

BRAZIL

CEDAW A/58/38 (2003)

76. The Committee considered the combined initial, second, third, fourth and fifth periodic report of Brazil (CEDAW/C/BRA/1-5) at its 610th, 611th and 616th meetings on 1 and 7 July 2003 (see CEDAW/C/SR.610, 611 and 616).

Introduction by the State party

77. In introducing the report, the representative of Brazil stated that it covered 17 years, giving an overview of measures adopted by the Government since 1985, in compliance with the Convention on the Elimination of All Forms of Discrimination against Women. It was the result of a collective effort by women's organizations and experts in human rights in partnership with the Ministry of External Relations and the Ministry of Justice, through the National Council for Women's Rights (CNDM). The report provided an important tool for the present Administration whose principal goals included the reduction of poverty and the enhancement of citizenship rights. Brazil had also ratified the Optional Protocol to the Convention in 2002, and had recognized the jurisdiction of international human rights courts.

78. The representative informed the Committee of the creation of three institutional mechanisms to fight discrimination: namely, the Special Secretariat for Women's Policies, created on 1 January 2003, the Special Secretariat for the Promotion of Racial Equality Policies, and the Special Human Rights Secretariat, which were directly subordinated to the Presidency of the Republic. The new Government was committed to strengthening public policies for the protection and the promotion of the rights of women and to appropriating the necessary budgetary and human resources.

79. In updating the information contained in the report of Brazil, the representative discussed new legislative initiatives as well as progress in the areas of women's economic autonomy, labour, health, education and violence against women.

80. Among the legislative provisions, the representative highlighted a law of 1996 instituting the right to family planning within the context of the Unified Health System and the entry into force of a new civil code in January 2003. Notwithstanding constitutional and legislative advances, certain prejudices and sexist and discriminatory attitudes towards women continued to exist. For example, domestic servants were not fully covered by labour laws, and there was no legislative acknowledgement of the rights of persons in homosexual relationships. Reform of the Penal Code of 1940 was urgently needed to eliminate provisions that discriminated against women, such as severe penalties imposed for abortion, which the current law allowed only in restricted situations. The representative also deplored the absence of a law to combat domestic violence and protect victims of such violence.

81. Observing that one of the most salient features of Brazilian society was its inequality and high social

exclusion rates, the representative discussed areas of persistent discrimination against women. Poverty was concentrated among black or Afro-Brazilian groups, and women in those groups were particularly disadvantaged. The Government's Zero Hunger Programme, which was the central policy to combat hunger and the structural causes of poverty, included actions targeted at women.

82. While women on average had a higher level of schooling than men, that did not translate into comparable rates of professional achievement and remuneration for women. Black women had significantly lower indicators of educational achievement than white women. New initiatives aimed at increasing school attendance and funding for education as well as at revitalizing all levels of education to overcome structural racial discrimination.

83. While women's access to power was occurring at different levels, including through women's entry into the labour market and their growing level of education, their representation in public office remained low. The representative gave an overview of the number of women in various branches of the Government, stating that Brazilian women made up over 51 per cent of the electorate, but only 8.75 per cent of the elected representatives in the National Congress. A law of 1995 requiring that political parties present a minimum of 30 per cent and a maximum of 70 per cent of candidates of either sex had not yet shown any significant results. Women were also largely absent from the judiciary.

84. The representative stated that the new Government, which included five women ministers, was pursuing measures to increase affirmative action policies beyond electoral quotas, enhance representation of Brazilian women in public administration and at the international level, and stimulate greater political participation by women through media campaigns and capacity-building measures. Programmes were also being implemented to overcome the resistance of the judiciary to the demands of women, such as national seminars to sensitize members of the judiciary and law enforcement agencies with regard to gender equality issues; awareness-raising concerning international human rights treaties and conventions; law reform efforts to eliminate discrimination against women; and legislation aimed at enforcing women's rights.

85. A national comprehensive women's health programme had been launched in 1983. However, its full implementation faced difficulties. For example, maternal deaths remained at a very high level. Although a tendency towards the feminization of the epidemic was noted, the human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) incidence rates had been declining since 1999 as a result of the internationally recognized programme to combat AIDS of the Ministry of Health. A series of additional actions and measures were being developed in the field of women's health, including those aimed at reducing maternal mortality and improving sexual and reproductive rights.

86. The representative stated that the situation of work and employment in Brazil was quite precarious, with a high unemployment rate. While women accounted for 40.4 per cent of the economically active population, obstacles to overcome included women's high unemployment rate, traditionally lower salaries and the informality of labour relations. Women's labour situation was further aggravated by factors of race and ethnicity as well as by regional aspects, as poverty was more concentrated among rural women, in major urban centres and in certain regions of the country. The new administration was implementing a series of actions to contribute towards the improvement of women's opportunities in the productive sector.

87. With regard to violence against women, the representative pointed to the creation, since 1985, of specialized police stations for women victims of violence. A historic ruling of the Supreme Court of 1991 rejected the legitimate defence of honour. Sexual exploitation and trafficking in women and girls were increasing in the country. One of the goals of the new Administration was the implementation of a comprehensive programme for the prevention and combating of violence against women, including the drafting of legislation on domestic violence, the improvement of services for victims of violence and the prevention of violence against women.

88. In conclusion, the representative noted important advances in the condition of Brazilian women and the essential contributions of women's organizations, including those for women of African descent, in the achievement of public policies in support of the implementation of the Convention. However, social exclusion and high poverty affected mostly women in a country with one of the largest income distribution gaps in the world. Sociocultural concepts, structures and processes kept women in subordinate positions and justified their unequal access to economic, social and political resources. The Government and the Special Secretariat for Women's Policies, in dialogue with civil society organizations, were determined to make every effort to achieve equality between women and men and among women themselves, and to eliminate discrimination against women, in particular against black and indigenous women.

Concluding comments of the Committee

Introduction

89. The Committee expresses its thanks to the State party for its combined initial, second, third, fourth and fifth periodic report, which, although very long overdue, was frank, informative, comprehensive and self-critical and provided information about all levels of the Federal Republic.

90. The Committee commends the State party on its high-level delegation, which was headed by the Special Secretary of Women's Policies, of ministerial rank, and included the Special Secretary of Racial Equality Promotion Policies, also of ministerial rank, representatives of two ministries, and representatives of non-governmental organizations. It expresses appreciation to the State party for the oral presentation, which provided an overview of recent advances and challenges remaining to achieving gender equality in Brazil, and for the extensive written responses and further clarification to the questions posed by the Committee.

91. The Committee expresses its appreciation for the withdrawal of the reservations to article 15, paragraph 4 and to article 16, paragraph 1 (a), (c), (g) and (h) of the Convention.

Positive aspects

92. The Committee commends the State party on its Federal Constitution of 1988 that enshrines the principle that men and women have equal rights and duties; prohibits discrimination in the labour market by reason of sex, age, colour or marital status; protects motherhood as a social right by ensuring maternity leave without the loss of job and salary; and establishes the duty of the State to suppress violence within

the family.

93. The Committee commends the State party for a number of legal reforms introduced since the ratification of the Convention in 1984, including the law on paternity suits involving children born out of wedlock; the law on the right to family planning; the law that criminalizes sexual harassment; and the law that provides for restraining orders in domestic violence cases. The Committee also welcomes the recent reform of the Civil Code that introduces equality between spouses in gender-neutral terms, but acknowledges that some anachronistic provisions remain.

94. The Committee welcomes the creation of the Special Secretariat for Women's Policies, which, reports directly to the President and has advisory, coordinating and monitoring functions with respect to women's policies. The Committee considers that the placement of the new national machinery at the ministerial level reflects strong political will and the Government's commitment to working towards achieving equality between women and men in compliance with the Convention.

95. The Committee commends the State party for launching the Zero Hunger Programme to combat hunger and the structural causes of poverty, which has a significant impact on the situation of women.

96. The Committee acknowledges the vibrant and catalytic role of women's non-governmental organizations with regard to gender equality issues. It also acknowledges the partnership between the Government and women's organizations in preparing the combined initial, second, third, fourth and fifth periodic report.

97. The Committee notes with appreciation that the State party has ratified the Optional Protocol to the Convention and has accepted the amendment to article 20, paragraph 1, of the Convention, relating to the Committee's meeting time.

Principal areas of concern and recommendations

98. The Committee expresses concern about the wide gap between the constitutional guarantees of equality between women and men and the present de facto social, economic, cultural and political situation of women in the State party, which widened with respect to women of African descent and indigenous women.

99. The Committee requests the State party to ensure full implementation of the Convention and constitutional guarantees through comprehensive legislative reform to provide for de jure equality and to establish a monitoring mechanism to ensure that the laws are fully implemented. It recommends that the State party ensure that those who are responsible for implementing such laws at all levels be made fully aware of their content.

100. The Committee notes with concern that, while international treaties to which Brazil is a party have become part of domestic law, there is disagreement in the judiciary as to the legal doctrine regarding the status of such international treaties and their direct applicability.

101. The Committee recommends that awareness-raising and sensitization of the judiciary and other law enforcement authorities be undertaken to alter the predominant view of the status of international treaties in the hierarchy of Brazilian law.

102. The Committee is concerned that sharp economic and social regional disparities, particularly in access to education, employment and health care, are posing difficulties in ensuring uniform implementation of the Convention throughout the country.

103. The Committee recommends to the State party that it ensure uniformity of results in the implementation of the Convention in Brazil, not only at the federal level, but also at the State and municipal levels, through effective coordination and the establishment of a mechanism to monitor compliance with the provisions of the Convention at all levels and in all areas.

104. The Committee is concerned that the Penal Code still contains several provisions that discriminate against women. It is concerned about articles 215, 216 and 219 that require the victim to be an honest woman in order to prosecute the perpetrator. It is also concerned that article 107 covering crimes against custom provide for mitigation of sentence when the perpetrator married his victim, or when the victim marries a third party. The Committee notes that the draft bills to amend the Penal Code are being discussed in the National Congress.

105. The Committee calls upon the State party to give priority to amending the discriminatory provisions of the Penal Code without delay so as to bring the Code into line with the Convention and the Committee's general recommendations, in particular general recommendation 19 on violence against women.

106. The Committee is concerned that, despite a Federal Supreme Court ruling in 1991, the judiciary sometimes continues to apply the defence of honour in cases of men accused of assaulting or murdering women. The Committee is concerned that such decisions lead to serious violations of human rights and have negative consequences for society, strengthening discriminatory attitudes towards women.

107. The Committee recommends that the State party implement training and awareness-raising programmes to familiarize judges, prosecutors and other members of the legal profession with the Convention and its Optional Protocol. It also recommends that the State party implement sensitization activities addressed to the general public on the human rights of women.

108. The Committee is concerned about the glaring persistence of stereotyped and conservative views, behaviour and images of the role and responsibilities of women and men, which reinforce women's inferior status in all spheres of life.

109. The Committee recommends that policies be developed and that programmes directed at men and women be implemented to help ensure the elimination of stereotypes associated with traditional roles in the family and the workplace, and in society at large. It also recommends that the media be encouraged to project a positive image of women and of the equal status and responsibilities of women and men both in the private and public spheres.

110. The Committee is concerned about the impact of poverty on Brazilian women of African descent, indigenous women, female heads of household and other socially excluded or marginalized groups of women and about their disadvantaged position with respect to access to education, health, basic sanitation, employment, information and justice.

111. The Committee urges the State party to ensure that its poverty eradication measures give priority attention to Brazilian women of African descent, indigenous women, female heads of household and other socially excluded or marginalized groups of women through adequately funded programmes and policies addressing their specific needs.

112. While acknowledging the efforts made to address violence against women, including the early establishment of specialized police stations (DEAMS) and shelters, the Committee is concerned about the persistence of violence against women and girls, including domestic violence and sexual violence, the existing lenient punishments for offenders and the absence of a specific law on domestic violence. The Committee is further concerned that violence against women, including domestic violence and sexual violence, is not being sufficiently addressed owing to the lack of information and data.

113. The Committee urges the State party to take all necessary measures to combat violence against women in conformity with the Committee's general recommendation 19 to prevent violence, punish offenders and provide services for victims. It recommends that the State party adopt without delay legislation on domestic violence and undertake practical measures to follow up and monitor the application of such a law and evaluate its effectiveness. It requests the State party to provide comprehensive information and data on violence against women in its next periodic report.

114. The Committee is concerned about reports that indigenous women are being sexually abused by military units and prospectors (gold miners) on indigenous lands. The Committee notes that the Government is considering developing a code of conduct to regulate the presence of the armed forces on indigenous lands.

115. The Committee calls upon the State party to take necessary measures to raise awareness of the situation of indigenous women and girls and ensure that sexual violence against them is prosecuted and punished as a grave crime. It also urges the State party to adopt preventive measures, including swift disciplinary inquiries and human rights education programmes for the armed forces and law enforcement personnel.

116. The Committee is concerned at the increased rate of the various forms of sexual exploitation of and trafficking in women and girls in Brazil, both internally and across borders. It is particularly concerned about the participation of police personnel and their connivance in sexual exploitation and trafficking and about the impunity of abusers, aggressors, exploiters and traffickers as reported by the State party. The Committee notes a lack of sex-disaggregated data and insufficient information on the sexual exploitation of street children and adolescents.

117. The Committee recommends the formulation of a comprehensive strategy to combat trafficking in

women and girls, which should include prosecution and punishment of offenders and protection and support to victims. It recommends the introduction of measures aimed at eliminating women's vulnerability to traffickers, particularly young women and girls. It recommends that the State party enact anti-trafficking legislation and make the fight against trafficking in women and girls a high priority. The Committee requests the State party to include comprehensive information and data in its next report on the issue as well as on the situation of street children and adolescents and on policies adopted to address their specific problems.

118. While commending the recent appointment of five women ministers and noting the significance of the legal provisions adopting quotas for women's participation in elected bodies, the Committee remains concerned that women are still significantly underrepresented at all levels and instances of political decision-making. It is further concerned that implementation of the quotas is controversial and lacks efficacy.

119. The Committee recommends the adoption of a comprehensive strategy to accelerate the participation of women in decision-making positions in political life, both in appointed and elected bodies, until a balanced representation of women and men was attained. The Committee recommends that non-compliance with the existing provisions aiming at a minimum and maximum percentage of each sex be duly sanctioned and that other effective means to support implementation be adopted.

120. The Committee is concerned at the underrepresentation of women in qualified positions in some areas of professional and public life, such as the judiciary and external affairs, particularly at the highest echelons. It is also concerned that women's participation in high-ranking positions in economic life remains much lower than men's.

121. The Committee recommends that proactive policies for women's increased participation at those levels be adopted and, when appropriate, temporary special measures in accordance with article 4, paragraph 1, of the Convention be taken to ensure women's real empowerment on equal terms with that of men.

122. Although women's access to education has improved, the Committee is concerned at the high rate of illiteracy and the low percentage of women having education beyond primary school. It is further concerned at the persistence of gender segregation in educational fields and its consequences for professional opportunities. The Committee is also concerned that, even though teaching is a preponderantly female profession, women are underrepresented in higher education.

123. The Committee recommends that proactive measures for women's access to all levels of education and teaching be strengthened, particularly for marginalized groups of women, and that diversification of educational and professional choices be actively encouraged for women and men.

124. The Committee is concerned about discrimination against women in the labour market, where women earned significantly less than men in all states, irrespective of their skills or education. It is concerned that the poor conditions of employment of women, in general, including vertical and horizontal segregation, are compounded by race and ethnicity. The Committee is particularly concerned about the precarious situation of domestic workers, the vast majority of whom are denied rights that other categories

of workers enjoy, such as mandatory limitation of the workday.

125. The Committee recommends that measures be taken to guarantee implementation of article 11 of the Convention and the application of relevant International Labour Organization conventions, in particular those on non-discrimination in employment and equal remuneration for equal work and work of equal value for women and men. It recommends that measures be taken to eliminate occupational segregation, in particular through education and training. The Committee calls on the State party to bring all domestic workers within the bounds of its labour legislation.

126. The Committee is concerned at the high maternal mortality rate, particularly in the more remote regions where access to health facilities is very limited. The Committee is also concerned at the health condition of women from disadvantaged groups and at the high rate of clandestine abortion and its causes, linked to, among others, poverty, exclusion and a lack of access to information. The Committee is further concerned that, notwithstanding progress in relation to the control of HIV/AIDS, the number of infected women, particularly young women, had increased.

127. The Committee recommends that further measures be taken to guarantee effective access of women to health-care information and services, particularly regarding sexual and reproductive health, including young women, women from disadvantaged groups and rural women. Those measures are essential to reduce maternal mortality and to prevent recourse to abortion and protect women from its negative health effects. It further recommends that programmes and policies be adopted to increase the knowledge of and access to contraceptive methods with the understanding that family planning is the responsibility of both partners. The Committee also recommends that sex education be widely promoted, particularly targeting adolescents, with special attention to the prevention and further control of HIV/AIDS.

128. The Committee notes a lack of comprehensive data on rural women, including on race and ethnicity, as well as insufficient information on their overall situation.

129. The Committee recommends that the State party generate comprehensive sex-disaggregated data, including data on race and ethnicity, that showed the evolution and impact of programmes on the country's rural women in its next periodic report.

130. The Committee is concerned at the State party's use of the term "affirmative action" to describe some of its measures aimed at eliminating discrimination, rather than to describe temporary special measures aimed at accelerating equality.

131. The Committee recommends that the State party, in devising policies for the achievement of gender equality, not only eliminate discrimination, but in line with article 4, paragraph 1, of the Convention adopt temporary special measures to accelerate the process of achieving equality.

132. While appreciating the fact that the State party's views on the concept of "equity" take into account concrete unequal situations and lay the foundation for temporary special measures, the Committee notes that the terms "equality" and "equity" are used synonymously throughout the report in describing

laws, policies, plans and strategies.

133. The Committee recommends that the terms equity and equality not be used synonymously or interchangeably and that a clear understanding of the term equality, both formal and de facto, should underpin laws, policies, plans and strategies to ensure the State party's compliance with its obligations under the Convention.

134. The Committee requests the State party to respond in its next periodic report, due in 2005, to the issues covered in the present concluding comments. It also requests the State party to improve the collection and analysis of statistical data, disaggregated by sex, age, race and ethnicity, and to report on the results of programmes and policies, planned and undertaken, in its next periodic report to the Committee.

135. Taking account of the gender dimensions of declarations, programmes and platforms for action adopted by relevant United Nations conferences, summits and special sessions (such as the twenty-first special session of the General Assembly for an overall review and appraisal of the implementation of the Programme of Action of the International Conference on Population and Development, the twenty-seventh special session of the General Assembly on children, the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Second World Assembly on Ageing), the Committee requests the State party to include information on the implementation of the aspects of those documents relating to relevant articles of the Convention in its next periodic report.

136. The Committee requests that the present concluding comments be widely disseminated in Brazil in order to make the people of Brazil, in particular government officials, judges and politicians, aware of the steps that had been taken to ensure the de jure and de facto equality of women and the further steps required in this regard. It also requests the State party to continue to disseminate widely, in particular to women's and human rights organizations, the Convention on the Elimination of All Forms of Discrimination against Women, its Optional Protocol, the general recommendations of the Committee on the Elimination of Discrimination against Women and the Beijing Declaration and Platform for Action, as well as the outcome of the twenty-third special session of the General Assembly, entitled Women 2000: gender equality, development and peace for the twenty-first century .