



**International covenant  
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HUMAN RIGHTS COMMITTEE

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

Second periodic report  
BRAZIL\*

[15 November 2004]

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## **1 Introduction**

1. Since Brazil's ratification of the 1966 International Covenant on Civil and Political Rights on January 24, 1992, a number of political and institutional changes have been implemented and significant progress has been made in the effort to build a normative framework capable of guaranteeing the fundamental rights of individuals in the country. Despite those changes and the process of democratic consolidation pursued up to now, significant challenges remain with respect to securing economic and social improvements capable of ensuring application of those rights, as well as transforming the guarantees formally assured in the Constitution and the infra-constitutional legislation into a cultural mindset. The experience of the decade since the first report on the Covenant on Civil and Political Rights was submitted by the federal government, in 1994, has been marked by a disturbing contradiction: while on the one hand, Brazil has never before achieved a comparable level of progress in building a legal order committed to Human Rights, on the other hand, some of these achievements have yet to be reflected in public policies or effective guarantees for the Brazilian population.

2. This Second Report gives particular consideration to the observations, suggestions, and recommendations made by the Human Rights Committee following its analysis of Brazil's Initial Report. It focuses on the measures adopted by Brazil in response to the Committee's principal concerns, as well as those measures intended to implement the Committee's suggestions and recommendations, as set forth in official UN document CCPR/C/79/Add.66, of 24 July 1996.

3. In accordance with these specific items, the Second Brazilian Report on the International Covenant on Civil and Political Rights adopts the same systematic approach used in the Initial Report. It is composed of three parts: 1) an introduction; 2) information on articles 1 to 27; and 3) an annex containing Brazil's legislation concerning the Covenant. Note that this approach conforms fully to United Nations' directives governing the preparation of reports.

4. The introduction presents a general analysis of the advances, obstacles, and challenges of implementing the civil and political rights set out in the Covenant. Following a general overview of the application of civil and political rights in Brazil, the second part of the report is devoted to a specific examination of the manner in which Brazil has implemented each of the rights enumerated in articles 1 to 27 of the Covenant. Because of the delays in submitting the Second Report, the document covers 2 more extensive period of time, from 1994 to June 2004. In this time, it is possible to point to a number of significant institutional developments specifically regarding the Covenant's implementation in Brazil including:

- a) The launch of National Human Rights Programs I and II through Decrees no. 1904, of 13 May 1996 and no. 4229, of 13 May 2002, respectively, which reflected the demands and expectations of civil society and elevated the priority extended to the struggle on behalf of Human Rights in Brazil by proposing government actions to protect and promote civil and political rights in the country. Following this initiative, many states developed regional

Human Rights plans, leading to a series of innovative experiments and enactment of humanistic public policies;

b) The establishment of the National Human Rights Secretariat, in April 1997. President Luiz Inácio Lula da Siiva's administration has renamed the Secretariat the Special Secretariat for Human Rights, conferred ministerial-level status on the agency, and placed it under the direct authority of the Presidency of the Republic;

c) The approval of Law no. 9140/95, which officially recognizes the death of those persons disappeared as a consequence of their political activities during the military dictatorship and requires the Union to compensate the victims' families;

d) The approval of Law no. 9100/95, which establishes quotas for women candidates to legislative positions with a view to stimulating political participation by women;

e) The approval of Law no. 9029/95, which prohibits the requirement that individuals present proof of pregnancy and sterilization certificates, as well as other discriminatory practices, used as instruments in hiring or determining the continuation of a legal employment relationship;

f) The approval of Law no. 9099/95, which establishes the Special Civil and Criminal Courts to assure expanded access to the justice system and increased speed in the resolution of minor disputes; (in compliance with item 24 of the suggestions and recommendations of the United Nations' Human Rights Committee);

g) The approval of Law no. 3299/96, which transfers jurisdictional authority over intentional crimes against human life committed by military police officers from the Military Courts to the Common Courts, thereby eliminating the privileged forum that had previously shielded military police officers responsible for the deaths of civilians; (in compliance with item 18 of the suggestions and recommendations of the United Nations' Human Rights Committee);

h) The approval of Complementary Law no. 88/96, which establishes summary expropriations aimed at carrying forward the agrarian reform process;

i) The approval of Law no. 9503/97, which enacts the Brazilian Traffic Code;

j) The approval of Law 9534/97, which mandates the issuance of essential documentation such as birth and death certificates at no charge;

k) The approval of Law no. 9455/97, which specifically defines the crime of torture; (in compliance with item 18 of the suggestions and recommendations of the United Nations' Human Rights Committee);

- l) The approval of Law no. 9459/97, which expands on the provisions of Law no. 7716/89 governing the crimes of racism and racial discrimination and includes crimes of discrimination based on ethnicity, national origin, and religion; (in compliance with item 27 of the suggestions and recommendations of the United Nations' Human Rights Committee);
- m) The approval of Law no. 9437/97, which outlaws the illicit possession of arms and establishes the National Arms System (*Sistema Nacional de Armas*);
- n) The approval of Law no. 9474/97, which establishes the Statute on Refugees;
- o) The approval of Complementary Law no. 93/98, which establishes the "Banco da Terra" to serve as an additional instrument in the implementation of agrarian reform;
- p) The approval of Law 9741/98, which institutes eight new alternative penalties; (in compliance with item 25 of the suggestions and recommendations of the United Nations' Human Rights Committee);
- q) The implementation of Human Rights training courses for civil and military police officers; (in compliance with item 13 of the suggestions and recommendations of the United Nations' Human Rights Committee);
- r) The establishment of Police Ombudsman offices in several states to act independently and receive complaints involving crimes and improper conduct by police officers; (in compliance with item 22 of the suggestions and recommendations of the United Nations' Human Rights);
- s) The approval of Federal Law no. 9807/99, which implements the National Victims' Assistance and Witnesses Protection Program (*Programa Nacional de Assistência a Vítimas e Proteção às Testemunhas Ameaçadas*) and includes provisions governing the protection of individuals accused or convicted of crimes who effectively cooperate with police investigations and the criminal justice system;
- t) The approval of Law no. 10216/2001, which sets out provisions on the protection and rights of individuals suffering from mental illnesses or disturbances and reorders the mental healthcare system;
- u) The approval of Law no. 10098/2000, which establishes the general rules and basic criteria for promoting access for individuals with disabilities or limited mobility;
- v) The approval of Constitutional Amendment no. 20/98, raising the minimum working age for adolescents to 16 and the minimum age for apprenticeships from 14 to 16;
- w) The approval of the Disarmament Statute, Law no. 10826/2003, which sets out provisions restricting the registration, ownership, and sale of firearms and ammunition and on the National Arms System;

x) The approval of the Elderly Statute, Law no. 10741/2003, which consolidates and introduces measures protecting the elderly.

5. At the international level, two important advances in Brazilian Human Rights policy deserve mention, which formalize the recognition of the pertinent international jurisdictional competences charged with protecting such rights. The first refers to Brazil's accession to the statute establishing the Permanent International Criminal Court, approved in Rome, in July 1998. The second advance involves the enactment of Legislative Decree no. 89, of 3 December 1998, which approved the executive branch's request to recognize the jurisdictional competence of the Inter-American Court of Human Rights.

## **II. Information on articles 1 to 27 of the Covenant**

6. The purpose of this section is to offer a brief overview of the achievements and innovations introduced in Brazil since 1994 with regard to the Covenant's implementation for each of the 27 articles under consideration, as well as set forth the difficulties and limitations that persist.

7. The report gives special emphasis to constitutional norms and federal laws in light of their applicability and enforceability nationwide. It would be of value to survey the measures adopted by the individual states, as well as collect data on their concrete experiences. However, this would present an insurmountable problem for a report that cannot be exhaustive or overly focused on specific situations. For this reason, the experiences of the federal states will be mentioned on occasion in this report to illustrate either the ample opportunities that have opened up in the struggle for Human Rights or the limitations that Brazil confronts.

8. In light of Brazil's federative system, the states enjoy autonomy, to the extent that the Union's intervention in the states' sphere of action is prohibited except as expressly authorized in the Federal Constitution (article 34). The investigation and punishment of a large part of Human Rights violations are the responsibility of the states, although the Constitution does mandate federal intervention to safeguard the rights of the human person.

9. Indeed, there are specific bodies in the federal sphere charged with safeguarding Human Rights that are linked to the Special Secretariat for Human Rights, including the Council for the Defense of the Rights of the Human Person (*Conselho de Defesa dos Direitos da Pessoa Humana CDDPH*), the National Council for the Rights of the Child and the Adolescent (*Conselho Nacional dos Direitos da Criança e do Adolescente - CONANDA*), the National Council for the Rights of People with Disabilities (*Conselho Nacional dos Direitos da Pessoa com Deficiência - CONADE*), the National Council to Combat Discrimination (*Conselho Nacional de Combate à Discriminação - CNCD*), the National Council for the Rights of the Elderly (*Conselho Nacional dos Direitos do Idoso CNDI*), the National Commission for the Eradication of Slave Labor (*Comissão Nacional de Erradicação ao Trabalho Escravo - CONATRAE*), and the National Committee for Human Rights Education (*Comitê Nacional de Educação em Direitos Humanos*). The following agencies and

bodies, furthermore, are under the authority of the Ministry of Justice: the National Indian Foundation (*Fundação Nacional do Índio - FUNAI*), the National Council for Criminal and Penitentiary Policies (*Conselho Nacional de Política Criminal e Penitenciária - CNPCP*), the National Council for Refugees (*Conselho Nacional para Refugiados - CONARE*), and the Department of Foreigners (*Departamento de Estrangeiros*). In addition, the current administration has established two new bodies with ministerial-level status and directly subordinated to the Presidency or the Republic to develop and implement public policies: the Special Secretariat for the Promotion of Racial Equality (*Secretaria Especial de Políticas de Promoção da Igualdade Racial - SEPIR*) and the Special Secretariat for Women's Policies (*Secretaria Especial de Políticas para as Mulheres - SPM*). The first is linked to the National Council for the Promotion of Racial Equality (*Conselho Nacional de Promoção da Igualdade Racial — CNPIR*) and the second to the National Council for Women's Rights (*Conselho Nacional dos Direitos das Mulheres - CNDM*).

10. To illustrate the importance of these bodies, one need only look at the efforts of the CDDPH, which this year is commemorating its 40<sup>th</sup> anniversary in the struggle to promote Human Rights through measures aimed at preventing, correcting, redressing, and punishing violations of these rights. Today, most states have a State Council for the Defense of Human Rights. From the National Human Rights Program's launch, the Council has played an active role in some particularly serious cases of violation, going so far as to visit the locations of specific violations and proposing that the Federal Police open inquiries into these matters. The meetings of the Councils have been regularly attended by Governors, Secretaries of Justice, State Attorneys, and police officials. The Council has sent commissions to the states on a regular basis to investigate complaints and prepare reports setting forth concrete measures to address and prevent the cases considered. Moreover, the National Congress is currently considering a draft bill designed to establish the National Council for Human Rights to replace the CDDPH so as to confer greater independence and power on the body, as well as to expand the role of organizations representing civil society. Beyond the activities of the CDDPH and other federal bodies, the federal government can exercise an even more important role in the area of Human Rights by prompting changes in the states and even establishing conditions on access to federal appropriations. Finally, it is important to note that a majority of states today have State Councils for the Defense of Human Rights.

#### **Article 1 - The right of self-determination of peoples and to the free use of their natural wealth and resources**

11. Article 1 of the 1988 Brazilian Constitution enshrines sovereignty, citizenship, dignity of the human person, the social values of labor and free enterprise, and political pluralism as principles of the Federative Republic of Brazil. In accordance with the Constitution, all power emanates from the people, who exercise that power indirectly through representatives elected by means of universal suffrage, in direct and secret balloting, or directly by way of plebiscites, referendums, or popular initiatives. The purpose is the consolidation of a participative model of Democracy and the Legal Democratic State.

12. Similarly, the principles that guide Brazil's international relations are the self-determination of peoples, the prevalence of Human Rights, national independence, non-intervention, equality among States, the defense of peace, the peaceful resolution of conflicts, the repudiation of terrorism and racism, as well as cooperation among peoples to ensure the continued progress of humanity. Of these principles, it is important to highlight the self-determination of peoples. Brazil exercises and respects the right of self-determination in freely establishing its political, social, cultural, and economic statute. Brazil is a signatory to the 1945 United Nations Charter, which enshrines the underlying goal of developing friendly relations among nations on the basis of the adherence to the principle of equality of rights and the self-determination of peoples. Brazil has no colonies or any foreign territories under its administrative control.

13. With regard to the social groups that make up the Brazilian State, the Federal Constitution (article 215, paragraph 2) mandates that the States shall protect popular, indigenous, and Afro-Brazilian cultural expressions, as well as those of other groups engaged in the nation's civilizing process. In this context, the groups that warrant special mention are the country's indigenous peoples and the runaway slave communities (*quilombos*).

14. The indigenous policy adopted by the Brazilian State is prescribed by Chapter VIII (articles 231 and 232) of the Title designated the Social Order. The social organization, customs, languages, beliefs, and traditions of indigenous communities are recognized, as are their original rights to the land they have traditionally occupied. The Union has the duty and authority to demarcate these lands by means of acts decreed by the Ministry of Justice and ratified by the President of the Republic. The Constitution also establishes that only the National Congress may authorize the use of the water and mineral resources on indigenous lands following consultations with the affected communities, which shall be entitled to a part of the gains obtained from the use of such resources. Coordination of indigenous policy and the human rights of indigenous peoples were further bolstered following the Brazilian State's ratification, in April 2004, of International Labor Organization (ILO) Convention no. 169 on Indigenous Peoples and Tribes.

15. With regard to the remaining runaway slave communities (*quilombos*), article 216, paragraph 5, of the Federal Constitution establishes the preservation of the former *quilombos* as national heritage sites. In 2003, Decree no. 4887 regulated the procedures for identifying, surveying, delimiting, demarcating, and titling the land occupied by the remaining runaway slave communities. It is expected that the regulation will represent an important step in increasing the granting of titles and recognition of these rights. Further, Law no. 19639/2003 adjusted the Law on National Education Directives and Bases to include "Afro-Brazilian History and Culture" as a mandatory subject of the educational system's official curriculum.

## **Article 2 - Guarantees of the rights assured in the Covenant and legal remedies**

16. Article 5 of the 1988 Brazilian Constitution mandates the equality of all before law, without distinction of any kind, and guarantees Brazilians and foreign nationals who are Brazilian residents the

inviolable right to life, liberty, equality, security, and property. The Constitution buttresses the right to equality by providing for legal penalties in cases of any discriminatory act that violates fundamental rights and liberties. Thus, racism constitutes a non-bailable, without statutory limitations crime.

17. On March 27, 1968, Brazil ratified the Convention on the Elimination of all Forms of Racial Discrimination and on February 1, 1984, the Convention on the Elimination of all Forms of Discrimination against Women. Additionally, the Brazilian State has the duty to guarantee all individuals within its territorial boundaries who are subject to its jurisdictional authority the rights set forth in the Covenant and expressly prohibit all forms of discrimination.

18. Paragraph 1 of article 5 of the 1988 Constitution provides for the immediate application of the norms that define pertinent rights and fundamental guarantees. Paragraph 2 of the same article adds that *the rights and guarantees set forth in this Constitution shall not exclude others arising from the regime and the principles adopted thereby or from the international treaties to which the Federative Republic of Brazil is a party*. To settle divergences in Brazilian courts over the constitutional or infra-constitutional status of these treaties, the National Congress is considering a constitutional amendment determining that the ratification of such international norms shall follow the same procedures of consideration and adoption used for proposed amendments in order to ensure their constitutional status.

19. The Brazilian constitutional order enshrines a series of guarantees aimed at safeguarding and restoring fundamental rights in cases of their violation. Thus, the Brazilian system includes principles such as open access to the judicial branch - which ensures the law will not exclude examination by the judicial branch of any damages or threats to rights - and the prohibition of exceptional courts or tribunals. Every person has the right to petition the branches of government to take all necessary measures to defend guaranteed rights against illegal actions or abuses of power. To the right of petition we can add the constitutional guarantees of habeas corpus, writs of mandamus, collective action, court injunctions, habeas data, class action, and public civil actions.

20. The purpose of habeas corpus is to ensure freedom of movement in cases in which individuals have in fact been threatened, or feel they have been threatened, with violence or coercion. The purpose of habeas data is to assure individuals the right to information on the petitioner, as well as adjust personal information. Since 1996, 21 requests for habeas data have been submitted to the Federal Supreme Court (*Supremo Tribunal Federal - STF*). For its part, the writ of mandamus is designed to safeguard any and all evident and clear rights not covered by habeas corpus or habeas data in cases of illegal acts or abuses of power. The 1988 Constitution breaks new ground in mandating collective action, which can be entered by political parties, unions, class entities, or associations. Yet another innovation involves the creation of court injunctions to assure, through the judicial branch, the exercise of constitutional rights and freedoms even in the absence of a pertinent statutory norm. Since 1996, there have been 179 court injunctions filed with the STF. Popular actions, for their part, allow for the repeal of acts that harm public property and assets, administrative morality, the environment, and the nation's historical and cultural heritage. Finally, civil



public actions are aimed at safeguarding the environment, the nation's historic, artistic, and cultural heritage, and various other collective rights.

21. In this way, the Brazilian State guarantees all persons the right to effective remedies when the rights and liberties recognized in the Covenant have been violated. The authorities have the duty to fulfill the judicial decisions handed down, under penalty of the crime of responsibility.

**Factors and difficulties:**

22. A significant portion of the Brazilian population, particularly that segment victimized by misery and social exclusion, is unable to turn to the judicial system to guarantee its rights. Frequently, those in poverty do not have the necessary information about the specific rights granted by law; in other cases, although they may be aware that their rights have been violated, the more disadvantaged do not have access to the courts either because they lack the means to retain counsel or as a result of the insufficient numbers of public defenders available to represent them at no charge. The Office of Public Defender of the Union is charged with providing free representation at the federal level, while the state public defender's offices have this responsibility in the individual states. Their effectiveness is limited, however, due to their lack of financial and budgetary autonomy. There are still other cases, including the states of São Paulo, Santa Catarina, and Goiás, in which public defender's offices have yet to be introduced.

23. The relative lack of trust in the police agencies, the slow pace of the Brazilian legal system, the high levels of impunity witnessed, and the fear of reprisal drive many victims to opt for not filing criminal complaints with the competent authorities.

24. To address the problem of restricted access to the legal system in Brazil, first a profound restructuring of the public security system must be carried out followed by the corresponding implementation of associated reforms in the judicial branch; and these are questions the National Congress and civil society have tackled in recent years. Recently, the government submitted a draft constitutional amendment on the reform of the judicial branch for a vote by the National Congress. The objective of the amendment is to speed judicial process and expand access to the justice system. The central elements of this reform, which are now under consideration, include a proposal to federalize crimes against human rights, to impose outside oversight of the judiciary and the public prosecution service, and to grant functional and budgetary autonomy to the public defenders service.

**Government Actions**

25. With a view to ensuring all individuals access to the justice system, the federal government has, since 1996, lent its support to the establishment of Legal Desks (*Balcões de Direitos*). Located for the most part in low-income communities or areas into which public services have limited access, the Legal Desks, maintained in partnership with a number of non-governmental organizations, primarily neighborhood associations, provide free legal counseling and conflict mediation services.

### **Article 3 - Equality of Rights between men and women**

26. The Brazilian State strives to ensure equality of rights between men and women through prohibitions on discrimination based on gender and the promotion of equality. Article 5 of the 1988 Brazilian Constitution establishes that all are equal before the law, without distinctions of any kind. Subsection I of the same article sets forth the principle of equality between men and women by specifying rights and obligations, pursuant to the Constitution. For its part, paragraph 5 of article 226 emphasizes that the rights and obligations of marriage are equally exercised by the man and the woman. Similarly, Brazil's major Law provides for penalties in cases of discrimination or the violation of fundamental rights and freedoms. Subsection XX of article 7 forbids differences in salaries, the exercise of positions, and hiring criteria based on sex, age, color, or marital status. Article 3 of the Constitution enshrines as a central objective of the Republic the well-being of all, without prejudice based on origin, race, sex, color, age, or any other form of discrimination. Subsection XX of article 7 prescribes the protection of the employment market for women through specific incentives, pursuant to the applicable legislation.

27. With regard to the problem of domestic violence, the 1988 Constitution is the first in Brazilian history to address the issue, mandating that the State ensure assistance to each individual family member through the creation of mechanisms to restrain violence within the family setting.

28. Concerning the open clause in the Federal Constitution regarding the treaties to which the Federative Republic of Brazil is a party, it is important to highlight that Brazil has been a party to the Convention on the Elimination of all Forms of Discrimination against Women since February 1, 1984, and to the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women since November 27, 1985. Brazil supported the 1993 Vienna Declaration on Human Rights (which condemns violence against women and affirms that the human rights of women and girls are an inalienable, integral, and indivisible part of the universal human rights); the 1993 Declaration on the Elimination of Violence against Women; the 1994 Cairo Declaration on Population and Development; and the Beijing Declaration and Action Plan approved at the Fourth World Conference on Women's Rights, in 1995. In fact, since 1995 Brazil has been a party to the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, also known as the "Belém do Pará Convention." The Convention was the first international Human Rights treaty to recognize violence against women as a prevalent phenomenon that affects a large number of women regardless of race, class, religion, age, or any other condition and, therefore, as a problem of regional scope. Additionally, the Brazilian State ratified the Optional Protocol to the CEDAW, in 2002, enabling the submission of individual petitions to the UN's Commission on the Elimination of Discrimination against Women. Finally, in March of this year, the Brazilian State also ratified the Additional Protocol to the United Nations Convention against Transnational Organized Crime to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children.

29. At the infra-constitutional level, another provision that warrants mention, in addition to the laws cited in the introduction, is Law no. 10224/2001, which modifies the Penal Code through the

introduction of a new provision, namely sexual harassment (article 216-A). The act of *subjecting an individual to degrading circumstances for purposes of obtaining sexual advantage or favor through imposition of the agent's status as a hierarchical superior or the inherent predominance of such agent's office, position, or function* is subject to a sentence of confinement for a period of two years. The expectation is that the norm will help bring the problem of sexist acts involving hierarchical submission into the public light and ensure they are subject to penal sanctions. The approval of Law no. 10406, of 10 January 2002, enacting the new Brazilian Civil Code, also deserves mention. The new Code eliminated a series of patriarchal and sexist notions contained in the 1916 Code, while recognizing the rights secured by women over the last several decades.

30. Beyond these legislative breakthroughs, we should point out the establishment of the Presidency of the Republic's Special Secretariat for Women's Policies, the aim of which is to incorporate gender-oriented considerations in sectoral policies. The Secretariat oversees the National Council for the Rights of Women, which in its almost 20 years of existence has served as an example of the importance of wedding the efforts of government and civil society.

#### **Factors and difficulties**

31. In spite of these legal achievements and expanded opportunities in the job market and high-level positions within the State and civil society, Brazilian women continue to be victimized by an array of violent and discriminatory practices. Domestic violence constitutes a phenomenon that is as long-standing as it is urgent in the country and that poses, at the same time, significant difficulties. The majority of public officials are unaware of the problem, while, moreover, there continue to be insufficient resources available to develop and sustain public policies in this area. Throughout Brazil, there are only 71 shelters for women in conditions of violence, and this, in a country with over 5,000 municipalities. Over the last decade, more than 400 Police Departments specializing in providing assistance to women in conditions of violence have been established in Brazil, representing, to be sure, an important advance, albeit a limited one given the magnitude of the problem.

32. A survey by Human Rights Watch ("Criminal Injustice x Violence against Women in Brazil," 1991) revealed that of every 100 murders in which women were the victims, 70 occurred within the domestic setting. Another survey conducted by the National Human Rights Movement - *Movimento Nacional de Direitos Humanos* - ("Spring Has Departed," 1998) found that 66.3% of those charged with the murder of women were partners of the victims. A survey of women over the age of 15 performed by the Perseu Abramo Foundation, in 2000, reported that 19% of the respondents spontaneously recounted acts of violence committed against them by men.

33. Note that the UN's own data demonstrates that domestic violence constitutes the principal cause of injury to women between the ages of 15 and 44 worldwide, a figure that exposes the severity of the problem. Gender violence, which reflects historically unequal and asymmetric power relations between men and women, is a serious violation of Human Rights and limits the ability of women to exercise their other rights. According to the Inter-American Development Bank (IADB),

one in five women who are absent from work are the victims of physical aggression. Domestic violence aggravates the problem of the feminization of poverty and, when witnessed by children and adolescents, serves as a predictor for aggressive and criminal behavior. Economically dependent women, for their part, are more vulnerable to domestic violence. It is, then, a vicious cycle which effectively links the violation of civil rights to the violation of social rights.

34. Important initiatives have been implemented at the federal level to confront the problem. On November 25, 1998, for example, the Ministry of Justice signed the Community Pact against Intra-Family Violence (*Pacto Comunitário Contra a Violência Intrafamiliar*). It involves an effort by the United Nations and the Brazilian government (Ministry of Justice/National Secretariat for Human Rights), in partnership with non-governmental organizations, to prevent and combat intra-family violence in the country. The effort is the product of the "A life free of violence is our right" ("*Uma vida livre sem violência é um direito nosso*") campaign promoted by women's organizations, the federal government, and the United Nations. Initiatives of this type offer, in, one way or another, important contributions and close a chapter on a story of invisibility and silence that has historically gone hand in hand with the violence perpetrated against women.

35. Sexual exploitation of young women continues to represent a serious problem in Brazil, having reached alarming levels in some states and at times involving the participation or implicit consent of the authorities. In response to this challenge, the Special Secretariat for Human Rights of the Presidency of the Republic established, in 2003, the National Action Plan Against Sexual Violence and Exploitation of Children and Adolescents (*Plano Nacional de Enfrentamento à Violência e Exploração Sexual Infanto-Juvenil*). Also created was the Intersectoral Commission to Confront Violence and Sexual Exploitation of Children and Adolescents (*Comissão Intersetorial para o Enfrentamento da Violência e Exploração Sexual de Crianças e Adolescentes*), composed of representatives of the federal government, Congress, civil society, and international organizations. This unprecedented joint effort led to an increase in the number of cases investigated by the Federal Police and the formation of a task force within the Public Ministry in every state of the Union for the sole purpose of addressing cases of sexual exploitation of children and adolescents.

36. The law establishing quotas for electoral lists, meanwhile, has fostered increased participation among women in the political process, although it has not succeeded in reversing the virtual monopoly enjoyed by men in the country's legislatures and offices of the executive branch. In 1994, women occupied 5.7% of the elected public offices, whereas one year later this figure had risen to 13.1%. This trend, however, was not sustained, and today women occupy only 8.75% of the elected seats in the National Congress. In the 2002 elections, women won the following percentages of elected offices: 14.81% in the Senate; 8.19% in the Chamber of Deputies; 12.56% in the Legislative Assemblies; and 11.61% in the local and state Chambers of Deputies. This imbalance was also found in elected positions within the executive branch: 7.4% of state governorships and 5.7% of mayoral seats.

37. By contrast, in the judicial branch, where access is secured exclusively through civil service exams, the number of women judges has increased progressively. The judicial branch's primary challenge is to promote women to senior judgeships in higher jurisdictions in the state and federal court system.

38. In general, women continue to receive less than men for performing the same function. In September 1996, the Government Working Group on the Elimination of Discrimination in Work and Occupation (*Grupo de Trabalho Governamental para Eliminar a Discriminação em Matéria de Emprego e Ocupação - GTEDEO*) was established, with the participation of the National Council for the Rights of Women. Its main purpose is to eliminate discrimination based on sex and promote national legislation against discrimination and Convention 111 of the international Labor Organization. Another of the central objectives of the Group is to ensure compliance with Law no. 9029/95, which prohibits and establishes penalties for requiring proof of pregnancy and sterilization certificates, or other discriminatory practices, for purposes of hiring or maintaining employment.

39. On the basis of the conclusions of the April 1998 seminar "Promoting Equality between Men and Women in the Public Service" (*"Promoção da Igualdade entre Homens e Mulheres na Função Pública"*), the National Secretariat for Human Rights and the National Council for the Rights of Women presented a series of proposed actions to promote equal opportunities between men and women in the public service, which was then submitted to all government ministries for incorporation in their action plans.

40. Growing awareness of the problem, moreover, has contributed to the expansion and consolidation of several important projects developed by NGOs and entities representing civil society. Entities such as the NGO Themis - Assessoria Jurídica e Estudos de Gênero (Porto Alegre), the União de Mulheres (São Paulo), the Instituto de Advocacia Pública (São Paulo), the SOS-Mulher (Campinas), and the SOS-Mulher (São Jose dos Campos), among others, develop programs to train "popular public prosecutors" to prepare community leaders, who, through their role as multiplier agents, offer legal assistance services to women in need or who have been victimized by discrimination or violence.

41. Through these actions, the Brazilian State seeks to fulfill in very concrete terms the recommendation of the Human Rights Committee (item 30 of document CCPR/C/79/Add.66, of 24 July 1996) with regard to the implementation of measures to combat violence against women.

42. Another issue that warrants consideration involves reproductive rights. The current government has committed itself to undertake a review of the repressive legislation governing abortion so that the principle of free choice in the exercise of individual sexuality is fully respected. It is not the purview of the State to interfere in this area of individual autonomy, although it does have a duty to offer all necessary information and assure access to the various methods of contraception in order to ensure people are provided with the ideal conditions to prevent unwanted pregnancies. The 1988 Federal Constitution recognized the universality of the right to healthcare and mandated

that the State provide services in this area at no charge. It also guarantees the right to family planning, thereby anticipating the recommendation of the World Conference on Population and Development held in Cairo. The right to family planning was officially ordered by Federal Law, in 1898, with the introduction of the principle of full healthcare for women in all stages of their lives, assuring, in this way access to reversible contraceptive methods and recognizing the right to tubal ligations and vasectomies. The same legislation set out guarantees against abuses and imposed or manipulative sterilization practices.

43. However, the autonomy assured by the Law with regard to a woman's decision to not bear children has yet to be fully implemented. Difficulties in access to contraception and the small number of services available to assist women who have been the victims of sexual violence play a role in the problem of unwanted pregnancies and back-alley abortions, which, in turn, predispose women to maternal death. Abortion is currently the fifth leading cause of maternal death in Brazil.

44. The Brazilian Penal Code dates to 1940. Despite the reforms that have been introduced in the Code, some discriminatory clauses persist, such as subsection VII of article 107, which provides for waiving punishment when the sexual aggressor is married to the victim. That same legislation, meanwhile, mandates stiff penalties for abortion, except in cases of imminent risk to the mother and pregnancy induced by rape.

45. Brazilian legislation has not yet been adjusted to conform to the recommendation of the Plan of Action of the 1995 World Conference on Women, held in Beijing, in which abortion was defined as a public health issue. The Brazilian government is hopeful that the National Congress will consider one of the draft bills now in Congress aimed at correcting the repressive manner in which abortion is today addressed.

46. Through the Special Secretariat for Women's Policies and the Ministry of Health, the Brazilian government has carried out several actions to reduce morbimortality caused by abortion. A specific protocol was introduced requiring notification in the event of maternal death; reviving the National Commission against Maternal Mortality (*Comissão Nacional Contra a Mortalidade Materna*); implementing prevention Committees in all state capitals and municipalities with more than 100,000 residents; establishing the "Dial Women's Health" hotline designed to provide access to information on existing services; and mobilizing the country for a debate on sexual and reproductive rights with an emphasis on family planning and conscious and involved paternity.

47. Finally, we should mention the efforts to end violence perpetrated against women, carried forward in conformity with established international guidelines, specifically the Belém do Pará Convention cited above. Law no. 10714, of 13 August 2003, authorized the executive branch to establish a nationwide telephone number to receive complaints regarding acts of violence committed against women. On November 24, 2003, the law requiring mandatory notification of police authorities in cases in which women victims of violence receive public and private health services was published. This legislation represented an unprecedented initiative aimed at giving

wide publicity to the plight of women subjected to acts of violence. Further, in response to the recommendation of the 29<sup>th</sup> Session of the Committee on the Elimination of Discrimination against Women (*Comitê para a Eliminação da Discriminação contra a Mulher- CEDAW*), the Secretariat for Women's Policies established the Inter-Ministerial Working Group to develop proposals for legislative measures designed to limit domestic and family violence against women. The group's efforts have been based on the work of a consortium of non-governmental organizations, in what represents yet another indication of the utility of government-NGO partnerships. The results of the working group's efforts will be submitted to the National Congress as a draft bill introduced by the executive branch.

#### **Article 4 - Restrictive measures in emergency situations**

48. Measures that restrict rights may only be decreed in a "State of Defense" or "State of Siege," which allow for the imposition of extraordinary constitutional laws. According to article 136 of the Federal Constitution, the President of the Republic has the authority, following consultations with the Council of the Republic and the National Defense Council, to decree a State of Defense for purposes of preserving or quickly reestablishing public order or the social peace in restricted and specific locations in the event these are threatened with serious or imminent institutional instability or struck by widespread calamities.

49. The decree enacting a State of Defense shall determine the measure's time and duration, which may not exceed thirty days (one extension of the established period is permitted if the conditions that gave rise to the act persist); specify the areas covered; and indicate the applicable coercive measures, among the following options: a) restrictions on the freedom of association; b) restrictions on the secrecy of correspondence; c) restrictions on the secrecy of telegraph and telephone communications; d) the occupation and temporary use of public assets and services in the event of a public calamity, for which the pertinent authorities shall be accountable to the Union with respect to the associated costs or resulting damages.

50. The National Congress shall have the duty and authority to examine the decree instituting the State of Defense.

51. Similarly, the President of the Republic may enact a State of Siege, following consultations with the Council of the Republic and the National Defense Council and the authorization of the National Congress, in cases of serious unrest with nationwide implications, evidence demonstrating the ineffectiveness of the measures adopted during a State of Defense, or the declaration of a State of War or in response to armed foreign aggression.

52. As with the State of Defense, the decree instituting a State of Siege shall determine the time and duration of the measure and indicate the applicable coercive measures. In cases of internal unrest or the ineffectiveness of a State of Defense, only the following restrictive measures may be imposed: a) the obligation to remain in specific locations; b) detention in structures not used to house individuals charged or convicted with common criminal acts; c) restrictions relative to the inviolability of

correspondence, the secrecy of communications, the channeling of information, and freedom of the press and radio and TV broadcasting; d) suspension of the freedom of association; e) the search and seizure of homes; f) intervention in companies providing public services; and f) the requisition of assets. In the event of armed international conflict, individual rights shall be assured by the rules relative to Humanitarian Law, including the Geneva Convention and Additional Protocols, all ratified by Brazil.

53. In contrast to the State of Defense, the State of Siege may not be decreed for more than thirty days, nor may it be extended for a greater period of time, unless the situation of war or foreign armed aggression that prompted the measure persists.

54. Upon termination of the State of Defense or the State of Siege, the pertinent effects shall also be terminated, while not exonerating the act's executors or agents of responsibility for illicit actions committed during such act's effectiveness. Neither the State of Defense nor the State of Siege constitutes a situation of arbitrary rule, but is, rather, constitutionally ordered and subject to political controls (exercised by the legislature) and judicial controls (exercised by the judiciary). Since the promulgation of the 1988 Constitution, no State of Defense or State of Siege has been instituted, nor has the possibility of such a measure been considered.

55. In permitting the adoption of restrictive measure, neither the State of Defense nor the State of Siege represents a violation of the obligations imposed by international law or discriminatory conduct of any type. Brazil's legal order adheres to the provision of paragraph 2 of article 4 of the Covenant, which prohibits the repeal of articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16, and 18 of the Covenant during a State of Defense or a State of Siege.

#### **Article 5 - Extension of rights**

56. In an unprecedented move, the 1988 Brazilian Constitution incorporated international Human Rights treaties in its Declaration of Rights, as set out in paragraph 2 of article 5. Pursuant to this open constitutional clause, the Brazilian legal order identifies three categories of fundamental rights: a) the rights expressly granted by the Constitution; b) implicit rights (arising from constitutionally adopted regime and principles); and c) the rights enumerated in international treaties to which Brazil is a party. Subsection IV of paragraph 4 of article 60 of the 1988 Constitution also contains an unprecedented provision mandating individual rights and guarantees among the Constitution's "immutable clauses" ("*cláusulas pétreas*"). No amendment intended to abolish individual rights or guarantees is permitted.

#### **Article 6 - Right to life**

##### **a) The right to life and the prohibition on the death penalty**

57. Article 5 of the 1988 Brazilian Constitution ensures the inviolability of the right to life. Subsection XLVII of the same article prohibits the death penalty, except in cases of declared war,



as specified in article 84, subsection XIX, of the Constitution. The 1988 Constitution mandates that the President of the Republic may grant pardons and commute sentences for all convictions (including the death penalty in cases of war). The death penalty was last applied in Brazil in 1855 under the imperial regime.

58. The Brazilian State has been a party to the American Convention on Human Rights since September 25, 1992. Paragraph 3 of article 4 of the Convention forbids the reenactment of the death penalty in States in which it has been abolished. The 1988 Constitution enshrines individual rights and guarantees as an immutable clause (*cláusula pétrea*), thereby prohibiting any amendment intended to rescind those rights and guarantees. Thus, during the time the 1988 constitutional order is in force, the right to life and the prohibition of the death penalty shall remain fully safeguarded.

#### **b) Genocide**

59. Brazil has been a party to the Convention on the Prevention and Repression of the Crime of Genocide since April 15, 1952. Internal Law no. 2889/56 defines and sets out penalties for the crime of genocide by applying precepts contained in the Convention against Genocide to the Brazilian legal order. With the advent of Law 8072/90, genocide was henceforth considered a hideous and non-bailable crime not subject to mercy or amnesty. The crime of genocide is specifically defined as the act of killing members of a national, ethnic, religious, or racial group in order to bring about its total or partial destruction. Additionally, in light of Brazil's accession to the International Criminal Court, a draft bill on the crime of genocide, as defined by the Rome Statute, will be presented to the National Congress for purposes of applying the norms of the international court in the domestic sphere.

60. The 1988 Constitution establishes the promotion of the general well-being, without prejudice based on origin, race, sex, color, age or any other form of discrimination as a fundamental objective of the Federative Republic of Brazil. The values of tolerance, pluralism, and respect for differences make up the distinctive constitutional feature of the Brazilian Legal Democratic State.

#### **c) Disappeared Persons**

61. The period of military rule in Brazil, which extended from 1964 to 1985, was marked in the political sphere, specifically in the 1970s, by torture, arbitrary detentions, extrajudicial executions, and forced disappearances committed by agents of the state security apparatus against political opponents. With the restoration of democracy, entities representing civil society demanded investigations aimed at locating the remains of the disappeared and identifying those responsible for the disappearances. A significant achievement was secured in 1995 with the approval of Law no. 9140, which officially recognized that the deaths of the disappeared had been a consequence of their political activities during the dictatorship, assigned responsibility for those deaths to the State, and granted compensation to the victims' families. Law no. 10875, of 1 June 2004, transformed Provisional Measure no. 176, of 3 March

2004, into law and adjusted the law cited above, expanding the period subject to compensation for disappearances connected to the military regime, expanding the legal scope for extending compensation to the families of individuals who disappeared for their political activities, while consolidating the role of the Special Commission before the Special Secretariat for Human Rights with respect to the payment of compensations. The State's official recognition of the disappeared and of those whose deaths in law enforcement and associated facilities may not have been due to natural causes represented an important step in correcting the historical record.

62. Article 8 of the Constitutional Provisions Act of the 1988 Constitution grants amnesty to those individuals who were the targets of exceptional acts during the period extending from September 18, 1946, to the promulgation of the Constitution for purely political motives. The Special Amnesty Commission (*Comissão Especial de Anistia*) was established in Brasilia to grant political amnesties. In 1988, the state of São Paulo formed the Special Amnesty Commission (*Comissão Especial de Anistia*) at the state level to process and order the measures specified in article 8 of the Transitional Constitutional Provisions Act. The states of Rio Grande do Sul, Paraná, and Santa Catarina also approved specific laws granting political detainees who were subjected to torture and mistreatment during the dictatorship the right to compensation.

#### **d) Peaceful Resolution of Conflicts and Limitations on Nuclear Arms**

63. One of the principles that guide Brazil in the context of its international relation is the peaceful resolution of conflicts and the defense of peace, as set forth in subsections VI and VII of article 4 of the 1988 Constitution. The Union has the duty and authority to develop nuclear services and installations in the country. However, the Constitution only permits the use of nuclear energy for peaceful ends and with the express consent of the National Congress, pursuant to article 21 subsection XXIII, "a," of the text. Brazil is also a signatory to treaties that proscribe nuclear arms, such as the Treaty of Tlateloco, encompassing the Latin American region, the Treaty on the Non-Proliferation of Nuclear Arms (NPT), and the Comprehensive Test Ban Treaty (CTBT).

#### **e) Measures adopted to increase the population's life expectancy and reduce mortality**

64. By virtue of the public policies adopted by the federal and state governments, we can identify a general trend toward reduced infant mortality rates, although these remain relatively high.

65. According to UNICEF's "The State of Children - 1998" report Brazil ranked seventy-ninth with regard to mortality rates for children under the age of 5, pointing to a statistical probability of death between birth and age 5 equivalent to 52 per 1,000 live births. A marked decline in infant mortality rates is evident, however, in analyzing the 1990-2000 period: from 48.3 deaths per 1,000 children to 29.6. This corresponds to a reduction on the order of 40%. The government has implemented various actions to reduce infant mortality levels. The community health agents program, for example, has contributed significantly to this effort by providing assistance to 6.7 million Brazilians in 1996 alone.

66. At the same time, the existence of acute regional disparities must be highlighted. The mortality rates in the more highly developed states are far better than those registered in the country's most impoverished states. On this point, it is important to mention Brazil's sharp income inequality. The average annual income of the wealthiest 20% is US\$ 18,563, a total 30 times greater than that recorded among the poorest 20%, who earn an average of US\$ 578 per year.

67. Another factor that deserves to be mentioned is the decline in the number of children living with HIV. Whereas, in 1991, this segment represented 6.3% of all cases, in 2000, it accounted for only 3.7% of all cases. The most positive aspect of this data involves the approximately 50% reduction in vertical transmission (mother to child) rates as a consequence of the introduction of universal anti-retroviral treatments, in 1996. From 1991 to 2000, the rate of reported cases of HIV infection among individuals under the age of 19 constituted a mere 4.9% of the total. Brazil's policy of universal access to anti-retroviral medications established at the beginning of the 1990s and consolidated by Law 9313, of 1996, provides for highly active anti-retroviral therapy (HAART) for all patients infected with HIV, including children and adolescents. Through December 2001, there were 113,000 people receiving treatment, of which 6,100 were under the age of 13.

68. Another area of children's healthcare that has shown progress involves vaccination coverage, which between 1995 and 2002 reached 95% for the triple DTP vaccine and 100% for the poliomyelitis, BCG, and measles vaccines among children under the age of 1. Poliomyelitis was eradicated in 1994, and Brazil has registered no autochthonous cases of measles since 2001. Furthermore, the country has brought diphtheria, whooping cough, and the more virulent strains of tuberculosis under control.

69. Maternal mortality rates have also dropped. Between 2001 and 2002, a decline of 28% was recorded in the country's state capitals. In 2001, for every 100,000 children born alive, 71 women died during pregnancy, delivery, or post-partum. These figures have prompted the government to pursue policies to reduce the number of cesareans performed, given that the risk of death during these procedures is five times higher than during natural births. Other important initiatives, such as specialized training for obstetric nurses, the implementation of the High-Risk Pregnancy Assistance System (*Sistema de Atenção à Gestação de Alto Risco*), which has invested on the order of R\$ 100 million reais, and the Pre-Natal and Birth Humanization Program (*Programa de Humanização do Pré-Natal e Nascimento*) implemented in 2000, have constituted vital achievements.

70. In 1940, the average life expectancy of the Brazilian population was only 39 years. By the beginning of the 21<sup>st</sup> century, that figure had risen to 68 years and is expected to reach 80 years by 2025. Currently, there are 14.1 million people in Brazil over the age of 60, corresponding to 9.1% of the population. Within 20 years, the country's elderly population will total 32 million, or 15% of the total. This dramatic shift in the country's demographic make up presents new challenges to policymakers, beginning with healthcare, which will come under increasing pressure as chronic degenerative diseases, higher hospital internation costs, among other factors, will have to be

addressed. With this in mind, Brazil recently approved new legislation to protect the rights of the elderly: Law no. 10741/2003, the Elderly Statute, representing a new and significant achievement.

71. At the same time, IBGE data reveals that a black child has a greater probability to die than a white child from causes linked to the lack of proper sewage, potable water, education, and reasons connected to difficulties in accessing the public health system. A black child has a 67% greater chance of dying before the age of 5.

#### **f) Traffic Fatalities**

72. Another problem that has sparked concern within the government concerns the high levels of fatalities due to traffic accidents. In Brazil traffic accidents are among the primary causes of death. The Ministry of Justice, and since 2003 the Ministry of Cities, through the National Traffic Department (*Departamento Nacional de Trânsito*), has implemented a series of programs to reduce

the rate of traffic-related fatalities, including the National Traffic Statistics System (*Sistema Nacional de Estatística de Trânsito*) and the approval of the new Brazilian Traffic Code - Law no. 9503/97. The new Traffic Code introduces "traffic crimes," as they are referred to, defined as the conduct in which the driver of a vehicle jeopardizes the well-being, life, safety, and physical integrity of other persons. Data from the Ministry of Health provides an idea of the severity of the problem: each year between 30,000 and 35,000 people die in traffic accidents in Brazil.

#### **Factors and Difficulties**

73. Throughout the 1980s and 1990s, the largest Brazilian cities registered increases in violent crime rates accompanied by shifts in criminal activity. The annual murder rate in modern-day Brazil is 27 per 100,000 of population. In Brazil's metropolitan centers, where the problem of violence is most acute, murder has primarily affected poor youth between the ages of 15 and 24. According to the most recent survey on this subject conducted by the IBGE in April 2004, if we consider for computational purposes only those murders that affect the male population, Brazil's murder rate rises to 49.7 per 100,000 of population. If we focus our field of inquiry on young Brazilian men, the murder rate reaches 95.6 murders per 100,000 of population. In the state of Rio de Janeiro, the murder rate for that same category of individuals reveals the alarming figure of 205 murders per 100,000 of population. This tragedy has produced demographic shifts in some regions of the country similar to those witnessed in times of war, and the issue of public safety is today one of the nation's top concerns.

#### **I) Police Violence**

74. Police violence, especially lethal police violence, continues to represent a serious problem. The civil and military police are responsible for law enforcement in the individual states. The duties of the civil police, which are principally investigative, correspond to those of a judicial police force, while the military police is charged with concrete preventive law enforcement activities. A high number of deaths continues to occur in confrontations involving the police. Generally, the victims of police homicides have

been criminal suspects, inmates, children and adolescents in high-risk settings, as well as rural inhabitants and union leaders. In the state of Rio de Janeiro, deaths caused by police action have risen 298.3% over the last seven years: from 300 cases, in 1997, to 1,195 cases, in 2003. In the state of São Paulo, deaths resulting from police activities have increased 263.17%, from 239 victims, in 1996, to 868, in 2003.

75. Police violence against criminal suspects has also been a constant feature of Brazilian law enforcement. The victims are invariably poor. The majority are young and black. When approached on the streets, they are commonly treated in a disrespectful or even offensive manner. For many police officers, those who are already socially marginalized are deemed, implicitly, "suspects." Cases of verbal and physical aggression by police officers are common in Brazil, as are cases of racial discrimination and homophobia. There are increasing reports of sexual crimes and violence perpetrated by police officers against women and even adolescents. Various cases of individuals targeted and killed by police officers on roads and at checkpoints simply because they failed to follow an instruction or were suspected of car theft provide sufficient illustration of the wholly inadequate levels of preparation that precede and lay the groundwork for these kinds of criminal acts.

#### **Government Actions**

76. One of the central problems as regards police violence lies in the "law of silence," by which eyewitnesses refuse to clarify the facts of an incident for fear of reprisal. Thus, the establishment of an effective system to protect witnesses who have been threatened is essential for addressing the problem. The first witness protection program in Brazil was created in Pernambuco at the end of the 1990s through a joint initiative between the NGO Gabinete de Assessoria Jurídica das Organizações Populares - GAJOP and the government. The Pernambuco program is known as PROVITA (the same name assigned to the national witness protection program). Rio Grande do Sul, meanwhile, approved the first Brazilian legislation enacting a law to assist the victims of violence and a witness protection program, in 1998, designated PROTEGE. Today, there are sixteen state-level witness protections operating in partnership with the federal government, in addition to the federal program, which is responsible for cases of police violence in the remaining states. All of Brazil's witness protection programs lack adequate investments, a fact that has reduced the potential for expanding these programs. Similarly, a guideline ordering the procedures for providing witnesses and their families with new identities has yet to be developed. Notwithstanding these limitations, the witness protection programs - a recent phenomenon in Brazil - are essential instruments and have produced important results.

77. In 1996, Law no. 7865, which introduced the National Arms System, was approved. The law establishes the conditions for registering arms and defines the illegal possession of arms by civilians or law enforcement and security agents as a crime, in that same year, Law no. 9299, which transfers jurisdictional authority over crimes against life committed by military police officers - an issue that will be considered further in the comments to article 14 of the Covenant - from military to civilian courts, was approved. In 2003, the National Congress approved new and advanced legislation ordering gun

control in Brazil by enacting Law no. 10826/2003, known as the "Disarmament Statute." The measure significantly restricts the ability to obtain and carry guns and calls for a national plebiscite, in 2005, on the enactment of a total gun ban. All opinion polls to date have shown over 70% approval for the proposed permanent prohibition on the purchase and possession of guns by civilians in Brazil.

### **III. Detainees**

78. The Federal Constitution and Brazilian legislation contain advanced provisions regulating the treatment of detainees. However, the conditions in Brazil's prison system are incapable of assuring effective application of these precepts, due to overcrowding in detention facilities and compromised execution of the duties the system is charged with fulfilling, to violence perpetrated by police officers and prison guards, or to violence incited by the detainees themselves stemming from disputes among rival factions.

79. According to data from December 2003, there are approximately 308,000 inmates in the Brazilian penitentiary system, of which 139,000 are incarcerated in a closed regime, 31,000 are in a semi-open regime, 67,000 are under provisional arrest, and 2,500 are held under detention orders. Of this total, 240,000 are housed in the system itself, translating in a shortage of 60,000 vacancies, while 68,000 are in public security units. The prison population is 96% male and 4% female. In spite of the difficulty in maintaining updated data on the state prison systems, the National Penitentiary Department of the Ministry of Justice monitors the temporal and spatial trends associated with the shortage of vacancies in federal units in an effort to foster a more disciplined consideration of the policies adopted. The effort, in place since November 2003, is based on studies of the historic profile of the Brazilian penitentiary system and frequent submissions of questionnaires to the state governments. It establishes, furthermore, conditions on all agreements ordering the concession of budget resources of the National Penitentiary Fund to the states.

### **IV. Children and Adolescents in Situations of Risk Street Children**

80. One of the main problems that draw the attention of Brazilian society with regard to children and adolescents at risk refers to those who depend on the streets for their survival, commonly known as "street children." The problem has been widespread, particularly since the end of the 1970s.

81. Various studies and surveys have been performed in the country to estimate the number of street children, the root causes of the phenomenon, and the most effective means for "removing children from the streets." Today the number of children and adolescents who actually live on the streets without any family ties is far below the usual estimates of millions. In the city of São Paulo, the largest city in South America, for example, a 1996 survey conducted by the Municipal Secretariat for the Family and Social Well-Being (*Secretaria Municipal de Família e Bem-Estar Social*) indicated that nearly 3,000 (three thousand) children and adolescents were regularly on the streets, although they did not live on the streets, while a mere four hundred and sixty-six (466) actually lived on the streets.

82. The majority of these children spend their days on the streets selling small objects, sweets and candies, committing petty thefts, or panhandling. At night, many of them return to their families. However, the situation of those who are forced to sleep on the streets of the largest cities is dire indeed, exposed as they are to all forms of exploitation, drug use, and child prostitution. Although the underlying cause for this is related to poverty and misery, other factors are equally important, such as mistreatment and abuse, changes in behaviors that trigger family crises and estrangements, the lack of educational, sports, and recreational programs that are compatible with the needs and aspirations of young people.

83. Prior to the enactment of the 1988 Constitution and the Child and Adolescent Statute, Law no. 8069, of 13 July 1990, the problem was addressed through repressive measures involving the removal of children and adolescents to boarding facilities and shelters. In the mid-1980s, alleging that the government's actions were not only ineffective, but harmful and unjust as well, a group formed by technical staff from what was then the FUNABEM, with the support of UNICEF, sought, with the sponsorship of non-governmental organizations, information on the alternative assistance efforts that were then in place throughout the country. The product of this groundbreaking group was designated the "Alternative Street Children Assistance Project" (*"Projeto Alternativas Comunitárias de Atendimento a Meninos de Rua"*) of the Pastoral do Menor da Arquidiocese de São Paulo.

84. In 1985, one of the most influential non-governmental organizations in the long struggle on behalf of the rights of children and adolescents in the country was created: the National Street Children's Movement (*Movimento Nacional Meninos e Meninas de Rua*), which, together with other Human Rights NGOs, particularly the Pastoral do Menor, played a central role in the elaboration of article 227 of the Constitution, the development of the Child and Adolescent Statute (*Estatuto da Criança e do Adolescente - ECA*), and the dissemination of the principles and dictates of the Convention. The movement also contributed, on the basis of the experiences of its activists, to the reformulation of the programs aimed at fulfilling public policies.

### **Sexual Abuse and Exploitation**

85. Article 227, paragraph 4, of the Federal Constitution establishes that the law shall severely punish those responsible for committing acts of sexual abuse, violence, and exploitation against children and adolescents. With regard to violence perpetrated within the domestic setting, article 226, paragraph 8, of the Constitution mandates that the State shall assure assistance for each family member by creating mechanisms to prevent violence within families.

86. Pursuant to the principle stipulated in the Constitution and articles 240, 241, and 244-A of the Child and Adolescent Statute, the following acts are defined as crimes: to present, produce, sell, supply, broadcast, or publish, through any means of communication, including the World Wide Web or the Internet, photographs or images containing pornographic or sexually explicit scenes involving children or adolescents; or to subject a child or adolescent to prostitution or sexual exploitation. In

accordance with article 244-A, added to the Statute by means of Law no. 9975, of 23 June 2000, the owner, manager, or party responsible for a location in which a child or adolescent has been forced to submit to prostitution or sexual exploitation shall also be considered to have committed a crime subject to a mandatory sentence and repeal of the property and operating license.

87. The sexual abuse and exploitation of children and adolescents is a complex phenomenon that is difficult to confront. It is part of a social and historic context marked by endemic violence with deep cultural roots. Only in the last decade have children been afforded the legal classification of individuals with rights. Previously, they were defined as the object of guardianship, whose sole obligation was obedience and submission given their inherent lack of capacity and status as minors. The rupture with past standards and the introduction of a new culture based on protection and respect for human rights requires bringing to light and preventing abuses in the development of family and educational relationships, as well as protecting the vulnerable and witnesses and holding aggressors accountable for their actions.

88. Sexual violence against children and adolescents in Brazil was first addressed at the political level in the 1990s, when the phenomenon, a product of social, gender, racial, and ethnic inequality, was confronted by society at large as an issue related to the national and international struggle for the human rights of children and adolescents, as extolled in the Constitution of the Republic of Brazil, the Child and Adolescent Statute (Law no. 8069/90), and the International Convention on the Rights of the Child. This period, which represented an historic juncture in the fight for the rights of the child and the adolescent, was marked by a dynamic process of coordinated action, mobilization, and consolidated experiences through which Brazilian society was spurred to view the act denouncing sexual violence as a way to confront the problem.

89. In 1993, the House of Representatives established a Parliamentary inquiry Commission (*Comissão Parlamentar de Inquérito- CPI*) on Child Prostitution in Brazil. In the years following the CPI, sexual violence against children and adolescents was confronted in Brazil with greater intensity both by society at large and the media, on the one hand, and the government, the legislature, and international bodies, on the other. This process shed greater light on the phenomenon and was accompanied by studies, surveys, campaigns, and the development of databases.

90. This movement triggered the emergence of assistant programs, investments directed toward training social agents, efforts by police forces focused on protecting children and adolescents, and specific legislation. The first initiative was an assistance program launched by the federal government to aid child and adolescent victims of sexual abuse and exploitation carried out through the Brazil Child Citizenship Program (*Programa Brasil Criança Cidadã*) and the Cunhantã and Curumim Project (*Projeto Cunhantã e Curumim*) in the state of Amazonas.



91. The ratification of Convention 182 of the International Labor Organization (ILO), which sets forth guidelines that include sexual exploitation among the demeaning and degrading forms of work to which adolescents may not be subjected, is among the various initiatives undertaken by the Brazilian government.

92. After obtaining congressional approval for the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, Brazil deposited the document with the UN Treaty Section in New York on January 27, 2004. The Protocol was promulgated by Decree no. 5007, of 8 March 2004.

93. In February 2003, the National Congress formed a Joint Parliamentary Inquiry Commission (*Comissão Parlamentar Mista de Inquérito - CPMI*), on the initiative of a member of the Chamber of Deputies and two Senators, to investigate cases of child and adolescent sexual violence and prostitution rings in Brazil. The CPMI presented its final report on July 7, 2004. During the course of its work, the CPMI visited 22 Brazilian states, convened 34 meetings and public hearings, and held 20 proceedings.

94. The cases investigated point to the existence of serious forms of exploitation - prostitution rings, domestic and international trafficking, sex tourism networks offering services to foreign visitors, sexual violence and abuse committed against adolescents with disabilities - practiced within those spheres "occupied by the economic and political elites." On the basis of these findings, indictments were handed down against politicians - parliamentarians, local councilmen, mayors, military police officers, businessmen from various industries, religious leaders, advisors, drivers, specific groups, fathers, mothers among others. The large minority of child and adolescent sexual exploitation cases are organized within a single, intricate web of networks; even when small or badly organized, these groups must be investigated with the same "last generation" techniques "(...) used to break up the narco-trafficking, money-laundering networks (...) of organized crime"

95. Beyond investigating and reporting on and referring cases to the Public Prosecuting Office, the CPMI recommended measures to improve the implementation of the basic sectoral public policies now under development

### **Child Labor**

96. Although child labor exists for the most part in response to economic conditions in which families, unable to cover their expenses, employ their children, it is also true that the problem cannot be reduced simply to economic circumstances. In theory, this would lead us to the conclusion that once misery is eradicated child labor will instantly disappear.

97. It is essential to clearly state the prevalence of a negative, but widely accepted, paradigm in Brazilian society, one often reproduced by the media and government authorities themselves. It involves the rhetorical argument that juxtaposes work and crime, whereby the idle child is purportedly more susceptible to enlistment in illicit activities. One can challenge this false paradigm

on the basis of two main points. The first is that surveys of the prison population in Brazil show that a significant percentage of inmates began working at an early age, suggesting that they would actually have benefited more from not working. By contrast, one can legitimately suppose that the very fact that they were forced to devote their childhood and adolescence to work and not education made them easier prey for criminal activity. The second and decisive associated point is that the real paradigm - a positive one, at that - can be drawn from a juxtaposition of work and education. True freedom, the only real independence available to the individual, stems from knowledge, from the ability to perceive the world and oneself, and results in considered choices and cognizance of the need to integrate oneself in society in a healthy and civilized manner.

98. Based on this, we can offer a succinct illustration of the principles and actions that have guided the efforts in Brazil to eradicate child and adolescent labor can be drawn.

99. In 1992, the National Family Survey (*Pesquisa Nacional por Amostra de Domicílios - PNAD*), reported that there were 4,092,580 children and adolescents between the ages of 5 and 14 working throughout the country. This statistic was alarming in light of the political, economic, and social difficulties the country faced at the time and, above all, the absence of strong and integrated public policies aimed at preventing and repressing child labor.

100. Over the last decade, a radically different picture emerged. On the basis of policies designed to bring together the various levels of government (federal, state, and municipal) and civil society, a structure of bodies and entities working together to coordinate their efforts, combine their capacities, and achieve significant results was built.

101. Data from the PNAD indicated that in 2001 there were 2,232,974 children and adolescents between the ages of 5 to 14 engaged in work. This figure represents a reduction of 45.46% in a ten-year period. Between 1999 and 2001 alone, 740,000 children between the ages of 5 and 14 were removed from work, amounting to a 24.86% decline.

102. As an illustration of the progress made, the table below presents the number of persons between the ages of 5 and 14 engaged in work in Brazil, namely those who worked at least one hour during the week covered by the survey (the last full week of September):

Number of persons between 5 and 14 years engaged in work in Brazil

Number of persons between 5 and 14 years engaged in work in Brazil	Children 5 to 9 years	Children 10 to 14 years	Total
Year			
1992	613,843	3,478,737	4,092,580

1993	526,212	3,431,764	3,957,976
1995	518,770	3,269,553	3,788,323
1998	402,016	2,532,965	2,887,505
1999*	375,376	2,587,281	2,908,341
2001	383,51	1,935,269	2,231,974

Source: IBGE – Pesquisa Nacional por Amostra de Domicílios.

\* Figure corrected on the basis of 2000 Census

Brazil – Child Labor by age group – 2001 and 2002

Age Group	Year	
	2001	2002
5 to 10 years	495,924	483,938
11 to 15 years	2,598,323	2,538,993
<b>Total</b>	<b>3,094,247</b>	<b>3,022,931</b>

Source: IBGE/PNAD 2001 and 2002.

Note: Rural areas of the North Region not included, except for the state of Tocantins.

Obs: Data relative to child labor for 2003 will only be available at the end of 2004.

According to the PNAD data, child laborers are concentrated in small family enterprises especially in the agricultural sector (58.7% of working children between the ages of 5 and 14 years), where they receive no remuneration. On the basis of this information, it can be stated that many of these individuals do not perform activities that fall within the strict definition of work, given that they execute small tasks and are not subject to regular work obligations. Similarly, the weekly workload of one hour per week used in the survey is not sufficient to characterize a full workday. The conclusion drawn from the information presented, then, is that the contingent of children involved in child labor activities in the country could be reduced even further than that reflected in the published figures.

### **Recruitment of Children and Adolescents into Narco-Trafficking**

103. The issue of child labor involved in narco-trafficking deserves special attention, for it involves morally reprehensible work that places the child and the adolescent at great risk. That is why ILO Convention 182, to which Brazil is a signatory, includes this form of labor among the worst forms of child labor.

104. In the area of law enforcement, the trafficking of narcotics is the purview of the Federal Police. Adolescents identified as participating in this activity are referred to the Public Prosecuting

Office. The Public Prosecuting Office then proposes, where applicable, the actions prescribed in the Child and Adolescent Statute (ECA) to the Specialized Child and Juvenile Court (Justiça Especializada da Infância e da Juventude), which may apply the socio-educational measures aimed at rehabilitating the offender.

105. With regard to prevention, mention should be made to the National Antidrug Secretariat (Secretaria Nacional Antidrogas - SENAD), which is linked to the Office of Institutional Security (Gabinete de Segurança Institucional) of the Presidency of the Republic. SENAD operates in prevention, treatment, rehabilitation, and reintegration activities on the basis of the directives launched by the National Antidrug Policy (Política Nacional Antidrogas). The entity sponsors training courses centered on the basic principles of drug use prevention for its target audience, made up primarily of educators from around the country, although in fact the focus of those courses are their students. It is a strategic initiative spurred by studies and analyses indicating significant potential for illicit drug use in childhood or adolescence.

#### Government Actions Street Children

106. The federal government does not have a specific program devoted to reducing the number of street children. However, there is a variety of programs geared toward addressing the problem, including, among them, the Child Labor Eradication Program (Programas de Erradicação do Trabalho Infantil- PET!), which will be described in greater detail below. Two other programs that contribute to the effort against this problem include the Literate Brazil (Brasil Alfabetizado) and the Educated Brazil (Brasil Escolarizado) programs, both run by the Ministry of Education. The first is an initiative aimed at eliminating illiteracy, a goal set forth in article 208 of the Federal Constitution: "The duty of the State in the area of education shall be fulfilled by ensuring the following: I - mandatory and free elementary education, including the assurance of its free offer to all those who did not have access to it at the proper age." The objective of the second program is to universalize education by ensuring that all children, adolescents, young persons, and adults are enrolled and remain in school. According to the IBGE's 2000 demographic census, nearly 3.9 million children between the ages of 4 and 6 years neither are in school, as well as approximately 1.5 million children between the ages of 7 and 14 years, who should be attending pre-school or primary school, respectively.

108. Along these same lines, there are also programs under the direction of the Ministry of Social Development and Hunger Alleviation: the Social Childhood, Adolescence, and Youth Protection (*Proteção Social à Infância, à Adolescência e à Juventude*) program, the purpose of

which is to assist disadvantaged children, adolescents and youth up to the age of 24 years in low-income communities who are either at personal or social risk; and the Income Transfer with Conditionality (*Transferência de Renda com Condiçionalidades*) program aimed at combating hunger, poverty, and other forms of deprivation faced by families and promoting food and nutritional security and access to public health, education, and social assistance services, thereby allowing families to secure their permanent independence to develop.

109. Finally, we must mention the Ministry of Social Development and Hunger Alleviation's Family Grant Program (*Programa Bolsa Família*). The Family Grant is an income transfer program aimed at poor families with monthly per capita incomes of less than R\$100.00, which associates the transfer of financial benefits to the access to basic social rights - health, food, education, and social assistance. With total investments on the order of R\$296.8 million, the program is present in 5,465 municipalities, where it currently provides assistance to 4.25 million families. The Family Grant is one of the primary programs supporting the social inclusion policy of hunger alleviation known as "Fome Zero."

### **Sexual Abuse and Exploitation**

110. To promote the coordination and organization of the federal government's programs aimed at combating sexual abuse and exploitation of children and adolescents so as to ensure greater efficiency and effectiveness, the National Plan to Confront Sexual Violence against Children and Juveniles (*Plano Nacional de Enfrentamento da Violência Sexual Infanto-Juvenil*), duly approved by the National Council for the Rights of the Child (CONANDA), was developed in June 2000. That same year the Brazilian government included the Program to Combat Sexual Abuse and Exploitation of Children and Adolescents (*Programa de Combate ao Abuso e a Exploração Sexual de Crianças e Adolescentes*) in its 2000-2003 Multi-Annual Plan and again in its 2004-2007 Multi-Annual Plan.

111. As part of the effort to aid affected individuals, the Sentinela Program (*Programa Sentinela*) was implemented to offer children, adolescents, and relatives involved in cases of sexual violence specialized social assistance. The municipalities selected by the program include the state capitals, metropolitan regions, tourist centers, port areas, cargo warehouses, highway junctions, wildcat mining areas, and border regions.

112. The table below sets out data on sexual abuse and exploitation for 2001, 2002, and 2003.

2003									
	Male			Total Male	Female			Total Female	TOTAL CHILDREN AND ADOLESCEN
	O to 6	7 to 14	15 to 18		O to 6	7 to 14	15 to 18		
Sexual Abuse	304	917	252	<b>1473</b>	782	3057	1416	<b>5,255</b>	<b>2,333</b>
Sexual Exploitation	01	16	205	<b>222</b>	23	1138	1144	<b>2,305</b>	<b>1,160</b>
2002									
	Male			Total Male	Female			Total Female	TOTAL CHILDREN AND ADOLESCEN
	O to 6	7 to 14	15 to 18		O to 6	7 to 14	15 to 18		
Sexual Abuse	503	1355	125	<b>1983</b>	1004	4755	2250	<b>8,009</b>	<b>3,605</b>
Sexual Exploitation	11	324	201	<b>536</b>	58	1706	1719	<b>3,483</b>	<b>2,043</b>
2001									
	Male			Total Male	Female			Total Female	TOTAL CHILDREN AND ADOLESCEN
	O to 6	7 to 14	15 to 18		O to 6	7 to 14	15 to 18		
Sexual Abuse	204	545	103	<b>852</b>	500	1.609	675	<b>2,784</b>	<b>3,636</b>
Sexual Exploitation	17	179	87	<b>283</b>	2	923	974	<b>1,899</b>	<b>2,182</b>

Source: Programa Sentinela do Ministério do Desenvolvimento Social e Combate à Fome.

113. At the beginning of 2003, the federal government assumed responsibility for the Abuse Hotline (*Disque Denúncia*), which, to that point, had been operated by entities representing civil society. The service plays an important social role by assuring responses to the most severe cases of abuse. It is an indispensable tool for understanding and monitoring these types of crimes in Brazil. Between May 2003 and May 2004, the Abuse Hotline received more than 5,500 complaints, of which those considered to have a legal basis were referred to the responsible authorities in each state. The table below breaks down the complaints called in to the Hotline.

**DATA ON COMPLAINTS BY STATE – MAY 2003 TO MAY 2004**

State	Physical Violence	Sexual Abuse	Negligence	Prostitution	Psychological Violence	Pornography	Sexual Tourism	Trafficking	Total
SP	325	193	191	57	30	14	0	1	811
RJ	303	160	95	53	10	16	1	0	638
RS	336	81	56	109	9	2	0	2	595
BA	150	156	29	55	6	9	0	0	405
MG	115	151	52	63	7	5	0	1	394
CE	87	141	25	102	4	5	4	0	368
PR	107	70	42	36	9	5	0	0	269
PE	109	87	28	36	2	0	0	1	263
AM	110	66	41	29	0	0	0	0	246
MA	79	105	10	43	3	3	2	0	245
PA	78	59	22	15	3	2	0	0	179
SC	77	42	18	1	1	0	0	0	157
DF	63	47	19	10	3	1	1	0	144
ES	60	21	15	13	5	1	0	0	115
PB	38	31	18	23	2	0	0	0	112
GO	30	45	8	12	1	2	0	1	99
AL	30	25	4	16	1	1	0	0	77
MS	20	19	9	8	1	0	0	0	57
RN	19	14	5	15	0	1	0	0	54
PI	22	19	5	2	2	9	0	0	59

TO	7	24	8	9	1	0	0	0	49
MT	15	24	1	3	1	0	0	0	44
RO	11	16	2	8	0	0	0	0	37
SE	10	12	6	5	1	0	0	0	34
AP	9	7	5	3	0	0	0	0	24
MNI*	1	3	0	0	0	15	0	0	19
AC	4	6	0	0	0	4	0	0	14
RR	3	3	1	1	1	0	0	0	9
<b>Total</b>	<b>2,218</b>	<b>1,627</b>	<b>715</b>	<b>744</b>	<b>103</b>	<b>96</b>	<b>8</b>	<b>6</b>	<b>5,517</b>

**Source: Disque Denúncia SEDH/PR**

**\* Municipalities not identified**

114. At the same time, the federal government maintains programs SUCH AS THE Program of Measures to Prevent and Combat the Trafficking of Human Beings (Programa de Medidas de Prevenção de Combate ao Tráfico de Seres Humanos – TSH) and the Integrated Reference Actions Program to Confront Sexual Violence against Children and Juveniles within the Brazilian Territory (Programa de Ações Integradas Referenciais de Enfrentamento da Violência Sexual Infanto-Juvenil no Território Brasileiro – PAIR), a partnership between the federal government / USAID / POMMAR.

115. The Program of Measures to Prevent and Combat the Trafficking of Human Beings was developed by the National Secretariat for Justice/MJ in partnership with the United Nations Office on Drugs and Crime (UNODC). Pursuant to the provisions of the "Protocol to Prevent, Suppress and Punish the Trafficking in Persons, especially Women and Children," which complements the United Nations Convention against Transnational Organized Crime, the principal objective of the project is to strengthen the mechanisms available to the Brazilian government to prevent and combat the trafficking of human beings, children, adolescents, and women for purposes of sexual exploitation.

116. The Integrated Reference Actions Program to Confront Sexual Violence against Children and Juveniles within the Brazilian Territory (PAIR) is a program established by the Brazilian government in response to the recommendations contained in the "Analysis of the Trafficking in Women, Children, and Adolescents for purposes of Commercial Sexual Exploitation" ("*Pesquisa de Tráfico de Mulheres, Crianças e Adolescentes para fins de Exploração Sexual Comercial*" - PESTRAF) and carried out by a cooperation agreement between the Brazilian government and USAID in October 2003. Seven municipalities were targeted by this effort: Pacaraima (RR), Manaus



(AM), Rio Branco (AC), Corumbá (MS), Feira de Santana (BA), Campina Grande (PB), and São Paulo (SP), all identified in the survey as sources or destinations for the trafficking in children and adolescents for purposes of commercial sexual exploitation.

117. The criteria for selecting the municipalities included their strategic location in dry border regions on the Venezuelan and Bolivian frontiers, in Northeastern Brazil in two municipalities situated at highway junctions, and São Paulo, in the Southeast region, a Brazilian megalopolis with the largest international airport and the principal destination of internal migrants.

118. Between June 2003 and March 2004, there were 63 cases of children and adolescents involved in trafficking routes in six municipalities where the program was already in place - with the exception of São Paulo. To dismantle these routes, a strategy of mobilizing, coordinating, and training the various social actors engaged in this effort was applied, in addition to repressive measures. As a consequence, today there are nearly three thousand entities, agencies and organizations, and public policy administrators representing the judiciary and law enforcement in these municipalities strengthening the social protection networks aimed at addressing the issue.

119. Another major advantage of the PAIR is the potential for using the program as a means for creating networks based on communication as a strategy for developing a methodology to address sexual exploitation and trafficking through the strengthening of local protection networks. The project relies on communication as a mobilizing strategy through access to the website [www.caminhos.ufm.br](http://www.caminhos.ufm.br).

120. In September 2003, the Special Secretariat for Human Rights - SEDH, through an agreement with UNIFEM and in partnership with the Ministry of Education, launched the "School Guide - methods for identifying signs of sexual abuse and exploitation of children and adolescents" (*"Guia Escolar- métodos para identificação de sinais de abuso e exploração sexual de crianças e adolescentes"*), a tool for aiding in the prevention of this kind of violence.

120. Pilot programs have been implemented to integrate the School Guide in daily school activities: methodological instruments aimed at the implementation of the School Guide, teaching instruments for educational professionals, direct and distance teacher training courses and modules, and guidance for collective and individual efforts in the area of School - Family relations designed to stimulate educational and creative approaches to the issue are being identified.

121. During the week of December 1 to 5, 2003, the SEDH/MEC/Canal Futura/TV-Escola broadcast five programs in the "Leap into the Future" (*"Salto para o Futuro"*) series as a means of offering distance training to teachers.

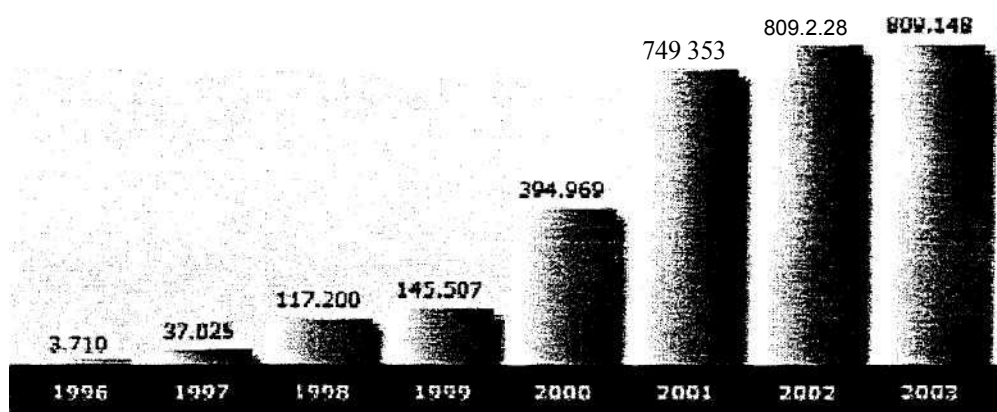
122. Partnerships with government and domestic and international non-governmental entities, agencies, and bodies have been encouraged to raise and increase the resources required to ensure adequate instruments and materials for performing school-related tasks. A further goal is to disseminate the printed and electronic versions of the School Guide in all Brazilian schools so as to

universalize the methods and practices for preventing and combating the sexual abuse and exploitation of children and youth. In addition to the Guide, the SEDH sponsors the "Peace in School" ("*Paz nas Escolas*") program, developed by schools and partner entities to make better use of school areas and foster an active role by children and youth. In addition to these actions, the Ministry of Education's National Secretariat for Educational Inclusion (*Secretaria Nacional de Inclusão Educacional*) operates a program to strengthen NGOs that in partnership with public schools develop complementary actions in school areas aimed at preventing sexual violence against children and youth.

### Child Labor

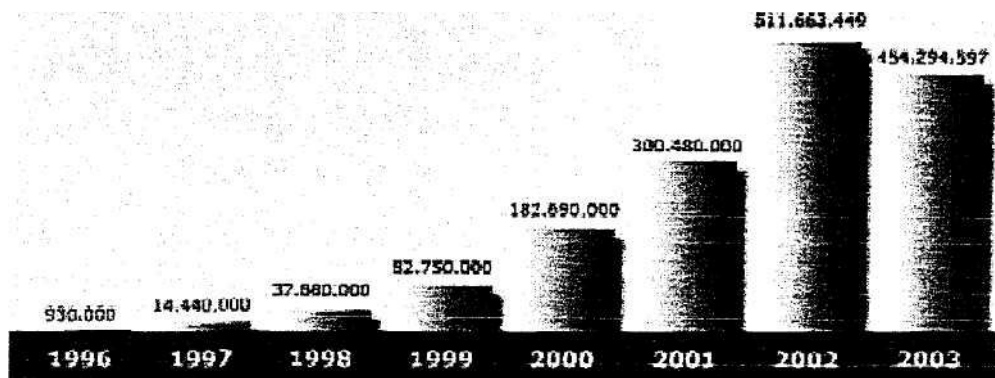
123. The initiatives undertaken by the federal government to reduce child and adolescent labor includes the Child Labor Eradication Program (*Programa de Erradicação do Trabalho Infantil - PETI*), which, in 2003, benefited almost 810,000 children and adolescents (data from March 2004) in 27 states and 2,601 municipalities. The PETI has been noteworthy for its direct role in lowering the incidence of child and adolescent labor. The Program is based on three main pillars: the Citizenship Grant, the extended school day, and efforts carried out with the families to address the three main causes of the problem. The monetary benefit represents an alternative to limited access to basic goods and services. The extended school day offers socio-educational and cultural activities by fostering learning among the children and adolescents involved. The efforts undertaken with the family entail developing socio-educational and job and income creation efforts. The graphs below set forth the evolution in the number of children receiving assistance from PETI and the program's budgetary outlays.

Nos Gráficos I e II apresenta-se a evolução do Programa.



Fonte: Relatório de Gestão 2001 – PETI e Gerência Nacional do PETI Brasília, agosto 2003

Gráfico II – Evolução dos recursos aplicados no PETI pela esfera federal de 1996 a 2003 (R\$)



Fonte: Relatório de Gestão 2001 – PETI e Gerência Nacional do PETI Brasília, agosto 2003

### Recruitment of Children and Adolescents into Narco-Trafficking

125. The federal government manages the National Drug Supply and Demand Reduction (*Program Programs National de Redução da Demands e da Oferta de Drogas*) through the National Antidrug Secretariat of the Office of Institutional Security of the Presidency of the Republic. The objective of the program is to prevent the improper use of substances capable of causing physical or psychological dependence and promote treatment, recovery, and social reintegration for individuals with disturbances stemming from drug use.

### V. Rural inhabitants and Union Leaders

126. The distribution of land in Brazil is extremely unequal, generating the conditions for social confrontation. Approximately 1% of the population, or 1.5 million individuals, controls 47% of all private property. The Landless Movement (*Movimento dos Sem Terra - MST*) reports that there are 12 million people without access to land. The death of rural inhabitants and labor leaders in the countryside generally results from land disputes in regions marked by high concentrations of real property.

127. In 1985, the number of rural workers murdered in Brazil reached 180. Thereafter, there was a significant drop in the number of murders of rural workers, and by 2000, reported cases stood at only 10. In the following years, however, there was a notable increase in these statistics, culminating in 2003 when 42 rural leaders were reported to have been the victims of violent deaths.

### Government Actions

128. Through February 1997, the government had expropriated nearly 4,500,000 hectares of land, an area larger than the territory of Belgium. In May 1996, the Extraordinary Ministry of

Agrarian Reform was established. Also in 1996, a series of laws was approved to stimulate rational land use and encourage the sale of large unproductive properties for purposes of advancing agrarian reform efforts, particularly through the increased taxation of large properties. The "Law of Summary Expropriation" (Complementary Law no. 88/96) was approved. The intent was to reduce the time between expropriation and the granting of ownership rights and, in this way, limit the incidence of land disputes in cases of expropriations carried out for purposes of advancing agrarian reform.

129. In 1998, the Banco da Terra was established to serve as another instrument to accelerate agrarian reform, pursuant to Complementary Law no. 93/98. Mention should also be made to the approval of Law no. 9437/87, which defines the illegal possession of weapons as a crime and has the effect of reducing the prevalence of weapons in the countryside. The federal government created the National Agrarian of Ombudsman Office (*Ouvidoria Agrária Nacional*), in conjunction with the Regional Agrarian Offices of Ombudsman, an initiative that has enabled permanent dialogue with the landless, descendants of the remaining communities of former slaves (*quilombolas*), indigenous populations, gypsies, miners and tappers (*extrativistas*), those displaced by dams, leaseholders, and river-dwellers (*ribeirinhos*). The "Peace in the Countryside" ("*Paz no Campo*") program, which, is devoted to conflict mediation, is yet another initiative aimed at reducing violence in rural areas that deserves mention.

## **VI. Homosexuals:**

130. There is a great deal of prejudice and discrimination against homosexuals, bisexuals, transvestites, and transgenders in Brazil. The core issue is that Brazil faces a cultural heritage of intolerance and homophobia that must be countered with humanist values and also confronted with a determined stance by the authorities and the government. Prejudice against homosexuals is also widespread in the media, particularly Brazilian comedy programs. Worse yet, is the violence to which homosexuals in Brazil are regularly subjected.

131. The federal government has endeavored to address discrimination and violence against homosexuals. In a pioneering initiative, the Special Secretariat for Human Rights launched the "Brazil Without Homophobia" ("*Brasil sem Homofobia*") plan in May 2004 - the Program to Combat Violence and Discrimination against GLBT and to Promote Citizenship for Homosexuals (*Programa de Combate à Violência e à Discriminação contra GLBT e de Promoção da Cidadania Homossexual*). One of the program's central goals is to educate and modify the behavior and attitudes of public officials. The expectation is that inter-ministerial integration, in partnership with the homosexual movement, will succeed in moving forward the implementation of new parameters for public policies aimed at incorporating millions of Brazilians in a dignified and representative manner.

132. Additional measures include (a) Ministry of Culture Administrative Rule no. 219, of 23 July 2004, which established the Working Group to Promote Citizenship for GLTB in order to prepare a

plan for fomenting, stimulating, and supporting artistic and cultural productions that promote culture and non-discrimination based on sexual orientation; (b) publication of a directive by the Superintendence for Private Insurance (*Superintendência de Seguros Privados - Susep*) ensuring gay couples the right to mandatory car insurance (DPVAT) compensation payments; and (c) Ministry of Health Administrative Rule no. 880, of 20 May 2004, which created the Gay, Lesbian, Transgender, and Bisexual Population Health Advisory Committee (*Comitê Consultivo de Saúde da População de Gays, Lésbicas Transgêneros e Bissexuais*) to develop health policies and a national health plan for that population.

133. Despite the absence of any specific laws recognizing their civil rights, Brazilian homosexuals have found a significantly greater response to their demands for respect and dignity in the judicial branch. A number of decisions upholding the civil rights of homosexuals have been handed down by the federal courts and the state judiciaries. The right to support in cases of the death of a partner in a stable same-sex relationship, for example, has been fully recognized. Because of this, a specific normative directive from the National Social Security Institute (*Instituto Nacional de Seguridade Social – INSS*), no. 50/2001, was put into effect administratively ensuring standard procedures for the granting of benefits to homosexuals. A recent decision from the Rio Grande do Sul state Judicial Internal Affairs Office requires public notaries to register homosexual unions. Several states of the federation and a number of Brazilian cities have approved laws banning anti-discrimination and protecting the rights of homosexuals. Based on these and other achievements, it can be said that a strong social movement on behalf of the civil rights of homosexuals is emerging, which is reflected in the organization of the annual “gay pride parades.” Recently, in São Paulo, a demonstration for homosexual rights rallied over one million people to the streets, a show of public support that signals how far Brazilian homosexuals have come as a result of their struggle.

#### **Article 7 – Prohibition of Torture**

134. Article 5, subsection III, of the 1988 Brazilian Constitution mandates that no individual shall be subjected to torture or to inhuman or degrading treatment. Subsection XLIII of the same article adds that the law considers torture to be a non-bailable crime not subject to mercy or amnesty and for which those who order and execute or are omissive in light of their ability to prevent such acts are accountable.

135. Brazil has signed the Convention on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment on September 28, 1989, and the Inter-American Convention on the Prevention and Punishment of Torture on July 20, 1989. On April 7, 1997, Law no. 9455, which sets out the applicable penalties for the crime of torture, was approved. As specified in article 1 of Law no. 9455/97, the crime of torture involves subjecting an individual to duress through the employment of violence or serious threat, thereby causing physical or mental suffering for purposes of: a) obtaining information, a statement, or a confession from the victim or a third party; b) provoking actions or omissions of a criminal nature; and c) discriminating on the basis of race or religion. Torture is also considered any act that subjects the victim in an individual’s custody, or under his power or authority, to violence or serious

threat and intense physical and mental suffering as a form of personal punishment or a preventive measure. Thus, the Brazilian statute governing torture offers a broader definition of the crime than that generally found in the international sphere. The sentence for the crime of torture is 2 to 8 years of confinement. Those guilty of omissive conduct in the perpetration of torture who were duty bound to prevent or verify such act are subject to 1 to 4 years of confinement. Sentences are increased by one-sixth to one-third of the total if the crime is: a) committed by a public agent; b) perpetrated against a child, pregnant woman, disabled person, or adolescent; and c) committed during a kidnapping. In cases involving public agents, the sentence will result in the loss of such agent's position and a suspension of the exercise of the corresponding post for a time equivalent to twice the total applied sentence. Another mechanism aimed at controlling the incidence of torture is Law no. 7960, of 29 December 1989, which regulates the implementation of provisional custody. The law establishes that temporary detainees must undergo a medical exam prior to and following their detention within a maximum of five days and only through an express judicial order.

### **Factors and Difficulties**

136. In spite of the progress arising from the promulgation of Law no. 9455/97, torture persists in the country's police precincts and prisons. Torture is applied to extract information, force confessions, extort, or punish. These incidents occur primarily during the period of temporary detention employed to conduct investigations and search for evidence. At the same time, the number of complaints formally submitted to the judicial branch alleging the perpetration of the crime of torture continues to be very small, while the number of convictions is even smaller.

### **Government Actions**

137. At the federal level, several measures have been taken to confront the problem of torture. The first is related to the Optional Protocol to the Convention on Torture and Other Cruel, Inhuman, and Degrading Treatment and Punishment, signed by Brazil on October 13, 2003. Following findings from the pertinent technical areas of the government in favor of the instrument's ratification, the Protocol was submitted to the National Congress for its approval. In establishing a system of unannounced visits to prisons and detention centers by a Sub-Committee on International Prevention, the Protocol will serve as an additional instrument to combat torture and impunity.

138. A second measure refers to the National Plan to Combat Torture (*Piano Nacional de Combate à Tortura*), launched in 2001 and currently under review and revision following a determination of the Special Commission of the Council on the Defense of the Rights of the Human Person (CDDPH) on June 2 of last year. As with the preparation of the National Plan for the Eradication of Slave Labor (*Piano Nacional de Erradicação do Trabalho Escravo*), the government, in partnership with civil society, has assumed responsibility for guiding the review process. The new plan will include mechanisms to monitor the pertinent actions so as to ensure its execution.

139. Another important measure to reduce the incidence of torture was the establishment of Police Ombudsman Offices in several Brazilian states. Currently, institutions of this type operate in 13 states of the federation (Rio Grande do Sul, Santa Catarina, Paraná, São Paulo, Minas Gerais, Rio de Janeiro, Bahia, Mato Grosso, Goiás, Rio Grande do Norte, Ceará, Pernambuco, and Pará). The Police Ombudsman Offices are autonomous and independent bodies headed by representatives of civil society and directed toward strengthening oversight of police actions. The Police Ombudsman Offices have the duty and authority to receive, forward, and track the investigations into claims of irregularities committed by civil and military police officers. As an example of the work performed by these bodies, in 1996-1997, the Police Ombudsman Office of the state of São Paulo received and monitored the investigation of 6,432 complaints against police officers. Of these, 1,471 constituted allegations of homicide, torture, and abuse by authorities. Specifically, 434 involved alleged cases of torture, 896 referred to abusive acts by authorities, and 141 dealt with allegations of murder. Of the 6,432 complaints received and monitored by the Ombudsman Office, 3,828 (59.5%) were satisfactorily investigated by the office of internal affairs of the civil and military police, of which 1,382 (21.5%) led to administrative penalties (544) or criminal indictments (833).

140. The SOS Torture hotline effort was successful to the extent that it assisted in identifying the principal focal points of torture in the country. The federal government will take full advantage of this effort in the "dial 100" (Human Rights Hotline) service it recently implemented. Through the hotline, the Brazilian State has, in unequivocal terms, assumed responsibility for referring and verifying complaints involving human rights violations, with particular emphasis on cases of torture. The objective is to ensure the system operates 24 hours, seven days a week.

141. The Mobile Group to Combat Torture implemented by the CDDPH is currently consolidating the information collected to date for purposes of instituting a policy of unannounced visits to prison establishments. Once fully operational, the Mobile Group will represent an effective and innovative mechanism for combating torture.

142. With regard to forensic examination procedures used in investigating crimes of torture in June 2003 a Working Group made up of eight experts, in addition to representatives designated by the CDDPH, was established under the Special Secretariat for Human Rights. The group's work resulted in the preparation of a Brazilian Protocol on Forensic Examinations of Crimes of Torture (*Protocolo Brasileiro de Perícia Forense no Crime de Tortura*). The Protocol includes norms and rules for guiding forensic experts, police ombudsmen, police forces, and members of the Public Prosecuting Office.

143. The National Plan for the Establishment of Juvenile Offender Detention Center Construction Standards represents another significant measure. The plan and two conduct agreements signed by the states and municipalities are intended to provide for appropriate detention conditions aimed at the application of socio-educational measures for children and adolescents who are in conflict with the law.

144. The government has adopted other initiatives such as the introduction of Human Rights courses, some in partnership with Amnesty International, for civil and military police officers. Another measure aimed at reducing the incidence of torture involves the implementation in some states of interactive and community policing intended to forge closer ties between the police and the community. The state of São Paulo created the Victim's Reference and Support Center (*Centro de Referenda e Apoio à Vítima - CRAVI*). The state of Paraná established the Crime Victim's Restructuring and Reorientation Program (*Programa de Reestruturação e Reorientação à Vítima de Crime - PROVIC*), while the state of Santa Catarina set up the Crime Victim's Assistance Center (*Centro de Atendimento às Vítimas de Crimes - CEVIC*). Lastly, mention should be made to the application of mandatory medical examinations to verify the health of inmates prior to and following their arrest.

145. Through these actions, the Brazilian State has striven to fulfill, in concrete terms, the recommendations of the Human Rights Committee (items 18, 19, and 21 of document CCPR/C/79/Add.66, of 24 July 1996) as regards the approval of the law that typifies the crime of torture, human rights education for police agents, and the establishment of Police Ombudsman Offices.

#### **Article 8 ° - Ban on slavery, servitude, and forced or mandatory labor**

146. The Brazilian Federal Constitution enshrines liberty as one of the fundamental rights of individuals. Art. 5, subsection XLVII, c, includes a prohibition on sentences of forced labor. Article 149 of the Penal Code defines the consignment of an individual to a condition equivalent to slavery as a crime, subject to a sentence of two (2) to eight (8) years of confinement. Other provisions of the Code also protect the right to freedom by typifying kidnapping and unlawful imprisonment. Detainees, in turn, may not be subjected to forced labor. Prison labor in Brazil is understood as a dignified activity that must be guaranteed, which aims at preparing inmates for reintegration into society. Thus, prison work must always be remunerated, whether the inmate performs work on prison grounds or in another location. Prison labor is regulated by articles 28 to 37 of Chapter III ("Labor") of Law no. 7210, of 11 July 1984.

147. For an analysis of the situation regarding children and adolescents, see the comments to article 24.

148. Military service in Brazil is mandatory. However, for those who invoke a superseding imperative based on religious faith and philosophical or political conviction the performance of strictly military activities may be waived. Women and members of the clergy are exempt from military service in times of peace, although they are subject to other obligations set out in law.

149. With regard to international agreements, Brazil remains a party to the Convention on Slavery, of 7 December 1953, ratified by legislative decree no. 66, of 14 July 1965, and the 1956



Supplemental Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, ratified on 6 November 1966.

### **Factors and Difficulties Forced Labor**

150. Allegations of forced labor in specific Brazilian states are still quite prevalent, especially in rural and mining activities. The most serious problems persist in Para state (of a total of 872 people subjected to slave labor in Brazil, in 1997, 528 were located in Para,) followed by Tocantins, Maranhão, and Mato Grosso. The existence of slave labor was also verified in Acre, Alagoas, Pernambuco, Rondônia, and São Paulo.

151. The list indicates that the cases of slave labor in Brazil have been identified mainly in power plants and on agricultural properties located at considerable distances from the large urban centers. However, the reduction in the number of cases of slave labor in Brazil (in 1992, 16,442 cases were confirmed while, in 1997, only 872 were recorded) can be attributed to the efforts of labor and religious organizations in the affected communities and of the Brazilian government, through the Ministry of Labor, the Special Secretariat for Human Rights, the Ministry of Justice, and the Public Prosecution Service of Labor.

### **Sexual exploitation of children and adolescents**

152. Cases of sexual exploitation of girls have been reported in the wildcat mines of Para, Acre, Rondônia, and Amapá. In the South, sexual exploitation is more prevalent in rural areas, while in the Southeast, the problem is concentrated in the urban centers. In the Center-West, primarily the Federal District, large numbers of girls are the victims of rape. In the Northeast, the sexual exploitation of children and adolescents is linked to "Sexual Tourism," as it is known. However, the Brazilian government has, in response to concern no. 14 of the Final Observations of the Human Rights Committee and recommendation no. 31 (document CCPR/C/79/Add.66, of 24 July 1996), launched an intense National Campaign to Combat the Sexual Exploitation of Children and Juveniles (*Campanha Nacional de Combate à Exploração Sexual Infanto-Juvenil*), involving the Brazilian Tourism Company (*Empresa Brasileira de Turismo*) and the Brazilian Childhood and Adolescence Multiprofessional Protection Association (*Associação Brasileira Multiprofissional de Proteção à Infância e à Adolescência*) as well as the creation of an "Abuse Hotline." Currently, the Hotline is operated by the government and has received information on thousands of cases of abuse. There are, additionally, a number of other social entities and movements that make up the National Network to Prevent and Combat the Exploitation, Abuse, and Mistreatment of Children and Adolescents (*Rede Nacional de Prevenção e Combate à Exploração, Abuso e Maus Tratos de Crianças e Adolescentes*).

### **Government Actions in the area of Forced Labor**

153. The Brazilian government has, in response to concern no. 14 and recommendation no. 31 of the Final Observations of the Human Rights Committee, launched numerous initiatives to combat

forced labor. First, it formed the Executive Group to Repress Forced Labor (*Grupo Executivo de Repressão ao Trabalho Forçado - GERTRAF*) that, together with the Mobile Enforcement Services, has performed countless enforcement operations and freed thousands of workers from degrading conditions.

154. In addition, cognizant that the elimination of slave labor constitutes a basic condition of the Legal Democratic State, in 2003, the federal government launched the National Plan for the Eradication of Slave Labor (*Piano Nacional para a Erradicação do Trabalho Escravo*). The plan sets forth measures that the various bodies of the executive, legislative, and judicial branches, the Public Prosecution Services, and entities representing Brazilian civil society must fulfill. To guarantee and monitor the implementation of the National Plan, the Special Secretariat for Human Rights created the National Commission on the Eradication of Slave Labor (*Comissão Nacional de Erradicação ao Trabalho Escravo - CONATRAE*), formed by representatives of the federal government, the Public Prosecution Service, non-governmental organizations, and international institutions and bodies.

155. In October 2003, the government launched the National Campaign on the Eradication of Slave Labor (*Campanha Nacional de Erradicação do Trabalho Escravo*), in partnership with the ILO. To influence opinion-makers, electronic and print materials were produced for broadcast on the country's television networks and publication in the major newspapers and magazines.

156. To lend further support to the campaign, the National Agriculture and Livestock Confederation (*Confederação da Agricultura e Pecuária do Brasil - CAN*) has developed the Legal Farm Program (*Fazenda Legal*) to disseminate information on the rights and obligations of rural producers with regard to the applicable labor legislation, in the May-June 2004 period, 11 events were held under the auspices of the Program (10 in municipalities in southern Para and 1 in Imperatriz, Maranhão) for rural employers. At the events, which included the participation of Labor Enforcement Auditors of the Ministry of Labor and Employment, various aspects of labor legislation and situations of slave labor were widely discussed. The second stage of the Legal Farm Program will consist of seminars on these same subjects in northern Mato Grosso, Tocantins, Rondônia, and Acre.

157. In those regions where recruitment of slave labor is prevalent, such as Maranhão and Piauí, a preventive diagnostic survey of the regions from which laborers are supplied has been undertaken. Through the Ministry of Labor and Employment's Secretariat for Cooperative Economy of the Ministry of Labour and Employment (*Secretaria de Economia Solidária*), the government has also shaped actions to generate work and income opportunities aimed at allowing workers to remain in their original locations.

158. In addition to the work of the Mobile Group of Labor Inspection, directly coordinated by the Secretariat for Labor Inspection (*Secretaria de Inspeção do Trabalho*) in Brasília, the Ministry of

Labor and Employment has also launched initiatives developed by its Regional Offices (*Delegacia Regionais - DRT*), particularly the Pará Regional Office.

The Pará Regional Office has performed competently in the eradication of slave labor, as demonstrated by the following initiatives:

- The creation of a Chamber for Monitoring and Promotion of Rural Labor (*Câmara de Fiscalização e Promoção do Trabalho Rural*) designed to prevent and repress the non-compliance of labor legislation and slave labor;
- The launch of the State Campaign (*Campanha Estadual*) in the municipalities of Belém and Redenção;
- The launch of the State Plan for the Eradication of Slave Labor (*Plano Estadual de Erradicação do Trabalho Escravo*), an effort that adapts the National Plan to the realities of the state of Pará;
- The unveiling and distribution of the Rural Work, yes! Slavery, no! (*Trabalho Rural, sim! Escravo, Não!*) pamphlet.

160. In addition to the Para Regional Office, the Regional Offices have also undertaken efforts in Piauí, Maranhão, and Mato Grosso through the creation of inter-institutional forums and commissions to prevent and combat slave labor. These are carried out at the state level through joint discussions between the state governments and the local populations in campaigns against slave labor and through the search for joint solutions to eliminate this problem.

161. The Rondônia Regional Office has also implemented specific actions aimed at combating slave labor. In addition to investigating and verifying complaints, the Office's Enforcement Auditors have pursued prevention efforts by regularly meeting with employers and workers' unions in an effort to solve conflicts.

162. Although there is still a need to strengthen the Federal Police's structures, the institution has registered progress specifically with regard to increases in the number of active police officers and the effective performance of its role as the Union's judicial police force. In spite of continued inadequate numbers of personnel, the Federal Police provides officers and agents when requested to monitor the actions of the Mobile Group.

163. In regard to the training of Federal Police and Federal Highway Police teams, the Ministry of Labor and Employment, with the support of the ILO and the Attorney General's Office of the Republic, has held training sessions to strengthen the actions of the police forces under the authority of the Union with a view to combating crimes related to the environment, social security, and slave labor. The training sessions also center on helping federal highway police units identify the irregular transportation and recruitment of laborers.

164. Beginning in 2003, the Federal Prosecution Service of the Citizens' Rights (*Procuradoria Federal dos Direitos do Cidadão*) fully committed itself to eradicating slave labor. To achieve this objective, it created a Task Force to combat this illicit practice.

165. From March 2003 to June 2004, a number of judicial measures were filed, including 26 criminal complaints charging the owners of farms with the practice of slave labor and recruitment. (See table below).

Federal Prosecution Service of the Citizens' Rights - Federal Public Prosecution Service Complaints Filed March/2003 - June/2004

State	Complaints	Number of Affected Persons (property owners, managers, and others)
MA	1	02
MT	10	129
PA	11	66
RJ	1	05
RO	2	05
TO	1	11
TOTAL	26	118

166. The Federal Public Prosecution Service - PFDC also established a comprehensive database containing a wide range of information on the main agents engaged in the fight against slave labor.

167. The Public Prosecution Service of Labor also strengthened its efforts in the struggle against slave labor. To this end, it set up a National Coordinating Body and structures under the Regional Prosecutors' Offices in those states with the highest incidence of slave labor.

168. Based on the data collected by the Mobile Group, the Public Prosecution Service of Labor opens public civil inquiries and files suits for collective moral damages, which often result in fines, at times for considerable sums, to employers.

169. The issue of slave labor has increasingly become a topic of interest to the media and the subject of studies by students and researchers at all levels. In May 2004, the Repórter Brasil, an institution representing civil society connected to CONTRAE sponsored the Seminar "The New

Slavery in Brazil" (*"A Nova Escravidão no Brasil"*), with the support of the ILO, for journalists and representatives of civil society.

170. At the event, that same institution launched, in partnership with the ILO, the "Journalist's Guide to Slave Labor" (*"Guia para Jornalistas sobre Trabalho Escravo"*), which continues to be distributed free of charge to all journalists interested in the subject.

171. In November 2003, the names of the 52 individuals and companies cited and found guilty in a final decision not subject to appeal of employing slave labor were published. The list - referred to as the "dirty list" - was used by the government to block public financing to the responsible individual farm producers and companies. An updated version of the list with 48 names was published in July.

172. The National Congress is now considering draft bills that include the issue of forced labor. One, for example, would provide for penalties in cases of coercive labor practices, such as transporting farm laborers on unsafe trucks, illegally recruiting laborers in areas outside the location where the work is to be performed by means of fraud or charges imposed on them and in cases involving violations of the freedom to enter into contracts through the unlawful retention of essential documentation, the effect of which is to impede the termination of an employment relationship because of an unpaid debt. Another bill would provide for the expropriation of rural lands where the existence of slave labor has been determined.

#### **Article 9 - Individual freedom and safety**

173. In accordance with the Federal Constitution, individuals can be taken into custody only in *flagrante delicto* (during the commission of a crime) or by means of a written and well-founded order from the competent judicial authority. In all other cases, the accused shall have the right to contest the charges set out against them and to a full defense. The Constitution also guarantees that individuals shall not be deprived of their freedom or assets in the absence of the due process of law. Additionally, the Constitution establishes that all evidence collected through illicit means shall be inadmissible. Further, it declares that all individuals shall be considered innocent until a final legal conviction has been handed down.

174. The Federal Constitution specifically sets forth the principle of legal reserve ("there is no crime in the absence of a prior law establishing such crime, nor a sentence that has not been previously sanctioned in law"). The judicial authority must provide immediate relief in cases of an illegal arrest (art. 5, LXV, of the Federal Constitution). The Penal Code typifies conduct involving the individual who orders or executes an illegal arrest and prescribes a sentence of 1 month to 1 year of confinement. The Federal Constitution establishes the duty to provide immediate notification of an arrest to the competent judge. Failure to provide notification is also considered a crime, pursuant to art. 4 of Law no. 4898/65. The failure to provide notification in cases of the arrest of children or adolescents to the judge and the families or guardians of such children and adolescents is also

typified as a crime under art. 231 of the Child and Adolescent Statute and is subject to a sentence of 6 months to 2 years of confinement. The Federal Constitution also establishes that no individual shall be taken into custody or detained in cases in which the law provides for conditional freedom, whether subject to bail or not (art 5, LXVI.) Title IX of the Penal Code orders the rules governing arrests and conditional freedom. The Code establishes that with the exception of individuals taken into custody during the commission of a crime, arrests can only be executed by means of an order, a copy of which must be provided to the individual detained, issued by the judicial authority and containing the required legal clarifications justifying the specific arrest.

175. Procedural detentions, also referred to as provisional detentions, include arrests in *flagrante delicto* (ordered by arts. 301 to 310 of the Penal Code), preventive detentions (governed by arts. 311 to 316, which may be authorized to preserve public order or the economic order, to fulfill the pertinent criminal instruction, or to assure application of the law, when a crime is identified or there is sufficient evidence demonstrating the commission of such crime), arrests arising from indictments (arts. 282 and 408, paragraph 1, of the Penal Code), detentions to execute a criminal sentence (art. 393,1, of the Penal Code), and temporary detentions (Law no. 7960, of 21 December 1989).

176. The writ of habeas corpus, ensured in the Federal Constitution and ordered by the Penal Code (art. 647 and following articles) provides for immediate relief by the judicial branch in cases of illegal coercive acts (art. 660). If following the release of the detainee the coercive authority is deemed to have engaged in abuse of power, a copy of all pertinent records shall be forwarded to the Public Prosecution Service for purposes of prosecuting the responsible party.

177. Book III of the Penal Code addresses nullities and appeals in general. Nullities occur as a result of the incompetence, suspicion, or bribery of a judge, the illegitimacy of the parties, and the absence of specific formulas or terms prescribed in law. Appeals are voluntary, except those judges are required to submit in the performance of their office. As a rule, appeals are heard by second tier (appeals) courts.

### **Factors and Difficulties Prolonged Sentences**

178. Many detainees remain in penitentiaries after completing their sentences. This occurs because prison overcrowding in conjunction with case backlogs often delay issuance of the required release order. The Federal Constitution, however, mandates that the State must compensate "a convict for judicial error, as well as the person who remains imprisoned for a period longer than the one established by the sentence" (art. 5, LXXV).

179. With regard to cases requiring compensation by the State, the example of the state of São Paulo indicates that by the time these cases are heard and recognized eight or ten years elapse before payment is actually executed. However, a major achievement was registered on December

30, 1998, with the promulgation of state Law no. 10177/98, the Law of Administrative Procedures (*Lei de Procedimento Administrativo*). The new law allows petitioners to request compensation without having to retain an attorney to formally file suit. The request must set forth the facts, reasons, include the necessary documents, and be addressed to the State Attorneys Office, which will then have ten days to reach a determination and investigate the case in question. Subsequently, each agency will be responsible for its specific cases, and there will be deadlines for issuing the pertinent instructions. The state government shall have a total of 120 days to reach a decision on the case. If the petitioner's right to compensation is recognized, the government shall make the corresponding compensation available through its account of administrative requests and effect payment upon enactment of the following state budget. Thus, the cases settled by July 31 will be effectively paid beginning in January of the following year. However, in cases in which the State pays compensation the responsible party will have 30 days to reimburse the public coffers. If such party fails to reimburse the state, a judicial collection process shall be immediately proposed.

### **Abusive psychiatric incarcerations**

180. For more than a century, individuals suffering from mental diseases or disturbances in Brazil have been deprived of their freedom without the right to due process. Throughout this period, the country's mental health system was modeled on asylums and large psychiatric hospitals where a variety of abuses were commonplace. Psychiatric practice at the time authorized the use of hard cells, abusive drug treatments, and the indiscriminate employment, without the benefit of anesthesia or considered criteria, of electroshock therapy, among other invasive procedures. This situation began to change with the emergence of a vigorous social movement on behalf of the civil rights of patients that was legally formalized in the 1990s with the approval of various state laws aimed at securing psychiatric reform. The first such law was approved in Rio Grande do Sul, in 1990. Recently, the National Congress approved specific legislation enshrining and protecting the civil rights of psychiatric patients. The Ministry of Health, for its part, has endeavored over the last several years to implement a series of changes at the state level. Public policies today have promoted alternative forms of mental health assistance, including community-based and ambulatory approaches. As an example, Law no. 10708, of 31 July 2003, established psycho-social rehabilitation assistance for patients suffering from mental disturbances or released from the hospital system who participate in the "Back Home" ("*De Volta Para Casa*") program coordinated by the Ministry of Health. The monies are paid directly to the beneficiary or legal representative, when the beneficiary is unable to exercise the activities of civil life independently, in those cases in which, among other things, such person's clinical and social condition does not warrant continued hospitalization but indicates technical eligibility for inclusion in a social reintegration program and the need for financial assistance.

### **Article 10 - Conditions of detention**

181. The Federal Constitution assures detainees respect for their physical and moral integrity (art. 5, XLIX). It also requires that sentences be fulfilled in distinct facilities, determined on the basis

of the nature of the crime and the convicted person's age and sex (art. 5, XLVIII). It assures inmates the necessary conditions to maintain contact with their children during the time they are incarcerated (art. 5, L). Within detention facilities, individuals who mistreat the convicted are subject to penalties (art. 136 of the Penal Code) of up to 12 years of confinement in cases involving loss of life.

182. Pursuant to the Law of Penal Execution (Law 7210, of 11 July 1984), the purpose of incarceration is to fulfill the provisions of the pertinent sentence or criminal decision and provide the conditions for the convicted and committed to reintegrate themselves harmoniously in society. The stand-alone paragraph of article 3 of the Law establishes that no distinctions shall be made on the basis of race, social class, religion, or political conviction. Article 5, subsection XLVIII, of the Federal Constitution mandates that the convicted must be classified according to their background and personality for purposes of individualizing the execution of the sentence. Article 41 enumerates fifteen rights assured inmates, among them the right to sufficient food and clothing; protection from any form of sensationalism; personal and private meetings with counsel; equality of treatment, except as regards to the individualized execution of sentences; representation; and petitions to any authority to defend specific rights. With respect to prison facilities, inmates must be housed in individual cells containing a bed, a toilet and sink, and be provided with the necessary equipment and conditions to ensure the basic health of their environment, including ventilation, insulation, and regulated internal temperatures, as required for human life, as well as a minimum living space of six square meters (art. 88). For their part, women must be housed in separate facilities adapted to their personal needs that contain nurseries where they are able to breastfeed (paragraph 2 of article 83, which was added to Law no. 9046/95).

### **Factors and Difficulties**

183. However, to date, one of Brazil's major deficits in the area of human rights involves the conditions to which its prison population is subjected. Brazilian legislation has been ineffective in the majority of prison cases. First, with few exceptions - notably those identified in maximum security prisons - inmates are placed in overcrowded cells and subjected to inadequate living conditions. Today, thousands of inmates continue to serve sentences in police precincts where they face dire conditions. In addition to terrible hygienic, health, and nutritional conditions, Brazilian inmates must coexist with daily violence stemming from disputes between rival groups housed in adjacent cell blocks or the same cell block. The circumstances surrounding the execution of sentence in Brazil have triggered several riots in virtually every state. There is a major distortion between the rise in incarceration rates in the country and the government's capacity to address the lack of vacancies: in 2003, for example, the Brazilian State created approximately 5,000 vacancies, while the prison population grew by 40,000, representing a deficit of 35,000 in the period of only one year.

184. It is also important to underscore the disparities among the states and the absence of clear rules establishing the guidelines for prison management and the mechanisms for resolving conflicts.



In the Federal District, where penitentiary agents are incorporated in the Civil Police, the starting salary is 4,223.73 reais and a university degree is required for the position. By contrast, in Amazonas, only a high school degree is required and the base salary for agents corresponds to 136 reais, which may, if all benefits and incentives are calculated, reach 1,103 reais. A similar situation prevails in Pernambuco where the base salary for penitentiary agents is 151.76 reais and the top available salary is 857, 38 reais.

### **Children and Adolescents**

185. The ECA introduced a new approach to assistance for adolescent offenders based on the following guarantees: full and formal knowledge of attribution of the act through a citation or equivalent instrument; equality during legal proceedings, wherein the offender may confront victims and witnesses and produce all the evidence necessary toward his or her defense; a technical defense offered by a qualified attorney; free and full legal assistance to the needy, as prescribed in law; the right to be heard by the competent authority; the right to request the presence of his or her parents or guardians at any stage of the proceedings.

186. The country inherited a network of institutions from the Code of Minors that reproduces the prison system and that was conceived with the idea of segregating offenders. Thus, serious cases of violence in detention units are not uncommon. For this reason, the reorientation of assistance programs on the basis of the precepts set out in the Child and Adolescent Statue constitutes a major challenge, principally with regard to adolescents in conflict with the law and to detention units.

187. The socio-educational measures provided for in article 112 and in the following articles of the Child and Adolescent Statue are in strict conformity with the Convention on the Rights of the Child, the Beijing Rules, and the Minimum United Nations Rules on the Protection of Juveniles Deprived of Freedom. Pursuant to the Constitution (article 5, subsection XLVII, of the Federal Constitution), Brazilian legislation does not allow for application of the death penalty, life in prison, or forced labor, including for young offenders.

188. The socio-educational system reserved for adolescent offenders, while not ideal, represents an effort to guarantee adolescents who commit violations respect for the unique conditions of their particular stage of human development.

189. In spite of the widespread repercussions generated by juvenile crime rates in Brazil, the number of adolescents performing socio-educational measures is not large if compared to the adult population. January 2004 data from the Sub secretariat for the Promotion of the Rights of the Child and Adolescent (*Subsecretaria de Promoção dos Direitos da Criança e do Adolescente*) shows that there are approximately 13,500 adolescents and youth housed in socio-educational establishments.<sup>1</sup>

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<sup>1</sup> Source: Survey by the Subsecretaria de Promoção dos Direitos da Criança e do Adolescente/SEDH based on

190. In light of the strengthening of the social-educational assistance system provided to adolescent in conflict with the law, the Sub secretariat for the Promotion of the Rights of the Child and Adolescent has sponsored various studies such as a Survey of the Status of Socio-Educational Detention Units for Adolescents in Conflict with the Law aimed at Executing Socio-Educational Measures (*Mapeamento da Situação das Unidades de Execução de Medida Socioeducativa de Privação de Liberdade a Adolescente em Conflito com a Lei*) to assess the situation in units that execute detention sentences in order to aid in the reorientation of public policies and the readjustment of socio-educational programs so as to secure additional advances in the area.

191. The need to coordinate, mobilize, and qualify the justice system and bring about institutional reorientation based on the principles of local control and decentralization as a means to promote the reintegration of adolescent offenders stems from the understanding that in spite of the numerous advances and efforts implemented to date institutional practices that adhere to the outdated correctional-repressive model persist, requiring, therefore, a broad mobilizing initiative to secure institutional reorientation.

192. The new assistance model for applying socio-educational detention measures is an advance guaranteed by law, although not yet fully implemented in practice insofar as detention units preserve the prison model adopted in large establishments and there continues to be a corresponding lack of educational and human resources available to work with adolescents within a truly socio-educational context. In these cases, detention becomes, then, far more a sanction than a rehabilitation process.

193. To effectively ensure the rights of youth who are in conflict with the law, the following actions deserve to be mentioned: expanding and improving the quality of the assistance provided to these adolescents through socio-educational measures; the development of policies that include services in the different areas of assistance on the basis of the broad involvement, coordination, and mobilization of government and non-governmental organizations: analyzing and discussing the complex nature of the innovations introduced in the institutions responsible for fulfilling the EGA with a view to preventing the operation of institutions that have not reoriented their approach based on the Statute's principles; striving to develop shared administration, assuring a central role for youth in the implementation of public policies, and educating society through broad social mobilizing initiatives founded on integrating youth who are in conflict with the law.

194. Recognizing the imperative of effecting changes, national coordination of the policies for promoting and defending children's rights is concentrated in the Sub secretariat for the Promotion of the Rights of the Child and Adolescent (SPDCA), which has conferred absolute priority on the provision of high-quality socio-educational measures, in addition to investments in professional training and the reorientation of detention units, all for purposes of overcoming the long-standing culture of repressive assistance employed in Brazil for many years.

195. The absence of a Law on the Execution of Socio-Educational Measures has left room for arbitrary actions among the system's managers and administrators. The most general principles established in the Child and Adolescent Statute should be applied to develop a specific law that regulates the execution of measures, primarily those involving detention. The National Council on the Rights of the Child and Adolescent - CONANDA and SPDCA are preparing a draft bill on the issue.

196. In addition, the SPDCA is developing a National Socio-Educational Assistance System (*Sistema Nacional de Atendimento Socioeducativo*) to set out the parameters and specify the principles on which the elaboration and execution of socio-educational actions must be based.

### **Factors and Difficulties**

#### **Institutions Housing Children and Adolescents:**

197. The reality of children in shelters in Brazil constitutes a serious psycho-social problem, given the various and parallel factors that jeopardize the performance of institutions in their effort to substitute for the traditional role exercised by families.

198. Babies and young children housed in shelters demonstrate developmental disturbances due to the emotional deprivation from which they suffer as a result of early separation from their mothers or care-givers. The care-givers in shelters do not fulfill the role of maternal substitutes with whom the babies and children can identify and on whom they can model their behavior. This causes inadequate interaction with their environment.

199. Collective care for small children suddenly separated from their families often causes irreparable damage to their psycho-emotional development, as a result of the fact that the consequent emotional vacuum and lack of continuous contact and stimulation acutely compromise the individual's psychiatric make up.

200. In recent decades, successive administrations have endeavored to extend the social assistance network to these families by giving priority to basic policies. Investments in the social area may, in the medium term, lead to a reduction in the need to provide children with shelters through the implementation of an open educational service and assistance system.

201. In a 2004 study by the Institute of Applied Economic Research - IPEA, performed in partnership with the Special Secretariat for Human Rights, concerning the status of child and adolescent shelters, 20,000 children and adolescents were found to be housed in these establishments. The majority (58.5%) were boys of African descent. They were between the ages of 7 and 15 years (61.3%), and more than one-third had been in shelters for a period of 2 to 5 years.<sup>2</sup>

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<sup>2</sup> The research encompassed only those shelters co-financed by the government, or on the order of 600 institutions, which are estimated to represent only 30% of all institutions of this type in Brazil. No information is

202. The absolute majority of children and adolescents (86.7%) housed in shelters have families. The reason most cited for their presence in shelters was poverty (24.2%). Children and adolescents gave other reasons as well, including that they: had been abandoned (18.9%), were the victims of domestic violence (11.7%), were exposed to chemical dependence of the parents or guardians, including alcoholism, (11.4%), had been living on the streets (7%), and were orphaned (5.2%).

#### **Government Actions: Children in Shelters**

203. The Institute for Applied Economic Research (*Instituto de Pesquisa Econômica Aplicada - IPEA*) is performing a nationwide study of all shelters in partnership with the Special Secretariat for Human Rights and the National Council on the Rights of the Child and Adolescent (CONANDA) and with the support of the Ministry of Social Development and UNICEF. The information gathered will assist in the determination of the parameters and guidelines that will regulate the shelters, in accordance with the Child and Adolescent Statute, and in the implementation of public policies for the sector, with a view to reorganizing the nation's network of shelters.

204. The National Council on the Rights of the Child and Adolescent (CONANDA) has designed a strategy for researching all the shelters in Brazil through the State Councils using IPEA's methodology.

205. Some municipalities, such as São Paulo and Rio de Janeiro, conducted their own surveys. It is hoped that in the short term these initiatives will produce new statistics that can be added to the National Survey.

#### **Article 11 - Prohibition on imprisonment for the non-performance of contractual obligations**

206. The Federal Constitution prohibits imprisoning individuals for unpaid debts, except in the following two cases: voluntary and unjustified nonpayment of alimony support and unfaithful trusteeship. In 1992, Brazil ratified the International Covenant on Civil and Political Rights. The article under consideration sets out no exceptions forbidding imprisonment due to unpaid debts. In 1992, Brazil also ratified the American Convention on Human Rights, art. 7 (7), which establishes, in article 7(7), that no individual should be detained for unpaid debts, while stipulating that this principle does not limit court orders issued in response to the nonpayment of alimony support, in what constitutes, therefore, the lone exception to the rule. Given that Brazil ratified these two instruments without reservation, the legal authority to impose civil imprisonment in cases of unfaithful trusteeship is questionable. Taking into consideration the criterion of adhering to the norm that is most favorable to the victim, the conclusion in the context of the protection of Human Rights is that the provision permitting imprisonment in the case of unfaithful trusteeship should be rescinded.

207. In spite of several judicial decisions limiting the possibility of civil imprisonment in cases of unpaid debts, which have been based on art. 42 of the Consumer Protection Code (*Código de Defesa do Consumidor*), art. 5, LXVII, of the Federal Constitution, and the international treaties governing the protection of humans rights, especially the American Convention and the International Covenant on Civil and Political Rights, the provision's applicability has been reaffirmed. In mid-1998, the Federal Supreme Court ruled in favor of the applicability of civil imprisonment in cases of unpaid debts involving fiduciary trustees.

#### **Article 12 - Freedom of movement and residence**

208. Article 5, subsection XV, of the Federal Constitution declares that "movement is free within the national territory in times of peace, and any person may, under the terms of the law, enter it, remain therein, or leave it with his assets." The subsection prescribes the freedom of movement in times of peace because, in the event of a declaration of war or in response to foreign armed aggression, a state of siege, with the corresponding restrictive measures set forth in art. 139 of the Federal Constitution, may be decreed, requiring individuals to remain in specific locations (subsection I of art. 139 of the Federal Constitution). The right to establish a residence without authorization is assured not only to native and naturalized Brazilians, but to foreigners as well. Law no. 4898/65 considers violations of the freedom of movement prescribed in the Federal Constitution (art. 3, line a) an abuse of authority.

#### **Factors and Difficulties**

209. There are no restrictions on movement within the territorial boundaries of Brazil, except with respect to indigenous reserves. Access to those areas requires government authorization. This measure seeks to protect indigenous peoples against the phenomenon of forced acculturation.

210. Brazilians are free to enter and leave the national territory at any time. This right is assured by law. Nevertheless, these guarantees are contradicted by specific cases in which the freedom to come and go has been restricted. First, it is necessary to recognize that the effective exercise of this right in modern societies requires access to the means of mass transportation. This is an important point insofar as the residents of urban centers are as of yet unable to afford regular access to mass transit services. This serves as an alert that Brazil must renew its commitment to policies that stimulate, develop, and subsidize mass transportation services throughout the country.

211. At the same time, increased activity by armed groups linked to the drug trade in Brazil, principally in metropolitan regions, has subjected thousands of people in shanties and residential complexes on the outskirts of cities to arbitrary rules regarding circulation through these areas and various kinds of interdictory measures, including curfews. People subjected to these circumstances are clearly unable to exercise the right to come and go.

#### **Government Actions**

212. The federal government granted free access to interstate transportation services to persons with disabilities - through Law no. 8899, of 29 June 1994, regulated by Decree no. 3691, of 19 December 2000 - and the elderly (over the age of 60) - article 40 of the Elderly Statute, regulated by Decree 5133, of 7 July 2004.

### **Article 13 - Status of Foreigners**

213. Pursuant to the Federal Constitution, all are equal before the law, insofar as Brazilians and foreigners are assured the same rights (art. 5, heading). Law no. 6815/80 sets out the legal status of foreigners in Brazil. According to the text, visas are required for foreigners entering the country, although these may be waived, provided there is reciprocity stipulated in an international agreement. Visas are granted to individuals and may be extended to legal dependents. Those entering Brazilian territory without the proper authorization are subject to deportation. Foreigners intending to reside in the country on a permanent basis are granted a permanent visa.

214. Brazilian immigration policy determines that the objective of immigration is to provide specialized labor to the various sectors of the national economy so as to increase productivity, promote technological assimilation, and attract resources for specific sectors.

215. Political asylum is provided for. The extradition of foreigners may be permitted when the requesting government bases its petition on an applicable convention, agreement, or reciprocity. No extradition will be granted, however, in the absence of an order from the Federal Supreme Court. The Constitution, moreover, establishes that extraditions will not be carried out against a foreigner whose crime was of a political nature was related to the expression of an opinion (art. 5, subsection LII.) Foreigners admitted into Brazil may not exercise any activity of a political nature (art. 106 of the Statute on the Foreigner).

216. Today, Brazil has 2,978 refugees from 50 countries. The largest contingent, 1,692 persons, comes from Angola, followed by Liberia, with 258, the Democratic Republic of Congo, with 186, Sierra Leone, with 161, Cuba, with 90, Colombia, with 83, Iraq, with 72, Serbia, with 48, Peru, with 40. Between 1996 and 2004, Brazil has carried out 555 repatriations, 472 deportations, 1,242 expulsions, and 106 extraditions.

### **Factors and Difficulties**

217. The Federal Constitution explicitly condemns prejudice based on origin (art. 3, subsection I). However, there is evidence that some Brazilian employers are still reluctant to grant employment to refugees. As to the execution of sentences of foreigners convicted in Brazil, the Ministry of Justice has manifested its support for formalizing prisoner transfer agreements, which would enable foreigners to complete their sentences in their countries of origin. Similarly, a Brazilian convicted abroad would have the opportunity to fulfill his or her sentence within the country's territorial boundaries. The treaty would put an end to the pertinent humanitarian question by permitting the convicted to fulfill their sentences in their country of origin in greater proximity to their relatives and

compatriots. However, it is essential that the penitentiary system responsible for the inmate's rehabilitation be equivalent to that in the location where he or she will be reintegrated into society following completion of the applicable sentence.

218. An initiative that deserves mention was the conclusion of a treaty with Paraguay, in 1995, under the auspices of the Ministries of Justice and Foreign Relations, enabling the legalization of the status of almost sixty thousand (60,000) Brazilians residing in Paraguay.

219. In spite of the government's efforts aimed at simplifying the legal requirements for foreigners seeking to remain in the country, obstacles remain in this area, it is also important to mention the status of groups of Paraguayans, Bolivians, Peruvians, and Colombians living clandestinely in Brazil's largest cities, where they accept degrading working conditions to avoid deportation.

### **Government Actions**

220. The status of foreigners and refugees in Brazil has been addressed by the National Humans Rights Program, which unveiled a series of short-, medium-, and long-term goals, with special emphasis to the short-term goals: the development of a program and campaign to legalize the status of foreigners currently in the country; the adoption of measures to prevent and punish violence and discrimination against foreigners in Brazil and Brazilians abroad; the proposal of a draft bill establishing a Statute on Refugees.

221. Concerned with the influx of irregular and clandestine foreigners, the federal government launched a package of measures during the week of September 7, 1998, that included extending an offer of amnesty to allow illegal immigrants in Brazil to legalize their status through a re-registration program held on December 7, 1998.

222. The Secretariat of Justice of the Ministry of Justice has simplified the rules for securing Brazilian naturalization, while the Federal Police has promoted a new re-registration program for foreigners in the country for purposes of exchanging existing identification cards with more secure ones. The Department of Foreigners of the Ministry of Justice, meanwhile, has distributed a "Practical Guide for Foreigners in Brazil."

223. In fulfillment of one of the goals of the National Human Rights Program, draft bill no. 1,936/96, subsequently transformed into Law no. 9474/97, was approved and sanctioned. Its sets out the mechanisms for implementing the 1951 Statute on Refugees.

224. Finally, on the occasion of the 50<sup>th</sup> anniversary of the Universal Declaration of Human Rights, the President of the Republic created the National Committee for Refugees (*Comité Nacional para os Refugiados - CONARE*) composed of representatives of the following bodies: the Ministry of Justice, which presides over the committee; the Ministry of Foreign Relations, which exercises the group's vice-presidency; the Ministry of Labor and Employment; the Ministry of

Health; the Ministry of Education and Sport; the Federal Police Department; the non-governmental organization Caritas Arquidiocesana of São Paulo and Rio de Janeiro, devoted to assisting and protecting refugees in the country; the United Nations High Commissioner for Refugees - UNHCR, which has a voice, but no vote. Caritas Arquidiocesana of São Paulo and Rio de Janeiro was chosen to serve as the official representative of civil society in the effort given its long partnership with the government in taking in and assisting refugees.

225. The National Committee on Refugees (*Comitê Nacional para os Refugiados*) has the following ends: I - to analyze the requests for recognition of refugee status; II - to deliberate on the the repeal of refugee status, either "ex officio" or upon an official request by the competent authority; III - to declare the loss of refugee status; IV - to guide and coordinate the actions required for ensuring refugees effective protection, assistance, local integration, and legal support with the participation of the Ministries and institutions comprising the CONARE; V - to approve normative instruments to implement Law no. 9747/97.

#### **Article 14 - Equality before the courts and the right to justice**

226. The Federal Constitution assures all individuals equality before the law, without distinction of any kind, and confers competence for considering all breaches of or threats to rights on the judiciary (art. 5, subsection XXXV). The judiciary enjoys full independence and autonomy equal to the legislative and executive branches. The creation of exceptional tribunals is forbidden (art. 5, subsection XXXVII), and individuals may only be prosecuted or sentenced by the judicial branch and deprived of their freedom or assets upon application of due process (art. 5, LIV). The accused are guaranteed a full defense, the right to challenge the charges against them, and application of all other pertinent legal instruments (art. 5, LV). Defendants shall only be considered guilty upon a final decision not subject to appeal (art. 5, LVII). Detainees are ensured the exercise of their rights, among them the right to silence, the right to family assistance, and, as mandated by law, the right to counsel (art. 5, LXIII).

227. The State has the duty to provide legal assistance at no charge to those who demonstrate a lack of sufficient financial means (art. 5, LXXIV). Judicial hearings and procedural acts are, in general, open to the public and are conducted in the pertinent tribunals and courts at times and on days specified beforehand. The publicity ensured procedural acts may only be restricted to protect a person's privacy or when the interests of society so require. In these cases, proceedings are held in closed session (art. 5, LX).

228. All legal decisions are subject to appeal to a higher court, and final judgments may only be proffered following a review of the original decisions (article 58 and subsequent articles of the Penal Code). This is denominated the principle of the double degree of jurisdiction. Those convicted as a result of judicial error, as well as those detained beyond the time stipulated in the applicable sentence, may request compensation from the State (art. 5, LXXV). Individuals convicted of a crime who do not speak the national language are guaranteed the presence of an interpreter,



designated by the presiding judge, during questioning, the associated costs for which will not be borne by the parties (art. 195 of the Penal Code). Pursuant to articles 25 and 26 of the Law on Penal Execution, no. 7210, of 1984, the former shall receive state protection, with the associated guidance and support to reintegrate them to society, including the provision, when necessary, of shelter and food until such time as employment can be secured. The institution of a jury in trials involving serious crimes against life is recognized, as is the right to a full defense, secret jury voting, and the predominance of verdicts (art. 5, XXXVIII).

### **The Justice System for Children and Adolescents**

229. Article 145 of the Child and Adolescent Statute enables the states and the Federal District to establish special and exclusive courts for children and youth. The judiciary has the duty to determine the proportionality by population of these courts, provide the necessary infrastructure, and specify their regular business hours and night shifts. The costs and fees associated with judicial actions falling within the purview of the Child and Juvenile Justice System (*Justiça da Infância e da Juventude*) shall be waived, except in cases of bad-faith litigation (art. 141, paragraph 2, of the Child and Adolescent Statute.) Minors under the age of sixteen (16) shall be represented, while those between the ages of sixteen (16) and twenty-one (21) shall be assisted, by their parents, guardians, or trustees. When the interests of the children or adolescents conflict with those of their parents or legal guardians, the judicial authority shall serve as a special trustee (art. 142 of the Child and Adolescent Statute).

230. Publication of judicial, police, and administrative acts that refer to children and adolescents and reveal the identity of individuals charged with an infraction is prohibited (art. 143, heading, of the Child and Adolescent Statute). The Child and Juvenile Justice system has the authority to: receive notification of all applications filed by the Public Prosecution Office to investigate an infraction attributed to an adolescent, through application of the pertinent measures; grant a pardon to suspend or terminate a case; be informed of adoption requests and their progress, among others.

231. Socio-educational measures can be divided into two groups: the first involves those that do not result in depriving individuals of their freedom (warnings, compensation for damages, community service, and supervised liberty); the second includes those that restrict or deprive offenders of their freedom (semi-liberty and detention with or without outside activities). The first measure, warnings, is the most lenient. It consists of a verbal reprimand by the competent authority to the violator in a hearing. This measure is used in cases of minor infractions or in cases in which the individual in question is a first time or occasional offender, thereby leading to the conclusion that a warning is sufficient. For its part, the obligation to make restitution for damages is a measure centered on the material effects of the infraction that can result in the imposition, on the offender or on those legally responsible for the offender, of one of the provisions set forth in article 116 of the Statute: restitution of that which was damaged; or reimbursement for damages or compensation for losses. These alternatives are highly instructional, be it as tools to ensure immediate compensation

or as a means to introduce a positive psychological effect based on the possibility of requiring compensation. Community service entails offering adolescents an alternative by which they can recognize the inappropriateness of their conduct and understand their value as human beings through an educational experience within a social setting. The measure can also foster relationships based on solidarity in those cases involving interaction with socially excluded individuals. The services are provided free of charge within established deadlines and at scheduled times. Unhealthy, dangerous, or distressing work or that provided to not-for-profit entities is forbidden. Although supervised liberty involves some curbs on freedom, the measure is executed in a regime of liberty. It is based on designating an individual preferably linked to a governmental or non-governmental public assistance program to monitor and provide the adolescent with guidance, under the oversight of the competent judge. Imposition of a regime of semi-liberty results in the individual's institutionalization and is invoked in cases whose seriousness is considered to lie somewhere between supervised liberty and detention. Under this regime, the offender is subject to the rules of a unit/home, while continuing to exercise normal activities outside the institution. Detention consists of measures that deprive individuals of their freedom, which are, as discussed in the comments to art. 10, subject to the principles of brevity and exceptionality, pursuant to the Federal Constitution and the Child and Adolescent Statute, and have, additionally, an educational as well as punitive character.

### **Government Actions**

232. The Brazilian government, mindful of the concerns laid out in items 8 to 10 and of recommendations 18, 20, 21, and 24 of the Final Observations of the Human Rights Committee, has adopted a series of measures.

233. With regard to equality before the law, the federal government endeavored to ensure approval of the draft bill that transfers jurisdictional authority over cases involving military police officers charged with intentional crimes against the life of a civilian, whether consummated or attempted, from the military justice system to the civilian courts. On August 7, 1996, the President of the Republic sanctioned the draft bill that expands the number of crimes that fall within the purview of the civilian courts through the approval of Law no. 9299/96.

234. In the effort to combat impunity, the Federal Senate is now considering a judicial reform plan already passed by the House of Representatives that grants jurisdiction over Human Rights crimes to the federal justice system.

235. On the issue of access to the justice system, the approval of Law 9099/95, which establishes the Special Civil and Criminal Courts as independent entities presided over by state judges, deserves mention. In the civil sphere, their jurisdictional authority is restricted to sums not exceeding 40 minimum salaries. Representation, meanwhile, is waived in civil cases involving up to 20 minimum salaries. The success of the Special Courts at the state level led to the creation of the

Special Federal Courts, through Law no. 10259, enacted on 12 July 2001, with jurisdiction to examine cases under the purview of the federal justice system.

236. Additionally, in an effort to imbue the legal process with greater efficiency and offer the population greater speed and access, some states have instituted itinerant justice systems. São Paulo created its system, in 1998; Rio de Janeiro has had such a system since July 1996 (by the end of last year, 2,478 persons had been assisted by the "Mobile Defense" unit; in 1997, the average was five times greater as demonstrated by the fact that by August 28, 1998, 14,066 had received legal assistance); In Alagoas, the judiciary implemented an itinerant justice system, in 1997, to operate in districts of the state capital and interior areas of the state.

237. To assist communities with difficulties of access to the justice system, services such as the Itinerant Floating Court was created (one ship with a judge, prosecutor, defender, and staff member navigates the Amazon River for a week assisting populations living along the banks of the river); the Itinerant Terrestrial Court (a bus transformed into a hearing room that circulates through neighborhoods on the outskirts of the state capital); the Mobile Traffic Court (which provides timely assistance for accidents not involving serious injury). The creation of "Legal Desks" (Balcões de Direitos), a program which aims to provide free legal assistance, basic documents and conflict mediation services to low-income communities with limited access to public services, through the establishment of partnerships between the federal government, state-level governments and civil society organizations is also a positive initiative which deserves mention .

#### **Article 15 - Non-retroactivity of criminal law**

238. The Federal Constitution and the Penal Code enshrine the principle of non-retroactivity of criminal law. Article 5, subsection XL, of the Federal Constitution states "penal law shall not be retroactive, except to benefit the defendant." The exception to the rule of non-retroactivity is prescribed by art. 2 of the Penal Code, which establishes that no individual may be subject to penalties for circumstances that a subsequent law no longer considers a crime, resulting, therefore, in the suspension of the execution and penal effects of the conviction. Furthermore, the subsequent law that favors the agent shall be applied to previous circumstances, even when such circumstances resulted in a conviction. Thus, the principle set out in the Federal Constitution and the Penal Code is that of non-retroactivity of "lex gravior" (law that does not benefit the defendant) and of the retroactivity of "lex mitior" (law that benefits the defendant), that is, the non-retroactivity of "in pejus" (worst case) and the retroactivity of "in melius" (best case).

239. The heading of the article referred to presents the potential of a new law that no longer considers certain conduct a crime. This constitutes "abolitio criminis" (abolition of a crime). The stand-alone paragraph, meanwhile, sets out the case of a new law that is more benign to the defendant or convicted offender. This is known as "novatio legis in melius" (new best case law). In both cases, the retroactivity of penal law is prescribed for a new law that is more beneficial to the defendant or the convicted offender, a circumstance that has the effect of superseding the civil

effects of the conviction given that the heading of the article under consideration only mentions the "penal effects of the conviction."

#### **Article 16 - The right to a juridical personality**

240. The Federal Constitution ensures the right to a nationality, for which purpose Brazil adopts "jus solis," with some exceptions. Thus, nationality is assigned to those born within the territorial boundaries of Brazil, even by parents of a foreign country, provided they are not exercising an official capacity for their country of origin, in which case the principle of "jus sanguinis" applies. Article 12 of the Federal Constitution was modified by Constitutional Revision Amendment no. 03, of 7 June 1994. Pursuant to this determination, the exceptions to "jus solis" includes: those born abroad by a Brazilian father and mother, provided they return to live in the Federative Republic of Brazil and opt, at any time, for Brazilian nationality.

241. Foreigners may opt for naturalization. For those coming from Portuguese-speaking nations the only requirement for nationality is uninterrupted residence in Brazil for one year and moral fitness. Foreigners of other nationalities must be residents of Brazil for more than fifteen consecutive years and have no criminal conviction. In these cases, provided there is reciprocity in favor of Brazilians, the rights inherent to Brazilian citizens shall be conferred, except for the cases prescribed in the Constitution (paragraph 1 of art. 12).

242. The same Constitutional Revision Amendment provides for two additional cases through which another nationality could be obtained without resulting in the loss of Brazilian nationality: when the law of a foreign country recognizes the nationality of origin and in the event naturalization is imposed by foreign legislation on a Brazilian resident of a foreign country as a condition for remaining within such country's territorial boundaries or exercising the applicable civil rights thereof (subsection II of paragraph 4 of art. 12).

243. Brazilian law specifies the capacity to exercise the activities of civil life (articles 3 and 4 of the new Civil Code):

a) Individuals absolutely unable to personally exercise the activities of civil life include:

I - minors under the age of sixteen (16);

II - those who, due to infirmity or mental deficiency, do not possess the comprehension to carry out such activities;

III - those who are unable to manifest their will, even if temporarily.

b) Individuals unable to perform specific activities or to perform them correctly include:

- I - minors over the age of sixteen (16) and under the age of eighteen (18);
- II - heavy drinkers, addicts, and individuals with reduced discernment due to mental deficiency;
- III - the persons who lack full mental development;
- IV - the prodigal.

The capacity of indigenous populations shall be regulated by specific legislation.

244. Pursuant to Law no. 6015, of 31 December 1973, the full exercise of citizenship requires civil birth registrations. Law no. 9534, of 10 December 1997, ensures that the acts necessary for the exercise of full citizenship rights, including civil birth registrations (as well as their extemporaneous issuance) and death certificates, shall be provided at no charge.

245. Every year, 800,000 children fail to be registered in their first year of life. Concerned with this scenario of social exclusion, the federal government promoted a national Civil Birth Registration mobilization campaign founded on intense coordinated action by agencies and bodies at the three administrative levels of the State and involving the three branches of government and non-governmental organizations. At the federal level, sixty-two institutions make up the National Working Group responsible for coordinating the campaign. All 27 states, moreover, are part of the campaign, having created commissions to coordinate actions in the states and the Federal District. The birth registration mobilization effort is continuous, and the campaign launched on October 25, 2003 - the first national civil birth registration day - is scheduled to run through October 26, 2006.

246. On October 25, 2003, all the country's notary public offices operated 24 hours for the purpose of issuing birth registrations. On a single day, 40,000 birth registrations were issued in an effort that proved critical for educating Brazilian society on the question and introducing it in the nation's political agenda. In May 2004, the government, in partnership with civil society, developed the National Civil Birth Registration Plan (*Piano Nacional Para o Registro Civil de Nascimento*), which was aimed at ending the problem of unregistered children. The Plan provides for short-, medium-, and long-term actions to ensure that all Brazilian children are duly registered by 2006.

247. As an extension of the national mobilization campaign, the Rural Civil Birth Registration Mobilization Day will be held on August 6, 2004, while on November 6, 2004, another national civil registration mobilization campaign, associated to the Global Action effort, sponsored by the Industrial Social Service the past eight years, will be launched in the state capitals and largest urban centers.

248. Further, since 1996, the federal government has lent its support to the implementation of Citizen Mutual-Help initiatives. The Mutual-Help efforts are periodic actions that bring together public agencies and bodies responsible for the issuance of civil documents. On specific dates,

employees of these agencies and bodies travel to municipalities in the remote regions of the states that lack adequate civil registration services. The Mutual-Help initiatives and the Legal Desks (see paragraph 25) benefit more than 200,000 persons every year by providing them with the instruments they need to exercise their rights and duties as citizens.

#### **Article 17 - Protection against arbitrary or illegal interference**

249. The Federal Constitution considers the secrecy of a person's mail, as well as telegraph, data, and telephone communications, inviolable, except in cases of a judicial order, as established in Law no. 9296/96 for purposes of performing criminal investigations or legal procedural instructions (art. 5, subsection Xii). Intimacy, private life, honor and the image of persons are also inviolable, insofar as the right to compensation is assured for material or moral damages arising from the violation of these rights.

250. Individuals are assured knowledge of personal information collected on them that is then entered into government or public databases and have the right to correct such information through the constitutional remedy known as "habeas-data" (art. 5, subsection LXXII). The Consumer Protection Code also enables the consumer who discovers imprecise information in his or her data and records to demand immediate rectification of the problem, from which point the archivist has five business days to notify the recipients of the incorrect information of the modification (art. 43, paragraph 3, of the Consumer Protection Code).

251. Lastly, the Federal Constitution considers the a person's home as inviolable refuge, into which no person may enter without the consent of its inhabitant, except during the perpetration of a crime, a disaster, a medical or other emergency, or, during daylight hours, to execute a judicial order (art. 5, subsequent XI).

#### **Factors and difficulties:**

252. With regard to the principle of the inviolability of the home, there are cases of judges who issue collective search and arrest warrants without specifying the addresses at which the warrants should be executed, thereby allowing police officers to enter any residence considered suspect in the slums of large urban areas.

#### **Article 18 - Freedom of thought, conscience, and religion**

253. The Federal Constitution enshrines the fundamental right to freedom of thought in its article 5, subsection IV.

254. Freedom of conscience and freedom of religion are also guaranteed by Brazil's normative system. Because Brazil is a secular state, the country maintains no links with any established Church. The separation of the State from religious institutions creates a propitious environment for the freedom to practice cults and rituals. The inviolability of the freedom of conscience and religion

is enshrined in the Constitution, as is the freedom to exercise religious rites and the protection of religious cults and religious ceremonies (article 5, subsection VI). Law no. 4898/65 defines any actions against the freedom of conscience and religion, as well as free exercise of religious rites, as an abuse of power.

255. The deprivation of rights based on religious belief or philosophical or political conviction is prohibited, except in cases in which an individual invokes such rights to exempt him or herself from legal obligations imposed on all citizens and to refuse fulfillment through any alternative means, pursuant to article 5, subsection VIII, of the Brazilian Constitution.

256. The vast plurality of ideas can be evidenced in Brazil's learning establishments, marked, as they are, by wide heterogeneity. Both lay and religious establishments can be found in the country. Thus, respect for differences of religious orientation and thought are respected.

257. Brazilian legislators, heedful of the need to promote full religious exercise, added a provision to article 140 of the Penal Code, through enactment of Law no. 9458/97, with regard to libel, setting out more severe penalties for the violator who offends the dignity of a citizen on the basis of race, color, ethnicity, religion, or origin.

258. Religious entities in Brazil are exempt from tax obligations.

### **Factors and Difficulties**

259. In spite of the secular nature of the Brazilian State and the fact that it maintains no ties to any specific religious institution, Brazilian cultural tradition is strongly influenced by Catholicism. Some aspects of this tradition can be identified in some of the republic's official rituals. It is for this reason that all religious holidays in Brazil are Christian, pointing to limits on the State's secular character. In recent years, a significant growth in the presence of evangelical groups has been registered, particularly in Brazil's largest cities. There is, to be sure, a certain prejudice against specific religious groups, especially those founded on African traditions, such as umbanda. For this very reason, many who regularly attend Africanist temples declare themselves to be "Catholics" when queried. Be that as it may, the Brazilian republic has never been victimized by violent religious disputes. Christians, Muslims, Jews, Buddhists, Africanists, spiritists, and all other religious expressions coexist harmoniously and in mutual respect, to the extent that strengthened ecumenical ties have been forged over the years.

### **Article 19 - Freedom of opinion, expression, and information**

260. The 1988 Constitution assures the right to freedom of opinion, expression, and information. Censorship, an instrument that directly contradicts the right to free expression and opinion, is prohibited by the Brazilian State, pursuant to article 5, subsection IX. This prohibition ensures varied intellectual manifestations.

261. The right to information, essential for the functioning of the Legal Democratic State, is guaranteed by the Brazilian Constitution. The State, on the basis of the principles that order its activities, is subject to the principle of publicity, which establishes the provision of information concerning its acts to the general population (article 37 of the Federal Constitution).

262. The media enjoys full freedom, as ensured in article 220, paragraph 2, of the Federal Constitution. For their part, social communication services (radio and television), which are provided through government concessions, must observe the constitutional determinations that give preference to programming with educational, artistic, cultural, and information objectives, as well as to national and regional cultural productions and the respect for the ethical values of the human person and the family (article 200, subsections).

263. The prison population is assured contact with the outside world via correspondence, reading materials, and other communication means. It may also exercise intellectual, artistic, and sports activities.

264. With regard to national consumer relations policies, the Brazilian Consumer Protection Code includes principles mandating education and information for suppliers and consumers as regards their rights and duties in order to optimize the consumer market (Law 8078/90, article 4, subsection IV).

### **Factors and Difficulties**

265. The 1988 Federal Constitution established the right to opinion and expression and eliminated the repressive instruments in force during the military dictatorship. This important advance brought with it correspondingly serious responsibilities for the holders of the means of mass communication. The definition set out in the Constitution with regard to the need to respect the "ethical and social values of the human person and the family," however, is insufficient to ensure effective guidance on this question. In the absence of specific regulations, many radio and TV broadcasters have produced programs that violate civil and political rights and incite violence and prejudice - most notably against homosexuals, individuals engaged in the sex industry, inmates, and criminal suspects - by invading privacy, disrespecting the constitutional principle of the presumption of innocence, and so forth. This is an issue that has sparked great concern in Brazil and has increasingly been the focus not only of seminars but judicial actions as well. Additionally, the National Congress is now considering a Law mandating an "Ethical Code for Television Programming," an initiative that once approved will offer new and modern parameters for securing the accountability of TV broadcasters while respecting the freedom of information.

### **Article 20 - Prohibition on propaganda that favors of armed conflict or incites hatred**

266. As the primary constitutional principle ordering Brazil's international relations, the peaceful resolution of conflict (article 4, subsection VII) demonstrates the Brazilian State's official policy on



behalf of peace. This orientation is also manifest in the country's internal relations. The existence of measures to protect the harmony of social relations by ensuring the prohibition against propaganda that favors war or expresses sympathy for hate based on nationality, race, or religion are clearly evident.

267. With respect to consumer relations, legislators demonstrated their concern with the issue by enacting a prohibition on all abusive publicity that in any way discriminates or incites violence, plays on fears or superstitions, takes advantage of children's lower levels of judgment and experience, disrespects environmental values, or induces consumers to adopt behaviors that jeopardize or endanger their health or safety (Law no. 8078/90, art. 37, paragraph 2). In 2002, cigarette advertising was abolished by Brazil's federal Law governing television advertising.

268. The concern with maintaining the harmony of the public peace is reflected in various areas of Brazilian law. Thus, the primacy of the domestic and international struggle for peace and social coexistence based on solidarity is amply demonstrated. The Penal Code stipulates in clear terms the determinations that reveal the special concern with the maintenance of peaceful social relations. In regard to crimes against the public peace, the Code prohibits inciting criminal activity, as well as apologies for criminal acts or their perpetrators.

#### **Article 21 - The right of assembly**

269. Assembly is an activity fully guaranteed by the Brazilian Constitution, which assures the right of peaceful assembly, without weapons, in locations open to the public, for which no specific authorization is required. However, to ensure respect for all manifestations involving the peaceful assembly of citizens, the competent authority must be notified to avoid conflicts with another meeting previously scheduled for the same location (article 5, subsection XVI) and to enable the government, moreover, to assure the safety of those assembling. The right of private assemblies is ensured through the inviolability of residences.

270. Exceptional circumstances enable prohibition on the right of assembly. In accordance with the Brazilian Federal Constitution, upon the decree of a "State of Defense" or "State of Siege" some coercive measures may be adopted, among them restrictions on or suspension of the right of assembly (article 136, paragraph 1, subsection i, "a" and article 13S, subsection IV). Upon conclusion of the "State of Siege" or "State of Defense," the associated effects are also terminated (article 141).

#### **Factors and difficulties**

271. The reasons that drive people to organize peaceful demonstrations are varied (political, labor, and environmental questions, among others). Serious incidents relative to these demonstrations are uncommon. On certain occasions, specific violations of legal limits - such as the occupation of public buildings and demonstrations that result in the blocking of streets or roads - have required the presence of police forces called by state governments to reestablish public

order and guarantee all other citizens the freedom of movement. In these situations, sporadic reports of preventable acts of violence have been registered, usually as a consequence of the lack of preparation on the part of police forces.

#### **Article 22 - The freedom of association**

272. The Brazilian State guarantees citizens the right of association for legal ends, while prohibiting associations of a paramilitary nature, pursuant to article 5, subsection XVII, of the Constitution. For its part, the establishment of associations in accordance with the law does not require authorization, nor may the State interfere in their functioning. In setting out the establishment of associations, the Constitution also mandates that the compulsory dissolution or suspension of the activities of an association may only be determined by judicial order. Nothing in Brazilian law requires association, and compelling an individual to associate or remain associated is prohibited (article 5, subsection XX).

273. Union activity is also fully protected within the territorial boundaries of Brazil, so that its manifestation may be freely exercised. There is no requirement establishing State authorization for the creation of unions. However, these must be registered with the competent bodies. The Constitution also prohibits interference or intervention by the State in unions (article 8, subsection I).

274. The right to strike is included among the constitutional guarantees extended to Brazilian citizens. Specific laws, in turn, are charged with determining the services considered essential and their provision to the community (article 9, paragraph 1). The 1989 law governing strikes specified the essential services that must continue to be provided even in the event of strikes and established that workers must notify employers 48 hours prior to a planned stoppage.

275. The abuse of the right to strike is considered to occur when essential services are paralyzed or upon continuation of a strike following a judicial decision against the strike. However, the law mandates that until such time as an abuse of strike case has been heard employers are expressly forbidden from hiring replacement workers. The Brazilian Constitution prohibits the arbitrary or unfounded dismissal of an employee *elected* to a position on an internal *accident* prevention commission from such employee's official candidacy to one year following expiration of his or her mandated term.

276. The Penal Code establishes penalties for individuals who act against the freedom of association, prescribing prohibitions against coercive measures intended to secure another individual's participation or removal from a particular union or professional association (article 199).

#### **Factors and Difficulties**

277. The Brazilian union system proscribes the formation of more than one union to represent the same professional category within the same geographic area. This is based on the notion of "union unity," the system adopted by Brazil. Union structures are supported by mandatory union

dues, while the right to form unions is extended to all Brazilians, except members of the armed forces and police. Unions are free with regard to decision-making, a relevant fact given the essential and indispensable quality, at times, of labor negotiations. The notion of unity and union dues however introduced distortions that are only now being confronted through the federal government's decision to prepare a draft bill on the issue and in this way stimulate debate in the National Congress aimed at reforming Brazil's labor legislation. The reform aims at introducing, among other changes, the plurality of union representation and the end of union dues.

### **Article 23 - Rights of the Family**

278. The Brazilian Constitution considers the family the essential nucleus of society and extends special protections to that social unit. The Constitution expands on the concept of the family by defining the family structure not only on the basis of marriage, but on the basis of stable unions as well.

279. The rights and duties regarding conjugal relations are exercised equally by man and woman, pursuant to the Constitution (article 226, *paragraph 5*). Marriage may be dissolved by means of divorce.

280. On the issue of family planning, the couple's freedom to choose is ensured, while the State has the duty to provide the educational and scientific resources necessary to exercise that right, while official or private institutions are prohibited from employing any coercive measures in this area (article 226, *paragraph 7*).

281. The Brazilian normative system includes instruments to protect partners (man and woman) with respect to alimony support. Law no. 8971/94 assures the partner of a legally separated, divorced, or widowed single man who has lived with such man for more than five years or has borne children fathered by such man the right to alimony support until such time she forms a new union and demonstrates no further need for such support. This protection is also extended to male partners under the same conditions (article 1, *stand-alone paragraph*).

282. Law no. 9278/96 regulates the constitutional provision governing stable unions, defining in its first article such unions as those involving the long-term coexistence, of a public nature, between a man and a woman for the purpose of constituting a family. The Law also sets out the equality of rights and duties between the man and the woman living together. It regulates, furthermore, issues concerning the succession of assets (article 5).

283. As was already mentioned, the National Congress has been considering a draft bill aimed at recognizing the civil rights of homosexual unions for almost a decade. The absence of a specific Law on this question, however, has not precluded the judiciary from recognizing the civil rights of homosexual unions, in light of the fact that prevailing constitutional principles are committed to ending any and all forms of discrimination.

284. In accordance with the recommendations put forth by the UN Human Rights Committee (UN document CCPR/C/79/Add.66, of 24 July 1996), the Brazilian State has taken important steps in ensuring observance of civil rights within the family sphere.

### **Factors and Difficulties**

285. In considering the family, we must be aware of the dramatic situation of children who, by judicial order, have been removed from the guardianship of their biological parents by virtue of mistreatment involving neglect, beatings, or sexual abuse. These children are usually referred to protective institutions identified as "shelters." In a majority of cases, the children cannot be returned to their parents. Often, the family from which they came has ceased to exist; in other instances, the conditions leading to the mistreatment within the family setting persist. For this reason, the children continue in institutions. Even if the shelters were able to offer services of high quality - which, unfortunately, is not often the case - these children would still be deprived of one fundamental right: the right to live with their families, the right that can only flow from an intense and stable loving relationship.

286. Children in institutions are less likely to be adopted given that adoption in Brazil follows quite traditional patterns, whereby most people seek newborns, preferably white and healthy girls. The children in shelters, however, show a different profile: generally they are older, represent all colors and races, and have, invariably, sad life stories to recount. There are thousands of children living in these circumstances in Brazil, children who dream of having someone they can call "Mom" and "Dad."

287. Brazil has not yet been able to offer a response capable of fulfilling such a simple, but compelling, dream. The country lacks policies to promote the adoption of older children and must move beyond its traditional culture of adoption.

### **Article 24 - Rights of the Child**

288. In absolute conformity with the applicable international standards, in particular the Convention on the Rights of the Child and the 1988 Brazilian Constitution, the Child and Adolescent Statute introduced a new paradigm in Brazilian jurisprudence inspired on the idea that children and adolescents constitute true individuals with rights who are in a specific stage of human development.<sup>3</sup>

289. This new paradigm advances the doctrine of full protection to children and adolescents and enshrines its own logic and underlying principles based on assuring the prevalence and primacy of

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<sup>3</sup> See Flavia Piovesan and Wilson Ricardo Buqueti Pirotta, *Os Direitos Humanos das Crianças e dos Adoiescentes no Direito internacional e no Direito Interno*, in Flavia Piovesan, *Temas de Direitos Humanos*, 2<sup>a</sup> edição, São Paulo, ed Max Limonad, 2002, p.277-298.

the interests of children and adolescents. As individuals with rights in a specific stage of human development, children and adolescents are guaranteed the right to special protections. From the perspective of Human Rights, the 1988 Constitution and the Child and Adolescent Statute provide a full vision of the human rights of children and adolescents by considering the indivisibility of those rights, their reciprocal implementation, and the equivalent importance of all rights, whether civil, political, social, economic, or cultural.

290. . The preparation of the 1988 Federal Constitution in the context of the country's return to democratic rule led to a national debate with the active participation of civil society. As a consequence, social questions and the rights of the child and adolescent were addressed by the current Constitution in a manner unprecedented in the nation's history.

291. The priority conferred on children and adolescents runs through the entire 1988 Federal Constitution, although it is the inclusion of an article aimed specifically at ensuring the civil, economic, social, and cultural rights of children that enshrines the importance of this issue for Brazilian society as a whole.

292. Article 227 of the 1988 Brazilian Constitution establishes that "it is the duty of the family, society, and the State to assure children and adolescents, as an absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, liberty, and family and community life, in addition to safeguarding them from all forms of neglect, discrimination, exploitation, violence, cruelty, and oppression."

293. In light of the vulnerability of children and adolescents, special and distinct legal protections are afforded them that reflect the process of specifying the individual with rights, as it is known. That is, general, generic, and abstract protections are not sufficient; rather special protections must be adopted for particular groups that require specific legal guardianship. In the case of children and adolescents, that specific guardianship is justified on the basis of their constituting individuals with rights in a specific stage of human development in light of an "adult-centered" culture that essentially conceives the world from the perspective of adults, while "diminishing" children and adolescents and viewing them as inferior subjects.

294. As individuals with rights in a specific stage of human development, children and adolescents are guaranteed the right to special protections. The special rights recognized for children and adolescents stem from their particular status as human beings in development. Consequently, the State and society must assure all the opportunities and means through laws or other measures required to enable the full physical, mental, spiritual, and social development of children and adolescent, ensuring their freedom and dignity in the accomplishment of these objectives.

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295. Article 227, paragraph 3, of the 1988 Constitution mandates that the right to special protection shall encompass the following elements: I. a minimum age of fourteen years for admission to employment positions, pursuant to the provisions of article 7, subsection XXXIII; II. the right to social security and labor guarantees; III. the right of access by adolescent workers to education; IV. the full and formal guarantee of knowledge concerning the attribution of an infraction, equality in court proceedings, and a technical defense by a qualified professional, as set out in the specific legislation; V. adherence to the principles of brevity, exceptionality, and respect for the specific developmental stage of the individual upon the application of any detention measure; VI. the offering of fiscal incentives and subsidies by the government, by means of legal assistance and pursuant to the law, for those who assume guardianship of orphaned or abandoned children and adolescents; VII. prevention programs and specialized assistance for children and adolescents suffering from narcotic or other drug-related dependencies. Note that the previous repressive and correctional approach to adolescent offenders is transformed into an effort centered on providing special protections and direct involvement by the family, society, and the State as a means to reintegrate children and adolescents into society, as set out in the Child and Adolescent Statute.

296. In 1990, the Child and Adolescent Statute (ECA), Law no. 8069, of 13 July 1990, was promulgated, leading to the repeal of the Code of Minors and the adaptation of the infra-constitutional norms to the prevailing constitutional principles. The objective of the Statute is to regulate the legal status of individuals up to the age of eighteen years, with children defined as individuals up to the age of twelve years and adolescents defined as individuals between the ages of twelve and eighteen years.

297. In developing the Child and Adolescent Statute, the Minimum United Nations Rules on the Administration of Child and Juvenile Justice (Beijing Rules, 1985), the Minimum United Nations Rules on the protection of Youth Deprived of Freedom (1990), and the United Nations Guidelines on the Prevention of Juvenile Delinquency (Riyhad Guideline, 1990) were taken into consideration, in addition to the Convention on the Rights of the Child. The Statute was also based on provisions stemming from International Labor Organization Convention no. 138, of 1973, on the Minimum Age for Admission to Employment, which establishes a minimum age of sixteen years; the Hague Convention on the Protection of Children in Matters relative to International Adoption, ratified by Brazil, in 1999; and ILO Convention no. 182, of 1999, on the Worst Forms of Child Labor and Immediate Action Aimed at its Elimination, ratified by Brazil, in 2000.

298. The Statute guarantees children and adolescents under Brazilian jurisdiction all the rights set forth in the Convention on the Rights of the Child and emphasizes the democratic principle of participation by civil society in the development and execution of policies and actions aimed at promoting and safeguarding rights.

299. With respect to legal doctrine, the previous legislation and policies in force in Brazil, based as they were on the concept of the "minor in an irregular situation," pursuant to the Code of Minors, Law no. 6697, of 10 October 1979, and the National Policy on the Well-Being of Children (*Política*

*Nacional do Bem-Estar do Meno - PNBEM*), articulated through Law no. 4513, of 1964, the Child and Adolescent Statute secured the following advances:

- > replaced the generic term "minor" with "child and adolescent," considered "individuals in development," with distinct characteristics and needs;
- > conferred absolute priority on the rights of the child and adolescent;
- > shifted the focus of the interpretation of socially disadvantaged, abandoned, or delinquent minors to individuals in development subject to all applicable legal rights.
- > substituted the repressive and correctional focus by which children and adolescents in situations of abandonment and/or in conflict with the law constituted a "matter for law enforcement and the justice system" with a concept based on special protections involving the joint responsibility of families, society, and the State.

300. One of the Statute's most innovative features is its applicability to all individuals under the age of eighteen years, in contrast to the previous Code of Minors, which applied only to those in an irregular situation. This created a legal dichotomy with children and adolescents considered to be in regular situations by virtue of the fact that they lived with their families or the provisions of the applicable legislation and the legal and doctrinal interpretation of such legislation covering children not living with their parents. The term "minor," then, came to be associated with irregular situations and, subsequently, discrimination, resulting, ultimately, in its elimination from the current legislation.

301. Under the Brazilian legal system, children and adolescents enjoy all the fundamental rights guaranteed to the human person, whether those recognized by domestic law or those prescribed in the international treaties to which Brazil is a party. In addition, they enjoy the full protections ensured by the Statute.

302. The characterization of the rights of children and adolescents as human rights underscores the inalienability of those rights and commits the State to respect, defend, and promote such rights both on the domestic front and in the international sphere. Moreover, absolute priority must be conferred on those rights, as well as the fulfillment of the needs of children and adolescents.

303. In light of the fact that the most recent international human rights instruments underscore the indivisibility of civil, political, economic, cultural, and social rights, the rights of children and adolescents as a whole must be fully guaranteed. This suggests that the violation of any right constitutes, in one form or another, a violation of all human rights given their interrelationship and that the guarantee of one right presupposes the guarantee of all rights.

304. Consistent with this guideline, the Statute endeavors to address the rights of children and adolescents in an interrelated manner by referring to other rights that assure protection for a particular right and linking individual and social rights under a single title. The rights to life, health,

liberty, respect, dignity, family and community life, education, culture, sports, leisure, professional training, and employment protections are, in this way, prescribed. Again, there is absolute harmony between the areas focused on by the Statute and the Convention on the Rights of the Child, which endorses, similarly, the indivisibility of the human rights of children, their reciprocal implementation, and the equivalent importance of all rights.

305. One of the most important innovations of the Child and Adolescent Statute is the judicial protection assured to individual, diffuse, and collective interests (articles 208 to 224) of children and adolescents. The Statute provides for liability and civil actions in cases involving the violation of these rights. The Statute's fundamental focus is on civil society's direct democratic participation in the coordination and control of the Public Policies within the Councils on Rights.

### **Factors and Difficulties**

306. Income distribution in Brazil constitutes one of the country's most serious problems. Because of the extreme inequality of wealth distribution, the adequate education of children stands as a difficult challenge. A high percentage of Brazilian children are born and raised in conditions of poverty and exclusion. At the same time, we must also highlight other factors that fuel violence against children and adolescents in Brazil, such as the reduced role schools play in combating violence; insufficient policing on the outskirts of urban centers; inadequate training and preparation of police officers; and the poor quality of the institutions that house adolescent violators.

307. Although the Brazilian legal system prohibits any and all forms of violence and mandates a series of safeguards and mechanisms aimed at ensuring the rights of the child and the adolescent, the fact is that some are the victims of grave violations. To start, within the family setting children and adolescents are all too often the victims of aggression, beatings, and disrespect. The habit of subjecting children to physical punishment is still prevalent among Brazilian families, including in middle-class and upper-class families. Children and adolescents are victimized on the streets, most notably those who live on the streets as a result of extreme poverty and/or domestic violence. Children are also the target of violations in many of the shelters built to protect them; similarly, many juvenile offenders are subject to humiliation and aggression in the juvenile detention centers where they should, pursuant to the Child and Adolescent Statute, receive socio-educational assistance.

### **Government Actions**

308. The federal government has undertaken efforts, in partnership with the other levels of government and civil society, to strengthen the national, state, and municipal councils on the rights of children and adolescents and protective councils, which are considered the foundation of the Child and Adolescent Guaranteed Rights System (*Sistema de Garantia dos Direitos da Criança e do Adolescente*). Through the Special Secretariat for Human Rights of the Presidency of the Republic (SEDH), the federal government established a series of partnerships with state and private companies to develop actions and apply financial resources toward the establishment and



strengthening of those councils. The resources are applied directly by the companies in consultation with SEDH and the National Council for the Rights of the Child and Adolescent (CONANDA) or by means of donations to national, state, and municipal funds for children and adolescents, which are managed by the respective councils.

309. Recently, the Pró-conselho Brasil program was implemented, in partnership with an institute linked to a private company. The objective of the program is to conduct a broad study of the councils in the country, as well as to establish new councils where none exist or to strengthen existing ones through training of council members and the promotion of donations to child and adolescent funds. The United Nations Fund for Children is a strategic partner in this effort.

**Article 25 - The right to participate in the public sector, to vote and be elected, and to access public positions in the country**

310. The Federative Republic of Brazil is a Legal Democratic State formed by the indissoluble union of the states and municipalities and the Federal District. Its guiding principles are sovereignty, the dignity of the human person, the values of work and free enterprise, as well as political pluralism. One of the underlying presumptions of the Brazilian Legal Democratic State is popular sovereignty exercised through universal suffrage and direct, secret, and equal voting by all, as well as plebiscites, referendums, and popular initiatives.

311. The Brazilian Federal Constitution proclaims, additionally, mandatory voter registration and voting for individuals over the age of eighteen and voluntary voter registration and voting for the illiterate and persons over the age of seventy and minors over the age of sixteen and under the age of eighteen (article 14, paragraph 1, subsections I and II).

312. Foreigners are prohibited from registering to vote and from voting, as are conscripts during the period of their mandatory service. To qualify as a candidate to elective office, specific constitutional requirements must be met, specifically the individual must: have Brazilian nationality, enjoy full exercise of his or her political rights, be registered, have his or her residence in the pertinent electoral district, and have a party affiliation. Another condition involves eligibility based on mandatory age limits, namely: thirty-five for President, Vice President, and Senator of the Republic; thirty for State Governor and Vice Governor; twenty-one for Federal Representative, State or District Representative, Mayor, and Vice Mayor and justice of the peace; and eighteen for Councilman. Those not registered to vote and the illiterate are ineligible to hold office.

313. The formation, merger, amalgamation, and extinction of political parties is free, with due regard for national sovereignty, the democratic regime, the plurality of political parties, the fundamental rights of the human person, while observing the precepts of national character, the prohibition on the receipt of financial resources from foreign entities or governments, and the rendering of accounts related to campaign finances to the electoral courts.

314. Political parties are assured the independence to determine their internal structures and functioning, the specific statutes of which must be set forth in the norms regarding party loyalty and discipline. Political parties may not employ paramilitary organizations, are ensured access to resources of the party fund, as well as free access to the means of mass communication, pursuant to the applicable electoral legislation.

315. In accordance with Constitutional amendment no. 16, of 4 June 1997, reelection is permitted once for a single equal term for the President of the Republic, state governors, including the Federal District, and mayors, as well as those who succeed or substitute the aforementioned during the course of their terms of office.

316. As provided for by the Constitution (article 14, paragraph 8, subsections I and II), military personnel registered to vote may be eligible for election.

317. The disenfranchisement of political rights is forbidden. The repeal or suspension of such rights is only permitted in cases of the cancellation of an individual's naturalization following a final judgment not subject to appeal, absolute civil incapacity, criminal conviction following a final judgment not subject to appeal, in which case the repeal or suspension herein considered shall extend for the time the legal effects of such conviction apply, refusal to fulfill an obligation or provide an alternative service, and administrative misconduct.

318. The Brazilian electoral legal system is charged with organizing the country's electoral districting; voter registration; adopting or proposing measures to ensure elections are carried out in a timely fashion and as prescribed by law; establishing the dates for elections (when not so determined by the Constitution); deciding on challenges to findings of ineligibility or incompatibility; granting habeas corpus and issuing injunctions in pertinent cases involving electoral matters; vote counts and official results; prosecuting and judging cases of electoral and common criminal offenses related to the electoral process; and decreeing the loss of a legislative office in constitutionally established cases.

319. Article 118 of the Federal Constitution sets out the structure of the electoral court system, composed, specifically, of the Superior Electoral Tribunal, the Regional Electoral Tribunals, the electoral Courts, and the Electoral Councils. A Complementary Law prescribes the organization and competence of the tribunals, the state courts, and the electoral councils.

320. The government is guided by the principles of legality, impersonality, morality, and publicity (article 37, heading). All Brazilians may, under equal conditions, hold public posts, whether civilian or military, with admission to public service governed by a public exam and the presentation of professional and academic credentials, except in the case of commissioned offices, appointments, and waivers.

321. Public-sector employees have the right to free union association. They enjoy a distinct legal regime under which they are subject to a mandatory retirement age of 70 and are assured income proportional to their time of service.

322. The right to participate in public affairs is not restricted to the right to vote, win elected office, or gain access to public positions. As mentioned, the constitutional system enshrines direct democratic mechanisms such as referendums, plebiscites, and public consultations. Other initiatives have been consolidated at the federal, state, and municipal levels. Some municipalities, beginning with Porto Alegre, have promoted popular participation through internationally recognized mechanisms of direct democracy such as the "participative budget", which enables citizens to request the establishment of specific priorities in the light of scarce resources. The executive branch's initiative with regard to budgetary legislation submitted to the legislative branch is subject to public consultations held at the various geographic levels of the municipality. Another important step was taken in 2003 with the development of the Multi-Annual Plan (*Piano Plurianual - PPA*) of joint goals, challenges, and actions considered of priority to the federal government in the execution of its four-year development models. In spite of the difficulties in guaranteeing direct democratic mechanisms at the national level, the government, in cooperation with UNESCO and the Caixa Econômica Federal, has held public hearings in the 26 states and the Federal District to promote society's participation in the public administration's efforts during the 2004-2007 period.

### **Factors and Difficulties**

323. The promulgation of the 1988 Federal Constitution triggered fundamental changes in Brazil by providing the basic conditions for the development of a democratic regime.

324. In the field of political rights, the changes eliminated the inequalities previously present in the rules governing the right to vote. The National Congress is today considering adoption of a political reform initiative, in what marks a controversial debate involving issues such as "party loyalty," "public financing for electoral campaigns," and the "adoption of closed lists of political candidates."

### **Article 26 - Equality of Rights before the Law and the right to protection from the law without discrimination**

325. The Brazilian Federal Constitution establishes that all persons are equal before the law, without distinction of any kind (art. 5, heading). To this formal equality, the Constitution adds a series of provisions to protect material equality, such as article 5, subsection I, which prescribes that men and women have the same rights and obligations.

326. A fundamental objective of the Federative Republic of Brazil is the eradication of poverty and social exclusion and the reduction of social and regional inequalities, as well as the promotion of the general well-being, without prejudice based on race, sex, color, age or any other form of discrimination. Racism constitutes a criminal act, without statutory limitations and subject to

confinement (art. 5, subsection XLII). The principle of legality also represents an underlying structural element of the Brazilian Constitution, insofar as it ensures that no individual may be forced to act or not to act other than as prescribed by law. The principle of strict legality applies to the State, meaning that it may only carry out those acts expressly authorized by law. In addition, the Brazilian State's conduct of international relations is guided, among other things, by the principle of the repudiation of terrorism and racism (article 4, subsection VIII).

327. The constitutional provisions on employment relations include clauses consistent with the adherence to equality between urban and rural workers, as well as a prohibition on differences in salary scales, the exercise of functions, and hiring criteria based on sex, age, color, or civil status. The prohibition on any form of discrimination with regard to salaries and hiring criteria for disabled workers is expressly set forth.

328. In light of prevailing social realities, legislators concerned themselves with protecting the employment market for women by determining a series of special incentives to this end.

329. The infra-constitutional legislation prescribes adequate penalties for discriminatory practices. Law no. 7716, of 5 January 1989, specifies the crimes resulting from prejudice based on race and color and establishes the corresponding penalties. Law no. 9459/97 improves upon the legislation by also prohibiting acts stemming from discrimination based on ethnicity, religion, or national origin. The law has also strengthened the Brazilian Penal Code by adding a provision to article 140 (libel) mandating substantially more severe penalties for the crime of libel consisting of references to color, race, ethnicity, religion, or origin (item 27 of UN document CCPR/C/79/Add.66, of 24 July 1996).

330. In the effort to ensure full protections to citizens, Law 8081/90 establishes the applicable crimes and penalties in cases of discriminatory acts or prejudice based on race, color, religion, ethnicity, or national origin in cases involving the country's communication mediums or publications of any type.

331. Brazil ratified the International Convention on the Elimination of all forms of Racial Discrimination on March 27, 1968. The Convention entered into force within the territorial boundaries of Brazil on January 4, 1969. More recently, Brazil ratified article 14 of the same Convention.

332. It is also worth mentioning Law no. 8842, of 4 January 1994, which enhanced the Brazilian normative system by providing for a National Policy on the Elderly (*Política Nacional do Idoso*) and the creation of a National Council on the Elderly (*Conselho Nacional do Idoso*). This effort peaked with the approval of the Elderly Statute, in 2003, Law no. 10741, establishing the conditions to promote the independence of the elderly aimed at ensuring their effective integration and participation in society.

### **Factors and Difficulties**

333. Note that in spite of the vast body of legislation in Brazil ensuring respect for the principles of equality and legality, discriminatory and prejudiced practices targeting primarily the black community are still prevalent. Black individuals in Brazil (classified on the basis of those who declare themselves to be black) constitute the second largest black nation in the world, second only to Nigeria, with a total population of 76.4 million persons, or 45% of the country's inhabitants, according to data from the 2000 Census. The black population is spread throughout the federation, although its highest concentrations, proportionally, are found in specific states: in 18 of the 27 states in Brazil, the black population constitutes a majority of the total population.

334. In comparing average income levels between blacks and whites, we find that, according to estimates from the PNAD of 2001, an ordinary white individual in Brazil comes from a household with an average monthly per capita income of R\$482, which, although low, is more than double the average for a black individual, whose monthly per capita income reaches only R\$205. This difference, moreover, remained stable throughout the 1995-2001 period. The result is that, as articulated by the Institute for Economic and Social Research (*Instituto de Pesquisas Econômicas e Sociais- IPEA*), skin color constitutes an effective predictor of the probability that an individual lives in poverty. Indeed, of every ten people living in poverty, nearly seven are black. Considered from another standpoint, the data reveals that the proportion of people living in poverty remained stable in the 1995-2001 period. However, an analysis of the racial distribution of poverty indicates that poverty is much higher among the black population. The probability that a white person lives in poverty is on the order of 22%, while for a black person the probability is more than double that figure, 48%.

335. The rate of participation in the employment market by whites and black is similar. However, the rate of unemployment points to sharp variations when examined through the prism of skin color: in 2001, there was a 6% probability that an economically active white individual was, at a given time, searching for employment without success, while for a black individual the probability was 7%. On the other hand, while 41% of whites hold jobs in the formal sector (that is, they were duly contracted with employment documents or hold positions in the public sector), only 33% of blacks enjoyed this same status. A total of 12% of whites are employed in jobs without employment documents at the same time that 17% of blacks work without the benefit of employment documents.

336. With regard to education, the black population is at a disadvantage in relation to the white population. For example, the difference in the number of years of education has remained more or less stable, on the order of two years over time. In other words, in the 1990s blacks were unable to complete 70% of the average years of schooling completed by whites in the decade. Similarly, despite the reduction in illiteracy rates among blacks and whites, a constant percentage difference of almost 10% persists through time.

337. An analysis of net schooling, defined as the ratio of school-aged children enrolled in the appropriate educational level corresponding to their age reveals that an absolute majority of Brazilian children are today in school. On the basis of this finding, we can conclude that universal

access to primary education has had a positive impact in securing greater racial equality: there has been a clear reduction in the gap in this area between blacks and whites, from 12 to 3 percentage points (see table 5). However, this progress is not evident at the secondary educational level: the divide has actually increased from 18 to 26 percentage points, even though the secondary school enrollment rate of the black population between the ages of 15 and 17 has almost tripled.

338. One could conclude that these racial differences arise from past discrimination: black students come from families in which the parents have lower educational levels than their white counterparts, a fact that influences performance in school. Thus, the continuing gap would be the product of differences rooted in historical circumstance. To test this hypothesis, Soares, *et al.* (2002), developed a model, based on tracking those born in the 1900 to 1965 period, that simulated the educational levels blacks would reach assuming their parents had comparable educational levels to whites. The results showed that a major part of the race-based differences could be traced to educational discrimination, in fact, according to the model, historic inequalities within the educational sphere represent only 37% of the educational gap between blacks and whites.

339. With regard to discriminatory acts and despite the legislation in force, it is important to mention that cases of libel based on race are common in the Brazilian legal system. Because there is a certain resistance in Brazil to the application of Law no. 7716/89, which outlaws racially discriminatory conduct in consumer, labor, and neighborhood relations, cases of racial libel today make up the majority of the cases of racism in the nation's justice system. This reduced resistance to the crime of libel based on racism is due, in all probability, to two factors. First, the sentences prescribed for this crime are more lenient than those contained in Law no. 7716/89 and are, moreover, subject to bail and appeal. Second, while libel is a classic element of penal law with which legal officials are accustomed, the crimes of racism constitute a relatively recent creation of Brazilian law.

### **Government Actions**

340. First, mention should be made to Decrees no. 4885 and 4886, of 20 November 2003. The first established the National Council on the Promotion of Racial Equality (*Conselho Nacional de Promoção da Igualdade Racial - CNPIR*), a consultative body within the Special Secretariat for Policies aimed at Promoting Racial Equality (*Secretaria Especial de Políticas de Promoção da Igualdade Racial*). The Council aims at proposing national policies to promote racial equality with an emphasis on the black population and other ethnic groups of the Brazilian population in an effort to combat racism, prejudice, and racial discrimination and reduce racially-based disparities in the economic and financial, social, political, and cultural spheres, while extending society's control over such policies. Decree no. 4886/2003 instituted the National Policy for the Promotion of Racial Equality (*Política Nacional de Promoção da Igualdade Racial - PNPIR*) with the purpose of reducing racially-based inequalities in Brazil, with particular attention to the black population.

341. In August 2003, the Special Secretariats of the Council on Economic and Social Development, Women's Policies, the Promotion of Racial Equality, and Human Rights, the Ministry of Labor and Employment, the Ministry of Social Assistance, the Ministry of Culture, the Bahia state government, the municipality of Salvador, the Women's Movement, the Black Movement, the Public labor Ministry, and the State University of Bahia signed a Protocol of Intent to develop an Action Plan aimed at addressing gender and race questions and confronting discrimination, particularly in the workplace and the cultural sphere.

342. The Ministry of Labor created the National Coordinating Body for the Promotion of Equal Opportunity and the Elimination of Discrimination in the Workplace (*Coordenadoria Nacional de Promoção da Igualdade de Oportunidades e Eliminação da Discriminação no Trabalho - CORDIGUALDADE*) on October 28, 2002, to supervise and coordinate the actions intended to end the various forms of discrimination practiced in the workplace.

343. The government also published Law no. 10639, of 9 January 2003, which establishes the guidelines and bases for the nation's educational system and requires inclusion of "Afro-Brazilian History and Culture" as an official subject in the school system's curriculum.

344. Among the many proposals offered by the government, mention should be made to the affirmative action measures in both the public and private spheres, including the corresponding base studies, incentives, and public awareness efforts. As an example of this, we should highlight the affirmative action programs adopted in the following state and federal universities, respectively: Mato Grosso do Sul, Rio de Janeiro, Bahia, Brasilia and Alagoas.

345. Another important measure adopted by the PNDH consists in promoting diverse ethnic representation in institutional publicity campaigns contracted by State agencies and enterprises. The current government is preparing an initiative in the area of affirmative actions to offer comparative advantages to the black, indigenous, and poor populations particularly with regard to their admission to institutions of higher education. The recently launched "University for AH" Program (*Programa "Universidade para Todos"*) of the Ministry of Education initiated a sweeping university reform in Brazil guided by a commitment to social inclusion.

346. At the same time, the government has developed specific policies to recognize the rights of the descendants of the founding members of communities of former runaway slaves (*quilombolas*). To this end, Decree no. 4887, of 20 November 2003, regulates the procedures for identifying, surveying, delimiting, demarcating, and titling the land occupied by the remaining communities, as provided for in article 68 of the Transitional Constitutional Provisions.

347. In 1995, the Brazilian State took an important step through the establishment of an Inter-Ministerial Working Group to promote the black population through the creation of a national program to combat sickle cell anemia, a genetic illness that predominantly affect members of the black race; the incorporation of color as a standard item in certificates of death and live births; the

inclusion of race/color as a standard item in school censuses and all statistical studies on education; proposed programming for the educational TV service (*TV-Escola*) aimed at offering an alternative view of Brazilian history based on an examination of the contribution of Afro-Brazilians to the country's social formation; a nationwide review of textbooks distributed to primary education students, resulting in the exclusion of those textbooks expounding prejudice or containing formal errors, as well as discriminatory or stereotypical references based on race, color, or sex; monitoring with the Ministry of Education of the development of "National Curricular Parameters" ("*Parâmetros Curriculares Nacionais*"), among others.

348. Additionally, the federal government has undertaken efforts to combat all forms of discrimination against persons with disabilities. It has improved the existing legislation, verified and referred complaints to the competent bodies, conducted actions to protect and promote the rights of this segment of society, estimated to represent 14.5% of the nation's population, as well as endeavored to develop policies that facilitate their insertion in the country's development process.

349. In this regard, we can point to the effective fulfillment of laws that assure places for persons with disabilities in public exams as well as the enforcement of the quotas established for the employment of the members of this population in the private sector; the development of the "School Inclusion" (*Inclusão Escolar*) program, which has trained teachers in the regular school system on the best methods for integrating persons with disabilities into the classroom; the implementation of the National Disabled Information System (*Sistema Nacional de Informações sobre Deficiência - SICORDE*), which is currently striving to build a National Cooperation Network (*Rede Nacional de Cooperação*) and has been decentralized in 18 states of the Union through partnerships with public institutions and non-governmental organizations. The objective of the System is to democratize the access to information on existing legislation, technological advances, available services, as well as to encourage the exchange of experiences regarding the realities of individuals with disabilities; incentives to create and strengthen councils on the rights of individuals with disabilities in the states and municipalities through an effort to secure the effective participation of organized society and the public agencies in the defense and promotion of the rights of these individuals.

350. The federal government has also endeavored to implement the National *Accessibility Program (Programa Nacional de Acessibilidade)* by regulating the existing legislation; forming partnerships with the municipalities with the purpose of training local administrators to fulfill the provisions established in law intended to assure, among other things, the suppression of all types of barriers (architectural, environmental, transportation, and communication and information) that prevent the full exercise of citizenship by individuals with disabilities or impaired mobility; formalize the various cooperation agreements with public and private entities aimed at intensifying the implementation of actions designed to guarantee unrestricted movement to all citizens.

#### **Article 27 - The rights of ethnic, religious, or linguistic minorities**



351. The 1988 Federal Constitution enshrines provisions aimed at protecting the rights of indigenous peoples. The social organization, customs, languages, beliefs, and traditions of indigenous communities are recognized, as well as their original rights over the lands they have traditionally occupied (article 231). The lands occupied by indigenous communities are intended for permanent possession of such communities, which shall also enjoy exclusive use of the riches of the soil and lakes located therein. The lands are inalienable and unavailable and the rights thereto imprescriptible. The removal of Indians from their lands may only be executed ad *referendum* by the National Congress in cases of catastrophe or epidemic that present an immediate threat to the affected population or in the interest of national sovereignty (article 231, paragraph 5). Upon termination of the risk, the affected indigenous peoples are assured immediate return to their lands.

352. Indigenous peoples and the organizations that represent them are entitled to file legal actions in defense of their rights (article 232). The Federal Constitution recognizes indigenous languages and assures to the indigenous communities the right to use their native languages and their own learning processes in primary education. (Articles 210, 215 e 231)

353. According to the Federation of Arab-Palestinian Entities (AMBR) Brazil's Arabic and Jewish communities are incorporated in the mainstream of society with full civic, economic and social participation and without any systematic distinction based on ethnic, religious or racial factors that could be characterized as discrimination or racism, save for exceptional cases. Gypsies - estimated in 600 to 800 thousand in the country - are organized in associations and have pronounced themselves in favor of defending their identity and their culture.

354. All racial and ethnic groups in Brazil are represented in the National Council for the Promotion of Racial Equality that has taken office in 2004 bringing new references for racial equality promotion policies.

### **Factors and Difficulties**

355. The indigenous community in Brazil is made up of approximately 410,000 Indians distributed among 220 different indigenous groups with ancestral links to the national territory. Some of these communities preserve a self-sufficient culture and have minimal contact with the outside world. Others, however, have established intense relations with the non-indigenous world through agricultural activities and other forms of production.

356. The current Administration established as its main goal to conclude the demarcation of all indigenous lands in Brazil by the year 2006. There are around 600 indigenous lands of which 450 have *been* demarcated and fully guaranteed to indigenous peoples. The Brazilian government estimates that about 1,1 million square kilometers or 12% of the Brazilian territory will be formed of indigenous lands at the conclusion of this process. The largest portions of indigenous lands are located in the Brazilian Amazon but indigenous peoples live in all regions of Brazil.

357. In recent years, indigenous peoples have expanded their participation in Brazil's political life by securing broader recognition of their rights. President Luiz Inácio Lula da Silva has recently promulgated the 169 1LO Convention on the Rights of Indigenous Peoples, an important step towards a broader recognition of the human rights of indigenous peoples and the formulation of public policies. The Brazilian government also intends to elaborate a new Indigenous National Law ("Estatuto do Índio") to replace the present one that was created more than 30 years ago.

### **Government Actions**

358. Following implementation of the PNDH, a number of measures have been taken at the federal level resulting in significant advances for the indigenous population, such as: the integration of the actions adopted by FUNAI and the Department of Transmittable Infectious Diseases of the Ministry of Health aimed at developing joint programs to prevent these diseases within indigenous populations

359. Articles 78 and 79 of the Law of National Educational Directives and Guidelines, of 1996, mandate "(...) integrated learning and research programs to offer bilingual and intercultural education (...)" with the consent of indigenous communities, educational materials, and specific programs aimed at providing assistance to the respective communities. On November 10, 1999, CNE/CEB Resolution 003 establishing the National directives on the operation of indigenous schools and other measures was approved. Included among the advances in the legislation aimed at meeting the specific needs of indigenous communities is the objective of training and qualifying indigenous teachers to enable them to perform a vital role in their communities. This policy recognizes differences as a value and serves to oppose past homogenizing efforts. There are over 220 indigenous communities in Brazil that speak 170 distinct languages. Currently, 16 secondary education and one specific higher education indigenous teacher training courses are in place in the country. These will prepare 200 indigenous teachers trained in four areas of knowledge nationwide.

360. The rate of population growth among the indigenous population is on the order of 2.8% per year, a direct result of the advances made in securing territorial gains for these communities efforts aimed at environmental recovery and the preservation of indigenous cultures.