183 Child and Adolescent Statute). The pre-trial detention should not be served in a prison institution.

Procedural rights and legal assistance

Assistance should be provided during the police interrogation if the juvenile is not immediately sent to the OAG. In this regard, children have the same legal rights as adults. If they cannot afford a lawyer, a public assistant will advise and defend them during all steps of the procedure.

Practice

According to groups that work with street children, the police sometimes detain street youths illegally without a warrant. There are also cases where police officers hold the suspects incommunicado.

Statistics on children deprived of their liberty (research conducted by the *Instituto de Pesquisa Econômica Aplicada* (IPEA) in 2002 regarding 9´555 teenagers deprived of their liberty[57]):

- 76% between 16 and 18 years old
- 6% between 19 and 20 years old
- 18% between 12 and 15 years old
- 94% males

57 Total population of Brazilian teenagers who subsist on a dwelling income of up to 1/4 of a minimum wage per capita: 23,3 million (SILVA, Enid R. A. - O direito à convivência familiar e comunitária : os abrigos para crianças e adolescentes no Brasil – IPEA/ CONANDA. Brasília, 2004) (IPEA estimate). The data come from the report of an independent commission of prosecutors of child justice, parliamentarians, journalists and representatives of the civil society who, in 2002, visited 18 units in 5 Brazilian states, many of them with no previous notice.

- 6% females
- 51% were not in school when carried out the infraction
- 49% did not work
- 50% had not finished the “ensino fundamental”
- 66% of the detainees came from families with a monthly wage of up to 2 minimum wages (US$ 150)
- 85,6% were drug users
- 81% lived with the family

Detention Conditions of Children Deprived of Their Liberty

<u>Grounds for and maximum period of detention</u>

In the case where a juvenile has committed an offence when he/she was between 12 and 18 years old, he/she may be sentenced to detention. According to article 122 of the Child and Adolescent Statute, detention may be applied in the following cases:

I - the case involves an infraction committed by means of grave threat or violence to a person (for instance homicide, rape, robbery, drug trafficking, etc.)

II - the case involves repetition in the commitment of other grave infractions;

III - the case involves reiterated and unjustified non-compliance with the previously imposed measure.

A juvenile who was under 18 when he committed the crime should not be detained more than 3 years. In practice, this time is respected.

Moreover alternative measures to detention such as assisted freedom (provided in articles 118 and 119 of the Child and Adolescent Statute) are weakly used, mostly because of the lack of mechanisms to the execution of these measures.

Pre-trial detention

The problem is with provisory detention which maximum time is 45 days (article 108 Child and Adolescent Statute). In many cases, this period is not respected

Separation from adults

Regarding the separation between adults and minors detainees, those conditions are generally respected.

Abuse from guards

Prisons officials frequently torture and beat inmates, including in juvenile detention centres. Indeed, during his visit to Brazil in November 2003 (see E/CN/.4/2004/9/Add.2 and E/CN.4/2005/78Add.3), the Special Rapporteur on the sale of children expressed his concerns about the allegations of ill-treatment of adolescents detained in juvenile detention centres.

Rights of children deprived of their liberty

According to article 124 of the Child and Adolescent Statute, juveniles deprived of their freedom may benefit the following rights:

I - to meet personally with the representative of the Office of the Attorney General;

II - to petition any authority directly;

III - to meet privately with his defender;

IV - to be informed of the status of his process whenever he so requests;

V - to be treated with respect and dignity;

VI - to remain interned in the same locality or in that which is closest to the domicile of his parents or guardian;

VII - to receive visits, at least once a week;

VIII - to correspond with family members and friends;

IX - to have access to the objects required for hygiene and personal cleanliness;

X - to live in lodgings in adequate conditions of hygiene and health;

XI - to receive schooling and vocational training;

XII - to carry out cultural, sports and leisure activities;

XIII - to have access to the communications media;

XIV - to receive religious assistance according to his own belief, whenever he so desires;

XV - to retain possession of his personal objects and to have a secure place in which to keep them, receiving a receipt for those that may be deposited in the keeping of the entity;

XVI - to receive his personal documents required for life in society, upon departure from the entity.

Life conditions in detention

According to the IPEA research, juvenile offenders deprived of their liberty suffer from the following harms: overcrowding, poor treatment, torture, lack of training of guards and the architectonic model similar to those of prisons for adults. Moreover, place for the practice of sports in the centres is lacking and conditions of hygiene and schooling remain poor.

The overcrowding is due not to a great number of teenagers in conflict with the law but, instead, to the non-application of the "principle of the exceptionality" of penalties which deprive the individuals of their liberty. This is due to the lack of mechanisms to allow the application of alternative measures. It is also important to note that the units are located mainly in urban centres, which prejudices the contact with the family and contributes to the concentration of youths in a few places. There are only 190 internment units in Brazil.

Below is some concrete information on juveniles sent to the Unit of Initial Treatment of Sao Paulo[58]:

the unit, which has the capacity for 62 teenagers, on the day of the visit counted 248;

all the boys between 12 and 18 years old were organized in lines, had their heads shaved and walked with their heads down and hand behind their body;

the teenagers are not authorised to say anything except to "excuse me sir";

there were reports of beatings, kicking and beatings with broomsticks;

the teenagers were not separated by age, physical build or gravity of infraction, as provided in the Statute on Children and Adolescents; and

the teenagers stay altogether with no activity for 40 days, the maximum time allowed by law.

8. Prohibition on Imprisonment for the Non Performance of Contractual Obligations (article 11)

Brazil has not changed the 1988 Federal Constitution (article 5º, XLVII) and continues to allow prison penalties for voluntary and unjustified non-payment of alimony support and unfaithful trusteeship. There has not been any government action to change the Federal Constitution and make it compatible with article 11 of the ICCPR. As stated in the Brazilian Second Periodic Report to the ICCPR, the Federal Supreme Court ruled in favour of the applicability of civil imprisonment in cases of unpaid debts involving fiduciary trustees in 1998.

58 Through this unit pass the teenagers who are sent to FEBEM, the unit where the measures which include the deprivation of liberty are served. The UIT works as a provisional detention centre for teenagers.

9. Right to a Fair Trial (article 14)

Police corruption is one of the main obstacles to a fair trial in Brazil, since it impairs criminal investigations and the proper instruction of the criminal lawsuits. The strengthening of internal affairs offices of the Civilian and Military Police and the creation of the Police Ombudsman Offices have been a step forward in the limitation and control of corruption in some federal states. However, the police do not have a policy designed to prevent the corruption in the organisation. A major source of corruption in the police has been the illegal ownership of private security services by police officers and the illegal employment of police officers in private security services. However, these practices, even though illegal, have been widely tolerated by police organisations and governments, the Public Prosecutor Office and the Judiciary, on the basis of the argument that police officers have low salaries and the state does not have enough resources to increase their salaries. The consequence is that police officers are frequently led to dedicate more time and energy to their private job rather than their public mission, and even use public resources to perform private services, undermining the confidence of the society in the police and the criminal justice system, contributing to sustaining the growth of private security services.

The prosecution and judgment in military courts of police officers by crimes committed in the exercise of preventive and ostensible policing is also a major obstacle to limit and control police violence in the country. Law 9,299/96 transferred the competence to prosecute and judge military police officers accused of intentional crimes against life from the Military Justice System to the Common Justice System. However, other crimes remain under the jurisdiction of the Military Court System. In addition, the investigation of crimes committed by military police officers, which determines the type of crime and the court system in which they will be prosecuted and judged, is still done primarily by the military police' internal affairs offices.

Law Project 1,837/2003 seeks to modify the Military Penal Code and Military Process Code (both from 1969) and transfer from the competence of the Military Court System to the Common Justice System all crimes practiced by military police officers in the exercise of preventive and ostensive policing. It was linked to Law Project 2,014/2003, which also seeks to modify the Military Penal Code and the Military process Code, but undermining Law 2,299/1997 and further limiting the competence of the Common Justice System, by determining that the military police inquiry

should be sent first to the Military Court System, which would be responsible for sending them to the Common Justice System, only in the cases of intentional crimes against life.

Law Projects 1,837/2003 and 2,014/2003 were approved by the Chamber of Deputies' Commission of Foreign Relations and National Defence, whose report, from 22 November 2004, is favourable to the approval of Law Project 2,014 and contrary to the approval of Law Project 1,837.

Federal Deputy Orlando Fantazzini presented Law Project 4,850/2001, seeking to change the Penal Code and Penal Process Code with the objective of making the judge responsible for the instruction of the process also responsible for the sentence and the monitoring of the penal execution. The Law Project was based on the argument that such link, despite the problems it can cause from the point of view of the Judiciary and the judges, will create better conditions for the provision of Justice and benefit the accused and the convicted in criminal processes since their case will be appreciated more fully if under the responsibility of only one judge. The Law Project, however, was rejected by the Commission of Constitution and Justice and Citizenship and was not voted in the Chamber of Deputies.

OMCT URGENT APPEAL - Case BRA 010905

The International Secretariat of OMCT was informed of the arbitrary detention of **Juan Freitas dos Santos**, 18 years old, as well as the ill-treatment inflicted on him in detention and the murder of his brother, **Samuel dos Santos**, in the city of Guarulhos, state of São Paulo.

According to information provided by "Christian Action for the Abolition of Torture" (ACAT-Brasil), on April 9, 2005, **Juan Freitas dos Santos** was detained while giving assistance to his brother Samuel who had been shot during a shooting between armed groups; Samuel eventually died. When police officers arrived at the place where the shooting had taken place, they detained Juan Freitas dos Santos for supposedly being caught in unlawful possession of weapons. He was then taken to the 80th Police Department of Guarulhos and later transferred to the Provisional Detention Centre II (CDP-II) in Guarulhos.

The police reportedly received an anonymous denunciation claiming that Juan dos Santos is the supposed murderer of an individual named "Lulu" in 2003. As a consequence of this denunciation, on August 2, 2005, he was transferred to the Department of Homicide and Protection of the Human Person (DHPP) to be interrogated about the homicide. Juan Freitas dos Santos denied both the accusations of homicide and that of unlawful possession of weapons at the moment of his arrest on April 9.

After continuing to deny his committing the mentioned murder in 2003, Juan was taken by two police officers to another room of DHPP, who beat him alternatively in the stomach, while urging him to confess the crime. He kept on resisting and affirmed that he would only sign the declarations he had done before, where he denied all accusations against him. He was later transferred back to CDP II in Guarulhos, where he is still detained.

According to the information received, on August 11, 2005, based on a denunciation by ACAT-Brasil about the ill-treatment suffered by Juan Freitas dos Santos, the authorities of the Detention Centre asked him to make a declaration about the ill-treatment inflicted on him on August 2 in the premises of DHPP.

In addition, the mother of Juan dos Santos, Mrs. **Anaildes Freitas dos Santos**, was the victim of intimidation by four unknown men who went to her residence and asked her to ask her son Juan dos Santos not to talk to the authorities about the circumstances of the assassination of his brother Samuel. The acts of intimidation suffered by Mrs. Anaildes dos Santos were so harsh that she had to move to another state of the country.

10. Rights to Freedom of Expression and Assembly (articles 19 and 21)

In August 2004, President Luis Inácio Lula da Silva presented a Law Project to the National Congress a Law Project to create the Federal Council of Journalism and Regional Councils of Journalism, with the objective of "orienting, disciplining and monitoring the exercise of the profession and the activity of journalism, watch over the observance of the journalists' ethical and disciplinary principles, as well as protect the right to free and plural information and the improvement of journalism" (Law Project 3,985/2004). Supported by several journalist trade unions, particularly in the states of Rio de Janeiro and São Paulo, the project was strongly criticized by journalists and the press as an attempt by the Federal Government to impose State control over the work of journalists and restrict the freedom of expression, particularly through the press.

The Brazilian Government has not yet developed an effective policy for the protection of human rights defenders, rural and union leaders. Despite the announcement of the *National Programme for the Protection of Human Rights Defenders* and the *Peace in the Countryside Programme*, people continue to be killed, particularly in the countryside, as a result of conflicts over land and slave labour.

The *National Programme for the Protection of Human Rights Defenders*, announced in October 2004, has a budget of only R$ 1,2 million for 2005. In February 2005, the state of Pará created a working group to organise the State Coordination for the Protection of Human Rights Defenders.

The *Peace in the Countryside Programme*, coordinated by the Agrarian Ombudsman, has five main actions with the objective of reducing violence in the countryside in Brazil: 1) train mediators for social conflicts in rural areas; 2) receive, analyse investigate complaints regarding rural conflicts; 3) mediation of rural conflicts; 4) creation of Agrarian Ombudsman in the Federal States; 5) technical, social and legal assistance for families involved in rural conflicts.

In 2004, despite the increasing number of land occupations in the country, the Federal Government spent only 40% (R$ 1,8 million) of the total budget (R$ 4,5 million) of the *Peace in the Countryside Programme*. In 2005, the budget of the programme was reduced from R$ 4,5 million, according the

Brazilian Association of Ombudsmen – São Paulo (www.abosaopaulo.org.br).

On February 12, 2005, Sister Dorothy Mae Stang was assassinated with six shots by gunmen in Anapu (state of Pará), as a result of conflicts with and complaints against farmers.[59] In the next days, six other persons were assassinated in the region. The police work with the hypothesis that four homicides, in addition to the killing of Sister Dorothy, resulted from land conflicts: the rural worker Adalberto Xavier Leal, who would have worked to Vitalmiro Bastos de Moura, a farmer suspected of ordering the killing of Sister Dorothy, rural union member Daniel Soares da Costa Filho, and rural workers Cláudio Matogrosso and Olisvaldo Morais de Lima.

On January 24, 2004, three auditors of the Ministry of Labour and Employment (Erastótenes de Almeida Gonçalves, João Batista Soares Lage and Nelson José da Silva) and their driver (Ailton Pereira de Oliveira) were assassinated by gunmen close to the city of Unaí (state of Minas Gerais), when they were inspecting the existence of slave labour in the region.[60]

In the municipal elections of October 2004, Antério Mânica had 72% of the votes and was elected mayor in the city of Unaí by the PSDB. He and his brother Norberto Mânica were denounced by the Public Prosecutor Office for the killing of the auditors of the Ministry of Labour and Employment, and imprisoned in the Federal Police in Brasília. In August 30, 2005, the Supreme Federal Court conceded habeas corpus to Norberto Mânica, accused of having ordered the killing of the three auditors and the driver.

In June 2002, journalist Tim Lopes was killed and his was body burned by members of a criminal organisation linked to drug traffic in a shantytown in the City of Rio de Janeiro. Lopes was doing a report on funk parties where there was trafficking and use of drugs and sexual exploitation of adolescents.

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59 See Press Release of the Observatory for the Protection of Human Rights Defenders dated 16 February 2005 - Brasil: Asesinato de la misionaria Dorothy Mae Stang en Pará, available at http://www.omct.org/base.cfm?page=article&num=5314&consol=close&kwrd=OMCT&cfid=2486396&cftoken=59638224&SWITCHLNG=ES

60 See Observatory Press Release dated 30 January 2004 – Brazil: Three defenders of workers rights murdered, available at http://www.omct.org/base.cfm?page=article&num=4570&consol=close&kwrd=OMCT&rows=2&cfid=2486396&cftoken=59638224&SWITCHLNG=EN

Six of the nine individuals accused of the killing, including drug dealer "Elias Maluco" (Madman Elias) have been arrested, one was killed in conflict with the police and another committed suicide (Mesquita Neto and Affonso 2002).

In addition to Tim Lopes, nine other journalists were killed in Brazil from 2002 to 2004, and many others have suffered threats, aggressions and censorship, according to information collected by the Centre for the Study of Violence-University of São Paulo, provided by Inter-American Press Association, Reporters Without Borders: three in the state of Mato Grosso do Sul, two in São Paulo, one in Ceará, one in Pernambuco, one in Alagoas and one in the Federal District.

11. Protection of Women (article 23)

WOMEN CONCERN:

The Brazilian Constitution of 1988 establishes in Article 226, VIII that "the State shall guarantee assistance to the family, as represented by each one of the persons that makes up that family, by creating mechanisms to restrain violence in the framework of the relationships among those family members." In spite of the protection created by the law and the engagement of the State's 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.[61]

According to available survey and records from police stations specialised in crimes against women, 70% of the incidents registered happen inside the home and the offender is the husband or intimate

61 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, (consulted 16/12/2002).

partner; over 40% of the violent acts cause severe body harm resulting from punches, slaps, kicks, injuries by tying and/or burning, beatings and strangulations[62]. Moreover, about 70% of Brazilian women killed used to be victims of violence in the ambit of their domestic relationships[63]; and according to a survey by the National Human Rights Movement (MNDH), 66.3% of defendants in cases of homicide of women were their intimate partners.

Since Brazil has not yet enacted special legislation relating to the prevention, punishment and eradication of violence against women, Law 9099/95, which establishes the Special Criminal Courts, is applied to these cases. The Special Criminal Courts were created aiming to deal with offences said of lesser severity, which punishments set in law are not superior to a two-year prison term. Law 9099/95 considers crimes such as moderate body injury (article 129, caput, Penal Code) and threat (article 147 of the Penal Code) as 'penal offences of lesser harm potential', which can be sentenced to at most one year imprison term – which means a retreat, as it refers domestic violence against women to the private sphere, while this is defined as of public concern in terms of the Belém do Pará Convention. However, the application of this law in cases of violence against women has been considered inadequate due both to the wrong notion that violence against women could be considered as an 'offence of lesser harm potential' and not as a grave human rights violation, and to the normalization and legitimating of such a pattern of violence, which reinforces hierarchy between genders. To the extent that conciliation and negotiation are favoured and the process is often suspended, such violence becomes banal within the Criminal Justice system. The Law operates ineffectively when the offender is sentenced to pay a fine or to do community service during a short time – what can also inadvertently affect the woman herself, once her offender/companion will pay the judicial fine instead of purchasing food for supplying the home.

The special courts are not the only reason why domestic violence remains unaddressed. Police and judiciary attitudes and practices with respect to violence cases still tend to disregard the gravity of violent acts

62 CEDAW/C/BRA/1-5 of 2002, p. 68.

63 Human Rights Watch, Criminal Injustice, Violence against Women in Brazil, 10/1991.

that occur within the domestic sphere. More disturbing though is the fact that the judicial system contributes towards impunity: in 21% of the cases of domestic violence, the defendant has been acquitted[64] and only 2% of complaints regarding domestic violence against women lead to convictions.[65] As a result, there is a sense of impunity surrounding these crimes in Brazil. In spite of the fact that domestic violence is a criminal offence, domestic violence against women has not been reduced in Brazil.

In some cases, the offender may receive suspended sentences with no jail time whatsoever. Women therefore tend to drop charges since there is no effective punishment at stake. Furthermore, since a fine is usually imposed rather than incarceration, 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. 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-inhabiting with the perpetrators of this violence. Moreover, when women report the violence, the police and the judiciary do not take the crime seriously. The concern though remains that overall the present system is simply not aimed at punishing these types of crimes or protecting the victim.[66]

According to report 54/01 dated 16 April 2001 on case 12.051 (Case Maria da Penha Maia Fernandes[67]), the Inter-American Commission on Human Rights (IACHR) has found the Brazilian State to be in breach

64 10 % is considered guilty at the end of the proceedings. These results may strongly discourage women to carry on with the legal proceedings. A significant portion of women declare there is no point in seeking help because they feel they won't be recognised as victims.

65 U.S. Dep't of State, Human Rights Report 2001.

66 See Samantha Buglione, A mulher enquanto metáfora do Direito Penal, available at http://www1.jus.com.br/doutrina/imprimir.asp?id=946, (consulted 01/12/2002).

67 Annual Report of the Inter-American Commission on Human Rights 2000. Available at: http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/OASpage/humanrights.htm.

of the right to a fair trial and judicial protection, guaranteed in Articles 8 and 25 of the American Convention, in accordance with the general obligation to respect and guarantee rights set forth in Article 1(1) of this instrument, as well as Article 7 of the Convention of Belém do Pará, because of the unwarranted delay and negligent processing of this case of domestic violence in Brazil. A petition filed by CLADEM and CEJIL (Centre for Justice and International Law) before the Inter-American Commission on August 20, 1998, alleged tolerance by the Brazilian State regarding the violence committed by the victim's husband in their home, during several years of matrimonial life, which culminated with a homicide attempt and aggressions, in May and June 1983, that left the victim irreversibly paraplegic and caused her other illnesses. The petition also indicated the tolerance by the state, for having taken no measures during more than 15 years to prosecute and punish the aggressor despite complaints by the victim. The IACHR concluded that the Brazilian State had violated Maria da Penha Maia Fernandes' human rights, and that this violation followed a discriminatory pattern with respect to tolerance of domestic violence against women in Brazil due to the inefficacy of the judicial action. The IACHR recommended to the Brazilian State to:

1. Complete, rapidly and effectively, criminal proceedings against the person responsible for the assault and attempted murder of Mrs. Maria da Penha Fernandes Maia;

2. In addition, conduct a serious, impartial, and exhaustive investigation to determine responsibility for the irregularities or unwarranted delays that prevented rapid and effective prosecution of the perpetrator, and implement the appropriate administrative, legislative, and judicial measures;

3. Adopt, without prejudice, possible civil proceedings against the perpetrator, the measures necessary for the State to grant the victim appropriate symbolic and actual compensation for the violence established herein, in particular for its failure to provide rapid and effective remedies, for the impunity that has surrounded the case for more than 15 years, and for making it impossible, as a result of that delay, to institute timely proceedings for redress and compensation in the civil sphere;

4. Continue and expand the reform process that will put an end to the condoning by the State of domestic violence against women in Brazil

and discrimination in the handling thereof. In particular, the Commission recommends:

a. Measures to train and raise the awareness of officials of the judiciary and specialized police so that they may understand the importance of not condoning domestic violence;

b. The simplification of criminal judicial proceedings so that the time taken for proceedings can be reduced, without affecting the rights and guarantees related to due process;

c. The establishment of mechanisms that serve as alternatives to judicial mechanisms, which resolve domestic conflict in a prompt and effective manner and create awareness regarding its serious nature and associated criminal consequences;

d. An increase in the number of special police stations to address the rights of women and to provide them with the special resources needed for the effective processing and investigation of all complaints related to domestic violence, as well as resources and assistance from the Office of the Public Prosecutor in preparing their judicial reports;

e. The inclusion in teaching curricula of units aimed at providing an understanding of the importance of respecting women and their rights recognised in the Convention of Belém do Pará, as well as the handling of domestic conflict; and

f. The provision of information to the Inter-American Commission on Human Rights within sixty days of transmission of this report to the State, and of a report on steps taken to implement these recommendations, for the purposes set forth in Article 51 (1) of the American Convention.

Nevertheless, four years after the decision of the IACHR (Report n.54/01, from April, 2001), the Brazilian State has not yet fully implemented the recommendations adopted by the Commission. Only recommendation number one was implemented with the conclusion of the process at the national level and imprisonment of the perpetrator of the aggressions and homicide attempt against Maria da Penha. As for recommendation number 4, on June, 3, 2004, Decree n. 5.099 provided ordinary regulation to Law n. 10.778 (November, 2003) which establishes the obligation to put into operation health centres, public or

private, and to notify the justice system about cases of domestic violence against the women assisted by these services; in 2004, Law 10.886 granted criminal character to domestic violence in article 129 (9) of Penal Code, setting penalties to the perpetrator ranging from 6 months to one year terms. However, there were neither advances regarding recommendations number 2 and 3, nor in relation to specific recommendations of number 4 (a, b, c, d, e).

In November 2004, Bill 4559/2004[68] was presented to the National Congress and is still being examined by the legislators[66]. It consists of a draft law establishing mechanisms to restrain domestic and familial violence against women. Bill 4.559/04 defines domestic and familial violence against women as "any action or behaviour based on gender relationships, which causes death, harm, physical, sexual, psychological or moral suffering, as well as patrimonial loss". Moreover, it defines public policies guidelines and integrated actions for the prevention and eradication of domestic violence against women. The bill provides for the creation of a specific procedure, within Law 9099/95, in cases of domestic violence. In its final provisions, it stipulates that the Federal State, the Federal District, Territory and States will be allowed to create Special Courts for Domestic and Familial Violence against Women with both civil and criminal competence. The proposal comprises yet the referral of women under situation of violence, and their dependants as well, to protection programmes and services, guaranteeing the victim's rights to stay with her children and to safekeeping property.

However, Bill 4559/2004 still keeps the competence of Law 9099/95 for crimes for which penalty does not exceed two years, which led civil society to elaborate an alternative improved proposal. Whereas the proceeding of Law 9099/95 is not adequate to address violence against women, numerous public hearings have been held aiming at both discussing the matter and the existing and/or necessary public policies

68 For the full text of Bill 4559/2004 see the Presidency's website, Secretaria Especial de Políticas para as Mulheres, Projeto de Lei nº 4559/2004 - Não-violência contra a Mulher (http://200.130.7.5/spmu/destaques/projeto_lei/projeto_lei_violencia.htm)

69 In July 2005, Bill 4559/04 was submitted to the appreciation of the Commission of Family and Social Security, being Deputy Jandira Feghali (PCdoB-RJ – Communist Party of Brazil, Rio de Janeiro) the rapporteur.

directed to deal with the problem, and debating on the bill text. Thus, on 16 August 2005, a National Seminar was held with the objective of disseminating the outcomes of the public hearings and the text of the alternative proposal[70] to Bill 4559/04, thus expanding the debate on the matter and mobilizing legislators for a prompt appreciation and approval in Plenary[71].

The alternative proposal to Bill 4559/04 is intended to take crimes of domestic and familial violence against women out of the scope of Law 9099/95, and provides for the creation of Special Courts on Domestic and Familial Violence against Women, public judicial proceedings, competence for judging criminal and civil suits; impossibility of applying financial and food supply penalties; provisions for fines in case of non compliance with penalty of rights suspension. The alternative proposal still provides measures for implementing a gender and race perspective along the diagnosis, data recording, training and educational programmes; it also provides special assistance to children who live under a situation of violence, additional resources to special police stations for women's defence and training for military policemen/women and civil guards. The alternative proposal also establishes the inclusion of the victim in programmes for assistance and protection of victims and witnesses, measures for transfer of work place when the victim is a public official, and legal guarantee to keep the job during six months on the grounds of temporary leave; it still provides urgent protective measures and the obligation by the states to create psychological-social assistance centres, shelters, special police stations, defence counselling units, health centres, legal-medical specialized centres, centres for education and rehabilitation for aggressors.

70 Available at: <http://www.cfemea.org.br/pdf/PL4559-04.pdf> (accessed on 08/10/05)

71 According to Secretaria Especial de Políticas para as Mulheres <http://www.presidencia.gov.br/spmulheres/> accessed on 08/10/05; <http://copodeleite.rits.org.br/apc-aa-patriciagalvao/home/noticias.shtml?x=117> accessed on 08/10/05; and NGOs' letter dated 29 June 2005 <http://www.advocaci.org.br/Docs/CARTA%20DO%20CONSORCIO%20PARA%20O%20MOVIMENTO%20DE%20MULHERES.doc> accessed on 08/08/05.

12. Protection of Children (article 24)

CHILD CONCERN:

Brief description of the basic Brazilian legislation on children

The two main legal instruments regarding children's protection in Brazil are the Constitution and the Child and Adolescent Statute.[72]

(1) The 1988 Federal Constitution and particularly article 227 which states that "it is the duty of the family, society and the State to assure with absolute priority the rights of children and adolescents to life, health, food, education, leisure, occupational training, culture, dignity, respect, freedom, and family and community life, and in addition to protect them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression." According to the same article, the rights to special protection of children and adolescents encompasses, among other aspects, the "government's incentive, by means of legal assistance, tax incentives and subsidies, pursuant to the law, to the shelter, through custody, of the orphan or abandoned child or adolescent". The article 203 II of the constitution also sets that one of the purposes of social welfare is "the protection of unprivileged children and adolescents".

(2) The ordinary legislation is mainly laid down in the Child and Adolescent Statute (Law 8069 of July 1990) which replaces the Minor's Code. After intensive lobbying by NGOs on behalf of the rights of the child, the Brazilian National Congress passed the law, which notably reformed the status of the child in Brazil, recognising childhood as a differentiated period of the life of an individual and which therefore requires special attention. The Statute also regulated the political and administrative decentralisation of the child rights protection and promotion, creating Children's Rights Councils and Guardianship Councils. The Statute covers all aspects of children's life (family, social, justice, etc. issues).

One can consider that the Child and Adolescent Statute is in line with

72 Description of the Basic Brazilian Legislation on Children and Adolescent, available at : www.brasilemb.org/social_issues/social_statute.shtml

the main international instruments protecting children's rights (especially the UN Convention on the Rights of the child) and is a legal progress for Brazilian children. However, the implementation of the Statute is less satisfying and remains a huge challenge for Brazilian authorities and civil society. For instance, in practice the setting up of the Councils has been difficult. Moreover, general material and financial resources are lacking, local and State-level politicians as well as the judiciary do not fully comply with the Statute, and popular attitudes still continue to consider certain categories of children (street children for example) as criminals that should be repressed.[73]

Moreover, despite a suitable legislation, children's civil rights are affected by criminal practices such as sexual abuse and sexual exploitation, family violence and murders of teenagers in shantytowns. This kind of violations often happens in certain spheres, especially among poorest or black people as in Salvador de Bahia.

Domestic violence also exists towards children. They are often victims of physical violence such as corporal punishment. This situation is general in Brazil where many children are severely reared. A child is generally considered not as a real person but as a thing.

CEDECA has noted, however, that when police officers are trained and the population sensitised after being involved in some specific programmes, the behaviour of adults (whether they are agents or parents) change the situation of children improves.

The current situation of street children is particularly worrying. According to CEDECA-BA there are not so many children living in the street in reality. There is a difference between living and working or spending the whole day in the street. But even if most of children in the street go back home for the night, it does not mean that they are protected from different kinds of abuse. For instance many children working in the street are victims of acts of violence, particularly by police officers. They are also often recruited to become prostitutes. In Brazil, street children are thus a very vulnerable part of the population, in a country where poverty is grounds for violence.

73 For an analysis of the Child and Adolescent Statute, see The Struggle for Citizens and Human Rights by Daniel Hoffman, available at: http://pangaea.org/street_children/latin/statute.htm

A current programme ruled by the federal government, in partnership with Brazilian NGOs, UNICEF and ILO, offers alternatives to the street. A grant is offered to families so that they let their children go to school. Although it would need to be more ambitious and deal with all children at risk, this programme is considered as a useful one by CEDE-CA.

13. Non Discrimination; Protection of National Minorities (articles 26 and 27)

The Brazilian legislation regarding racism (specially Law 7,716/1989 and Law 9,459/1997) has contributed to a change in race relations but has not substantially reduced the problem of racial inequality in Brazilian society.

The Brazilian Racial Atlas (UNDP and UFMG-Cedeplar 2004), provides information on the health, education and wealth of the black population compared to the white population in Brazil. It shows that the percentage of blacks in the population below the poverty line increased from 58.37% in 1982 to 64.55% in 2003. It also shows that, in the year 2000, the medium salary per hour is R$ 18,32 for white men and R$ 12,42 for black men with 15 or more years of study, and 11,5% for white women and R$ 7,63 for black women with 15 or more years of study.

The infant mortality among the white population fell 85.84 per 100,000 inhabitants in 1980 to 22.93 per 100,000 in 2000, while among the black population it fell from 100.64 per 100,000 inhabitants in 1980 to 38 per 100,000 in 2000. In the same manner, the percentage of children working in the white population fell from 12.98% of the total children population in 1980 to 7.97% in 2000, while in the black population it fell from 16.02% in 1980 to 9.69% in 2000.

With the objective of promoting racial equality in Brazilian society, the National Policy for the Promotion of Racial Equality (Decree 4,886, of 20 November 2003), proposes executive programs and actions in the short, medium and long time, directed towards six main objectives: 1) implementation of a model for managing policies aimed at promoting racial equality, 2) support to black traditional communities (“quilombos”), 3) affirmative

actions, 4) development and social inclusion, 5) international relations, and 6) production of knowledge (www.presidencia.gov.br/seppir).

Two civil society organisations, Geledés (www.geledes.org.br) and Fala Preta (www.falapreta.org.br), have been especially active in promoting policies and programmes for reducing racial inequality and discrimination in Brazilian society, particularly inequality and racism affecting black women.

The Government announced the Programme Brazil Without Homophobia (Brazil, Ministry of Health, National Council Against Discrimination and Special Secretary for Human Rights 2004), but few actions have been implemented so far.

On 28 September 2005, the president of the Amazon Association of Gays, Lesbians and Transgenders, Francisco Adamor Lima Guedes, was assassinated in the City of Manaus (AM). One of the founders of the Brazilian Association of Gays, Lesbians and Transgenders and member of the State Council of Human Rights in the state of Amazonas, Francisco Adamor had received death threats and hired private security to protect him.

CHILD CONCERN:

Regarding children, poverty and race are the two main roots for vulnerability and thus discrimination. Children from a poor class, as well as black children, are numerous among the child victims of violence. For example, 90% of killed children are black. The same percentage is also applicable to girl victims of sexual exploitation.

Among children, discrimination also concerns minorities. In February-April 2005, 17 children Guarani-Kaiowá died as a result of malnutrition in the indigenous area of Dourados (state of Mato Grosso do Sul). The Chamber of Deputies established a commission to investigate the death of indigenous children as a result of malnutrition in the states of Mato Grosso and Mato Grosso do Sul. The commission reported that the problem of malnutrition in indigenous areas in these states is due not only to the lack of food and poverty but also and mainly the lack of land and violence to which the indigenous groups are submitted.[74]

74 Report of FIDDH, p. 10.

RECOMMENDATIONS

The coalition of NGOs recommends the State party to:

1. Ensure a full and effective implementation of the concluding observations and recommendations already adopted by international and regional human rights treaty bodies;

2. Sign and ratify the First and Second Optional Protocol to the International Covenant on Civil and Political Rights, with the aim of abolishing the death penalty;

3. Make the declarations provided for in articles 21 and 22 of the Convention;

4. Ratify the Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment or punishment;

5. Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the UN Convention against Transnational Organized Crime;

6. Approve a legislative measure that provides for the enlargement of the judiciary's competence in the investigation and trial of crimes committed by military police agents, including human rights violations, torture and other ill-treatment;

7. Foster the creation of autonomous and independent Police Ombudsman in the States that still do not have it, and guarantee the independent operation of the already existing Police Ombudsmen;

8. Ensure that all states provide statistical data on the extrajudicial, summary or arbitrary executions, torture and ill-treatment as well as police violence, and initiate impartial, full and prompt investigations into such allegations;

9. Adopt measures for immediate suspension even during the inquiry of law enforcement officials, including prison agents or police officers, charged with acts of torture and / or cruel, inhuman or degrading treatments or punishment;

10. Issue legislative, administrative or judicial measures, in order to ensure full and prompt reparation and compensation to victims of torture and other cruel, inhuman or degrading treatment or punishment committed by state agents;

11. 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.

Regarding women's rights, the coalition of NGOs recommends the State party to:

12. Adopt effective legislative and policy measures in order to prevent, combat and eradicate violence against women in Brazil, in particular:

    a. create effective mechanisms for punishing and preventing violence against women, in particular through the discussion on Bill 4559/04 and its alternative proposal, aiming for the approval of the final text debated by government and civil society;

    b. create effective mechanisms to prevent the grave consequences over the reproductive health and life of women by providing safe and lawful conditions for the realization of abortion within the public and private health system facilitating access of women pregnant as a result of rape, and eventually by approving the Law on decriminalisation and legalisation of abortion.

13. Provide appropriate gender-sensitive training in fighting and responding to cases of rape and other forms of violence against women to all law enforcement personnel and members of the judiciary (especially judges and public prosecutors);

14. Develop 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;

15. Increase the number of Special Police Stations for the defence of women's rights and allocate the special resources necessary to the effective course and investigation of all denunciations on domestic violence;

16. Adopt measures directed to collect national data regarding violence against women, as well as to encourage production of systematic data separated by sex and race;

17. Improve the information system and data on the occurrence of torture and / or ill-treatment crimes, for preventing it and proceeding periodical diagnosis, with special regard to occurrences involving women, be they victims or aggressors;

18. Guarantee that, in line with international standards on detention, detained women should only be supervised by female prison staff and that all detainees are granted access to effective and confidential complaints mechanisms.

Regarding children's rights, the coalition of NGOs recommends the state party to:

19. Implement the Child and Adolescent Statute at local, state and federal levels through effective programmes and public sensitisation;

20. Urgently act to end killings of minors by state agents, particularly through addressing the question of impunity and training state agents dealing with children;

21. Set up a specific legislation to better protect children from torture and ensure that victims of such acts are assisted and supported in order to lodge a complaint;

22. Address the issue of child commercial exploitation through adequate and strict legislation and its implementation with independent monitoring bodies for instance regarding the problem of child labour;

23. Ensure (through training programmes for instance) that deprivation of liberty (including pre-trial detention) is used towards children only as a measure of last resort and that alternative measures are used by judicial authorities;

24. Ensure that police officers do not illegally arrest and detain children; this may be reached by enabling independent monitoring bodies to visit police premises and especially places where children can be detained;

25. Ensure an effective separation between convicted detainees and those awaiting their trial;

26. Ensure that the pre-trial detention of a person under 18 does not exceed 45 days;

27. Set up mechanisms that would prevent guards from abusing and violating prisoners' rights (monitoring bodies, fight against impunity, system of complaint, etc.).

HUMAN RIGHTS COMMITTEE

CCPR/C/85/L/BRA

27 JULY 2005

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

LIST OF ISSUES TO BE TAKEN UP IN CONNECTION WITH THE CONSIDERATION OF THE SECOND PERIODIC REPORT OF BAZIL

Right to self-determination (art. 1)

1. Please provide recent examples of consultations with indigenous communities on the use of land affecting them (paragraph 14 of the report). How is the State party ensuring their right to freely pursue their economic, social and cultural development?

Right to a legal remedy for the violation of Covenant rights (art. 2)

2. In how many low-income communities has the Government installed Legal Desks (para. 25), and have they improved access to justice for disadvantaged groups? Please provide information on progress made in judicial reform, and in particular the proposal to federalize human rights crimes (para. 24).

Constitutional and legal framework within which the Covenant is implemented (art. 2)

3. Please provide further information on the role of National Human Rights Programmes and the Special Secretariat for Human Rights (para. 4) in implementing Covenant rights. In addition, how will the application of the State party's international human rights obligations be enhanced through human rights programmes and institutions at state level?

4. Has the State party considered the creation of a mechanism to address questions remaining from the period of military dictatorship, such as a truth and reconciliation commission?

Principle of non-discrimination, gender equality and protection of national minorities (arts. 2, 3, 26 and 27)

5. Please provide detailed information on the law establishing a goal for increasing the number of women candidates in political elections (para. 4) and its operation. Why has there apparently been a decrease in the percentage of women elected to legislative and executive posts (para. 36)? What measures has the State party taken to remove remaining obstacles to the adequate representation of women?

6. To what extent has the creation of specialized police units to address the problems of abused women succeeded in raising the number of abuse complaints made to the police (para. 31)? Please provide information on the number of prosecutions and convictions in cases of domestic violence. What measures is the State party taking to sensitize public officials to the issue of domestic violence?

7. What measures is the State party taking to ensure that women enjoy equal pay for equal work (para. 26)? Please comment on reports that women generally earn significantly less than men for work of equal value.

8. Please elaborate on the "National Policy for the Promotion of Racial Equality" (para. 340) and the targets set to reduce the education gap of the black and indigenous populations (para. 336).

9. Please elaborate on the "Brazil without Homophobia" programme (para. 131) and explain action taken at the level of the States in response to reported cases of discrimination based on sexual orientation and acts of violence against affected groups.

10. Please explain and elaborate on the proposal to regulate the "capacity" of indigenous populations (para. 243), and comment on its compatibility with the Covenant. Please also explain and elaborate on any proposal to implement such legislation.

11. According to information before the Committee, forced evictions of indigenous populations from their land continue to occur. What actions has the State party initiated to prevent these evictions, to ensure access to legal remedies in order to reverse these evictions, and to compensate the affected populations for the loss of their residence and basis for subsistence? How are such evictions to be remedied legally or politically insofar as they interfere with the rights guaranteed under article 27?

Right to life, and prohibition of torture and cruel, inhuman or degrading treatment (arts. 6 and 7)

12. Please explain the increase in the number of deaths caused by police action, as reported in some states (para. 74). Since the "law of silence" impedes investigating and prosecuting cases of police violence (para. 76),

what action has been taken to tackle this phenomenon, inter alia by creating witness protection programmes and special police inspection units?

13. According to information presented to the Committee, extrajudicial executions committed by members of the police force are often disguised as lawful actions and forensic institutions lack the independence and resources for proper investigations, which prevents prosecution of those responsible. Please comment on and provide information about the resources of Forensic Medical Institutes and their independence.

14. Please account for the recent increase in the number of violent deaths of rural leaders (para. 127), and provide information on prosecutions and convictions of those accused of these crimes.

15. What practical steps has the State party taken to educate police officers about their human rights obligations, in light of the persistence of a high incidence of ill-treatment by police officers of detainees and suspects (paras. 144 and 306)?

Prohibition of slavery or forced or compulsory labour (art. 8)

16. According to information before the Committee, forced labour persists in some regions, affecting alarming numbers of persons. Please indicate what steps have been taken, in law and in practice, to eradicate all forms of forced labour, and provide details of recent cases in which landowners have been prosecuted and convicted (para. 165). Please provide updated figures (para. 151) and comment on reports of the involvement of politicians and judges among those responsible.

17. Please elaborate on the aims, strategies and results of programmes addressing the sexual exploitation of children (paras. 106 and 108) and provide information on cases investigated and their outcome. Please also provide information about the claimed reduction in the number of trafficking victims (para. 116), considering that there are a large number of routes through which women and minors are trafficked for commercial sexual exploitation in Brazil. Please give detailed information on the investigation and prosecution of trafficking of women and minors.

Liberty and security of the person; treatment of prisoners (arts. 9 and 10)

18. Please elaborate on the plan of action addressing inadequate prison conditions and inadequate prison capacity, including criteria for the allocation of funds to state prisons (paras. 78 and 79). To what extent have prison conditions and capacity improved? Please provide examples. Please comment on the plan to establish guidelines for prison management in line with the Covenant (para. 184).

19. Is the State party envisaging any measures to simplify and accelerate procedures on prisoner release, and compensation for arbitrary prolonged confinement (para. 179)? What accounts for the extraordinary phenomenon of arbitrary prolonged confinement? In how many cases has compensation been granted, and in what form? Please provide statistics, disaggregated by gender, age, race and ethnic origin and type of crime committed, about detainees who were victims of arbitrary prolongation of their prison sentence (para. 178).

20. Please elaborate on the availability and effectiveness of complaint mechanisms for any abuses committed against detainees in prisons, jails and other forms of custody.

Right to a fair trial (art. 14)

21. What steps has the State party taken to transfer jurisdiction from military to civilian courts for human rights violations committed by police officers? In the transfer of jurisdiction over “intentional crimes against human life” to civilian courts by Law No. 9299 (para. 77), how can one assure impartial investigation as to the “intentional” nature of the crime?

22. Corruption has been reported to permeate all branches of the judiciary and the law enforcement system, contributing to impunity for serious crimes and human rights violations. What measures is the State party taking to enforce transparency, impartiality and accountability throughout its public institutions, especially regarding the judiciary and its independence? Please provide information on numbers of prosecutions and convictions in cases of corruption and the sentences pronounced.

Rights to freedom of expression, assembly and association (arts. 19 and 21)

23. Is there a policy to protect human rights defenders, rural leaders and trade union leaders? How does the Government envisage improving their freedoms of expression, assembly and association? What results has the "Peace in the Countryside Programme" (para. 129) produced?

Protection of women and children (arts. 23 and 24)

24. Please account for the disproportionate rate of infant mortality among black children, due apparently to conditions of severe poverty (para. 71). What actions has the State party taken or envisaged to reduce the exposure of children of vulnerable groups to dire conditions? What recent initiatives has the State party taken with regard to the situation of children living in the street (para. 82)? What objective measures of progress are available?

Right to participate in public life (art. 25)

25. Please provide data, disaggregated by gender, age, race and ethnic origin and state, about the incidence and role of illiteracy in barring persons from holding public office (para. 312). What percentage of the illiterate population makes use of voluntary voter registration (para. 311)?

Dissemination of information relating to the Covenant (art. 2)

26. Please provide detailed information on human rights training for public officials, including all law enforcement officers (paras. 144 and 306) and members of the judiciary, as well as on programmes to promote general public awareness of human rights. Please comment on efforts to support the public's awareness of the Covenants and their rights. Please describe the steps taken to disseminate information to the public and to NGOs on the submission of the State party's report, on its consideration by the Committee and on the Committee's concluding observations that will follow.

HUMAN RIGHTS COMMITTEE

EIGHTY-FIFTH SESSION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

CONCLUDING OBSERVATIONS OF THE HUMAN RIGHTS COMMITTEE ON BRAZIL

1. The Committee considered the second periodic report of Brazil (CCPR/C/BRA/2004/2) at its 2326th and 2327th meetings (CCPR/C/SR.2326 and 2327), on 26 and 27 October 2005, and adopted the following concluding observations at its 2336th meeting (CCPR/C/SR.2336), on 2 November 2005.

A. Introduction

2. The Committee welcomes the second periodic report submitted by Brazil while regretting that it was presented more than 8 years after the examination of the initial report. It expresses its appreciation for the dialogue with the State party delegation. The Committee also welcomes the extensive responses to the list of issues in written form, which facilitated discussion between the delegation and Committee members. In addition, the Committee appreciates the delegation's oral responses given to questions raised and to concerns expressed during the consideration of the report.

B. Positive aspects

3. The Committee welcomes the campaign for civil registration of births, needed, *inter alia,* to facilitate and ensure full access to social services.

4. The Committee welcomes institutional measures to protect human rights in the State party, namely, the establishment of Police Ombudsmen's Offices and "Legal Desks" to provide legal advice and civil documentation to indigenous and rural communities, as well as the "Brazil Without Homophobia" program, the "Afro-Attitude" program to support black students in public universities and the "Plan Against Violence in the Countryside".

C. Principal subjects of concern and recommendations

5. While noting the adoption of various programs and plans to promote the appreciation of human rights, including dialogues and education, the

Committee regrets the general absence of specific data to permit the evaluation of practical enjoyment of human rights, especially in regard to alleged violations in the States of the Federative Republic of Brazil (articles 1, 2, 3, 26 and 27).

The State party should provide detailed information regarding the effectiveness of programs, plans and other measures taken to protect and promote human rights, and is encouraged to strengthen mechanisms to monitor the performance of those measures at the local level. This should include statistical data on issues such as domestic violence against women, police lethality, and arbitrary prolonged confinement.

6. The Committee is concerned about the slow pace of demarcation of indigenous lands, the forced evictions of indigenous populations from their land and the lack of legal remedies in order to reverse these evictions and compensate the victimized populations for the loss of their residence and subsistence (articles 1 and 27).

   The State party should accelerate the demarcation of indigenous lands, and provide effective civil and criminal remedies for deliberate trespass on those lands.

7. While acknowledging the federal structure of Brazil, the Committee is disturbed by the failure of the judiciary in some states of the Federation to act against human rights violations (article 2).

   The State party should create appropriate mechanisms to monitor the performance of the judiciary at the State level, in order to fulfil its international obligations under the Covenant. The State party should increase its efforts to sensitize the judiciary, especially at the State level, to the need to take seriously and deal effectively with allegations of human rights violations

8. While welcoming the existence of a Secretariat for Human Rights under the Presidency of the Republic, the Committee regrets the proposed significant reduction in the budget of the Secretariat (article 2).

   The State party should strengthen the Secretariat for Human Rights and provide it with adequate resources so as to allow it to function effectively.

9. The Committee is disturbed by the apparent absence of effective civilian supervision of the activities of the military police (article 2).

   The State party should ensure that the military police are subject to the institutions and procedures of judicial and civilian accountability. The ordinary courts should have criminal jurisdiction over all serious human rights violations committed by the military police, including allegations of excessive use of force and manslaughter, as well as intentional murder.

10. The Committee is concerned about the low-level of participation of women, Afro-Brazilians, and indigenous peoples in public affairs, and their disproportionately limited presence in the political and judicial life of the State party (articles 2, 3, 25 and 26).

    The State party should take appropriate measures to ensure the effective participation of women, Afro-Brazilians, and indigenous peoples in political, judicial, public and other sectors of the State party.

11. The Committee is concerned about the lack of information regarding the incidence of domestic violence and regrets the absence of specific legal provisions to prevent, combat and eliminate such violence. It is also concerned about the illegal practice of some employers in requiring sterilization certificates as a condition of women's employment (article 3).

    The State party should adopt, and implement, appropriate criminal and civil laws and policies to prevent and combat domestic violence, and assist the victims. In order to raise public awareness, it should initiate the necessary media campaigns and increase educational programmes. It should also adopt adequate measures, including sanctions, against the impermissible practice of requesting sterilization certificates for employment purposes.

12. The Committee is concerned about the widespread use of excessive force by law enforcement officials, the use of torture to extract confessions from suspects, the ill-treatment of detainees in police custody, and extra-judicial execution of suspects. It is concerned that such gross human rights violations committed by law enforcement officials are not investigated properly and that compensation to victims has not been provided, thus creating a climate of impunity (articles 6 and 7).

The State party should:

take stringent measures to eradicate extra-judicial killing, torture, and other forms of ill-treatment and abuses committed by law enforcement officials;

ensure prompt and impartial investigations into all allegations of human rights violations committed by law enforcement officials. Such investigations should, in particular, not be undertaken by or under the authority of the police, but by an independent body, and the accused should be subject to suspension or re-assignment during the process of investigation;

prosecute perpetrators and ensure that they are punished in a manner proportionate to the seriousness of the crimes committed, and grant effective remedies including redress to the victims; and

give utmost consideration to the recommendations of the United Nations Special Rapporteurs on Torture, and on Extra-judicial, Summary and Arbitrary Executions, and on the Independence of Judges and Lawyers, in the reports of their visits to the country.

13. While acknowledging the recent amendment to the Brazilian Constitution allowing the Prosecutor-General of the Republic to seek a transfer of certain human rights violations from state to federal jurisdiction, the Committee is concerned about the ineffectiveness to date of such a mechanism. It is also concerned about the widespread reports and documentation of threats and murders directed against rural leaders, human rights defenders, witnesses, police ombudsmen and even judges. (articles 7 and 14)

    The State party should assure that the constitutional safeguard of federalization of human rights crimes becomes an efficient and practical mechanism to ensure prompt, thorough, independent and impartial investigations and prosecution of serious human rights violations.

14. While noting the establishment of a National Commission for the Eradication of Slave Labour, the Committee is still concerned about the persistence of practices of slave labour and forced labour in the State party and the absence of effective criminal sanctions against this practice (article 8).

The State party should reinforce its measures to combat practices of slave labour and forced labour. It should create a clear criminal penalty against such practices, prosecute and punish perpetrators and ensure that protection and redress are granted to victims.

15. The Committee is concerned about persistent trafficking in women and children, the alleged involvement of some officials in acts of trafficking, and the lack of effective witness and victim protection mechanisms (articles 8, 24 and 26).

    The State party should reinforce international cooperation mechanisms to fight trafficking in persons, prosecute perpetrators, provide protection and redress to all victims, protect witnesses and root out trafficking-related official corruption.

16. The Committee is concerned about gross overcrowding and inhuman conditions of detention in jails at the State and federal level, the use of prolonged remand in police custody, and the arbitrary confinement of prisoners after their sentences have been completed (articles 9 and 10).

    The State party should urgently take steps to improve the conditions for all persons held before trial and after conviction. It should ensure that detention in police custody, before access to counsel, is limited to one or two days following arrest, and should end the practice of remand detention in police stations. The State party should develop a system of bail pending trial, ensure that defendants are brought to trial as speedily as possible, and implement alternatives to imprisonment. In addition, the State party should take urgent measures to end the widespread practice of detaining prisoners in prolonged confinement even after their sentences have expired.

17. While taking note of recent efforts undertaken by the State party to reform the judiciary and increase its efficiency, the Committee remains concerned about interference with the independence of the judiciary and the problem of judicial corruption. It is also concerned about a lack of access to counsel and legal aid, and undue delay of trials (article 14).

    The State party should guarantee the independence of the judiciary, take measures to eradicate all forms of interference with judicial independence, ensure prompt, thorough, independent and impartial

investigations into all allegations of interference and prosecute and punish perpetrators. It should establish mechanisms to improve the capacity and efficiency of the judiciary, to allow access to justice to all without discrimination.

18. While noting that the State party has created a right to compensation for victims of human rights violations by Brazil's military dictatorship, there has been no official inquiry into or direct accountability for the grave human rights violations of the dictatorship (articles 2 and 14).

    To combat impunity, the State party should consider other methods of accountability for human rights crimes under the military dictatorship, including the disqualification of gross human rights violators from relevant public office, and the processes of justice and truth inquiries. The State party should make public all documents relevant to human rights abuses, including the documents currently withheld pursuant to Presidential decree 4553.

19. The Committee is concerned about the situation of street children, and the absence of information and measures needed to remedy their plight (articles 23 and 24).

    The State party should adopt effective measures to combat the phenomenon of street children and the abuse and exploitation of children in general, and establish public awareness raising campaigns regarding children's rights.

20. The Committee is concerned about the lack of information on the Roma community and allegations that this community suffers discrimination, in particular with regard to equal access to health services, social assistance, education and employment (articles 2, 26 and 27).

    The State party should provide information on the situation of the Roma community and the measures taken to ensure their practical enjoyment of rights under the Covenant.

21. The Committee requests that the State party's second periodic report, the list of issues, and the present concluding observations be widely disseminated throughout Brazil in the country's main languages, and that the next periodic report be brought to the attention of non-governmental organizations operating in the country before being submitted to the Committee.

22. In accordance with article 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, the relevant information on the assessment of the situation and the implementation of the Committee's recommendations in paragraphs 6, 12, 16 and 18.

23. The Committee requests the State party to provide in its next report, which it is scheduled to submit by 31 October 2009, information on the other recommendations made and on the Covenant as a whole.

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