

BRAZIL

Follow-up - State Reporting

i) Action by Treaty Bodies

CCPR, A/61/40 vol. I (2006)

CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS

234. In chapter VII of its annual report for 2003 (A/58/40, vol. I), the Committee described the framework that it has set out for providing for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report (A/60/40, vol. I), an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2006.

235. Over the period covered by the present annual report, Mr. Rafael Rivas Posada continued to act as the Committee's Special Rapporteur for follow-up to concluding observations. At the Committee's eighty-fifth, eighty-sixth and eighty-seventh sessions, he presented progress reports to the Committee on intersessional developments and made recommendations which prompted the Committee to take appropriate decisions on a State-by-State basis.

236. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table. Over the reporting period, since 1 August 2005, 14 States parties (Albania, Belgium, Benin, Colombia, El Salvador, Kenya, Mauritius, Philippines, Poland, Serbia and Montenegro, Sri Lanka, Tajikistan, Togo and Uganda) have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, only 11 States parties (Equatorial Guinea, Greece, Iceland, Israel, Mali, Moldova, Namibia, Suriname, the Gambia, Uzbekistan and Venezuela) have failed to supply follow-up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

237. The table below details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided to take no further action prior to the period covered by this report.

State party	Date information due	Date reply received	Further action
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Eighty-fifth session (October 2005)

Brazil	1 November 2006	-	
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Initial periodic report examined	Paras. 6, 12, 16 and 18		
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CCPR, A/62/40 vol. I (2007)

CHAPTER VII. FOLLOW-UP ON CONCLUDING OBSERVATIONS

220. In chapter VII of its annual report for 2003 (A/58/40, vol. I), the Committee described the framework that it has set out for providing for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report (A/61/40, vol. I), an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2007.

221. Over the period covered by the present annual report, Mr. Rafael Rivas-Posada continued to act as the Committee's Special Rapporteur for follow-up to concluding observations. At the Committee's eighty-fifth, eighty-sixth and eighty-seventh sessions, he presented progress reports to the Committee on intersessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State. In view of Mr. Rivas-Posada's election to the Chair of the Committee, Sir Nigel Rodley was appointed the new Special Rapporteur for follow-up on concluding observations at the Committee's ninetieth session.

222. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table.¹ Over the reporting period, since 1 August 2006, 12 States parties (Albania, Canada, Greece, Iceland, Israel, Italy, Slovenia, Syrian Arab Republic, Thailand, Uganda, Uzbekistan and Venezuela) have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, only 12 States parties (Brazil, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Mali, Moldova, Namibia, Surinam, Paraguay, the Gambia, Surinam and Yemen) and UNMIK have failed to supply follow-up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

223. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided before 1 August 2006 to take no further action prior to the period covered by this report.

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Eighty-fifth session (October 2005)

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State party: Brazil

Report considered: Second periodic (due since 1998), submitted on 15 November 2004.

Information requested:

Para. 6: Demarcation of indigenous lands; civil and criminal remedies in the event that such lands are deliberately usurped (arts. 1 and 27).

Para. 12: (a) Steps to halt extrajudicial executions, torture, ill-treatment and abuse by State officials; (b) Investigations into reported violations of human rights conducted not by the police but by an independent body; (c) Prosecution of the culprits; punishment proportionate to the gravity of the offence; effective remedies and reparation for victims; (d) Utmost consideration to the recommendations of the United Nations Special Rapporteurs on the question of torture, on extrajudicial, summary or arbitrary executions, and on the independence of judges and lawyers (arts. 6 and 7).

Para. 16: Steps to improve the situation of detainees; limiting police custody to one or two days; ending pretrial detention at police stations and the practice of continuing to hold prisoners in captivity when their sentences are over; introducing an effective bail system; prompt trials (arts. 9 and 10).

Para. 18: Combating impunity by disqualifying those guilty of serious human rights violations from certain public positions, and by bringing legal action; trials to establish the truth; release to the public of documents on human rights abuses, including those currently withheld pursuant to Presidential Decree 4553 (art. 14).

Date information due: 3 November 2006

Date information received: NONE RECEIVED

Action taken:

6 December 2006 A reminder was sent to the State party.

29 June 2007 A fresh reminder was sent to the State party and the Special Rapporteur requested a meeting with a representative of the State party.

Recommended action: Consultations should be scheduled for the ninety-first session.

Next report due: 31 October 2009

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Note

1/ The table format was altered at the ninetieth session.

CCPR, CCPR/C/SR.2533 (2008)

Human Rights Committee
Ninety-second session
Summary record of the 2533rd meeting
Held at Headquarters, New York,
on Wednesday, 2 April 2008, at 11 a.m.

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Follow-up to concluding observations on State reports and to Views under the Optional Protocol

Progress report of the Special Rapporteur for follow-up on concluding observations

1. Sir Nigel Rodley (Special Rapporteur for follow-up on concluding observations), introducing an updated English version of his earlier report (CCPR/C/92/R.1) tracking the changes made in the light of developments since its publication, said that he had consulted with representatives of the Central African Republic, Mali, Namibia, Sri Lanka and Suriname and would soon be meeting with representatives of the Democratic Republic of the Congo. Regrettably, it had not been possible to meet with representatives of the Gambia and Namibia, which had not been forthcoming in making the necessary arrangements.

2. The Special Rapporteur's role was to urge States to provide prompt feedback on the points raised by the Committee in its concluding observations. Such efforts were counter-productive, however, if requests for information were made year after year and a subsequent periodic report of the State party was due or overdue. In those cases, the State party should be encouraged to submit a report rather than respond to concerns paragraph by paragraph. Nevertheless, failing the submission of a report, a response to the individual paragraphs would be better than nothing.

3. He hoped that the updated version of his report could be reformatted to make it more reader-friendly. Concerning overdue responses to concluding observations, he recommended, with respect to Moldova and Uzbekistan, that no further action should be taken in view of the States parties' submission of periodic reports.

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29. [Sir Nigel Rodley] With regard to Yemen, Brazil and Paraguay, the recommended action should not be, as indicated in his report, to review the status of submission of follow-up replies, but to send reminders to those States parties, with a view to receiving follow-up replies by the ninety-third session.

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33. *The recommendations contained in the progress report of the Special Rapporteur for follow-up on concluding observations, as amended, were approved.*

The meeting was suspended at 12.30 p.m. and resumed at 12.35 p.m.

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CCPR, CCPR/C/SR.2564/Add.1 (2008)

HUMAN RIGHTS COMMITTEE

Ninety-third session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 2564th MEETING

Held at the Palais Wilson, Geneva,

on Wednesday, 23 July 2008 at 11.25 a.m.

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FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO
VIEWS UNDER THE OPTIONAL PROTOCOL

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Report of the Special Rapporteur for follow-up on concluding observations (CCPR/C/93/R.1)

1. Sir Nigel RODLEY, Special Rapporteur for follow-up on concluding observations, introduced his report contained in document CCPR/C/93/R.1.

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4. He recommended that reminders should be sent to Barbados, Brazil, the Central African Republic, Chile and Madagascar requesting additional information...

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39. The draft report of the Special Rapporteur for follow-up on concluding observations was adopted.

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CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS

194. In chapter VII of its annual report for 2003,²⁰ the Committee described the framework that it has set out for providing for more effective follow up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report (A/62/40, vol. I), an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2008.

195. Over the period covered by the present annual report, Sir Nigel Rodley acted as the Committee's Special Rapporteur for follow-up on concluding observations. At the Committee's ninety-first, ninety-second and ninety third sessions, he presented progress reports to the Committee on inter-sessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State.

196. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table.²¹ Over the reporting period, since 1 August 2007, 11 States parties (Bosnia and Herzegovina, Brazil, Hong Kong Special Administrative Region (China), Mali, Paraguay, Republic of Korea, Sri Lanka, Suriname, Togo, United States of America and Ukraine), as well as the United Nations Interim Administration Mission in Kosovo (UNMIK), have submitted information to the Committee under the follow up procedure. Since the follow up procedure was instituted in March 2001, 10 States parties (Barbados, Central African Republic, Chile, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Honduras, Madagascar, Namibia and Yemen) have failed to supply follow up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

197. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow up responses provided to it, decided before 1 August 2007 to take no further action prior to the period covered by this report.

198. The Committee emphasizes that certain States parties have failed to cooperate with it in the performance of its functions under Part IV of the Covenant, thereby violating their obligations (Gambia, Equatorial Guinea).

20/ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40 (A/58/40), vol. I.*

21/ The table format was altered at the ninetieth session.

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Eighty-fifth session (October 2005)

State party: Brazil
Report considered: Second periodic (due since 1998), submitted on 15 November 2004.
Information requested: Para. 6: Accelerate demarcation of indigenous lands; provide effective civil and criminal remedies for deliberate trespass on such lands (arts. 1 and 27). Para. 12: (a) Measures to eradicate extrajudicial killing, torture and other forms of ill-treatment and abuse by law enforcement officials; (b) Prompt and impartial investigations by an independent body into reported violations of human rights by law enforcement officials; (c) Prosecution of perpetrators and punishment proportionate to the seriousness of the crime; grant effective remedies and redress to victims; (d) Utmost consideration to the recommendations of the United Nations Special Rapporteurs on the question of torture, on extrajudicial, summary or arbitrary executions, and on the independence of judges and lawyers contained in the reports on their visits to the State party (arts. 6 and 7). Para. 16: Measures to improve the situation of detainees and prisoners; limiting police custody to one or two days following arrest; end the practice of remand detention in police stations; develop a system of bail pending trial; ensure prompt trials; implement alternative measures other than imprisonment; end the practice of detaining prisoners in prolonged confinement even after their sentences have expired; introducing an effective bail system; prompt trials (arts. 9 and 10). Para. 18: Combat impunity by considering other methods of accountability for human rights crimes committed under the military dictatorship such as disqualifying perpetrators from certain public offices and establishing justice and truth inquiry processes; release to the public of all documents relevant to human rights abuses, including those currently withheld pursuant to Presidential Decree No. 4553 (art. 14).

Date information due: 3 November 2006

Date information received:

18 April 2008 Partial reply (response incomplete with regard to paragraphs 6, 12, 16 and 18).

Action taken:

Between December 2006 and September 2007, three reminders were sent. In his reminders of 29 June and 28 September 2007, the Special Rapporteur also requested a meeting with a representative of the State party.

18 October 2007 During the ninety-first session, the Special Rapporteur met with two representatives of the State party. The State party delegation committed itself to providing the requested follow-up information before the ninety-second session.

Recommended action: A reminder should be sent to request additional information.

Next report due: 31 October 2009

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VII. FOLLOW UP TO CONCLUDING OBSERVATIONS

237. In chapter VII of its annual report for 2003,²⁰ the Committee described the framework that it has set out for providing for more effective follow up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report (A/63/40, vol. I), an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2009.

238. Over the period covered by the present annual report, Sir Nigel Rodley acted as the Committee's Special Rapporteur for follow-up on concluding observations. At the Committee's ninety-fourth, ninety-fifth and ninety-sixth sessions, he presented progress reports to the Committee on inter-sessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State.

239. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table.²¹ Over the reporting period, since 1 August 2008, 16 States parties (Austria, Barbados, Bosnia and Herzegovina, Chile, Costa Rica, Czech Republic, France, Georgia, Honduras, Hong Kong Special Administrative Region (China), Ireland, Libyan Arab Jamahiriya, Madagascar, Tunisia, Ukraine and United States of America), as well as the United Nations Interim Administration Mission in Kosovo (UNMIK), have submitted information to the Committee under the follow up procedure. Since the follow up procedure was instituted in March 2001, 11 States parties (Botswana, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Namibia, Panama, Sudan, the former Yugoslav Republic of Macedonia, Yemen and Zambia) have failed to supply follow up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.²²

240. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow up responses provided to it, decided before 1 August 2008 to take no further action prior to the period covered by this report.

241. The Committee emphasizes that certain States parties have failed to cooperate with it in the performance of its functions under Part IV of the Covenant, thereby violating their obligations (Gambia, Equatorial Guinea).

...

Eighty-fifth session (October 2005)

State party: Brazil

Report considered: Second periodic (due since 1998), submitted on 15 November 2004.

Information requested:

Para. 6: Accelerate demarcation of indigenous lands; provide effective civil and criminal remedies for deliberate trespass on such lands (arts. 1 and 27).

Para. 12: (a) Measures to eradicate extrajudicial killing, torture and other forms of ill-treatment and abuse by law enforcement officials; (b) Prompt and impartial investigations by an independent body into reported violations of human rights by law enforcement officials; (c) Prosecution of perpetrators and punishment proportionate to the seriousness of the crime; grant effective remedies and redress to victims; (d) Utmost consideration to the recommendations of the United Nations Special Rapporteurs on the question of torture, on extrajudicial, summary or arbitrary executions, and on the independence of judges and lawyers contained in the reports on their visits to the State party (arts. 6 and 7).

Para. 16: Measures to improve the situation of detainees and prisoners; limiting police custody to one or two days following arrest; end the practice of remand detention in police stations; develop a system of bail pending trial; ensure prompt trials; implement alternative measures other than imprisonment; end the practice of detaining prisoners in prolonged confinement even after their sentences have expired; introducing an effective bail system; prompt trials (arts. 9 and 10).

Para. 18: Combat impunity by considering other methods of accountability for human rights crimes committed under the military dictatorship such as disqualifying perpetrators from certain public offices and establishing justice and truth inquiry processes; release to the public of all documents relevant to human rights abuses, including those currently withheld pursuant to Presidential Decree No. 4553 (art. 14).

Date information due: 3 November 2006

Date information received:

18 April 2008 Partial reply (response incomplete with regard to paragraphs 6, 12, 16 and 18).

Action taken:

Between December 2006 and September 2007, three reminders were sent. In his reminders of 29 June and 28 September 2007, the Special Rapporteur also requested a meeting with a

representative of the State party.

18 October 2007 During the ninety-first session, the Special Rapporteur met with two representatives of the State party. The State party delegation committed itself to providing the requested follow-up information before the ninety-second session.

22 September 2008 A letter was sent to the State party to request additional information on paragraphs 6, 12, 16 and 18.

16 December 2008 A further reminder was sent.

6 May 2009 A reminder was sent to the State party.

Recommended action: If no information is received, consultations should be scheduled for the ninety-seventh session.

Next report due: 31 October 2009

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20/ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40 (A/58/40), vol. I.*

21/ The table format was altered at the ninetieth session.

22/ As the next periodic report has become due with respect to the following States parties, the Committee has terminated the follow-up procedure despite deficient information or the absence of a follow-up report: Mali, Sri Lanka, Suriname, Namibia, Paraguay, and the Democratic Republic of the Congo.

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Chapter VII: Follow-up to Concluding Observations

203. In chapter VII of its annual report for 2003,¹⁶ the Committee described the framework that it has set out for providing for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report,¹⁷ an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2010.

204. Over the period covered by the present annual report, Mr. Abdelfattah Amor acted as the Committee's Special Rapporteur for follow-up on concluding observations. At the Committee's ninety-seventh, ninety-eighth and ninety-ninth sessions, he presented progress reports to the Committee on intersessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State.

205. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table.¹⁸ Over the reporting period, since 1 August 2009, 17 States parties (Bosnia and Herzegovina, Chile, Costa Rica, Czech Republic, Denmark, France, Georgia, Japan, Monaco, Spain, the former Yugoslav Republic of Macedonia, Sudan, Sweden, Tunisia, Ukraine, United Kingdom of Great Britain and Northern Ireland and Zambia), as well as the United Nations Interim Administration Mission in Kosovo (UNMIK), have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, 12 States parties (Australia, Botswana, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Namibia, Nicaragua, Panama, Rwanda, San Marino and Yemen) have failed to supply follow-up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the preparation of the next periodic report by the State party.¹⁹

206. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, the report does not cover those States parties with respect to which the Committee has completed its follow-up activities, including all States parties which were considered from the seventy-first session (March 2001) to the eighty-fifth session (October 2005).

207. The Committee emphasizes that certain States parties have failed to cooperate with it in

the performance of its functions under Part IV of the Covenant, thereby violating their obligations (Equatorial Guinea, Gambia).

Eighty-fifth session (October 2005)

State Party: Brazil

Report considered: Second periodic (due since 1998), submitted on 15 November 2004.

Information requested:

Para. 6: Accelerate demarcation of indigenous lands; provide effective civil and criminal remedies for deliberate trespass on such lands (arts. 1 and 27).

Para. 12: (a) Measures to eradicate extrajudicial killing, torture and other forms of ill-treatment and abuse by law enforcement officials; (b) prompt and impartial investigations by an independent body into reported violations of human rights by law enforcement officials; (c) prosecution of perpetrators and punishment proportionate to the seriousness of the crime; grant effective remedies and redress to victims; (d) utmost consideration to the recommendations of the United Nations Special Rapporteurs on the question of torture, on extrajudicial, summary or arbitrary executions, and on the independence of judges and lawyers contained in the reports on their visits to the State party (arts. 6 and 7).

Para. 16: Measures to improve the situation of detainees and prisoners; limiting police custody to one or two days following arrest; end the practice of remand detention in police stations; develop a system of bail pending trial; ensure prompt trials; implement alternative measures other than imprisonment; end the practice of detaining prisoners in prolonged confinement even after their sentences have expired; introducing an effective bail system; prompt trials (arts. 9 and 10).

Para. 18: Combat impunity by considering other methods of accountability for human rights crimes committed under the military dictatorship such as disqualifying perpetrators from certain public offices and establishing justice and truth inquiry processes; release to the public of all documents relevant to human rights abuses, including those currently withheld pursuant to Presidential Decree No. 4553 (art. 14).

Date information due: 3 November 2006

Date information received:

18 April 2008 Partial reply (response incomplete with regard to paras. 6, 12, 16 and 18).

Action taken:

Between December 2006 and September 2007, three reminders were sent. In his reminders of 29 June and 28 September 2007, the Special Rapporteur also requested a meeting with a representative of the State party.

18 October 2007 During the ninety-first session, the Special Rapporteur met with two representatives of the State party. The State party delegation committed itself to providing the requested follow-up information before the ninety-second session.

22 September 2008 A letter was sent to the State party to request additional information on paragraphs 6, 12, 16 and 18.

16 December 2008 A further reminder was sent.

6 May 2009 A reminder was sent to the State party.

7 October 2009 The Special Rapporteur requested a meeting with a representative of Brazil.

11 December 2009 A letter was sent inviting the State party to reply to all concluding observations in its next periodic report due on 31 October 2009.

Recommended action: If no information is received, consultations should be scheduled for the ninety-seventh session.

Next report due: 31 October 2009

¹⁶ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40*, vol. I (A/58/40 (vol. I)).

¹⁷ *Ibid.*, *Sixty-Fourth Session, Supplement No. 40*, vol. I (A/64/40 (vol. I)).

¹⁸ The table format was altered at the ninetieth session.

¹⁹ As the next periodic report has become due with respect to the following States parties, the Committee has terminated the follow-up procedure despite deficient information or the absence of a follow-up report: Austria, **Brazil**, Central African Republic, Democratic Republic of the Congo, Hong Kong (China), Mali, Namibia, Paraguay, Republic of Korea, Sri Lanka, Suriname and Yemen.

Follow-up - State Reporting
ii) Action by State Party

CCPR, CCPR/C/BRA/CO/2/Add.1 (2008)

Replies by the Government of Brazil on the concluding observations of the Human Rights Committee (CCPR/C/BRA/CO/2)

[18 April 2008]

1. Further to the dialogue maintained with the Human Rights Committee on the occasion of the consideration of Brazil's second periodic report at its 85th Session, October 2005, and resumed during the meeting between Commissioner Nigel Rodley and Ambassador Sérgio Florêncio, Alternate Representative at the Brazilian Mission to the United Nations in Geneva, on October 18, 2007, the Brazilian State hereby formally provides additional information in respect of paragraphs 6, 12, 16, and 18 of the Human Rights Committee's final observations (CCPR/C/BRA/CO/2).

2. The Brazilian State recognizes that said information has been overdue since November 2006. This situation shows that the Brazilian State needs to adopt more effective institutional mechanisms to follow up on recommendations from both conventional and extra conventional human rights protection mechanisms. The Brazilian State is wholly committed to this objective, which it has set as one of its voluntary commitments, as expressed in connection with its candidacy to the Human Rights Council.

3. As it finally submits the additional information requested, the Brazilian State wishes to reiterate its appreciation to the Human Rights Committee for its work on monitoring Brazil's implementation of the International Covenant on Civil and Political Rights, and to reaffirm its determination to proceed with the dialogue with the Human Rights Committee at a level consistent with the importance Brazil attaches to greater promotion and protection of human rights both at home and abroad.

PARAGRAPH 6. The State party should accelerate the demarcation of indigenous lands and provide effective civil and criminal remedies for deliberate trespass on those lands.

Settlement process

4. An analysis of the indigenous issue in Brazil is better set in historical perspective. The settlement process begun five centuries ago during Portugal's overseas expansion led to the wiping out of many indigenous peoples either by arms or owing to the contagion of exogenous diseases connected with the implementation of policies aimed at the Indians' assimilation into a new society of markedly European extraction.

5. Although the number of indigenous peoples living in Brazil at the time of the Europeans' arrival is not known, it is estimated that native inhabitants of the land numbered five million then. There are currently about 460,000 Indians in Brazil - 25 percent of the country's total

population - divided into 225 ethnic groups. Although the indigenous peoples currently have the highest population growth rate of all Brazilian ethnic groups, the drastic reduction in their numbers since pre-colonial times shows the high price these peoples have paid as a result of a settlement process based on the use of force and assimilation policies.

6. It should be noted that this demographic information covers only the indigenous peoples living on lands recognized as being traditionally occupied. The census taken by the Brazilian Geography and Statistics Institute (IBGE) in 2000 showed that about 730,000 Brazilians declared themselves to be Indians and that some of them live in urban centres. It should also be noted that there are in Brazil about 63 as yet uncontacted indigenous groups, as well as traditional communities that claim for being recognized as indigenous by the pertinent federal agency.

Current situation

7. By the late 1970s, the indigenous issue acquired increasing relevance for civil society. At the same time, indigenous communities began their first self-organization movements aimed at defending their rights and interests. Various indigenous and indigenist organizations promoted wide debate to ensure the demarcation of traditionally occupied lands and to bring about a critical reflection about the integration policy in force until then. As these groups organized themselves politically to defend the Indians' rights to their lands, the lineaments of a new indigenist policy began to be discussed, based on respect for these people's forms of sociocultural organization.

8. The major changes introduced by the 1988 Federal Constitution in the approach to and treatment of indigenous peoples thus resulted from the country's redemocratization process. The Federal Constitution replaced the integrationist model applied to the legal protection of the indigenous peoples with a legal framework based on respect for their cultural specificities and on the recognition of these communities' pre-existing rights over the lands they have traditionally occupied.

9. These recent developments have paved the way for a speedier demarcation and regularization of indigenous lands in Brazil. The existence of a specific legal framework, of well-defined technical procedures, and of partnerships with government agencies, governmental and nongovernmental international organizations, and representatives of the concerned indigenous communities for demarcation purposes has endowed demarcation of indigenous lands with greater legitimacy, consistency, and timeliness.

Demarcation of indigenous lands

10. Although the process of regularization of indigenous lands is usually referred to as "demarcation", the latter is but one of the administrative phases of the process, which also includes identification and bounding, physical demarcation, homologation, and land registration. It should be pointed out that all these procedures are public and transparent.

Identification and bounding

11. This phase, in which the concerned indigenous community is directly involved, begins with the setting-up of a technical working group consisting of experts of the National Indian Foundation (FUNAI), the National Institute for Settlement and Agrarian Reform (INCRA), and/or the state's land department responsible for the area to be identified and delimited. The technical working group carries out studies and research on the field, in documentation centers, in municipal, state, and federal land agencies, as well as in land and real estate registry offices in order to prepare a detailed report on the identification and delimitation of the studied area, upon which all subsequent stages will be based.

12. The purpose of the historical, anthropological, ethnographic, sociological, legal, cartographic and environmental studies and of the land survey carried out at this stage is to verify that the land has indeed been traditionally occupied by its indigenous inhabitants. These studies provide inputs for the subsequent phases of the land regularization process in accordance with the dictates of the Federal Constitution.

13. Based on these studies, which must be approved by FUNAI's President, the Minister of Justice issues a decision, which is published in the Official Gazette, stating that the area has proven to have been traditionally occupied by the indigenous group living on it. Upon this decision's publication, that indigenous group's original right over a portion of the Brazilian territory is formally recognized.

14. It should be pointed out that if third parties feel that they have incurred losses owing to the demarcation process, they may challenge the decision within up to ninety days from its publication in the Official Gazette. Such challenges, which delay the demarcation process, are reviewed by FUNAI, whose President may either decide in favour of a new study or confirm of the area's legal status, in which case the procedure continues.

15. If non-indigenous inhabitants are found living in the area to be delimited, a land survey and an assessment of improvements made must be carried through. The analysis of non-indigenous occupation of the land is based on criteria that seek to determine bona fide occupation and the time it began. This review is done by a Standing Inquiry Commission appointed by FUNAI's President, which defines the amount of compensation for improvements of lands occupied in good faith.

Physical demarcation

16. In this phase, the limits of the indigenous land are materially fixed on the field in accordance with the Minister of Justice's decision. At this time, the demarcation costs are estimated, the form of demarcation is selected, and the actual demarcation is carried out, as well as the verification and acceptance of the work done.

Homologation

17. On the basis of the data collected during the physical demarcation process, documents are drawn up to confirm the demarcated limits, which are then homologated by a Presidential

Decree.

Registration

18. The administrative process of regularization of indigenous lands ends with the land's registration at the land office of the district where it is located and at the Federal Patrimony Secretariat at the Ministry of Finance.

Demarcation policy

19. In the Brazilian State's view, the most objective guarantee of the indigenous peoples' individual and collective rights is the fact that their lands are recognized, demarcated, and regularized. The Indigenous Lands Protection Program implemented by FUNAI aims at the regularization of the territories traditionally occupied by indigenous peoples, in accordance with the constitutional provisions applicable to the issue. It should be noted that the use of the term "territories" to mean indigenous lands and of the term "peoples" to mean the indigenous populations is defined and placed in context under ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, ratified by Brazil in 2004, which recognizes that these terms cannot be used to support actions that imply an aggression to the States' territorial integrity and political unity.

20. The Indigenous Lands Protection Programme can be seen as a historic watershed in the realization of the indigenous peoples' original rights. Of a total 611 recognized indigenous territories, Brazil has so far delimited, formalized, homologated, and regularized 488 for the indigenous peoples' permanent, imprescriptible, and exclusive right. The area of indigenous lands whose demarcation process is currently at least in the delimitation phase totals 105,673,003 hectares, equivalent to 12.41 percent of the Brazilian territory or, for comparison purposes, to approximately twice the territory of France. The other 123 areas are still pending demarcation, as shown in the table below:

**Indigenous lands' situation
(Summary)**

	No. of lands	Area (ha)	%
Under study	123	0	-
Delimited	33	1 751 576	1.66
Formalized	30	8 101 306	7.67
Homologated	27	3 599 921	3.4
Regularized	398	92 219 200	87.27
Total	611	105 672 003	100

21. To further this process and better preserve and protect the rights of the indigenous peoples in general, the Brazilian State introduced the Indigenous Peoples' Social Agenda on September 21, 2007. This initiative calls for a wide range of actions, including the demarcation

of indigenous lands, indemnification and resettlement of 9,000 rural families that currently occupy these lands, recovery of 10,000 hectares of degraded areas on indigenous lands, reinforcement of eleven fronts for the protection of isolated indigenous peoples, and the establishment of "indigenous citizenship territories", where indigenous communities will actively participate in the formulation and implementation of policies and integrated initiatives aimed at meeting their needs, beginning with the indigenous areas of the Upper Rio Negro, the Javari Valley, and the Raposa Serra do Sol Indigenous Land/São Marcos.

22. The Indigenous Peoples' Social Agenda calls also for the recording of 20 indigenous languages threatened with extinction and for reinforcement of their use; the establishment of 150 culture points for the production and dissemination of contents in indigenous languages; and for promoting income-generation and self-support projects.

23. The Indigenous Peoples' Social Agenda also encompasses sanitation projects under the Growth Acceleration Program/National Health Foundation (FUNASA), aimed at building or expanding water supply and sewerage systems as well as introducing sanitary improvements in indigenous areas throughout the country.

24. Under this agenda, urban indigenous populations will also benefit, as their organizations will be strengthened in order to exert social control over government actions.

25. For implementation of the initiatives included on the agenda, FUNAI's budget for 2008 was increased by 44 percent, totaling R\$ 305 million, in addition to over R\$ 200 million earmarked for FUNASA activities.

26. One cannot ignore that progress in recognizing the indigenous peoples' original rights coexists with the occurrence of violence against some Brazilian indigenous peoples, usually owing to dispute over land ownership. In this connection, special mention should be made to the challenges faced by the Guarani-Kaiowa communities in the Dourados region, state of Mato Grosso do Sul, as they seek to assert their claims for their traditionally occupied lands and demand protection of their physical integrity, as well as the maintenance of their forms of social organization and economic life.

27. Mistaken indigenist policies of the past have led the Guarani-Ñandeva and Kaiowa peoples in particular to concentrate on small reservations, whose lands' size and quality are not sufficient for them to keep up with their traditional forms of subsistence. Many members of these communities have ended up finding work in productive activities outside their indigenous environment as seasonal workers in sugar mills, earning low salaries, losing their identity and self-esteem, and falling victims of serious health problems, such as alcoholism, and the attendant condition of indigence.

Legal protection of indigenous territories

28. Under the 1988 Federal Constitution, the indigenous territories are seen as the space necessary for the peoples that inhabit them to exercise their identity rights. The concepts of ethnicity, culture, and territory are to a great extent inseparable and inform the normative

framework in place in Brazil in this regard. Article 231, paragraph 1 of the Constitution states that lands traditionally occupied by Indians "[...] are necessary for their physical and cultural reproduction in accordance with their usages, customs, and traditions."

29. The legitimacy of ensuring the legal defense of indigenous territories and the rights and interests of the original populations that inhabit them is recognized under article 232 of the Constitution; they can count on the assistance of the Attorney General's Office to ensure their rights. It is also incumbent upon the Attorney General's Office, as provided under article 129, II and V of the Constitution, to defend in court the rights and interests of the indigenous populations and ensure that public authorities and public services fully respect their rights under the Constitution, adopting the requisite measures to guarantee them. The task of defending the indigenous peoples' rights and interests in court and before other public bodies whose actions may constitute a violation of these rights assigns to the General Attorney's Office a salient role in this respect, without prejudice to the increasing degree of empowerment demonstrated by the indigenous and indigenist organizations in performing this task.

30. It is incumbent upon the Federal Police under the provisions of Decree No. 73332/1971 to prevent, investigate, and deter crimes against indigenous life and patrimony and the indigenous communities. The Federal Police acts in conjunction with FUNAI, which has the power of an administrative police to defend the rights of the indigenous peoples.

31. Of particular interest to Brazil is military presence on indigenous lands in border areas, particularly in the Amazonian region. Military presence in these areas should be seen as imperative, as part of the State's inescapable duty to watch over and protect border zones, as well as protecting the indigenous communities living in them. The social and logistic role played by the Armed Forces in rainforest regions to the benefit of those communities should be stressed.

32. As regards the need to adopt measures for protecting the indigenous peoples' rights over their lands, it should be noted that despite the growing empowerment of indigenous and indigenist organizations and the work of the General Attorney's Office in the defense of these peoples, the demarcation process is often severely hampered by suits brought by landowners who feel harmed by demarcation. A case in point has to do with the homologation of the Raposa Serra do Sol Indigenous Land that in 2005 became the object of intense legal dispute, which was settled by the Supreme Court only on June 4, 2007, with the dismissal of the preliminary order that allowed non-indigenous occupants to remain on the lands. After this irrevocable decision, the occupants that refuse to leave have to be forcibly evicted; this eviction had already begun when this report was being prepared.

PARAGRAPH 12. The State party should:

(a) Take stringent measures to eradicate extrajudicial killing, torture, and other forms of ill-treatment and abuse committed by law enforcement officials;

(b) 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;

(c) 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;

(d) Give utmost consideration to the recommendations of the United Nations Special Rapporteurs on the question of torture, on extrajudicial, summary or arbitrary executions, and on the independence of judges and lawyers contained in the reports of their visits to the country.

General considerations

33. To understand the Brazilian State's actions in respect of public security it is necessary to understand first the country's federative structure and the constitutional provisions applicable to the subject.

34. The Federal Constitution assigns to the federated states the bulk of responsibility for public security. It is specifically incumbent upon the states to prevent, deter, and investigate criminal acts. The Federal Government also acts in preventive, ostensive, and investigative police work through the federal police in cases involving crimes against the Union, crimes that have international or interstate repercussions, and crimes involving drug trafficking, contraband, and customs evasion.

35. In addition to this policing task, the Federal Government plays a major role in supporting the federated states through the allocation of resources. For such purpose, there are two federal funds: the National Public Security Fund (FNSP) ¹ and the National Penitentiary Fund (FUNPEN), which are managed by the Federal Government and whose resources are transferred to the states according to criteria defined by law. These two Funds are the states' main source of resources; through them, the Federal Government seeks to foster the introduction of "good practices" into state public security policies.

36. Once the constitutional and normative framework of competence assignment in public security matters is understood, it becomes clear that as the states are endowed with most attributions in this regard; they are also responsible for nearly all human rights violations by police officers.

37. The states screen, train, investigate, and punish their own police officers, whether administratively or criminally through the State Judiciary. Cases only arrive at the federal courts by appeal or, after approval of Constitutional Amendment No. 45/2004, if they refer to human rights violations. Although welcome from a legal standpoint, Constitutional Amendment No. 45/2004 has not yet been put into practice. As to date there has been no instance of federalization of cases of human rights violations by police officers.

Human rights violations by police officers - lethality

38. Despite the progress achieved in recent years, police corruption and violence remain serious problems in Brazil. This can be attributed to a series of factors, including the existence within the police forces of an institutional ethos partially imbued with values and practices inherited from the military dictatorship that ruled the country from 1964 through 1984, and the low salaries paid to police officers - a problem that is more acute in some states - in addition to a flawed institutional framework pertaining to the investigation and punishment of police officers guilty of violence perpetrated while on duty.

39. Violation of fundamental rights by police officers assumes many forms. Although some do not involve the use of physical force - as in the case of forcible entry or illegal breach of secrecy of telephone communications - practices such as torture and excessive use of force, responsible for an extremely high rate of lethality in police actions still persist in the country.

40. There is no accurate data on the number of dead under police action in Brazil. Few states produce such data in a systematic way; in many cases, there are no historical series and such data are not obligatorily relayed to the Federal Government. Moreover, the data collection criteria differ from state to state and there are many cases of people killed in police actions that are recorded as common homicide.

41. Although underestimated, official figures submitted by the states with serious security problems, such as Rio de Janeiro and São Paulo, are alarming, as can be seen from the charts below:²

42. These figures allow no comparison as the criteria used to arrive at them are different. Nevertheless, they indicate the seriousness of the problem, which is even more serious, as the charts reflect only the number of people killed in direct confrontation with the police but do not include common homicides by police officers or that result from the action of extermination groups in which police officers participate.

43. Brazil still experiences difficulty in dealing with extermination groups in which police officers participate. Notwithstanding some good examples of investigation in states such as São Paulo, the judiciary still finds it difficult to characterize this activity and to mete out appropriate punishment. Currently, there is news of the existence of extermination groups with police participation in at least six States (Rio de Janeiro, São Paulo, Paraíba, Bahia, Goiás, and Ceará).

44. There are also problems with the investigation and actual punishment for deaths owing to police action. The police usually describe such cases as "resistance followed by death", and thus many cases do not even come before a trial jury, which should investigate if police action had gone beyond the applicable legal precepts, thereby consisting in attempted or consummated felonious act against life. It is thus recognized that the transfer of competence from military to common courts for judging crimes against life committed by the military police has not fully

achieved the objective of ensuring impartiality at every step of the judicial proceedings, as the criminal investigation phase has remained under the responsibility of the military police itself.

45. Despite the aforementioned problems, some administrative changes may provide a way out. An example of good practice worth mentioning is the research done by the São Paulo Police Magistrate's Office, which led to a change in the norms of the State Public Attorney's Office and Judiciary, which in turn reoriented inquiry assignments, thereby strengthening the judicial appreciation of cases of deaths stemming from police action.

Control of police activity

46. As regards control of police activity, it should be noted that control is diffusely assigned as it is exercised by various agencies, most of them at state level. In addition to Judicial Administrative Departments - the police own instances responsible for investigating crimes and

disciplinary infractions by police officers - there are different players of different institutional levels that exert external control over police activity, as is the case of the Executive's Police Ombudsman Offices and the Legislature's Human Rights Commissions.

47. There is no uniform model of police control in the states. As regards internal control, some states have one Judicial Administrative Department, while others have one Judicial Administrative Office for each type of police.

48. The National Public Security Secretariat did a survey on the organizational profile of Judicial Administrative Offices in 2006 and 2007. Although some States did not respond to the survey, the tables below show that most work done by these offices is the investigation of violent crimes committed by police officers:

Type of occurrence	No. of occurrences recorded (2005)		
	General	Civilian Police	Military Police