

BRAZIL

CESCR E/2004/22

108. The Committee considered the initial report of Brazil on the implementation of the Covenant (E/1990/5/Add.53) at its 8th, 9th and 10th meetings, held on 8 and 9 May 2003, and made public, at its 29th meeting, held on 23 May 2003 the following concluding observations.

A. Introduction

109. The Committee welcomes the submission of the initial report of Brazil, which was prepared in conformity with its guidelines, but regrets the late submission of the report and the absence of written replies to the Committee's list of issues (E/C.12/Q/BRA/1).

110. While welcoming the frank nature of the dialogue with the delegation of Brazil, the Committee regrets that there were not enough experts in the delegation in the field of economic, social and cultural rights who could have provided more information to the Committee on the concrete measures taken by the State party to implement its obligations under the Covenant.

B. Positive aspects

111. The Committee notes with appreciation that the Federal Constitution adopted in 1988 incorporates a wide range of human rights, including a number of the economic, social and cultural rights enshrined in the Covenant. The Committee also takes note that under article 5 of the Constitution, the rights and guarantees in international treaties to which Brazil is party are considered part of the national law.

112. The Committee welcomes the adoption of the new Civil Code in 2002 which replaced that of 1916 and established the principle of equality between men and women.

113. The Committee welcomes the adoption of the National Human Rights Programme in May 1996 and the creation of the Secretariat of State for Human Rights to monitor its implementation.

114. The Committee welcomes the new programmes adopted by the State party to combat discrimination, including the establishment of the National Council on the Rights of Women, the National Council to Combat Discrimination and affirmative action programmes for Afro-Brazilians, in particular women.

115. The Committee also welcomes the progress made in combating racial prejudices and barriers, which is illustrated by the appointment of persons of Afro-Brazilian origin to positions of high public office, on the basis of their professional merits and qualifications.

116. The Committee welcomes the programme "Fome Zero" undertaken by the State party aimed at eradicating hunger which affects a substantial portion of the population.

117. The Committee takes note with appreciation of the efforts made by the State party since 1996 to reduce the mortality rate from HIV/AIDS by 50 per cent.

118. The Committee notes with appreciation constitutional amendment No. 14 (adopted on 12 September 1996) which established the Teaching Development and Enhancement Maintenance Fund, reorganized the primary education system and earmarked more resources for education.

119. The Committee welcomes the creation within the State party of independent special rapporteurs responsible for monitoring economic, social and cultural rights, particularly the right to food, to health and to education.

120. The Committee welcomes the positive position of the State party in relation to the draft optional protocol to the Covenant.

121. The Committee welcomes the proactive participation of civil society in monitoring the implementation of the Covenant, including the provision of a large amount of information to the Committee.

C. Factors and difficulties impeding the implementation of the Covenant

122. The Committee notes that the persistent extreme inequalities and the social injustice prevailing in the State party have negatively affected the implementation of the rights guaranteed by the Covenant.

123. The Committee notes that the recent economic recession, along with certain aspects of the structural adjustment programmes and economic liberalization policies, have had some negative effects on the enjoyment of economic, social and cultural rights as enshrined in the Covenant, in particular by the most disadvantaged and marginalized groups.

D. Principal subjects of concern

124. The Committee notes with concern the persistent and extreme inequalities among the various geographic regions, states and municipalities, and the social injustice prevalent in the State party. The Committee is also concerned about imbalances in the distribution of resources and income and access to basic services in the State party.

125. The Committee is concerned that, despite the existence of constitutional and legislative provisions and administrative procedures to implement the Covenant rights, there are no effective measures and remedies, judicial or otherwise, to uphold these rights, especially with regard to the disadvantaged and marginalized groups.

126. The Committee is concerned about the lack of adequate human rights training in the State party, in particular with respect to the rights enshrined in the Covenant, especially among the judiciary, law enforcement officials and other actors responsible for the implementation of the Covenant.

127. The Committee is concerned about the widespread and deeply rooted discrimination against Afro-Brazilians, indigenous peoples and minority groups such as Gypsies and the Quilombo communities.

128. The Committee notes with concern that equal opportunity for persons with disabilities is hampered by physical barriers and lack of appropriate facilities.

129. The Committee is concerned about the widespread discrimination against women, in particular in their access to the labour market, to equal pay for work of equal value and to adequate representation at all levels of decision-making bodies of the State party.

130. In spite of the State party's successful efforts to release many workers from forced labour, the Committee is deeply concerned about the persistence of forced labour in Brazil, which is often close to slavery, particularly in the rural areas.

131. The Committee is concerned that the national minimum wage is not sufficient to ensure an adequate standard of living for workers and their families.

132. The Committee notes with concern the killing of landless farmers and the members of trade unions defending them and the impunity enjoyed by those responsible for committing these crimes.

133. While taking note of the concern expressed by the State party in relation to the need for better policy coordination for children and young people, the Committee requests the State party to include, in its next periodic report, information on measures taken to improve the functioning of services for children and young people.

134. The Committee notes with concern the high rate of maternal mortality from illegal abortions, particularly in the northern regions where women have insufficient access to health-care facilities. The Committee is also concerned about the persistence of forced sterilization.

135. The Committee is concerned that some articles of the Penal Code discriminate against women. In particular, it is concerned that article 215 of the Code requires the victim of a minor sexual assault to be an "honest woman" in order to prosecute the offence.

136. The Committee notes with concern that sexual and domestic violence is widespread and not being sufficiently denounced in Brazil.

137. The Committee is deeply concerned about the high incidence of trafficking in women for the purpose of sexual exploitation.

138. The Committee notes with concern the high concentration of land in the hands of a minority, and its negative effects on the equitable distribution of wealth.

139. In spite of the efforts taken by the State party to reduce poverty, the Committee is concerned about the persistence of poverty in the State party, especially in the north-east, in rural areas and among Afro-Brazilians and disadvantaged and marginalized groups.

140. The Committee notes with concern that, according to the State party's report, at least 42 per cent of families currently live in inadequate housing facilities without adequate water supply, waste disposal and trash collection. It also notes that 50 per cent of the population of major urban areas lives in informal urban communities (illegal settlements and homes, as stated in paragraph 512 of the State party's report).

141. The Committee notes with concern that the State party has not facilitated the access to, and adequate provision of, housing credit and subsidies to low-income families, especially disadvantaged and marginalized groups.

142. The Committee is deeply concerned that the State party does not provide sufficient protection for indigenous peoples, who continue to be forcibly evicted from their lands and face threats to their lives and even execution. The Committee also notes with concern that the right of indigenous peoples to own land is not respected and that mineral, timber and other commercial interests have been allowed to expropriate, with impunity, large portions of land belonging to indigenous peoples.

143. The Committee is concerned about the forced eviction of the Quilombo communities from their ancestral lands, which are expropriated with impunity by mineral and other commercial interests.

144. The Committee notes with concern the living conditions of prisoners and detainees in the State party, especially with regard to provision of, and access to, health-care facilities, adequate food and safe drinking water.

145. Although the State party has reduced HIV/AIDS-related mortality, the Committee is concerned that, despite these efforts, there has been a significant increase in cases among women and children.

146. The Committee is concerned about the high rate of illiteracy in Brazil that, according to the State party's report, was 13.3 per cent in 1999, reflecting the social and economic inequalities still prevalent in the country.

E. Suggestions and recommendations

147. The Committee recommends that the State party take immediate remedial action to reduce the persistent, extreme inequalities and imbalances in the distribution of resources and income and access to basic services among various geographical regions, states and municipalities, including speeding up the process of agrarian reform and of granting land titles.

148. The Committee urges the State party to take immediate remedial action to ensure that all the Covenant rights are effectively upheld and that concrete remedies, judicial or otherwise, are provided to those whose economic, social and cultural rights are infringed, especially in relation to disadvantaged and marginalized groups. In this regard, the Committee draws the attention of the State party to its general comment No. 9 (1998) on domestic application of the Covenant.

149. The Committee recommends that the State party improve its human rights training

programmes in such a way as to ensure better knowledge, awareness and application of the Covenant and other international human rights instruments, in particular among the judiciary, law enforcement officials and other actors responsible for the implementation of the Covenant.

150. The Committee strongly recommends that the State party's obligations under the Covenant should be taken into account in all aspects of its negotiations with the international financial institutions to ensure that the enjoyment of economic, social and cultural rights, particularly by the most disadvantaged and marginalized groups, are not undermined.

151. The Committee urges the State party to take all effective measures to prohibit discrimination on the basis of race, colour, ethnic origin or sex in all fields of economic, social and cultural life. It further recommends that the State party undertake urgent measures to ensure equal opportunity for Afro-Brazilians, indigenous peoples and minority groups such as Gypsies and the Quilombo communities, especially in the fields of employment, health and education. The Committee also requests the State party to include in its second periodic report detailed and comprehensive information, including comparative and disaggregated statistical data, on these matters.

152. The Committee urges the State party to adopt all effective measures to ensure equality between men and women as provided for in articles 2, paragraph 2, and 3 of the Covenant. The Committee also requests the State party to adopt in its relevant policies the principle of equal pay for work of equal value as provided for in the Covenant, to reduce the wage gap between men and women, and to provide detailed information on these matters in its second periodic report.

153. The Committee urges the State party to adopt concrete measures to enable persons with disabilities to enjoy fully the rights guaranteed by the Covenant.

154. The Committee urges the State party to implement its National Plan for the Eradication of Slave Labour and to undertake urgent measures in this regard, especially through the imposition of effective penalties.

155. The Committee calls upon the State party to ensure that the minimum wage enables workers and their families to enjoy an adequate standard of living.

156. The Committee urges the State party to take legal action against those who are responsible for committing crimes against landless farmers and members of trade unions and to take effective preventive measures to ensure protection to all farmers and members of trade unions.

157. In the light of the indication given by the State party that the reform of the social security system foresees an improved role for the State in fundamental areas of social development, the Committee recommends to the State party in this regard that the social security system and the social development measures take into account the needs of disadvantaged and marginalized groups.

158. The Committee requests the State party to undertake legislative and other measures, including a review of its present legislation, to protect women from the effects of clandestine and unsafe abortion and to ensure that women do not resort to such harmful procedures. The Committee

requests the State party to provide in its next periodic report detailed information, based on comparative data, about maternal mortality and abortion in Brazil.

159. The Committee calls upon the State party to repeal all discriminatory provisions contained in the Penal Code, in particular article 215.

160. The Committee calls upon the State party to take all effective measures, including the enforcement of existing legislation and the extension of national awareness campaigns, to eliminate all forms of violence against women. The Committee also recommends that the State party ensure that in addition to the “*delegacias da mulher*” the police are trained to handle violence against women in all parts of the country.

161. The Committee recommends the adoption by the State party of specific legislation against trafficking in persons and its effective implementation.

162. The Committee urges the State party to take effective measures to combat the problem of poverty, including the setting up of a national anti-poverty strategy that would include economic, social and cultural rights. In this regard, the Committee refers the State party to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights.⁷

163. The Committee urges the State party to give effect to its national housing policy and its federal housing programmes and to adopt nationwide policies in order to ensure that families have adequate housing facilities and amenities. In this respect, the Committee draws the State party’s attention to its general comment No. 4 (1991) on the right to adequate housing (art. 11 (1) of the Covenant).

164. The Committee urges the State party to provide access to housing credit and subsidies to low-income families and disadvantaged and marginalized groups.

165. The Committee calls upon the State party to ensure that indigenous peoples are effectively protected from threats and danger to their lives and from eviction from their lands. The Committee particularly urges the State party to seek the consent of the indigenous peoples concerned prior to the implementation of timber, soil or subsoil mining projects and any public policy affecting them, in accordance with ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989).

166. The Committee urges the State party to adopt measures to guarantee the ancestral lands of the Quilombo communities and to ensure that any evictions are carried out in compliance with the guidelines set out in general comment No. 7 of the Committee (1997) on the right to adequate housing (art. 11, para. 1, of the Covenant): forced evictions.

167. The Committee urges the State party to take effective measures, including policies, programmes and specific legislation, aimed at improving the living conditions of prisoners and detainees.

168. The Committee urges the State party to undertake appropriate measures to ensure effective

realization of agrarian reform.

169. The Committee urges the State party to continue its prevention and care efforts in the field of health by providing sexual and reproductive health services to the population, with particular emphasis on those for women, young people and children.

170. The Committee requests the State party to adopt effective measures to combat illiteracy and to provide, in its next periodic report, information on the measures undertaken and on the results obtained. The Committee also requests the State party to include disaggregated and comparative statistics in its periodic report.

171. The Committee requests the State party to disseminate the present concluding observations widely at all levels of society and, in particular, among State officials and the judiciary and to inform the Committee, in its next periodic report, of all steps undertaken to implement them.

172. The Committee also encourages the State party to continue to consult with non-governmental organizations and other members of civil society when preparing the next periodic report.

173. The Committee requests the State party to submit its second periodic report by 30 June 2006.

Notes

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⁷ *Official Records of the Economic and Social Council, 2002, Supplement No. 2 (E/2002/22-E/C.12/2001/17), annex VII).*
