

## BRAZIL

### CERD 26<sup>th</sup> (A/8418) (1971)

28. From its 56<sup>th</sup> to its 58<sup>th</sup> meetings, the Committee proceeded to determine formally its view as a Committee (as distinct from the views expressed at previous meetings, which were those of the individual members) as to which reports were “satisfactory”, in the sense that they furnished all or most of the required information, and which reports were “unsatisfactory” or “incomplete” and therefore needed to be supplemented by further information. The initial report (and supplementary report, if any) of each State Party was put before the Committee separately by the Chairman. Where there was no consensus, the question whether a State Party’s report (or reports) was “satisfactory” or whether, failing that, the Committee wished to request additional information from that State Party, was decided by vote.

...

30. On the other hand, the reports submitted by the following 17 States Parties were considered by the Committee “incomplete” or “unsatisfactory”, in the sense that significant categories of information were either totally lacking or insufficiently provided in them: . . . Brazil . . . At its 58<sup>th</sup> meeting, held on 23 April 1971, the Committee adopted the text of a communication which it decided to request the Secretary-General to submit to the aforementioned States Parties, in accordance with rule 65 of its provisional rules of procedure. (The text of this communication is reproduced in annex V.)

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35. . . . The Committee decided that further information was needed from the following six States Parties, whose initial reports were considered “incomplete” or “unsatisfactory” . . . It adopted similar decisions with respect to the supplementary reports of two States Parties: Brazil and Madagascar.

## **CERD 28<sup>th</sup> No. 18 (A/9018) (1973)**

121. The initial report of Brazil, submitted on 16 February 1970, was considered by the Committee at its third session. It was deemed unsatisfactory and additional information was requested. A supplementary report containing additional information, dated 8 July 1971, was considered at the fourth session. It too was found unsatisfactory and additional information was again requested. As suggested by the Committee, such additional information was embodied in the second periodic report, which was submitted on 31 January 1972. This report was considered at the seventh session (130<sup>th</sup> meeting).

122. Some members observed that the report under consideration was more informative and comprehensive than the two earlier reports. In the opinion of some members, the information contained in the report reflected awareness of the mandatory nature of the obligations incurred under article 4 of the Convention. Members welcomed the inclusion in the report of information about certain administrative measures, particularly in the field of economic and social development, which aimed at fostering equal opportunity for all Brazilians on a non-discriminatory basis, while also generating greater prosperity. Interest was expressed in the projected introduction into the regular school curricula of the study of the Charter of the United Nations and certain human rights instruments, including the Convention. Some members expressed the opinion that the policy of the Brazilian Government with regard to minority groups appeared to reflect the intent of the provisions of article 1, paragraph 4, and article 2, paragraph 2, of the Convention.

123. On the other hand, it was noted that the report did not follow in its organization the guidelines laid down by the Committee and did not always provide the texts of the provisions of the various laws it cited.

124. Several members commented on paragraph 18 of the report under consideration, which stated:

“Taking into consideration the position of Brazil in terms of racial integration, the Brazilian Government fails to understand the insistence of the Committee on the Elimination of Racial Discrimination in reiterating its demands for additional information on a country where, in spite of the multiplicity of races living within its boundaries, racial problems are simply non-existent. The information in this report is provided in order to give evidence of our strong support to the aims and principles embodied in the Convention and of our consideration of the Committee and its members”.

It was observed that the insistence of the Committee upon receiving certain categories of information stemmed from the mandatory nature of the obligation to adopt certain measures in accordance with certain articles of the Convention; that the Committee was not attempting to place on States parties any new, purported obligations, but merely reminding them of undertakings they had freely assumed when they ratified or acceded to the Convention; that, in the particular case of Brazil, had it not been for the repeated requests for additional information which were made by the Committee, much of the useful information contained in the report under consideration would not have been available to enable the Committee to discharge its functions under article 9 of the Convention; that, in the light of the situation of racial harmony which prevailed in Brazil, the requests for additional information on the measures taken to attain, preserve and promote such

harmony should be regarded not as a nuisance but as an opportunity to help other countries which might be faced with similar tasks; and that, in any case, requests for additional information should not be taken to imply any judgement by the Committee on matters of substance. Furthermore, members welcomed the statement in paragraph 19 of the report that:

“the considerations in paragraph 18 do not prevent Brazil from continuing to submit the regular biennial reports containing all the legislative, judicial, administrative and other measures and events which have been adopted or have taken place in the country during the preceding biennium”.

125. In view of the fact that the report was submitted prior to the adoption of general recommendation III by the Committee, a question was raised about the status of Brazil's relations with the racist régimes in southern Africa. Some members expressed the view that it would be useful to receive, in future reports, further information on the progress of the administrative, social and economic measures cited in the report, and on the projected introduction of new studies into the school curricula, relative to racial discrimination and the broader field of international action to promote respect for human rights. Regarding the single case of a suit involving possible racial discrimination, which was still pending before the Courts, some members wished to know, first, the law under which the suit was brought against the defendant and, secondly, the outcome of the proceedings. Interest was expressed in the scope of Law No. 1390 and its purpose - whether it was procedural measure, providing for a new legal remedy, or law specifically making certain conduct a criminal offence. Interest was also shown in the new Penal Code, which had recently been drafted but had not yet come into force, and in particular in whether it incorporated the old laws dealing with specific offences of a racial character. Some members expressed the wish that the texts of the relevant provisions of the new Penal Code of Law No. 898 and Law No. 5250 would be furnished to the Committee.

126. In his statement, the representative of Brazil summarized the policy of his Government towards indigenous groups as a policy of protecting those groups while encouraging their integration in the national community: they must neither be destroyed by contact with civilization nor maintained as human zoos. Regarding Law No. 1390, he said that it was designed to supplement the Penal Code, which did not deal directly with problems of racial discrimination; as such, Law No. 1390 defined any acts motivated by racial prejudices as criminal offences and established appropriate penalties. He assured the Committee that his Government would comply with the wish, expressed during the discussion, to have the texts of the laws mentioned in the report. And he stated that his Government, in continuing to submit biennial reports, would take account of comments made by members of the Committee.

127. The Committee considered the report satisfactory and welcomed the assurance of the Government of Brazil that it would continue to submit all relevant information in its future reports.

## **CERD A/9618 (1974)**

162. The Committee took note of the statement, in the third periodic report of Brazil, that no new measures had been adopted to give effect to the provisions of the Convention since the submission of the previous report. It was noted, however, that some information which was requested by the Committee at the seventh session during its consideration of the earlier report of Brazil (A/9018, paras. 121 - 127) had not been supplied.

163. With regard to the information submitted by Brazil in response to Committee decision 3 (VII), the Committee found that the texts of the relevant provisions of Brazilian laws which had been made available to it fulfilled the requirements of paragraph (a) of article 4 of the Convention, but that the requirements of paragraph (b) of that article had not been fully met.

164. The representative of the Government of Brazil informed the Committee that, owing to an oversight, the text of Law No. 898, which contained the provisions corresponding to article 4, paragraph (b), of the Convention, had not been provided as part of the information submitted by his Government in pursuance of decision 3 (VII); and he assured the Committee that an English translation of the text would be transmitted. He also informed the Committee that up-to-date information on matters related to racial discrimination, as far as Brazil was concerned, was to be submitted to the Economic and Social Council and that the relevant parts of that information would be transmitted to the Committee as soon as they become available. And he hoped that the information requested by the Committee at its seventh session would also be forthcoming.

## **CERD A/33/18 (1978)**

297. The fourth and fifth reports of Brazil, submitted in one document in accordance with previous requests made by the Committee (A/31/18 and Corr. 1, para. 23 and A/32/18, para. 60 (n)), were considered together with the introductory statement made by the representative of the reporting State.

298. The Committee noted with regret that the document under consideration contained scant information; that some questions raised at the third, fourth, seventh and ninth sessions of the Committee, in connection with its examination of the initial, supplementary, second and third periodic reports of Brazil, had remained unanswered; and that the legal texts requested at those sessions had not been provided. (For consideration of the initial and supplementary reports, see A/9018, para. 121; for consideration of the second periodic report, *ibid.*, paras. 122 - 127; and, for consideration of the third periodic report, see A/9618, paras. 162 - 164.)

299. Members of the Committee reiterated inquiries and requests made at earlier sessions, in particular the requests for information on the implementation of subparagraph (b) of article 4, articles 5 and 7 of the Convention and the information envisaged in general recommendation III of the Committee. The text of Law No. 898, requested earlier, as well as the text of article 39, VI, of the Law of National Security, cited in the report under consideration, and of articles 153 and 156 of the Constitution, to which the representative of Brazil referred in his introductory statement, were also requested. In his reply, the representative of Brazil stated - with reference to the subject of general recommendation III of the Committee - that Brazil "had supported all measures taken by the United Nations in relation to South Africa and was complying with Security Council resolution 418 (1977)".

300. Observing that "there existed in Brazil a foundation to protect pure-bred Indians", a member of the Committee asked whether, "in the colossal undertaking to integrate the Amazonas region, steps had been taken to prevent the arrival of modern civilization from disrupting the life of the Indians and exposing them to epidemics and diseases". In reply, the representative of Brazil stated that "there was a government institution whose task was to protect the indigenous minorities in the contacts which the latter would inevitably have to establish with modern civilization owing to the various activities that had been undertaken for the development of the Amazon region". He asserted that "the policy of the Brazilian Government in that respect was to try to gather the indigenous groups into certain areas of the country in which they could live in conformity with their traditions and their culture or, if they so desired, strengthen their contacts with civilization".

301. Noting that part of the population of Brazil of African origin had to a large extent preserved its cultural identity intact, a member of the Committee requested information concerning the situation of that sector of the population.

302. The Committee decided to request the Government of Brazil to submit, by 1 March 1979, a supplementary report which would include the information and supply the legal texts requested during the examination of previous reports as well as those requested during the current discussion.

## **CERD A/35/18 (1980)**

165. The sixth periodic report of Brazil (CERD/C/66/Add.1) was considered by the Committee together with the information given by the representative of the reporting State, in his introductory statement, who touched upon the additional information requested by the Committee at the time of its consideration of the fifth periodic report, especially the legislation and institutions regarding protection of the indigenous population.

166. The members of the Committee noted that the Government of Brazil had made a considerable effort in producing its sixth periodic report, had answered numerous questions which the Committee members had asked during the consideration of the previous report and had also submitted the relevant legislative texts.

167. Much of the discussion revolved around the Government's policy for the indigenous population and the legislative and practical measures designed to ensure the defence and protection of the Indians. Members of the Committee recognized that the chief difficulty in giving effect to the requirements of the Convention in Brazil arose from the country's ethnic composition and its indigenous communities. Although it was recognized that the Government of Brazil had taken some appropriate measures towards a solution of problems for the indigenous population with political, economic, social, cultural and educational objectives, the members of the Committee, nevertheless, pointed out that the information submitted in this connection was insufficient. It was stated in paragraph 4 of part III of the report that the National Indian Foundation (FUNAI), which had the tutelage over the Indians, guaranteed "ownership" of lands, but the members wished to know whether the lands did not in fact belong to the State, the presence of the Indians on them simply being tolerated. It was also asked by what procedure a person was identified as an Indian; who carried out the identification and what its consequences were. It was necessary to know of what rights the Indians were deprived and how they could be released from tutelage so as to enjoy the full rights of citizenship. Some members asked for the exact meaning of the tutelage to which the Indians and native communities, still not integrated into national society, were subject, and what measures had been taken to settle the Amazon area and to integrate the Indians into Brazilian society. It was also considered important to know what rights could be suspended by virtue of the legal tutelage under which the Indians were placed, whether it was the official policy towards the indigenous population to forcibly concentrate them in certain areas or whether such concentration was simply a possibility offered to them together with the option of leaving those areas; how the integration of the indigenous communities could be achieved if, as the report indicated, "the line of action adopted by FUNAI with relation to isolated indigenous communities not to contact them unnecessarily". Inquiries were made as to whether FUNAI's policy consisted in keeping those communities in isolation under the pretext of avoiding "undue contacts with whites since such contacts were, in general, harmful to Indians"; and what was meant by the "pacification of the Indians". It was requested that the next Brazilian report should provide more detailed information about the Indian reservations, on FUNAI's objectives and methods and progress that might have been made within the meaning of article 2, paragraph 2, of the Convention since the adoption of the Indian Statute, 1973, and also on the demographic composition of the country, including the indigenous groups.

168. With reference to article 3 of the Convention, members of the Committee hoped that the next

report would mention the specific measures Brazil was taking to combat apartheid and would provide a complete account of Brazil's relations with the racist régime of South Africa.

169. It was observed that Laws Nos. 5250, 6015 and 6620, extracts from which were quoted in the report, were important but did not fully meet the demands of article 4 of the Convention. Article 4 (a) of the Convention did not provide that there had to be "subversion of the political and social order" for there to be punishment on grounds of racist propaganda; the dissemination of racist ideas sufficed, according to the Convention, to attract penalties of that kind. A member of the Committee asked what happened if a society, whose declared objectives were legitimate, subsequently engaged in activities of another kind, particularly activities which incited to racial discrimination; it was necessary to know whether such an association could then be prohibited, at the instance of an authority or of individuals. Article 4 (b) of the Convention made "participation" in organizations which incited to racial discrimination a punishable offence, but Law No. 6015 did not provide for punishment of such participation. It was desirable to know how an association which after it had been registered, gave evidence of intention to commit unlawful acts, could then be dissolved; and whether assistance to and the financing of such activities were punishable. Information on the recent activities of the Council for the Defence of Human Rights as well as a selection of cases decided by the courts were also requested.

170. As regards article 5 of the Convention, it was noted that the report contained more complete information on the implementation of its provisions. However, some members of the Committee pointed out that the relevant provisions of the Federal Constitution, which the report claimed to give "complete coverage" to civil, economic, social and cultural rights referred to in paragraphs (d) and (e) of article 5 of the Convention, did not cover the rights listed in subparagraphs (i), (iii), (iv), (vi) and (ix) of paragraph (d) or in subparagraphs (iii), (iv), (v) and (vi) of paragraph (e); and the right to freedom of movement, in particular, was not mentioned in the Constitution. Regarding paragraph (f) of article 5, it was asked whether there existed other legislative provisions guaranteeing access to private establishments open to the public, such as hotels, restaurants, cafés, etc. With reference to paragraph (c) of this article, information concerning the right to vote was also required; whether, for example, the ability to read and write were necessary. A member wished to know what was to be understood by the phrase "lack of conflict of interests", as used in article 3 of the electoral law of Brazil in connection with conditions of eligibility of candidates for elective office.

171. In connection with the implementation of article 6 of the Convention, reference was made to article 159 of the Brazilian Civil Code imposing obligatory reparation for the practice of illicit acts, and it was asked whether legal aid existed in Brazil and how exactly it was granted; and, whether the reparation available to victims of acts of racial discrimination was material or moral in nature. A member of the Committee stated that in many cases new laws were needed to assure effective protection and remedies against acts of racial discrimination.

172. Most members of the Committee expressed general satisfaction with measures taken by the Brazilian Government to implement article 7 of the Convention. More detailed information was requested on measures taken in the area of education, particularly the content of school curricula and measures to eliminate prejudice of racial origin.

173. In replying to members' questions and comments, the representative of Brazil stated that the

aim of the policy of limitation of contacts with the Indian population was not to prevent contacts but to limit them to what was absolutely necessary, because they could be harmful to the populations concerned. As to regrouping of Indians in special zones or national parks, the purpose was not to keep them out of the mainstream of national life but to enable them to lead a life in accordance with their traditions and to preserve their identity. The Indians had the right to move freely. Concerning the term “pacification”, he explained that this referred to the activities through which FUNAI tried to enter into contact with the Indians by peaceful means. Even if a group of Indians resorted to acts of violence, it did not follow that there would be reprisals against them. The Brazilian Government would reply in its next report to questions raised regarding the tutelage system.

174. He also explained that the concept of complicity did exist in Brazilian law. As to the possibility of recourse against acts of the Government which might not be in conformity with the law, he said that any act by an authority could be challenged and, if the circumstances warranted, be nullified by a court decision. However, all possibilities for settling a dispute through administrative channels had to be exhausted before the matter was brought before the courts. As to the phrase “lack of conflict of interest” in article 3 of the electoral law, the representative explained that it referred to cases in which an individual could not be a candidate for elective office because of personal interests involved. The law provided all the necessary clarification in that regard.

175. In reply to the question concerning remedies available to persons who considered that there had been an encroachment on their rights, he stated that there was indeed a recourse procedure since a complaint could be lodged with the Courts through the administration. Law No. 6015 concerned any type of society organized in accordance with Brazilian law. He assured the Committee that the Brazilian Government would make every effort to give full and complete answers to the points raised by the Committee in its next periodic report.

## **CERD A/38/18 (1983)**

251. The seventh periodic report of Brazil (CERD/C/91/Add.25) was considered by the Committee together with the introductory statement made by the representative of the reporting State, who limited his remarks to the question concerning national legislation relevant to the Convention and highlighted the replies given in the report to questions previously raised by the Committee relating to the implementation of some articles of the Convention and the protection of the indigenous population.

252. Members of the Committee congratulated Brazil on its report, which reflected the increasing determination of the Government to implement the Convention, and welcomed the fact that a new bill to provide stiffer penalties for racial discrimination was currently being considered by the National Congress.

253. The Committee focused attention in particular on the questions of the Government's policy and practical measures regarding protection of the indigenous population in conformity with the provisions of article 1, paragraph 4, article 2, paragraph 2, and article 5 of the Convention. It was noted that the seven general directives of the Action Plan of FUNAI, adopted on 18 February 1991, could be useful for other countries with an indigenous population that had to be protected. However, some members of the Committee expressed the wish to receive further information on the demarcation and regularization of indigenous lands and on how individuals were classified as indigenous - whether it was on the basis of race or on their adherence to a particular group because of social and economic considerations; to what extent colonization by immigrants from other areas of Brazil was permitted on indigenous lands; whether the contracts referred to in the report had been concluded between the indigenous population and new immigrants in the areas in question whether those contracts were in keeping with the policy pursued by FUNAI. Since one of the activities of FUNAI was to acquire the title to lands in indigenous zones inhabited by non-indigenous people and to resettle strangers outside the indigenous lands, it was asked whether the Government had established any kind of fund to provide compensation to non-indigenous people who had made investments in indigenous lands and what penalties were applied in the case of incursions by non-indigenous people into areas reserved for the Indians.

254. The Committee also wished to know whether there was any kind of administrative or advisory body operated by the indigenous population on its own behalf, analogous to the congresses of indigenous peoples that were traditional in other parts of Latin America and, if so, what its relation was to the new organizations established by the Government, such as FUNAI; whether the leaders of the indigenous peoples were represented at any level of the administration of FUNAI and, if so, at what levels. Information was requested on what the situation was in cases where there had already been partial or complete annexation of a territory by national or multinational economic interests and exploitation of minerals had already been started, whether the Indians were entitled to derive any benefit from the exploitation of their natural resources and whether the tutelage system provided for any special form of assistance, compensation or subsidy in such circumstances. Inquiries were made as to whether the tutelage system entailed restrictions not only of civil rights but also of political rights, whether the indigenous groups under the tutelage system were allowed to vote and to participate in civil life and, if so, the conditions that they had to meet in order to vote.

255. Furthermore, some members requested information on Brazil's experience with bilingual schools, on educational and training programmes for indigenous groups, on the languages that had been officially recognized or were being reviewed as well as on the outcome of the literacy campaigns among the indigenous population. With reference to article 5 (e) of the Convention, a member wondered whether the indigenous peoples had been integrated into the work-force of the enterprises and if so, whether there were regulations governing their employment conditions with the aim of protecting them from alienation and whether such employment resulted in improvements for those peoples. The hope was also expressed that in the next report the Government would inform the Committee on the socio-economic development of the indigenous peoples and on the traditional institutions involved in the socio-economic programmes and would supply information whether Brazil had ratified ILO Convention No. 107 of 1957 concerning the protection and integration of indigenous and tribal populations. The Government was requested to submit in the next report full information, with figures, on the composition of the indigenous population and statistics on rural and urban housing shortages, illiteracy and infant mortality among the Indians.

256. With reference to article 3 of the Convention, members of the Committee commended the Government's efforts to help the people of South Africa who were suffering as a result of apartheid. However, they were surprised at the fact that Brazil maintained a diplomatic presence in Pretoria and called on the Brazilian Government to reconsider its position. In that connection, it was asked how much trade Brazil conducted with South Africa and what scope there was for reducing trading and diplomatic links with the Pretoria régime.

257. With regard to the statement in the report that the Council for the Defence of Human Rights had never been called upon to deliberate on an act of racial discrimination, it was asked whether any cases had been brought before the courts under Acts Nos. 5250 and 6620 and article 25 of the Penal Code, which related to article 4 of the Convention.

258. Regarding article 5 of the Convention, some members of the Committee wished to receive additional details on the Government's scheme for purchasing dwellings specially intended for persons of low income. Noting that article 178 of the Constitution obliged enterprises to educate their employees and employees' children, it was asked how many foreigners had benefitted from that provision; whether education from the age of 7 to 14 was in fact compulsory; and whether the Government's educational plan sought to make both indigenous and non-indigenous groups aware of each other's cultures and ethnic identities. Clarification was requested on why no information had been provided on the implementation of articles 5 (d) (vii) on the right to freedom of thought, conscience and religion and subparagraph (d) (viii) on the right to freedom of opinion and expression.

259. With respect to article 6 of the Convention, a member drew attention to article 92 of Act No. 4215, cited in the report, and asked what could be considered a "good and sufficient reason" for a counsel's failure to defend a needy person's case and what authority was empowered to decide whether the counsel's reasons were "good and sufficient". He also asked for a clarification of the intent of article 1547 of the Civil Code, which provided for substantially severer punishment for moral injuries than for physical or material ones.

260. With reference to article 7 of the Convention, it was asked what measures had been adopted

by the Government of Brazil to include in school curricula information designed to make young people aware of the Convention's aims and purposes.

261. Replying to questions raised by members of the Committee, the representative of Brazil stated that according to Act No. 6001 of 19 December 1973 an Indian was a person of pre-Columbian origin or descent identified as belonging to a separate ethnic group; and indigenous community was a cluster of Indian families either living in isolation or maintaining intermittent or permanent contacts with the outside world, but not integrated into the society of the nation as a whole. Concerning the directives given to FUNAI, he said that those directives were inspired by Act No. 6001, which was the basic document governing official policy in that area, and the primary purpose of the Act was to regulate the legal status of Indians with a view to promoting their harmonious integration into national society while respecting their cultural values. The slow process of integration was not made easier by the remoteness and inaccessibility of some of the areas inhabited by Indians. FUNAI was responsible for the demarcation on indigenous lands, a process in which representatives of the indigenous population were involved. FUNAI was also more concerned with providing basic assistance and bringing about integration and socio-economic development. Once a certain level of integration and development had been achieved, material benefits were likely to follow. With regard to the tutelage system, he explained that although that system did limit the civil capacity of Indians, the recent election of an Indian chief to the Chamber of Deputies was proof that the highest level of representation was accessible to Indians. In the context of the Brazilian system of proportional representation, and given the fact that there were 200,000 Indians out of a total population of some 120 million, the presence of one Indian in the Chamber of Deputies was of no mean significance. The representative pointed out that in July 1965 Brazil had ratified ILO Convention No. 107 of 1957 concerning the protection and integration of indigenous population and that Act No. 6001 had been inspired by that Convention.

262. As to the concern expressed about Brazil's diplomatic relations with South Africa, he stated that his Government had deliberately downgraded its representation in that country and that the Embassy was currently headed by a Chargé d 'Affaires who was at a very junior level. Brazil was continuing to loosen its commercial links with South Africa. Furthermore, the Brazilian Government was assisting such countries as Angola and Mozambique with their development plans and it had helped to finance the construction of a road in the United Republic of Tanzania.

263. In reply to questions concerning the implementation of article 5 of the Convention, the representative said that the Government had offered certain tax incentives with a view to encouraging investments in some areas and promoting the economic and social development of the inhabitants. Although it had already had some success in raising living standards, many formidable problems still had to be overcome. According to article 178 of the Constitution, commercial, industrial and agricultural enterprises were bound to maintain free primary education for their employees and the employees' children or to assist by contributing an education-wage in such form as the law might establish. Education in Brazil was compulsory.

264. In conclusion, the representative assured the Committee that all questions and comments would be forwarded to his Government, so that it could respond fully in the eighth periodic report.

## **CERD A/42/18 (1987)**

544. The eighth and ninth periodic reports of Brazil submitted in one document (CERD/C/149/Add.3) were considered by the Committee at its 788<sup>th</sup> meeting on 10 March 1987 (CERD/C/SR.788).

545. The report was introduced by the representative of Brazil, who informed the Committee that, in November 1986, the Brazilian people had elected a Constituent Assembly with responsibility for drafting a new federal constitution. He referred to relevant parts of the report dealing in particular with his Government's policy on the indigenous populations in Brazil.

546. Members of the Committee expressed satisfaction at the high quality of the report, which provided abundant information and bore witness to the importance Brazil attached to maintaining a meaningful dialogue with the Committee. They also welcomed the readiness with which the Brazilian Government had answered many of the questions put to it when the previous report had been discussed. Members welcomed the important new legislation that had been promulgated to eliminate racial discrimination. It was pointed out, however, that States parties were also required to consider the effectiveness of such measures and to decide whether other measures than legal ones were not also required.

547. With regard to the implementation of article 2 taken in conjunction with article 5 of the Convention, members welcomed the policy of the Government and its activities to improve the situation of indigenous populations. They observed, however, that considerable efforts were still needed in order to secure the indigenous inhabitants a position equal to that enjoyed by other citizens. It was asked how Brazil's considerable external debt affected the domestic economy and the implementation of the Convention. Members asked in particular whether the difficulties arising from the external debt might disrupt the Government's new policy of land distribution and to what extent the groups constituted by the landowners were an obstacle to the implementation of the programme.

548. In relation to the demarcation of indigenous land in accordance with the Indian Statute, members asked whether provision was made for general legal aid and legal assistance in court for Indians who appealed against the demarcation of such land or its assignment, for example, to mining companies for exploitation. They inquired whether there had been any cases in which the Government had imposed penalties on mining companies for infringing Decree No. 88985, which sought to protect the patrimony and welfare of the Indians, and asked how the mining companies were reacting to the implementation of that Decree. It was asked whether the term "demarcation" meant the right of Indians to live in a demarcated area or the transfer to the Indians of the title-deeds to indigenous lands. A clarification was sought in respect of differences in the system applicable to areas belonging to the Indians and to the domain of the Union.

549. Members wished to receive additional information on the exploitation of the subsoil in the areas belonging to the Indians. They asked whether such exploitation was carried out with the consent of the indigenous population, whether the latter gave its consent directly or through the agencies representing it, whether there had been any cases in which profits from the exploitation of the subsoil in the areas belonging to the Indians or indemnities and royalties for the occupation of

the land had been paid to them, what the total income paid to the Indians for the occupation of their lands was in such a case, and whether the interest of the recipient company or Indian tradition would prevail in the event of a conflict.

550. Members pointed out that the Amazonian tropical forest was of considerable importance, not only for the Indians who lived in it, but also for the climatic balance of the world. It would therefore be useful to have up-to-date information about the activities of multinational companies which were deforesting vast areas. It was pointed out that, in order to prevent private interests from dispossessing the Indians of their lands, it was extremely important to speed up the process of demarcating them so as to guarantee the physical and cultural survival of the indigenous communities. It was suggested that prospecting and exploitation should be restricted to State enterprises and that profits from the exploitation of the subsoil should be reserved exclusively for the Indians.

551. Additional information was requested regarding the tutelage system imposed on the Indians' enjoyment of civil and political rights. It was asked why civil and political rights could not be extended at least to those Indians capable of exercising them, and what the advantages of the tutelage system (from which, according to the report, no Indian had applied to be released) were.

552. Members of the Committee inquired about the level of participation of Indians in the management of public affairs. They asked whether the Government made use of the wisdom and intelligence of the indigenous inhabitants in building the country, if there were engineers and technicians among the indigenous population, and whether there were any other Indian members in the chamber of Deputies besides the Indian chief mentioned in the previous report.

553. Clarification was sought on the part played by Christian missionaries in Brazil, in particular concerning differences in attitude between European Catholics and fundamentalist Protestants from the United States of America towards the customs and life-styles of the Amazonian Indians, and it was asked whether the Brazilian authorities exercised control over the missionaries' activities. It was also asked what had become of Leonardo Boff after the Vatican had censured the theology of liberation.

554. Members of the Committee observed that very few Indians continued their studies beyond elementary school and expressed the hope that rapid progress would be made in that field. They asked for an explanation of the reduction in the number of Indian pupils in elementary schools from nearly 20,000 in 1983 to 4,536 in 1985. They requested additional information on the total indigenous population in Brazil, its composition and growth. They also wished to know how many Indian languages were spoken in the country and their relative importance.

555. Members inquired whether there was a long-term programme aimed at integrating the indigenous population into national life and how the Government was able to reconcile its concern for preserving the indigenous population's culture with its desire to integrate that population into national society. It was asked whether, for example, the indigenous methods of cultivation were compatible with the application of science and technology to agricultural production.

556. With regard to the Afro-Brazilians, members of the Committee asked whether they constituted

a separate ethnic group, whether they lived mainly in towns, whether they formed part of the working classes and what their educational level was. They noted that important measures on education had been adopted by the Government with the aim of promoting Afro-Brazilian culture. It was asked whether the Brazilian navy included blacks and whether a study had been conducted on equal representation of the various ethnic groups of the population in the navy and the civil service. Additional information was requested about the Brazilian Government's policy in respect of equity in employment in the civil service.

557. Concerning article 3 of the Convention, members of the Committee paid tribute to the Brazilian Government for the new measures it had adopted to implement that article. They expressed regret, however, that the guidelines recommended by the Brazilian authorities were not binding on individuals and private companies. They inquired about the Government's attitude to mandatory sanctions being imposed on South Africa by the Security Council and asked whether the Brazilian Government would ensure that individuals and private companies complied with economic sanctions. It was asked whether Decree No. 91524 forbidding cultural, artistic and sports exchanges with South Africa, as well as oil and arms sales to that country had ever been applied. Members wished to know whether Brazil maintained diplomatic relations with South Africa and whether the Brazilian airline Varig still flew to South Africa. Further information was requested on the seminar held in Rio de Janeiro under the auspices of the United Nations Commission on Transnational Corporations. Members of the Committee expressed the hope that Brazil would ultimately sever all relations with the racist régime of South Africa.

558. In relation to the implementation of articles 4 and 6 of the Convention, members of the Committee expressed concern at the incidents reported by Amnesty International, according to which 261 Pataxó Hã-Hã-Hã Indians living in the State of Bahia had been murdered by military police and mercenaries in the pay of landowners. They asked what action had been taken to prevent the recurrence of such incidents. It was also asked whether the incidents had been referred to the Council for the Defence of Human Rights.

559. They inquired as to whether the penalties envisaged for the crime of genocide (12 to 30 years' imprisonment) were equivalent to the maximum prescribed in criminal law, as was customary for the most serious crime, whether Act No. 7437 of 1985 was applicable to discriminatory acts committed by private individuals as well as by Government officials, whether the Act had been adopted and applied in the courts, and, if not, when it could be adopted, whether the Act was also applicable in cases where propaganda did not involve the use of force but, for example, defamation. They also asked whether civil servants guilty of discrimination were liable to administrative penalties only or to criminal penalties as well, whether the legislation forbidding discrimination in employment had been invoked and, if so, what types of cases had been brought before the courts and what remedies were available. Further information was requested on the membership of the Council for the Defence of Human Rights; it was asked whether it included representatives of the various sectors of the population and particularly the Catholic Church, which was especially sensitive to the cause of human rights, as well as how and by whom the members of the Council were appointed. The hope was expressed that the Government would take the opportunity of the adoption of the new Constitution to adopt legislation which would give full effect to the provisions of article 4 of the Convention.

560. In reply to questions raised and comments made by members of the Committee, the representative of Brazil stated that his Government recognized that there was still a long way to go as far as the protection and promotion of the rights of the indigenous population were concerned. Tensions had arisen in Brazil owing to the expansion of the agricultural frontier and the mining activities of gold prospectors and, regrettably, there had been a number of casualties. However, the Federal Police Department and the Ministry of Justice were doing their utmost to try to resolve the problem and bring to justice those whose responsibility had been duly established. The figures given in the report on Indians and primary education showed an enormous decrease between 1984 and 1985. The figure given for 1985 no doubt covered only part of the year and would be corrected in the next report. There were currently 220,000 Indians in Brazil out of the total population of 130 million. They already occupied a very large area of land which the Government was endeavouring to extend still further. There were about 205 Indian languages and dialects in Brazil. Portuguese was the only common language.

561. Regarding the external debt, he said that Brazil had decided to declare a moratorium in order to give itself the time to readjust the domestic economy. Brazil was unable to agree to the conditions of certain international financial institutions because its first priority must be national development.

562. The Government was extremely grateful to the missionaries for the very useful assistance they gave to the Indians. The problem recently created by the theology of liberation was an internal matter of concern solely to the Church.

563. As for the lack of blacks in the Brazilian diplomatic service and the navy, he recalled that in 1893, a revolt led by a black admiral had broken out in Rio de Janeiro (Revolta da Armada). The Brazilian Government attached great importance to the number of mixed marriages registered, which were producing a new race and a new culture.

564. In connection with article 3 of the Convention, Brazil maintained diplomatic relations with South Africa, where it was represented only by an assistant secretary. The Brazilian Government did not encourage trade or other relations with South Africa. Varig maintained its air links with South Africa, but it was a private company.

565. With regard to the implementation of article 4 of the Convention, the representative informed the Committee that the new law had been referred to the new Minister of Justice who had been appointed in March 1986. The death penalty and life imprisonment did not exist in his country. The maximum penalty was 30 years' imprisonment. The Council for the Defence of Human Rights was not a new body, but it had been completely restructured at the end of 1985 so as to meet the current needs of Brazilian society. It came under the jurisdiction of the Ministry of Justice and was composed of members from that Ministry, the Ministry of Foreign Affairs, the Federal Police Department, Congress (majority and opposition parties) and eminent persons from the press, the education sector and the bar. The composition of the Council was currently under review.

566. He added that a great part of the legislation in force in Brazil would be revised in the near future as a result of the adoption of the new Constitution. The next report would therefore contain much new information regarding the implementation of the Convention and would show that the Government took account of the Committee's comments and questions, the number and complexity

of which attested to the importance the Committee attached to Brazil's reports.

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290. The Committee considered the tenth, eleventh, twelfth and thirteenth periodic reports of Brazil submitted in a single document (CERD/C/263/Add.10), at its 1157<sup>th</sup>, 1158<sup>th</sup> and 1159<sup>th</sup> meetings (CERD/C/SR.1157-1159), on 5 August and 6 August 1996. At its 1177<sup>th</sup> meeting, on 19 August 1996, it adopted the following concluding observations.

### **A. Introduction**

291. The Committee welcomes the resumption of the dialogue with the Government of Brazil after a nine-year break. It expresses its satisfaction to the State Party for the frankness of its report and the explanations provided by the delegation. However, it regrets that the report submitted contains little specific information on the implementation of the Convention in practice. In this connection, the Committee takes note of the delegation's statement that the State Party is ready to continue the dialogue in the near future and to provide it with fuller information on the measures taken to give effect to the Convention.

292. The Committee notes that the State Party has not made the declaration provided for by article 14 of the Convention; some members of the Committee requested that it should consider the possibility of doing so.

### **B. Factors and difficulties impeding the implementation of the Convention**

293. The Committee recognizes that Brazil is a country with a very sizeable geographical area and population and that, during the past decade, it has undergone far-reaching political, economic and social changes. In spite of numerous structural, political, economic and social reforms, the authorities have not managed to control endemic poverty, thus exacerbating the social inequalities affecting the black, indigenous and mestizo populations in particular, and encouraging the emergence of a culture of violence.

### **C. Positive aspects**

294. The recent legislative and institutional measures taken by the Government of Brazil to bring national legislation more into line with the Convention and to improve protection of the fundamental rights of the most vulnerable communities are welcomed. In this connection, the Committee takes particular note of the adoption of the new Constitution in 1988 and the recent establishment of a human rights commission, an inter-ministerial working group for the promotion of the black population and a ministry of agrarian reform and the promulgation of a national human rights plan. The creation, on an experimental basis, of a police station to deal specially with cases of racial discrimination should also be highlighted.

295. The determination expressed by the delegation to ratify shortly ILO Convention No. 169 concerning indigenous and Tribal Peoples in Independent Countries is a step forward which the Committee hopes Brazil will take as soon as possible.

296. Active participation by members of society at large in drafting the State Party's report is a

welcome development, as is the determination expressed by the Brazilian authorities to disseminate widely the report and the Committee's concluding observations.

D. Principal subjects of concern

297. The statistical and qualitative information on the demographic composition of Brazil's population and on the enjoyment of political, economic, social and cultural rights provided in the State Party's report clearly show that the indigenous, black and mestizo communities suffer from deep structural inequalities and that the measures taken by the Government effectively to combat those disparities are still insufficient.

298. The Committee notes that the report contains no information on the "indicators" of the particular social difficulties encountered by the most vulnerable populations, especially the indigenous, black and mestizo populations.

299. A number of sources of information concur that discriminatory attitudes towards the indigenous, black and mestizo populations persist within Brazilian society and are apparent at a number of levels in the political, economic and social life of the country. These discriminatory attitudes concern, *inter alia*, the right to life and security of person, political participation, access to education and employment, access to basic public services, the right to health, the right to decent housing, land ownership, land use and law enforcement.

300. Special concern is expressed about the fate of the most vulnerable populations, in particular indigenous people, blacks and mestizos.

301. Regarding the implementation of article 2 of the Convention, the Committee notes with concern the slow pace of certain legislative reforms, in particular the reform of the Criminal Code. The Committee notes with concern the maintenance of article 6 of the 1916 Civil Code of Brazil, containing a discriminatory restriction on the exercise of civil rights by the indigenous populations which is contrary to the 1988 Constitution of Brazil, although according to the explanations of the representative of Brazil this provision has become obsolete.

302. The fact that illiterate citizens, who are found especially among the indigenous, black or mestizo populations, or other vulnerable groups, cannot be elected in political elections is contrary to the spirit of article 5 (c) of the Convention.

303. Particular note is taken of the fact that the indigenous populations encounter serious discrimination in regard to enjoyment of their civil, political, economic, social and cultural rights. Special concern is expressed about the unfair treatment of the indigenous populations during land demarcation and distribution, the violent and unlawful means used to settle numerous land disputes and the violence and intimidation used against them by private militias and even occasionally by members of the military police. Concern is also expressed about their social protection and the discrimination they suffer in the spheres of health, education, culture, employment, access to public office and housing.

304. Regarding the implementation of article 6 of the Convention, the Committee notes with regret

that the information provided on cases in which judicial remedies were exercised by the victims of acts of racial discrimination was insufficient and did not allow a proper assessment to be made.

E. Suggestions and recommendations

305. The Committee hopes that the State Party will continue and strengthen its efforts to improve the effectiveness of measures and programmes designed to ensure that all groups of the population fully enjoy their political, economic, social and cultural rights. The Committee also recommends that the State Party devote due attention to developing programmes to foster awareness of human rights and of the need for tolerance, in order to prevent social and racial discrimination and prejudice.

306. The Committee requests the Government of Brazil to provide, in its next periodic report, precise information and "indicators" on the social difficulties encountered by the indigenous black and mestizo populations, and in particular on rates of unemployment, imprisonment, alcoholism, drug use, delinquency and suicide. The Committee also draws the State Party's attention to the need to devise "indicators" to assess policies and programmes for protecting and promoting the rights of the vulnerable populations.

307. The Committee recommends that the State Party should do everything possible to speed up the current legislative reforms and, more specifically, to amend article 6 of the 1916 Civil Code of Brazil, which is contrary to its 1988 Constitution. The State Party should also take measures to allow illiterate citizens from the most underprivileged population groups to be elected in political elections.

308. The Committee recommends that the Government of Brazil put more vigorously into practice its determination to defend the fundamental rights of indigenous people, blacks, mestizos and members of other vulnerable groups, who are regularly the victims of serious intimidation and violence, sometimes leading to their death. It hopes that the authorities concerned will systematically prosecute those guilty of such crimes, whether they are members of private militias or State officials, and will take effective preventive measures, especially through training for the members of the military police. In addition, the State Party should ensure that the victims of such acts receive compensation and are rehabilitated.

309. The Committee strongly recommends that the State Party should adopt fair and equitable solutions for the demarcation, distribution and restitution of land. To that end, where land disputes are concerned, everything possible should be done to prevent discrimination against indigenous people, blacks or mestizos by the big landowners.

310. The Committee encourages the State Party to ratify ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

311. The Committee recommends that the next periodic report of Brazil contain detailed information on complaints filed by the victims of acts of racial discrimination and on how they were dealt with by the courts.

312. The Committee recommends that the State Party give nationwide publicity to its thirteenth periodic report and the Committee's concluding observations thereon.

313. The Committee recommends that the State Party ratify at its earliest convenience the amendments to article 8, paragraph 6, of the Convention which were adopted by the 14<sup>th</sup> meeting of States Parties.

314. The Committee recommends that the State Party's next periodic report, which is due on 4 January 1998, contain an update of the previous report and focus on all the points raised in the present concluding observations.