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COMMITTEE ON ECONOMIC, SOCIAL  
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**IMPLEMENTATION OF THE INTERNATIONAL COVENANT  
ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**Consideration of reports submitted by States parties in accordance  
with article 16 of the International Covenant on Economic,  
Social and Cultural Rights**

**Replies by the Government of Brazil to the list of issues (E/C.12/BRA/Q/2)  
to be taken up in connection with the consideration of the second periodic  
report of Brazil (E/C.12/BRA/2)**

**BRAZIL\***

[6 March 2009]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. GENERAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED .....	1 - 45	6
Question 1 .....	1 - 13	6
Question 2 .....	14 - 28	9
Question 3 .....	29 - 39	13
Question 4 .....	40 - 45	16
II. ISSUES RELATED TO THE GENERAL PROVISIONS OF THE COVENANT (arts. 1-5) .....	46 - 83	18
A. Article 2 - Non-discrimination .....	46 - 74	18
Question 5 .....	46 - 52	18
Question 6 .....	53 - 61	22
Question 7 .....	62 - 69	25
Question 8 .....	70 - 74	27
B. Article 3 - Equal rights of men and women .....	75 - 83	29
Question 9 .....	75 - 83	29
III. ISSUES RELATED TO THE SPECIFIC PROVISIONS OF THE COVENANT (arts. 6-15) .....	84 - 356	31
A. Article 6. The right to work .....	84 - 116	31
Question 10 .....	84 - 97	31
Question 11 .....	98 - 104	34
Question 12 .....	105 - 116	37

**CONTENTS (*continued*)**

	<i>Paragraphs</i>	<i>Page</i>
B. Article 7. The right to just and favourable conditions of work .....	117 - 142	40
Question 13 .....	117 - 125	40
Question 14 .....	126 - 135	43
Question 15 .....	136 - 142	45
C. Article 8. Trade union rights .....	143 - 167	46
Question 16 .....	143 - 160	46
Question 17 .....	161 - 167	51
D. Article 9. The right to social security .....	168 - 191	53
Question 18 .....	168 - 183	53
Question 19 .....	184 - 191	57
E. Article 10. Protection of the family, mothers and children .....	192 - 214	59
Question 20 .....	192 - 199	59
Question 21 .....	200 - 205	61
Question 22 .....	206 - 214	62
F. Article 11. The right to an adequate standard of living .....	215 - 274	64
Question 23 .....	215 - 230	64
Question 24 .....	231 - 242	68
Question 25 .....	243 - 249	71
Question 26 .....	250 - 261	72
Question 27 .....	262 - 274	74

**CONTENTS (*continued*)**

	<i>Paragraphs</i>	<i>Page</i>
G. Article 12. The right to the highest attainable standard of physical and mental health .....	275 - 322	77
Question 28.....	275 - 282	77
Question 29 .....	283 - 296	78
Question 30 .....	297 - 310	83
Question 31 .....	311 - 322	86
H. Articles 13 and 14. The right to education .....	323 - 340	90
Question 32 .....	323 - 336	90
Question 33 .....	337 - 340	93
I. Article 15. Cultural rights .....	341 - 356	94
Question 34 .....	341 - 348	94
Question 35 .....	349 - 356	96

## **List of tables, charts, and figures**

### **Tables**

Table 1 - Indigenous Literacy Rates

Table 2 - Cases taken up by the Federal Public Defender's Office

Table 3 - Employability of handicapped persons in Brazil-2007

Table 4 - Brazil - Number of workers with disability as at 12/31/2007 per federation unit and contractual hours

Table 5 - Percentage of participation of young people, women, Blacks, Darks, and Indians in PNQ qualification courses in comparison with their percentage share in the Economically Active Population-EAP

Table 6 - Overview of inspection operations to eradicate slave work SIT/SRTE 1995-2008

Table 7 - Number of strikes by selected types Brazil - 2003-2007

Table 8 - Estimated number of abortions in Brazil and in major regions - 2002-2006

Table 9 - Distribution of abortions for medical and legal reasons indicated in ICD's Chapter XV and the averages for the period under consideration, recorded by SIH/SUS pertaining to women aged 10-49. Brazil. 2002-2006

### **Charts**

Chart 1 - Young Afro-descendant victims of homicides

Chart 2 - Overrepresentation of young Afro-descendants who are victims of homicides

Chart 3 - Reduction of Poverty and Extreme Poverty in Brazil 1997-2007 (in percentage of the population)

Chart 4 - Financial evolution of federal resources spent on Social Welfare

### **Figures**

Figure 1 - BRAZIL\**Overview of Social Security Coverage of the Occupied Population (aged 16-59 years) - 2007*

Figure 2 - Number of abortion-related hospitalizations under SUS (in thousands) per major regions and for the country, 2002-2006

Figure 3 - Map showing rates of abortion-related hospitalizations (in thousands) under SUS, of women aged 10-49 per region in 2006

## **I. GENERAL FRAMEWORK UNDER WHICH THE AGREEMENT IS IMPLEMENTED**

***Question 1. Please provide statistical data on the socio-economic conditions of indigenous and traditional populations covering, in particular, the incidence of poverty, life expectancy, literacy rates and access to employment. (E/C.12/BRA/2, paras. 15, 19, 20 and 23)***

1. Estimates on the Brazilian indigenous population range from 500,000 to 720,000 people. Approximately 50 per cent of the groups are comprised by less than 500 individuals, and only three peoples comprise more than 20,000 members. Consistently with their geographical distribution characterized by isolation and dispersion, their linguistic situation is highly diversified. These facts pose obstacles to the reach of the Federal Government's social policies, such as those on food security, education and maternal and child health care. Since the initiatives are quite scattered, data on the impact of programs and actions are difficult to obtain. Even so, the Brazilian government has implemented initiatives to improve the living conditions of the indigenous populations through actions in the most different areas.

2. The current Brazilian Constitution entered into force in October 1988, after a long cycle of dictatorial rule. The new Charter recognized for the first time the rights of the indigenous populations, reversing the violative practices that pervaded the European colonizing process that began in 1500. It is estimated that approximately five million natives comprised the autochthonous population when colonization started; this population had been reduced to only about 250,000 by the time the new Constitution was enacted, which triggered a clear revitalization - numerical in first place - of this significant segment of the Brazilian population.

3. With regard to life expectancy, we must admit that there are no statistical data that reflect the life expectancy of about 270 peoples individually or that allow even an average estimate regarding the entire population. The welfare of each indigenous population varies greatly according to their specific situation in respect with the homologation of their lands, relations with the surrounding society, the community's socioeconomic structure, and its access to the health and educational systems. All that will necessarily have an impact on life expectancy.

4. Hence, the situation of the communities living in the Xingu Park, where they have sufficient lands to provide for their needs and enjoy relative security and access to public policies, is quite different from the situation of the Caiová and Nandeva Guaranis of Mato Grosso do Sul or of the Ava-Canoeiros of Goiás, for example. The Guaranis, a population of tens of thousands of individuals, face scarcity of land, acute food insecurity, impoverishment, and manifestations of hostility from the surrounding populations, among other problems. The Ava-Canoeiros, which amounted to thousands of individuals, are today reduced to a few individuals facing real risk of extinction.

5. It can be said that, in general, there is no life expectancy indicator because there is no reliable information on mortality. The Brazilian Institute of Geography and Statistics - IBGE performs researches on the self-declared indigenous population, which unequivocally shows a demographic recovery. This positive datum should not obscure the fact that some peoples do not follow such demographic dynamics.

6. With respect to health, the most serious problems faced by the indigenous populations are related to improper sanitation in their dwellings and particularly to the unavailability of potable water. Despite the great difficulties posed by these communities' pattern of territorial occupation, the State has been able to improve some indicators. In the last eight years, infant mortality dropped from 140 to 46 deaths per 1,000 births. This figure is still very high and requires a great effort from the Federal Government to provide maternal and child health care. About 25,000 children now enjoy daily follow-up in 24 Brazilian States. The cases of tuberculosis have also dropped 70 per cent in the last eight years. The 2009 Federal Budget allocates R\$340 million to indigenous health.

7. The indigenous health situation is though still precarious. In 2008, there were repeated reports on irregularities and negligence involving FUNASA, the government agency responsible for indigenous health, what prompted immediate action by the Federal Government. Additionally, these communities' cultural characteristics and spatial distribution hamper access to public policies. Nevertheless, the government recognizes the need to address these problems under a specific social agenda. In 2007 the Federal Government introduced a program that will benefit 1,239 municipalities with a population of up to 50,000 individuals, including populations remaining from *Quilombos*, indigenous settlements with higher infant mortality, malaria, and Chagas disease indicators. The Federal Government will spend R\$505.7 million by 2010 on three programs: Protection of Indigenous Lands, Promotion of Indigenous populations, and Promotion of Indigenous populations' Quality of Life. The initiatives encompass demarcation of lands, resettlement of the original occupants of indigenous lands, recovery of degraded areas, and creation of citizenship territories, beginning with the areas of Alto Rio Negro, Javari Valley, and Raposa Serra do Sol.

8. With regard to education, the Ministry of Education and the state and municipal education departments are in charge of coordinating the national policy on indigenous education in accordance with the guidelines set by the Federal Constitution, the Law on National Education Guidelines and Bases, and the National Educational Plan. Data from the 2006 School Census (INEP/MEC) show that enrolment of indigenous children in basic education increased 48.7 per cent between 2002 and 2006, from 117,171 to 174,255 students. This growth rate in enrolment of nearly 10 per cent a year is the highest among all population segments in the country. Enrolment can be categorised as follows: 10.9 per cent in preschool; 60.5 per cent in elementary school, stage I; 16.5 per cent in elementary school, stage II; 4.5 per cent in high school; and 7.6 per cent in youth and adult education. These figures show that, despite the progress achieved in recent years, the provision of education for indigenous communities is far from comprehensive coverage at the national level.

9. It is worth highlighting the importance of progressiveness in the realization of rights, indicated by the fact that between 2003 and 2006 the increase in the provision of elementary education in the second stage (5<sup>th</sup> to 8<sup>th</sup> grade) was much greater than in the first stage (1<sup>st</sup> to 4<sup>th</sup> grades) - 27.2 per cent in the first stage and 78.1 per cent in the second. The ratio, which was 5.13 in 2002, dropped to 3.67. The number of indigenous schools rose to 716 new schools between 2002 and 2006, from a total of 1,706 to 2,422, including both state and municipal schools.

10. In 2006, the state and municipal education departments received R\$18 million to build, remodel, or expand indigenous schools so as to meet the demand. The quality of indigenous education is also in the government's agenda, as illustrated by the fact that in the last ten years 9,100 indigenous teachers have been trained, covering nearly all the states. Brazil has seven public universities that offer intercultural graduate programs.

11. With respect to indigenous literacy, an issue must be raised. The national census considers as indigenous those that declare themselves as such. This would mean a population of approximately 551,462 individuals. The agencies that execute the national indigenous policy consider, for purposes of policy implementation, only those living in settlements; this would mean a population of about 480,000 people. There are no exact data on how many of them are literate in the sense of formal education, which is a fault on the government's side. The information we may consider, as officially provided by the 2007 Household Sample Survey, is the literacy rate of those that declare themselves to be indigenous, as shown in the table below.

**Table 1**

Indigenous Literacy Rate %	
Brazil	79.5
North	75.2
Northeast	69.1
Southeast	89.4
South	82.0
Center-West	79.4
Men	79.5
Women	79.5

*Source:* PNAD/IBGE 2007

12. *Labour.* Although the Ministry of Labour formally defines indigenous labour, the country does not have an employment policy intended to the indigenous population and thus there are no reliable data on the subject. Work in indigenous communities is basically concentrated on hunting, fishing, vegetables collecting and, in some cases, on the sale of typical handmade artefacts and of the surplus of some crops. These are small-scale activities that do not amount to a labour market.

13. Lastly, it should be noted that there are no specific indicators to measure the real level of poverty and quality of life in indigenous communities. Given cultural peculiarities, social and economic estimates differ from those of the surrounding society, just as there are different indicators within the existing indigenous communities themselves. The socioeconomic parameters related to purchasing power do not always apply to a community that lives according to a different economic model.

**Question 2. Please explain whether the rights provided by the Agreement can be directly applied and invoked before Brazilian courts and provide examples, if any, of court decisions directly applying the Agreement's rights. What steps are being taken to ensure that victims of violations of economic, social and cultural rights have access to effective judicial remedies? (E/C.12/BRAZIL/22 para. 56)**

14. Without the intention of pointing out the specific correlation with the rights provided by the Agreement, it can be said that the 1988 Brazilian Constitution widely contemplated the protection and guarantee of social, economic, and cultural rights. Art. 5, paragraph 2 states that the rights and guarantees therein established do not preclude others arising out of the regime and the principles adopted thereby or out of international treaties to which the Federative Republic is a party. Since the Constitution's promulgation, an intensive debate has gone on about the hierarchic ordering of international treaties that address human rights regarding constitutional norms. In 2004, Constitutional Amendment 45 added to the Charter the possibility of granting constitutional hierarchic ranking to treaties on human rights approved by both chambers of the National Congress on two rounds, by three fifths of the votes of their respective members.

15. The question of treaties ratified prior to Amendment 45 remained open until 2008, when the Federal Supreme Court (the Brazilian Constitutional Court) understood that such treaties have a supralegal status,<sup>1</sup> which means that they are above the law but on a level lower than the Constitution. There were dissenting votes from Justices that placed treaties on human rights on the same level as the Constitution. Doctrinal debate still goes on and includes positions that place pacts on human rights even above the Constitution.

16. Currently, in accordance with the Federal Supreme Court's recent understanding, the International Agreement on Economic, Social, and Cultural Rights has a supralegal position, as its ratification preceded Constitutional Amendment 45. This being the case, there are, in formal terms, no obstacles to its being invoked and applied by Brazilian Courts. Additionally, it should be noted that the Brazilian Court's new directive was embodied in the decision that determined the applicability of the American Convention on Human Rights and of the International Agreement on Civil and Political Rights.

17. There remains the question of the applicability by the Courts of the rights contemplated in the International Agreement on Political, Social, and Cultural Rights, given the latter's material content. Some claim that economic, social, and cultural rights cannot be claimed in Court, as they are incumbent upon the State, in whose jurisdiction the Judiciary cannot interfere under risk of violating the principle of separation of powers. This position mistakenly fails to consider that economic, social, and cultural rights lay upon the State both positive obligations - in the form of services provided - and negative obligations - in the form of not preventing the exercise of any of these rights. The Brazilian Judiciary is not shunning the examination of issues involving these rights, which, as mentioned, are also sheltered in the Brazilian Constitution.

18. An exemplary case extensively dealt with by the Courts is the provision of medications to people in need (judicialization of the fundamental right to health). Jurisprudence has reinforced

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<sup>1</sup> Federal Supreme Court, Interlocutory Appeals nos. 466343 and 349703 of December 3, 2008.

the understanding that the judicial conviction of the State to provide such medications does not violate the constitutional principle of separation of powers. The abstract of the Federal Supreme Court decision on the subject is as follows:

“ABSTRACT: REVIEW OF THE INTERLOCUTORY APPEAL. PROVISION OF MEDICATIONS FOR HYPO-SUFFICIENCY. STATE OBLIGATION. FEDERAL SUPREME COURT ABSTRACT NO. 636. 1. Patient without the requisite resources to purchase the medications he needs. State obligation to provide them. Precedents. 2. Incidence of FSC Abstract no. 636: “no extraordinary appeal is justified as it violates the constitutional principle of legality, since its verification presupposed the review of the interpretation of infraconstitutional norms by the decision under appeal”. 3. Appeal denied.” (STF AI-Agr 616551 / GO - Opinion written by Minister: EROS GRAU. Judgment: 23/10/2007 Judging instance: Second panel. [No bold in the original]

19. On April 29, 2004, the Federal Supreme Court judged a writ of prevention in an Action for Noncompliance with a Fundamental Precept (ADPF no. 45), for which Minister Celso de Mello reported the opinion for the Court, which addressed the constitutional legitimacy of the Judiciary’s control of and intervention in an issue related to the implementation of public policies, when a case of governmental abuse is evidenced. On that occasion, the understanding according to which alleging the public administrator’s discretion in regard to the realisation of social, economic, and cultural rights was unjustified prevailed. Some paradigmatic extracts from the decision are as follows:

“Neither doctrine nor jurisprudence has perceived the scope of programmatic constitutional norms on social rights, nor made adequate application of them as principles - a requirement of social justice. The denial of any type of obligation to be fulfilled on the basis of Fundamental Social Rights has as consequence the refusal to recognize them as true rights. (...) In general, there is a growing number of those who consider constitutional principles and norms on social rights as a source of rights and obligations and admit the Judiciary’s intervention in case of unconstitutional omissions. All the preceding considerations are fully justified regarding their pertinence, in view of the very constitutional nature of the juridical controversy now arisen at this Court, consistently with the impugnation of the act issued by the President of the Republic, which could result in a serious handicap to healthcare and to the execution of government policies derived from a binding decision of the National Congress, embodied in Constitutional Amendment 29/2000. It happens, though, as already stressed earlier in this decision, that in this case one finds a situation in which the action of non-compliance with a fundamental precept is made void.”

20. In October 2008, another Federal Supreme Court decision brought into evidence the realization of social rights, specifically the right to health. The discussion revolved around the execution of positive public policies regarding the establishment of Intensive Treatment Units at public health institutions. The President of the Federal Supreme Court handed down a monocratic decision establishing the possibility of conviction of the State by the Judiciary

concerning positive obligations.<sup>2</sup> The decision makes explicit the relevance of the social rights expressed in the 1988 Constitution and the ways such rights may be guaranteed by the Judiciary:

“The Brazilian Constitution not only expressly recognises the existence of fundamental social rights (Art. 6), specifying their content and means of provision (Arts. 196, 202, 203, 205, 215, and 217, among others) but does not distinguish between individual and collective rights and duties (Title II, Chapter I) and social rights (Title II, Chapter II), as it establishes that fundamental rights and guarantees have immediate application (Art. 5, paragraph 1, FC/88). It is clear, therefore, that fundamental social rights have been enshrined in the 1988 Federal Constitution as legitimate fundamental rights. There is no doubt - it must be clear - that demands for the provision of health services must be resolved on the basis of an analysis of our constitutional context and its particularities ...”

21. Decisions as these handed down by the Courts have the effect of fostering a more positive action by the State in implementing public policies intended to the realisation of fundamental rights. Thus, victims can count on an effective legal remedy to restore a violated right, which varies according to the type of obligation. As court decisions in favour of rights protection grow, these instruments are reinforced. In cases of the State’s noncompliance with a negative or positive obligation in connection with a right, there is wide judicial protection available. To this effect one may cite direct claims of unconstitutionality, actions to declare null and void public administration acts, public civil actions, declaratory actions, actions for liability, and even ordinary actions.

22. In ANNEX I attached, the Brazilian State provides substantial jurisprudence that demonstrates the Courts’ internal understanding in the sense of recognizing the Judiciary’s legitimacy and competence to compel the Executive Power to implement policies and measures to protect social, economic, and cultural rights.

23. With regard to measures adopted by the Brazilian State to guarantee the access for victims of violation of economic, social, and cultural rights to effective legal remedies, one should stress the work of the Public Defender’s Office, a public administration agency, charged by the 1988 Brazilian Constitution with providing full, free legal assistance to those that cannot bear the costs of a legal suit and legal fees without harm to themselves or their families. Legal assistance is provided through consulting activities or the filing of judicial or administrative actions. Thus, the Public Defender’s Office works as a large law firm, which must provide whatever is necessary to protect the interests of its clients.

24. Public defenders have full technical freedom to offer guidance and propose any kind of action - civil, administrative, labor, or criminal - restricting themselves exclusively to the interests of those they are assisting, as the law grants them total functional independence.

25. A legislative advance worth mentioning was granting public defenders express authorization to make use of public civil actions to achieve wider-ranging results at a lower cost.

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<sup>2</sup> Federal Supreme Court, Suspension of Provisional Order no. 228/CE. Opinion writer Justice Gilmar Mendes Judgment of October 14, 2008.

Also worth noting is the increase in public civil actions filed by public defenders. Finally, reference should be made to the itinerant legal service that assists communities that have no federal courts or that are not yet assisted by the Federal Public Defender's Office, and to the provision of specialized legal services to indigenous communities in Dourados, MS, which has helped reducing tensions and violence in the region.

26. Thus, the Public Defender's Office, making use of the various legal and procedural mechanisms available in the internal juridical system, is guaranteeing the access of victims of rights violations to the effective instruments that allow the defense and protection of their economic, social, and cultural rights.

27. It should be pointed out that although the strengthening of the Federal Public Defender's Office has led to a significant increase in the number of people assisted (see Table 2 below), it is imperative to recognize that its operation must be improved, as some states have not yet established their public defender's offices<sup>3</sup> and the country's number of public defenders - 481 - is far below the desired number.

**Table 2**

**Cases taken up by the Federal Public Defender's Office**

	2001	2002	2003	2004	2005	2006	2007
Cases	7 551	54 261	133 730	163 936	227 119	227 001	400 288

28. According to data provided by the Federal Public Defender's Office, the ratio of public defenders per inhabitants<sup>4</sup> is approximately one public defender per 394,305 inhabitants. With regard to judges, though, the ratio is one judge per 37,577 inhabitants. As the ideal number of public defenders should equal the number of judges before whom they must plead their cases, there is a gap between reality and the goal to be achieved. As the number of public defenders maintained by the Federal Government is less than ten per cent of the number of judges, the Brazilian population does not receive any legal assistance in labor cases anywhere and with regard to the Federal Judiciary, only the residents of state capitals, the Federal District, and eight interior cities have assistance from Public Defenders.

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<sup>3</sup> The states of Goiás and Santa Catarina do not yet have a Public Defender's Office; Paraná has one General Defender's Office, but its lawyers are hired; and the Federal District has one Legal Assistance Office.

<sup>4</sup> According to 2008 IBGE estimates.

**Question 3. Please provide information on the mechanisms which ensure that adequate safeguards are in place for the protection of economic, social and cultural rights of the most disadvantaged and marginalized individuals and groups, particularly in relation to the rights to health, to an adequate standard of living, to labor and to favorable labor conditions.**

29. The 1988 Brazilian Constitution provides for the guarantee and protection of social, economic, and cultural rights. Social rights come under Chapter II and include the right to education, health, work, housing, leisure, security, social security, maternal and child protection, and assistance to those in need (Art. 6). To ensure the realization and control of these rights, the Brazilian juridical system provides for two major protection areas: concentrated judicial review and diffuse judicial review.

30. Concentrated judicial review is exercised exclusively by the highest Judiciary instance in charge of guarding the Federal Constitution, namely, the Federal Supreme Court, whose decisions are binding on all jurisdictional and administrative bodies. The typical concentrated review actions are the following: Direct Action of Unconstitutionality, Direct Action of Unconstitutionality by Omission, Challenge of Noncompliance with Fundamental Precept, and Constitutionality Declaratory Action.

31. Diffused judicial review may be exercised by any judge in specific cases, with the possibility of appeal and effects restricted to the parties to the suit. In principle, it may be exercised in respect to any action filed before the courts. With regard to the realization of fundamental rights, possible actions under the Brazilian Judiciary are the following: Civil Action, Public Civil Action, Popular Action, Individual Writ of Mandamus, and Collective Writ of Mandamus.

32. A Direct Action of Unconstitutionality may be filed before a Federal or State Court for the purpose of declaring unconstitutional an infra-constitutional normative act in view of the Constitution's supremacy. As an example of a Direct Action of Unconstitutionality as an instrument for guaranteeing fundamental rights, we have the sentence handed down by the Federal Supreme Court in the case of ADIN No. 2649/DF, on the social inclusion of handicapped persons, as follows:

**“ABSTRACT. DIRECT ACTION OF UNCONSTITUTIONALITY: BRAZILIAN ASSOCIATION OF INTERMUNICIPAL, INTERSTATE, AND INTERNATIONAL ROAD TRANSPORT OF PASSENGERS-ABRATI. CONSTITUTIONALITY OF LAW 8899 OF JUNE 29, 1994, PROVIDING FOR FREE TRANSPORTATION OF HANDICAPPED PERSONS. ALLEGATION OF AFFRONT TO THE PRINCIPLES OF ECONOMIC ORDER, ISONOMY, PRIVATE INITIATIVE, AND PROPERTY RIGHT, IN ADDITION TO THE LACK OF IDENTIFICATION OF SOURCE OF FUNDING (ARTS. 1, IV; 5, XXII; AND 170 OF THE REPUBLIC'S CONSTITUTION): DENIED.**

1. The Plaintiff, a class association, had the legitimate right to appeal the decision on the Direct Action of Unconstitutionality no. 3133, written for the Court by Minister Celso de Mello, DJ of 9.9.2005. 2. Thematic pertinence between the Plaintiff's purpose and the matter addressed by the law is recognized. 3. On March 30, 2007, at the headquarters of the United Nations, Brazil signed the Convention on the Rights of Handicapped Persons and its Optional Protocol, undertaking to adopt measures to implement the agreement. 4.

Law 8899/94 is part of the public policies to include persons with special needs into society and purports to ensure equal opportunities and the humanization of social relations, in compliance with the Republic's fundamentals of citizenship and dignity of the human being, which are realized through the definition of the means for the achievement of these objectives. 5. The Direct Action of Unconstitutionality denied. (ADI 2649, Relator(a): Min. CÁRMEN LÚCIA, Tribunal Pleno, julgado em 08/05/2008, DJ-197 DIVULG 16-10-2008 PUBLIC 17-10-2008 EMENT VOL-02337-01 PP-00029)

33. The Allegation of Noncompliance with a Fundamental Precept is provided for under Art. 102, paragraph 1 of the Constitution and is also judged by the Federal Supreme Court. Its purpose is to ensure the observance of the Constitution's essential principles that give it its identity, such as the dignity of the human being and the guarantee of fundamental rights. Concerning the latter, Allegation no. 45 was the most recently judged:

“Neither doctrine nor jurisprudence has perceived the scope of programmatic constitutional norms on social rights, nor made adequate application of them as principles - a requirement of social justice. The denial of any type of obligation to be fulfilled on the basis of Fundamental Social Rights has as consequence the refusal to recognize them as true rights. (...) In general, there is a growing number of those that consider constitutional principles and norms on social rights as a source of rights and obligations and admit the Judiciary's intervention in case of unconstitutional omissions. All the preceding considerations are fully justified with regard to their pertinence, in view of the very constitutional nature of the juridical controversy now arisen at this Court, consistently with the impugnation of the act issued by the President of the Republic, which could result in serious compromise, in the area of public health, of the execution of the government policy derived from a binding decision of the National Congress, embodied in Constitutional Amendment 29/2000. It happens, though, as already stressed earlier in this decision, that in this case a situation that establishes the voidance of this challenge of noncompliance with a fundamental precept has occurred.” (24.04.2004).

34. The objective of a Direct Action of Unconstitutionality by Omission is the implementation and application of constitutional norms of limited and restricted efficacy. i.e., which require enacting a law for their application. A Popular Action (Art. 5, LXXIII of the Constitution) is a constitutional remedy against the violation of collective rights related to (a) public property or property of an entity in which the State participates; (b) administrative morality; (c) the environment; and the historical and cultural heritage. The main importance of this mechanism lies in the fact that any citizen can legitimately file such an action before the Court.

35. The objective of a Public Civil Action provided for under Art. 129, III of the Brazilian Constitution as one of the functions of the Public Prosecutor's Office is the “protection of public and social property, the environment, and other diffused and collective interests, all of a noncriminal nature.”<sup>5</sup> Law 7347/1985 regulates this modality of action and considers as legitimate applicants to this recourse, in addition to the Public Prosecutor's Office, the Public

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<sup>5</sup> SILVA, José Afonso. *Comentário Contextual à Constituição*. São Paulo: Malheiros. 2<sup>a</sup> ed., 2006, p. 602.

Defender's Office, the Federal Government, the States, the Municipalities, and the Federal District, the quasi-governmental agencies, public enterprises, foundations or mixed-economy societies, and associations that concomitantly (a) have been established at least for one year under civil legislation, and (b) have as one of their institutional purposes the protection of the environment, consumers, the economic order, free competition, or of the artistic, aesthetic, historical, tourist, and scenic heritage.

36. The Writ of Mandamus is provided for by the Federal Constitution (Art. 5, LXIX and LXX) as a guarantee of protection of a clear and legal right not backed by a habeas corpus or habeas data when the person accused of illegality or abuse of power is a public authority or legal entity performing government functions. The Constitution provides for a collective Writ of Mandamus, whose legitimate applicants are (a) political parties with seating in Congress and (b) labor unions, class associations, or legally constituted associations that have been established and in operation for at least one year in the defense of their members or associates.

37. The mechanisms for human rights protection have gained force in the Brazilian State only since redemocratization. Thus, although advanced, national jurisprudence has not yet fully distilled the fundamental rights embodied in the Constitution and in international treaties. It should be noted that Brazil is party of the Inter-American System for the Protection of Human Rights and is thus subject to the contentious jurisdiction of the Inter-American Court of Human Rights.<sup>6</sup> As an illustration of the country's role in international bodies, mention should be made of the Maria da Penha case, related to domestic violence against women, which was addressed by the Inter-American Commission of Human Rights and which has had great impact on the internal juridical order. The case led to the enacting of Law 11340/2006, which created constitutionally-based mechanisms for curbing domestic and family violence against women.

38. It should be further pointed out that Art. 129, II and III of the Federal Constitution, Arts. 6, XX, 7 and 8 of Complementary Law 75/93, and Art. 5, paragraph 6 of Law 7347/857 provide for mechanisms for extrajudicial work by the Public Prosecutor's Office to protect social rights. This work consists in the issuing of recommendation, the signing of a conduct adjustment agreement,<sup>7</sup> the holding of public hearings, and the finding of facts, among other initiatives. Its juridical work is done basically by the filing public civil actions and by handing down opinions in judicial proceedings. In ANNEX II attached, the Brazilian State provides information on cases that illustrate the Federal Prosecutor's Office work in defending economic, social, and cultural rights on behalf of underprivileged, marginalized groups.

39. In addition to the work of the Public Prosecutor's Office, it is also important to stress the work of the Public Defender's Office, already referred to in the reply to Question 2. It should be underlined that differently from what happens with regard to the Public Prosecutor's Office,

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<sup>6</sup> Brazil recognized the contentious jurisdiction of the Inter-American Court of Human Rights on December 10, 1998.

<sup>7</sup> Paragraph 6 establishes that legitimate public agencies may extract from interested parties the commitment to adjust their conduct to legal requirements, through sanctions that will have the validity of an extrajudicial document to start procedures.

which primarily watches over the collective interest, it is up to the Public Defender's Office to give voice to the individual bereft of financial resources so as to prevent the extinction of his private interests. To this end, public defenders have total technical freedom to provide guidance and to file any kind of suit - civil, administrative, labor, or criminal - binding exclusively to the interests of the individual they are counseling, as the law grants them with functional independence.

***Question 4. Please indicate whether the State party has established a national human rights institution according to the Principles of Paris. If so, does it have competence to deal with issues related to economic, social and cultural rights?***

40. The Council for the Defense of the Rights of the Human Person-CDDPH, a body under the President's Office's Special Secretariat for Human Rights, already implements initiatives and fosters an intense debate in an effort to be aligned with the Principles of Paris. The CDDPH has thus been considered to be the national institution whose profile is closest to what is recommended by that charter of principles. Art. 5 of the law that established it states that "the CDDPH shall cooperate with the United Nations regarding the initiatives and the **execution** of measures aimed at ensuring effective respect for the rights of man and for the fundamental liberties". Although it still lacks status before the United Nations Office of the High Commissioner for Human Rights, the CDDPH has dealt with several issues before the United Nations and in practice is already considered by the Office of the High Commissioner as a national interlocutor.

41. Created by Law 4319 in 1964 on the eve of the coup d'état that introduced the authoritarian regime in Brazil, the Council effectively started working four years later, at the peak of the arbitrary regime. In the course of subsequent years, the CDDPH was the only locus in which the regime tolerated an occasional denunciation of crimes committed in its basement facilities, although its investigations of disappeared politicians and opponents who died under torture were all filed away under the false allegation that the accusations had not been proved. However, the courageous attitude of some of the Council members under the dictatorship permitted CDDPH's consolidation after redemocratization as a federal collegiate body geared to the promotion and defense of human rights throughout the country. Its bylaws were overhauled twice, by Law 5763 of December 15, 1971 and by Law 10683 of May 28, 2003.

42. Endeavors are being made towards the CDDPH's gradual adaptation to the Principles of Paris, as illustrated by the setting-up, during its 188<sup>th</sup> Ordinary Meeting on August 12, 2008, of a Special Commission "to implement measures conducive to the recognition of the Council for the Defense of the Rights of the Human Being as the Brazilian National Institution accredited before the Office of the High Commissioner for Human Rights, and submit partial reports to the CDDPH Plenary until the final discharge of the attributions now vested in it (Resolution No. 9/2008)."

43. Among its attributions, the CDDPH promotes inquiries, researches, and studies on the efficacy of the norms that guarantee the rights of the human being, enshrined in the Federal Constitution, the American Declaration of the Rights and Duties of Man, and in the Universal

Declaration of Human Rights,<sup>8</sup> as specified in the section on Competences and Responsibilities, 3.a (i) of the Principles of Paris. Additionally, the Council for the Defense of the Rights of the Human Person promotes, in the areas where there is greater occurrence of human rights violations, measures aimed at ensuring the full enjoyment of those rights and awareness and advertising campaigns,<sup>9</sup> in accordance with the session on Competences and Responsibilities, 3.a (ii) and 3.g of the Principles of Paris.

44. With regard to the competence of the Council for the Defense of the Rights of the Human Person to handle issues related to economic, social, and cultural rights, it should be noted that this Council already deals with such issues through Special Commissions. As an example, it is worth mentioning:

(a) Special Commission (Resolution no. 01/2005) organized to investigate human rights violations pertaining to the repossession operation that ended in deaths and numerous injured people, carried out by the Military Police in the West Industrial Park of Goiânia, State of Goiás, on February 16 of the current year;

(b) Special Commission (Resolution no. 12/2005) with the purpose to “*establish a multi-institutional work methodology follow up and investigate denunciations of violations of the Human Right to Adequate Food*”;

(c) Special Commission (Resolution no. 26/2006) organized “*to investigate denunciations forwarded to the CDDPH of the occurrence of human rights violations stemming from the construction of dams in the country, through empirical fact finding about such cases*” and “*to submit suggestions and proposals on preventing, evaluating, and mitigating the social and environmental impact of the construction of such dams, as well as on preserving and redressing the rights of the populations affected*”.

45. Lastly, so as to adapt itself in the short run to the Principles of Paris and to be accredited as a National Institution before the United Nations Office of the High Commissioner for Human Rights, the CDDPH is acting not so much on a reformulation of its set of competences, as it is deemed already close to the requirements of said Principles, but rather on its makeup and functional structure. Accordingly, the Council, which in the nearly fifty years of its existence has substantially contributed to considerable progress in the promotion and protection of human rights in Brazil, is undertaking the requisite legal reforms to ensure greater independence, financial autonomy, and pluralism.

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<sup>8</sup> Law 4319 of March 16, 1964, Art. 4, paragraph 1.

<sup>9</sup> Law 4319 of March 16, 1964, Art. 4, paragraph 4.

## II. ISSUES RELATED TO THE GENERAL PROVISIONS OF THE AGREEMENT (arts. 1-5)

### A. Article 2 - Non-discrimination

*Question 5. Please provide information on the affirmative action programs being implemented and to what extent have they proven to be effective.*

46. Hereunder, a synopsis of affirmative action programs directed at Afro-descendants, women, and handicapped persons:

#### (a) Afro-descendants

47. Based on an across-the-board concept, ethnic/racial affirmative actions are implemented in Brazil by various agencies under the coordination of the Special Secretariat for Racial Equality Promotion Policies-SEPPPIR. The objective pursued is a gradual, consistent cultural change regarding the formulation of public policies to make them more inclusive. Actions in the area of education<sup>10</sup> purport to promote inclusive education from an ethnic/racial standpoint, thereby paving the way for the upbringing of a population that is critical and conscious of the importance of respect for diversity. The Brazilian State has adopted a wide range of initiatives, such as the following:

- (i) Incentive to public and private universities to reserve places for Blacks and Indians. Currently, 48 public universities in over 20 States already adopt various ways of reserving places for Afro-descendants and young people coming from the public education system. At public universities, the two main forms of affirmative actions are quotas and a bonus system;
- (ii) University for All Program-PROUNI. This program implements affirmative actions at private higher education institutions through the granting of scholarships to students coming from public schools, including Blacks and Indians, in proportion to the share of these groups within the population of the respective federated units (based on IBGE data). Between 2005 and 2006, over 200,000 scholarships were granted, out of which 81,287 went to Afro-descendants while some hundreds went to Indians;
- (iii) Revision of the 2005 School Census questionnaires and inclusion of the color item, and launching of a campaign titled “Assume your Race, Declare your Color!”;
- (iv) Holding of an Intergovernmental Forum on Racial Equality Promotion, including “Technical Seminars on Racial Equality Promotion” geared to the enforcement of Law 10639/03, which requires the teaching of Afro-Brazilian history and culture in elementary and secondary schools. To this end, a “Primer of National Curriculum

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<sup>10</sup> Information on work and income policies is provided in the reply to Question 10, and information on the health policy directed at the black population is provided in the reply to Question 30.

Guidelines for the Education in Ethnic/Racial Relations and for the Teaching of Afro-Brazilian and African History and Culture,” to serve as a teaching aid to support the enforcement of Law 10639/03;<sup>11</sup>

- (v) Uni-Afro Project. This project provides support and incentive to the strengthening and institutionalization the Afro-Brazilian Studies Nuclei-NEABs or similar groups at Public Higher Education Institutions. The objective is to foster the production and dissemination of knowledge about ethnic/racial issues and to contribute to the Afro-Brazilian population’s access to and perseverance in higher education;
- (vi) Rio Branco Institute’s Affirmative Action Program - Diplomatic Calling Scholarship Award. This award was introduced in 2002 for the purpose of ensuring greater equality of opportunities of access to the diplomatic career and of intensifying ethnic diversity among the Ministry of External Affairs staff. Between 2002 and 2007 a total of 204 scholarships were awarded. The original scholarship amount of R\$10,000 was raised to R\$25,000 in 2003, amount maintained up to now.

48. With regard to the effectiveness of the affirmative policies in democratizing access to higher education by Afro-descendants, it seems appropriate to quote an assessment by the Institute of Applied Economic Research - IPEA:

“... Higher education data point to an increase of the access inequalities between white and black students prior to the implementation of affirmative action policies. Another issue that has come into relief is the time it would be needed to reduce the difference pertaining to white and black students’ access to Brazilian universities, should this reduction depend only on improvements in basic education. According to Munanga (2002),<sup>12</sup> who based his conclusions on studies on Brazilian education and on racial inequalities, black students would take approximately 32 years to reach the white students’ current level, should they depend only on improvements in the quality of fundamental education. Policies geared to affirmative action and to the access of black students to higher education have thus become essential (IPEA. Boletim de Políticas Sociais: Acompanhamento e análise. Vol. 15. March 2008, p. 226).”

49. The results of affirmative programs indicate a greater presence of black students at universities, which is changing the racial ratio of higher education enrolment. It is not only a question of quantitative impact, as the numerical results are still little significant, given the objective of including black young people in higher education: less than 12 per cent of public

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<sup>11</sup> Law 10639/03 was modified by Law 11645 of March 10, 2008, to include in the official curriculum of the official educational network the obligatory teaching of the “Afro-Brazilian and Indigenous History and Culture,” thereby adding the indigenous issue to the curriculum.

<sup>12</sup> See MUNANGA, K. “Políticas de ações afirmativas em benefício da população negra no Brasil: um ponto de vista em defesa das cotas.” In: SILVÉRIO, V. R.; SILVA, P. B. G. da (Orgs.) *Educação e ações afirmativas: entre a injustiça simbólica e a injustiça econômica*. Brasília: Inep/MEC, 2003.

institutions have adopted affirmative actions, and these account for only 20 per cent of admissions to higher education (IPEA, *op. cit.*). However, these universities are at the vanguard of the production and dissemination of knowledge in the country - 27 of the 30 major institutions fostering research in Brazil in 2006 were public (CNPq apud IPEA, *op. cit.*). Thus, the presence of Afro-descendants, Indians, and other young people from poorer segments in public institutions means participation in the major centers of research and debate on national problems. One result is a new debate environment and the “*de-racializing*” of the Brazilian student elite.

**(b) Women**

50. Affirmative actions coordinated by the Special Secretariat for Women’s Policies to include women in education are also implemented across-the-board and fostered under the partnership of various agencies, including the Ministries of Education, Culture, Science and Technology, and Agrarian Development, SEPPIR, the National Council for Scientific and Technological Development-CNPq, and some universities, among other entities. The following programs are worth mentioning as an example:

- (i) Program on Gender and Diversity in School. Introduced in 2006, this program’s objective is to qualify educational professionals in respect of gender, ethnic/racial, and sexual orientation issues. Between April and September 2006, it trained 1,200 teachers of the public basic education system, through a 200-hour course, and is focusing on the qualification of education professionals and teachers of the 5<sup>th</sup> to 8<sup>th</sup> grade of fundamental education: 15,000 professionals will be contemplated in 2009 under agreements with some 20 state and federal universities selected in 2008;
- (ii) Women and Science Program. This program has been implemented since 2005 with the objective of legitimizing and encouraging scientific production and reflection about gender relations at all levels of education, as well as promoting women’s participation in the field of science and in academic careers. In 2008, the program held the fourth edition of the *Building Gender Equality Award* and issued CNPq/SPM/MCT/MDA Public Notice no. 57/2008 regarding gender, women, and feminisms studies, which drew contributions amounting to R\$5 million and 364 projects, of which 173 proportionally distributed nationwide were approved. State agencies on women’s policies and State Foundations in Support of Research-FAPs have replicated these initiatives;
- (iii) Support for the main national, regional, and international scientific events related to gender studies, such as the *Making Gender* encounters and those sponsored by the Brazilian Feminist Studies and Research Network-REDEFEM and by the Northern and Northeastern Network of Studies and Research on Women and Gender Relations-REDOR.

51. With regard to labor, the following initiatives should be pointed out:

- (i) Program on Women and Work, Crafts, Tourism, and on Women’s Empowerment. Its objective is the strengthening of public policies to foster local tourism through the

formulation of strategies for the artisan production sector, to ensure the empowerment of women and the protagonist role of artisan women from a perspective of gender and regional cultural identity;

- (ii) Program on Women's Work and Entrepreneurship. Introduced in 2007, this program supports women in the establishment and development of their own business. It has already assisted 1,800 women in the State of Rio de Janeiro, and expects to assist another 1,800 in the State of Santa Catarina and the Federal District by 2009;
- (iii) Second edition of the Pro Gender Equality Program with the participation of 38 enterprises of the public and private sectors, to promote equal opportunities and equal treatment of men and women at enterprises and institutions through the development of new concepts in personnel management and organizational culture. At the end of 2008, the enterprises that participated in the program in 2007 and fully implemented the Plan of Action were awarded the Pro Gender Equality Seal.

**(c) Handicapped persons**

52. With regard to the inclusion of handicapped persons, the following are some examples of affirmative actions:

- (i) The *Accessibility: Follow this Idea* campaign, planned by the National Council on the Rights of Handicapped Persons, has been broadcasted by various media and in public spaces, and has had the support of the Federal Supreme Court, state and municipal governments, artists, soccer clubs and players, public enterprises, and many others;
- (ii) Workshops, technical workouts, seminars, and meetings have been held and 11,079 people have been trained with funds from the Special Secretariat for Human Rights. In addition, ten titles were published dealing with the rights of handicapped persons, in an accessible format (Braille, large print, CDs) targeted at children, adolescents, technicians, and human rights advocates;
- (iii) The "*BPC at School*" program, introduced in 2007, for the purpose of raising the quality of life of handicapped persons who are beneficiaries of the *Continued Benefit Program* (See answer to Question 18), preferentially children and adolescents up to age 18, ensuring that they stay in school and following up their studies through multisector coordination, at the three levels of government, of education, social welfare, health, and human rights policies. To date, all the States, the Federal District, and 2,623 municipalities have joined the program;
- (iv) Under the "Inclusive Education: the Right to Diversity" program implemented by the Ministry of Education, 1,968 schools in the public education system have been granted funds for architectural adaptations and other pedagogical solutions, so as to guarantee accessibility in the school environment. Decree no. 6571/08 doubled the amount of resources for handicapped students in the regular public school system or in the regular public school system that offers specialized educational assistance during extended school hours;

- (v) The “University for All” Program-ProUni grants scholarships to handicapped persons;
- (vi) Regarding the assistive technologies,<sup>13</sup> the Technical Aids Committee<sup>14</sup> held six meetings to evaluate government policies in this field and, in partnership with UNESCO, issued a publication on Assistive Technology, aimed at managers, technicians, and social workers.

***Question 6. Please provide information on the measures taken following reported killings of young persons of African descent in the Bahia State. Please indicate the measures being taken to provide a stronger legal framework for the protection of persons of African descent, particularly to put an end to such killings.***

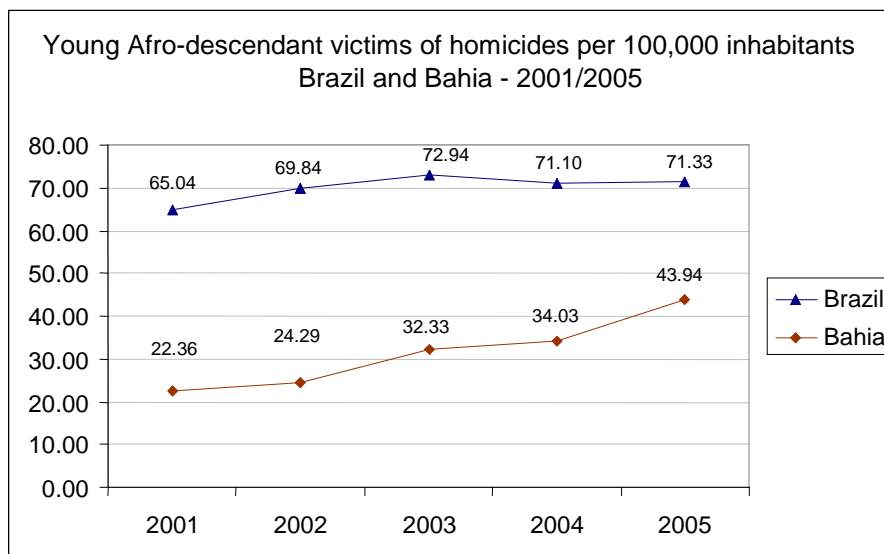
53. Indeed, the problem of criminal and police violence in a context in which the challenges to public security emerge as one of the key issues for the effectiveness of human rights in Brazil (a topic that deserves a more thorough treatment in the ICESCR report) and explain why violence statistics show an extremely high number of homicides, especially of young Afro-descendants. This occurs in the entire country but with particular intensity in Bahia, due to the historical background of the population, which consists mostly of Afro-descendants: according to the 2000 Census, 44.98 per cent of the Brazilian population declared themselves to be Afro-descendants, as compared with 73.87 per cent in Bahia.

54. With regard specifically to the victimisation of young Afro-descendants (of both sexes and aged 15-24), official data do not point to a worsening of the situation in the State of Bahia in relation to the national picture. Taking into consideration only the target population of this analysis, i.e., young Afro-descendants, Chart 1 below shows that although the rate of homicides is rising, in Bahia it is still considerably lower than in the country as a whole.

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<sup>13</sup> Assistive Technologies or Technical Aids are products, instruments, equipment, or technologies adapted or specially designed to improve the functionality of handicapped persons or reduced mobility, thereby contributing to their full or assisted personal autonomy.

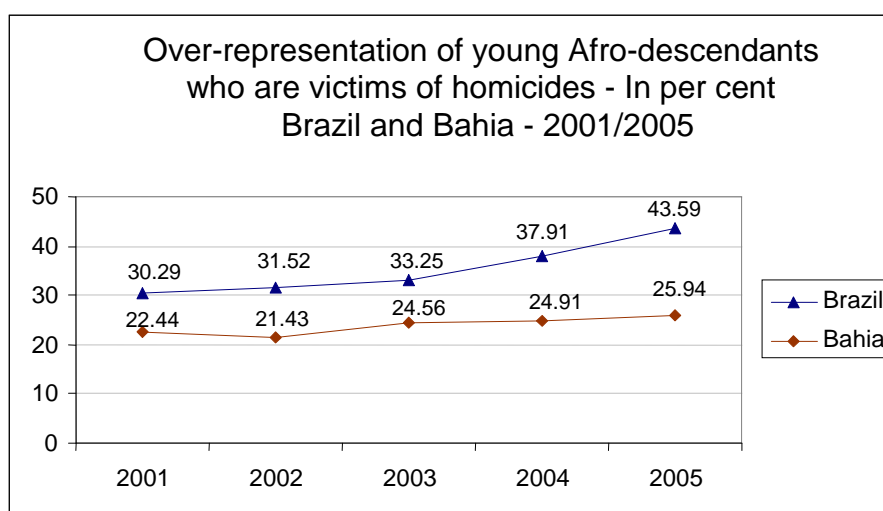
<sup>14</sup> The Technical Aids Committee was established by Decree 5296/2004 under the Special Secretariat for Human Rights. Its members are specialists and representatives of different government agencies involved with Technical Aids/Assistive Technology. It is charged with defining strategies in this field of knowledge, establishing competences and undertaking studies to provide inputs for the formulation of norms regarding Assistive Technology.



*Note:* The above rates were calculated on the basis of the population of young people that declared themselves as being Afro-descendants in the county and in the State of Bahia according to the 2000 Census x homicides in this segment per year.

55. Despite the over-representation of young Afro-descendants who are homicide victims in relation to their share in the participation of the general young population, in the State of Bahia this over-representation is less than in the country as a whole, as shown in Chart 2 below.

**Chart 2**



Sources: IBGE (population); DATASUS (homicides)

56. In short, both in the country as a whole and in the State of Bahia, there is a larger percentage of young Afro-descendants who are victimized than their percentage in the overall young population, although in Bahia this percentage is smaller. Between 2001 and 2005, they were victimized an average of 35.31 per cent more than their share in the composition of the young population, whereas in Bahia this percentage was 23.85 per cent. Thus, racial inequality in

Brazil is reflected in the serious picture of social conflict. According to IPEA, mortality rates are 50 per cent higher among young Blacks as compared with the rest of the population and this has significant implications for the life expectancy of black men.

“Black young people, more than whites, are thus subjected to a social context marked by violence, with a profound impact on their daily life, their view of the world, and their actual possibility of building a future. And yet, the public policies developed by the federal, state, and municipal governments are still timid in addressing this array of problems. In respect of black young people, in recent years only the initiatives for promoting their access to higher education stand out as an area of significant progress regarding to combating racial inequality and expanding social opportunities (IPEA, *op. cit.*, p. 214).”<sup>15</sup>

57. The Brazilian State promotes the decentralization of the racial equality promotion policy among the states, municipalities, and the Federal District, under SEPPIR’s coordination. Decentralization purports to make possible assistance to excluded populations in the areas of the specific competence of these federated units, and is being materialized through association with the Intergovernmental Forum on Racial Equality Promotion (FIPIR). All Brazilian states, including Bahia, as well as about 500 municipalities (approximately 10 per cent of municipalities) have joined FIPIR. As they join the Forum, the federated units undertake to adopt policies to promote equality and to combat racism in all the areas of their competence, including their public security policy.

58. With regard to violence against children and adolescents, the Government of the State of Bahia has already chosen the institution that will implement the Program for the Protection of Children and Adolescents Threatened with Death-PPCAAM, which is coordinated by the President’s Office’s Special Secretariat for Human Rights. The program’s implementation is expected to start early this year.

59. In addition, the Brazilian Government has introduced the National Public Security and Citizenship Program-PRONASCI, which combines security policies with social actions, attaches priority to prevention, and seeks to address the causes that lead to violence. PRONASCI’s main alignments include the valorization of public security professionals, restructuring of the penitentiary system, combating police corruption, and involving the community in violence prevention. The Federal Government will spend R\$6.707 billion on the program’s development by end-2012. One of the program’s objectives is to reduce the occurrences of abuse by police authorities against the population, recognizing that violence affects the different population segments differently, particularly the populations that are victims of racism, racial discrimination, xenophobia, and related intolerances.

60. The projects approved and agreed with the Ministry of Justice have ensured R\$82.7 million for Bahia, R\$3.5 million of which will be spent on police training, the health of police officers, legal assistance to inmates, protection of young people, and enhancement of women’s defense instances, among other initiatives. It should be noted that in the last two years, priority has been

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<sup>15</sup> See answer to Question 5.

given to structural investment in public security in the State to increase and strengthen police capabilities. This has allowed the renewal of the police vehicles fleet, the hiring of new officers, the overhauling of equipment, and the adoption of new technologies. In the operational area, police intelligence actions have been reinforced as have the prevention and reduction of criminality.

61. Finally, with respect to the Brazilian legal framework, it is expected that the approval of the Racial Equality Statute will strengthen it for combating ethnic/racial discrimination.

***Question 7. Please provide information on the results of the implementation of the “Brazil without Homophobia” program and indicate the measures taken at the level of the federal states in response to reported cases of discrimination based on sexual orientation and acts of violence against concerned groups***

62. The “Brazil without Homophobia” program was introduced in 2004 to implement, at the Federal Government level, initiatives aimed at promoting the rights of Lesbians, Gays, Bisexuals, Transvestites, and Transsexuals-LGBT, in addition to preventing and combating homophobia. Since 2005, the program has funded Reference Human Rights Centers for Preventing and Combating Homophobia. These centers provide specialized assistance (legal, psychological, and social welfare assistance) to the LGBT population that has been victim of prejudice or discrimination, in addition to assisting the general population that has been victim of any kind of human rights violation. There are currently 42 Reference Centers in the country, located in all the state capitals and in some other cities; this means an advance in comparison to the 17 Centers that were operating in 2006 (E/C.12/BRA/22, para. 106). In 2008, 48,600 people received assistance.

63. In June 2008, a First National LGBT Conference was held; it was opened by the President of the Republic, Luis Inácio Lula da Silva, and was preceded by conferences in all the federation units. The 600 delegates approved 559 proposals. This led to the setting-up of a Multim ministerial Technical Commission consisting of 18 Ministries, the Joint Parliamentary Front for LGBT’s Citizen Rights, and by the Office of the Attorney-General to formulate the National Plan for the Promotion of the Citizenship and Human Rights of the LGBT Population. The Commission concluded its work in December and forwarded it to the Ministries for their final decision. A Multim ministerial Working Group was set up for ongoing evaluation and monitoring of the Plan’s implementation. Lastly, the establishment of the legal framework for the National Council for the Defense of LGBT Rights is envisaged.

64. Since December 2006, the “Brazil without Homophobia” Program has financed LGBT Citizenship Promotion and Research Nuclei in partnership with nine federal universities. In 2008, a total of 31 Projects for Training in Human Rights and Combating Homophobia were implemented, aimed at the military and civil police, teachers, municipal guards, militants of organized civil society, and health professionals, in which 11,800 people participated. Other strategic initiatives under the “Brazil without Homophobia” Program include the following:

(a) Partnership with the Ministry of Justice and the Joint Parliamentary Front for Freedom of Sexual Orientation to approve bills under consideration by the National Congress in

favor of the LGBT populations, such as Bill 122 that purports to criminalize homophobia, and other initiatives such as bills authorizing the change of names by transvestite and transsexuals and disciplining homosexual civil unions;

(b) Participation in the UNAIDS Working Group and in the Ministry of Health's National STD/AIDS Program's Working Group to define strategies to combat sexually transmissible diseases among the LGBT population;

(c) Participation in the Working Group on Culture, Work and Income, and Social Security to explore public policies on the inclusion of LGBT in the labor market, cultural activities, and social security contributions;

(d) Coordination with organized civil society and the Federal and State Prosecutor's Offices for publicizing international human rights legislation, particularly the Yogyakarta Principles;

(e) Coordination with international organizations within the United Nations and the Organization of American States Systems to include the sexual orientation and gender identity issues on their agenda. This has led to Resolution No. 2435 (XXXVIII-O/08) approved by the OAS General Assembly, entitled "Human Rights, Sexual Orientation, and Gender Identity," and to the inclusion of this topic on the final document issued by the Regional Conference Preparatory to the Durban Review Conference;

(f) Participation in the Meetings of Senior Officials of Human Rights of Mercosur and Associated States-RAADH, which have a Sub-Working Group on "Sexual Orientation and Gender Identity" to establish a common agenda for the eradication of prejudice and discrimination against LGBT. At the Fourteenth RAADH, in November 2008, agreement was reached on a joint campaign through the media to combat discrimination based on sexual orientation and gender identity and to consolidate the normative frameworks of the participating countries that defend LGBT citizenship rights, as well as publishing results in Portuguese, Spanish, and English.

65. At the federal State level, the State LGBT Conferences have also resulted in State Plans for Promoting the Citizenship and Human Rights of the LGBT Population. The Reference Centers, which have their own structure and resources, implement preventive and educational activities and provide psychosocial and legal assistance. The various federation states and many municipalities have adopted a Gay Pride Day, which they institutionally support, as well as recognizing the nongovernmental organizations that defend the rights of the LGBT population as being of public utility. It is worth providing some examples of actions being undertaken by some states to address discrimination based on sexual orientation. The State of Pará, by issuing Administrative Ruling 16/2008 was the first state to accept the enrolment of transvestites and transsexuals in public schools under their social names. Similar Administrative Rulings are being considered in the States of Minas Gerais, Paraná, and Piauí.

66. The State of Mato Grosso do Sul has made significant progress with respect to legal instruments. Law 3416 of September 4, 2007 made mandatory the inclusion of Gender Relations in the training curriculum of Civil and Military Police officers and of Military Firemen, and added combating homophobia as another subject. Law 3591 of December 9, 2008 provides for

the State of Mato Grosso do Sul's Social Security Regime and admits as a dependent a person that lives in a public, lasting homosexual relationship with another person of the same sex covered by social security.

67. In 2008, the State of Mato Grosso offered training to public school teachers and civil and military police officers on combating discrimination based on sexual orientation. After receiving denunciations of aggression suffered by transvestites on the street, including their arrest, the Reference Center celebrated an agreement with civil police officers on avoiding homophobia in their contacts with transvestite sex professionals.

68. In the State of Minas Gerais, the training course in LGBT Human Rights aimed at all the state's public servants qualified 1,000 people at the first stage; training courses are also offered to 5,000 university students. Partnerships have been established with the municipalities for the implementation of the "Education without Homophobia Program" in public schools, including the training of teachers of the municipal and state educational systems; at the first stage, 600 teachers received training. With regard to denunciations of discrimination, the state intends to map the critical points of homophobia on its territory, the kinds of violence committed against the LGBT population, and the size of this population in each municipality.

69. In the São Paulo municipality, the Reference Center has executed a Technical Cooperation agreement with the Public Defender's Office to provide free legal assistance in cases of denunciations of homophobia and established a partnership with the Racial Crimes and Related Intolerance Police District-DECRADI of the State of São Paulo Public Security Department for the compilation of a databank (ANNEX III) and the adoption of the appropriate legal remedies. With respect to measures adopted after denunciations of homophobia, the following are worth mentioning:

(a) February 2007: outbreak of aggressions committed by groups of skinheads and punks in the Jardins district. A joint operation was undertaken by the police authorities, the Judiciary, and the São Paulo Municipal Government. Five skinheads were arrested and writs of arrest were issued against two other group members. One of those arrested was the leader of the "Punk Devastation" gang, responsible for various attacks in the capital;

(b) March 2007: assaults followed by serious physical aggression committed against the LGBT that frequented the Vieira de Carvalho Street, near the Republic Square. In mid-March, the Military Police mobile base returned to the area to prevent and combat intolerance crimes. A joint operation by the Civil and the Military Police resulted in the arrest of two gangs that were active in the area, thereby putting an end to the assaults and aggressions against those that frequented it.

***Question 8. Please indicate whether the project Statute for Racial Equality has been adopted. If so, please provide details of the provisions of the Statute.***

70. Bill No. 6264 of 2005 establishing the Racial Equality Statute is under consideration by the National Congress. The bill was introduced by the Senate, where it has already passed. It is now under consideration by the House of Representatives. Should modifications be introduced by the House of Representatives, this will delay approval, as the bill will have to be sent back to the Senate. If it passes at the House of Representatives it will be sent directly to the President for

sanction. On December 11, 2008, the Special Commission charged with issuing an opinion on the Statute reviewed the Rapporteur's Opinion, which was favorable. It is expected that the Statute's final approval will happen at the first voting sessions in 2009.

71. With regard to its content, the Statute is a comprehensive document meant to provide adequate protection for the black population and overcome the racism that is still observed in Brazil. The racial or ethnic/racial discrimination concept was inspired entirely in the International Agreement on the Elimination of Racial Discrimination-ICERD and reinforced by the possibility that such discrimination may also occur in private life. The Project also addresses specific issues, such as the situation of women, youth, and the *Quilombola* communities, from an across-the-board perspective. It is hoped that this aspect will be respected during the implementation of the policies therein established.

72. The Statute consists of four Titles, as follows:

Title I - Preliminary Provisions: definition of the scope of the law and main concepts.

Title II - Fundamental Rights

Chapter I - Health

Chapter II - Education, Culture, Sports, and Leisure

Chapter III - Freedom of Conscience and Belief and the Free Practice of Religion

Chapter IV - Access to Land and to Adequate Housing

Chapter V - Work

Chapter VI - Means of Communication

Title III - National System for Promoting Racial Equality-SINAPIR

Title IV - Final Provisions

73. The Statute safeguards universal, equal access to the Unified Health Service-SUS so as to promote, protect, and restore the black population's health; the access to educational, cultural, sports, and leisure adapted to the conditions of Brazilian Blacks; the fundamental rights of black women; the right to freedom of conscience and belief, and the dignity of cults and religions of an African origin practiced in Brazil; the quota system for admission to public higher education institutions; the permanent possession of lands occupied by *Quilombo* remnants; the publicizing by the media the cultural heritage and the participation of Afro-Brazilians in the country's history; the addition of the discipline "General History of Africa and of Blacks in Brazil" to the curriculum of elementary and secondary schools, both public and private. The Statute also provides for Ombudsmen offices to hear victims of racial discrimination and defines measures for the inclusion of Blacks into the labor market.

74. It is expected that the Statute will be an effective instrument for the promotion of racial equality in the country.

### **B. Article 3 - Equal rights of men and women**

**Question 9.** *Please indicate whether the State party has implemented or envisages implementing a comprehensive strategy to modify and eliminate negative cultural attitudes and practices and deep-rooted stereotypes that discriminate against women in the State party. Please also inform whether the State party has carried out awareness-raising campaigns aimed at the elimination of stereotypes associated with the traditional roles of men and women in the family and in society as a whole.*

75. The Special Secretariat for Policies for Women - SPM attached to the President's Office was established on January 1, 2003 by Law 10683/03. It has ministerial status and coordinates public policies to ensure that they incorporate the gender perspective throughout the government. It is important to note that the Federal Government has based its action on an ongoing dialogue with social movements, as illustrated by the First National Conference on Women Policies held in 2004, which resulted in the First National Plan on Women Policies, encompassing the work of 17 Ministries and Secretariats concerning gender and women policies. This plan's implementation and results were evaluated at the Second National Conference on Women Policies in 2007. Based on this second conference's findings, a Second National Plan on Women Policies was prepared.

76. With regard to campaigns for the prevention of violence against women, attention should be drawn to the site [www.homenspelofindaviolencia.com.br](http://www.homenspelofindaviolencia.com.br) which is part of the "Men united to end violence against women" National Campaign. The site collects signatures of men who, as they join the campaign, publicly undertake the commitment to contribute to the full enforcement of the Maria da Pena Law (11340/06) that addresses domestic and family violence against women. This initiative is a response by the Brazilian State to the urging by the UN Secretary-General, who launched the "Unite to End Violence against Women" worldwide campaign in February of the current year to mobilize national leaders for ending violence against women. The campaign's target is to collect 500,000 signatures by August 2009; between October and December 2004, about 40,000 had already been posted on the site.

77. In the 2007 and 2008 editions of the campaign "16 Days of Activism to End Violence against Women" the focus fell also on the enforcement of the Maria da Penha Law. The 2008 campaign had the motto: "There are moments when your attitude makes a difference. Maria da Penha Law. Get yourself committed." It was launched on November 20, urging society to adopt attitudes that can make a difference in the life of women subject to violence and publicizing the stories of sixteen people from different segments who experienced violence or supported victimized women. This campaign has been waged in Brazil for 17 years.

78. Another important campaign launched in 2008 was the National Campaign to Combat Violence against Rural and Forest Women. It was focused on rural workers, coconut crackers, black rural and *Quilombola* women, women in the Amazon, rubber tappers, and peasant women. The campaign includes cultural workshops, activities in schools, radio programs and television series, and educational activities aimed at establishing a solidarity network uniting the community and women living in rural areas and in the forest to end violence against women.

One of the initiatives envisaged is a media campaign entitled “Women, masters of their own life - To live free of violence is a right of rural and forest women.” Its purpose is to show that women are masters of their own lives and that living with respect and in dignity and without violence is a right of every Brazilian woman.

79. As to the elimination of stereotypes, the Special Secretariat for Women Policies has implemented various initiatives aimed at expanding women’s participation in the spheres of power and decision-making, which is one of the key objectives of the Second National Plan for Women Policies. To a great extent, discussions by Brazilian society about quotas for women in politics and the requisite improvement mechanisms take place within the broader debate about Political Reform. On May 17, 2007 the women’s movements, with the Federal Government’s backing, sent a letter to the National Congress, approved by the National Council on Women’s Rights-CNDM. Mention should also be made to the June 2007 public act advocating women’s participation in the political reform, promoted by the CNDM and the Women’s Caucus at the National Congress, with SPM’s support.

80. Still in connection with the objective of coordinating initiatives aimed at the empowerment of women, with emphasis on their participation in politics, mention should be made to the National Forum of Instances of Women in Political Parties, in which 16 political parties are represented and which encompasses different ideological trends. In August 2008, this Forum, together with the CNDM and the SPM launched the campaign “More Women in Power: I undertake this commitment!” The Forum is meant to be a permanent instrument for action in the power and decision-making levels in the private and the public sectors, and in strategic areas of society, through initiatives that promote women’s equal, plural, and multiracial participation. One of the campaigns objectives in its first phase was to elect more women to municipal Executives and Legislatives. The strategy consisted in a platform that addressed policies to be incorporated by both male and female candidates committed to combating racism and sexism. Radio spots were created drawing attention to women’s participation in power and decision-making levels. These spots were posted on the site [www.maismulheresnopoderbrasil.com.br](http://www.maismulheresnopoderbrasil.com.br), which, at its first stage, provides information and data on the 2008 elections.

81. These campaigns are necessary for changing the prevailing picture, as Brazil is one of the countries with the least participation of women in politics. Thus, although the percentage of women in the Chamber of Congressmen has risen from 1.9 per cent in 1982 to 8.9 per cent today, this figure does not reflect the fact that 50 per cent of Brazilian voters are women. Out of 513 congressmen, only 46 are women, which accounts for the 8.9 per cent. Out of 81 senators, only 10 are women, or 12.3 per cent. Of the 27 State governors, only three are women, or 11.1 per cent.<sup>16</sup>

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<sup>16</sup> Data from the Inter-Parliamentary Union-IPU, available at <http://www.ipu.org/wmn-e/classif.htm> and the Rio de Janeiro University Research Institute-IUPERJ, available at <http://www.jaironicolau.iuperj.br/banco2004.html>.

82. With regard to women's greater economic autonomy, reference should be made to the "Program for Institutional Strengthening of Gender and Race Equality, Poverty Eradication, and Employment Generation-GRPE" implemented in partnership with the International Labor Organization-ILO. The program's objective is to inject gender and race issues into public policies on combating poverty and creating jobs by sensitizing, qualifying, and training public managers and other social actors (particularly labor unions and employers' associations), developing activities geared to technical assistance and to expanding the spaces for dialogue and social coordination regarding this issue.

83. Lastly, the recently released opinion poll on "Perception of Human Rights in Brazil," commissioned by the President's Office's Special Secretariat for Human Rights, should be also mentioned. Men's and women's equal rights were considered the second most important issue by both blacks and whites. As to the respect owed to woman rights, 11 per cent of the interviewees said they were fully respected, 64 per cent thought they were partially respected, and 24 per cent found that they were not respected.

### **III. ISSUES RELATED TO THE SPECIFIC PROVISIONS OF THE AGREEMENT (arts. 6-15)**

#### **A. Article 6 - The right to work**

*Question 10. Please provide information on measures taken to promote equality in access to employment for persons of African descent and members of indigenous communities, particularly at the professional levels.*

84. The Brazilian State has undertaken the commitment before society to add the ethnic/racial component to the programs aimed at including discriminated populations into the labor market. In December 2003 a technical cooperation agreement was entered into between the Special Secretariat for Racial Equality Promotion Policies and the Ministry of Labor and Employment-MTE, defining the criteria for the State's action in this regard. Its main features are: establishment of a Tripartite Commission on Equal Gender and Race Opportunities at Work; the First Job Program; the Vocational Training and Retraining Program; the Brazil, Gender, and Race Program; and the Sector Plan for Training Domestic Servants. In addition, a Diversity Committee has been set up, consisting of representatives from companies and from government and nongovernmental institutions to create opportunities and promote ethnic/racial diversity in the labor market.

85. With regard to the Afro-descendant population, the Brazil, Gender, and Race Program stands out. Inspired on the principles and guidelines of ILO Conventions nos. 110 and 111, the program has established Nuclei for the Promotion of Equal Opportunities and Combating Discrimination at the Regional Labor Offices-DRTs to help identify and combat discriminatory practices in labor relations. These nuclei are made up of representatives from the community, public prosecutors' offices, public defenders' offices, state and municipal councils, labor unions, companies, universities, associations, and nongovernmental organizations representative of women, blacks, Indians, and handicapped persons. Their attributions include: (1) establishing educational programs to guarantee the application of policies on the promotion of equal opportunities in jobs and professions; (2) proposing strategies and actions to eliminate discrimination and degrading treatment as well as protecting the dignity of the human being at

work; (3) receiving denunciations of discriminatory practices at work and endeavoring to address them pursuant to legal provisions or forwarding them to the Labor Public Prosecutor's Office, as the case may be. There is also a National Qualification Plan (further details in the reply to Question 12).

86. The Brazilian State also invests on Afro-Brazilian entrepreneurs, supporting projects that potentiate their activities. In partnership with civil society and black entrepreneurs associations - Afro-Brazilian Businessmen and Entrepreneurs Association-CEABRA; Palmares Human Rights Institute-IPDH/RJ; and Social Brazil Institute-IBS - it has held seminars on "Incubation of Experiences for the Strengthening of Afro-Brazilian Entrepreneurs" in the States of São Paulo, Minas Gerais, Bahia, Rio de Janeiro, Amapá, Santa Catarina, and the Federal District, in which 800 people have participated, approximately 60 per cent of them small entrepreneurs. According to criteria established by the National Afro-Brazilian Entrepreneurs Association-ANCEABRA, 350 of such experiences are under incubation to be offered to the market, thereby fostering a business culture. Since 2005, the Government has intensified the dialogue with black entrepreneurs and developed initiatives in support of productive activities and entrepreneurship among the black population, with resources provided by the National Economic and Social Development Bank. Petrobras also sponsors this kind of initiative, laying emphasis on tourism.

87. With respect to the indigenous population, consistently with the indigenous policy, in addition to the demarcation of indigenous lands, it is necessary to ensure the socio-economic strengthening of the indigenous communities and the management of their cultural heritage. To protect those lands, the federal government agencies should not only keep surveillance over their physical boundaries but also promote the esteem of their own cultural identity by means of mechanisms geared to the strengthening of their social and economic structures.

88. Projects are related both to food production and the production of goods and services introduced by the surrounding society and which have been incorporated into these peoples' daily life. The State is also determined to create opportunities to allow the indigenous populations to achieve welfare conditions on their own terms.

89. With a view to contributing to the formulation of effective public policies targeted at the indigenous populations, based on the recognition of their ethnic plurality and on the need to foster an active, persistent self-affirmative attitude on their part, FUNAI has set the Ethnic Development Principles as a foundation for their action. The purpose is to promote the indigenous communities' production autonomy, on the basis of consultation with these communities, and by means of participative planning and execution of activities. Accordingly, FUNAI pursues the following objectives:

(a) Support for actions aimed at food and nutritional security, income generation, and sustainable management of natural resources on indigenous lands;

(b) Training of Indians in the planning, execution, monitoring, and evaluation of production projects;

(c) Support for the building, operation, and maintenance of production and marketing infrastructure;

(d) Acquisition of inputs and technical assistance for the management of study projects and of ethnic/environmental and economic diagnostics, making possible the hiring of consultants and helpers, and the publicizing of results;

(e) Support for the valorization of traditional techniques and knowledge pertaining to food production, utensils, and extraction of agroforest products;

(f) Implementation of the certification of indigenous products;

(g) Incentive to the use of traditional techniques in the recovery of degraded areas; and

(h) Cultivation of extractive species used in traditional medicine and in the making of indigenous artefacts, as well as strengthening of social control.

90. Between 2003 and 2008, FUNAI prepared and coordinated the Program on the Indigenous populations' Ethnic Identity and Cultural Heritage, encompassing various work fronts and lines of work:

(a) Training of Indians and Field Technicians in Developing Self-Sustainable Activities on Indian Lands. The objective is to create conditions for access to knowledge and information to optimize the management of natural resources on indigenous lands and to strengthen the process of the communities' internal organization.

91. To implement this idea, FUNAI has acted on two fronts: training in associativism, offered in two modules geared to the organization and management of an Indigenous Association, and training for the sustainable management of natural resources, through bee-keeping and copaiba oil extraction projects.

92. In 2007, five workshops were held for the training of indigenous associations: March 23-30, Module I, in the city of São Gabriel da Cachoeira-AM, attended by 57 Indians from the Tukano, Dessano, Baniwa, Issano, Baré, Werekena, Tariano, and Arapaço ethnic groups; April 7-11, Modules I in the city of Bonito-MS, attended by Indians from the Kadwéu and Terena ethnic groups; April 27-May 2, Module I, in the city of João Pessoa-PB, attended by 51 Potiguara Indians; July 14-18, Module II, in the city of Curitiba-PR, attended by 38 Guarani and Kaingang Indians; September 2-6, Module II, in the city of São Gabriel da Cachoeira-AM, attended by 57 Indians from the Tukano, Dessano, Baniwa, Issano, Baré, Werekena, Tariano, and Arapaço ethnic groups.

(b) Program on the Protection of Indigenous Lands, Territorial Management, and Ethnic Development. The objective is to train personnel serving at indigenous outposts to hear the communities' demands and to watch over and protect the cultural and environmental assets on indigenous lands;

(c) Promotion of Productive Activities on Indigenous Lands. The objective is to support the sustainability of environmental, social, and economic projects, taking into consideration, throughout the projects' execution, the traditional customs and specific needs of the indigenous society.

93. Finally, it should be mentioned that the strategy adopted by the Brazilian State to promote equal access to work by members of the indigenous communities has as one of its major components educational incentives. To this end, in 2004 FUNAI executed the Cooperation Agreement No. 001/2004 with the Brasilia University-UnB for promoting the development and implementation of affirmative action measures, with a view to the training and qualification of indigenous professionals and specialists. Under the agreement, FUNAI is obligated to provide scholarships to cover the indigenous students' housing, food, and transportation expenses, as well as academic support for as long as they are enrolled in UnB's special program for graduation from courses of interest to the indigenous populations and communities.

94. With regard to surveillance actions, in 2005 the Labor Public Prosecutor's Office introduced a *Program for the Promotion of Equal Opportunities for All*, which has implemented policies aimed at including workers into the labor market. The program's objective is to question the organizational hiring procedures and career advancement at medium- and large-sized companies, so as to combat racial and gender discrimination in labor relations. Based on the concept of indirect discrimination - that is, veiled discrimination without open conflict, pursuant to already classic interpretations of the reality of social relations in Brazil - the program has focused on the possibility of considering apparently neutral organizational practices, which have discriminatory effects.

95. Although it has not been long in implementation, the *Program for the Promotion of Equal Opportunities for All* has already been mentioned in the report to the Commission on Human Rights, UN Economic and Social Council, prepared by Special Rapporteur Mr. Doudou Diène on contemporary forms of racism, racial discrimination, xenophobia, and related forms of intolerance.

96. The program has achieved quite positive results, especially with regard to negotiated solutions. In 2006, a pilot project was implemented in the banking district of the Federal District by Coordigualdade, a specific coordinating office established at the Labor Public Prosecutor's Office to discuss and draft strategies for the Prosecutors' work in combating all forms of discrimination at work and in access to work nationwide. The Chamber of Congressmen's Commission on Human Rights and Minorities is cooperating with the project, mediating negotiations among the parties attending the meetings.

97. In August 2007, one year after negotiations started, a census-based mapping of the Brazilian bank employee force was nearing conclusion. The next step would be the discussion of the bases and equality targets to be negotiated with the banking sector as a whole.

***Question 11. Please provide detailed statistical data on the number of handicapped persons in fulltime and part-time employment.***

98. The main inductor of the inclusion of handicapped persons into the labor market is the Constitution of the Republic, which provides for positions in government service and the prohibition of any form of discrimination pertaining to the salary and criteria of admission of handicapped persons. There followed Law 8213/1991, establishing the percentages of positions in relation to the company's total number of employees, and Law 7853/1989, establishing the national policy aimed at persons with disability, as well as Decree No. 3298/1999, modified by Decree 5296/2004 that regulated, among other things, the form of access to labor relations.

99. The 1988 Brazilian Constitution broke away from the patronage model prevailing until then and ensured the equality of opportunities based on the principle of equal treatment of equals and different treatment of the different in accordance with their difference, so as to guarantee actual equality. It recognized that society is characterized by diversity, as it consists of individuals that are different from each other.

100. Brazilian legislation provides that up to 20 per cent of public positions and jobs must be reserved for handicapped persons. A pilot survey done by the Federal Government on the Employability of handicapped persons at Federal Administration Agencies in Brasilia revealed that the percentage of handicapped persons working in public agencies is less than one per cent, far below the percentage required under the legislation. The challenge in this regard is to employ a larger number of handicapped persons in civil service, with guarantee of accessibility to the work environment.

101. In the private sector, companies with 100 or more employees are obligated by law to fill from two per cent to five per cent of work positions with handicapped persons. Current legislation does not differentiate the daily shift of handicapped persons from that of persons without disabilities.

102. As to surveillance by the Labor Prosecutor's Office-MTP, inclusion began to be implemented in a systematic way after the 2002 establishment of the National Coordinating Office for the Promotion of Equal Opportunities and the Elimination of Discrimination at Work-Coordigualdade. The MTP investigates and uses the law to force companies to hire persons with disabilities and to readmit employees that after acquiring an occupational disease or suffering the consequences of a work accident have had their working capacity restricted on the labor market.

103. As a result, 193 civil public actions have been initiated and 1,773 agreements on the commitment to adjust conduct have been executed (33.37 per cent of investigations; it should not be forgotten that some actions expire because the compliance with the legal quota is proven).

104. Lastly, in 2007, thanks to the legislation, educational campaigns, and inspection by the Ministry of Labor and the Prosecutor's Office, 348,818 handicapped persons were employed, 12,341 of them on a part-time basis (up to 20 weekly hours) and 336,477 in jobs requiring from 21 to 44 hours a week (See Table 3 below). According to the MPT, 864,901 positions have been "opened" but not all have been filled. A major challenge, though, is guaranteeing that persons with greater limitations may have equitable access to work as well as adequate accessibility conditions in the work environment.

**Table 3**  
**Employability of handicapped persons in Brazil-2007**

Race/color	Number
Indigenous	911
White	195 068
Black	15 508
Yellow	1 990
Brown	81 052
Unidentified	5 992
Unknown	48 297
Total	348 818

Source: RAIS/2007 - Ministry of Labor and Employment

**Table 4**  
**Brazil - Number of workers with disability as at 12/31/2007**  
**per federation unit and contractual hours**

Federation unit	Up to 20 hours	21 to 44 hours	Total
Rondonia	4	1 305	1 309
Acre	3	197	200
Amazonas	24	3 701	3 725
Roraima	0	120	120
Para	31	4 815	4 846
Amapá	1	315	316
Tocantins	13	781	794
Maranhão	88	3 708	3 796
Piauí	27	1 515	1 542
Ceará	117	8 616	8 733
Rio Grande do Norte	10	2 903	2 913
Paraíba	35	5 327	5 362
Pernambuco	68	12 197	12 265
Alagoas	13	1 853	1 866
Sergipe	10	2 233	2 243
Bahia	697	20 693	21 390
Minas Gerais	956	39 268	40 224
Espírito Santo	112	5 178	5 290
Rio de Janeiro	452	16 968	17 420
São Paulo	7,193	98 178	105 371
Paraná	729	20 330	21 059
Santa Catarina	772	19 761	20 533
Rio Grande do Sul	571	18 781	19 352
Mato Grosso do Sul	157	4 803	4 960
Mato Grosso	67	4 366	4 433
Goiás	64	31 028	31 092
Federal District	127	7 537	7 664
Total	12,341	336 477	348 818

Source: RAIS - Dec, 76,900/75  
Prepared by: CGET/DES/SPPE/MTE

**Question 12. Please provide information on the implementation of the “National Qualification Plan” and, in particular, to which the extent it has benefited the disadvantaged sections of society who are entitled to preferential access to the benefits of the plan.**

105. The qualification public policy has a universal character, however, it determines that groups that have been historically discriminated or suffered from exclusion must be accorded priority treatment. The Ministry of Labor and Employment-MTE has implemented a series of programs to prepare the most vulnerable social groups to be included into the labor market. These groups include workers whose occupations have not been entered into the National Employment System; workers in family farming; persons in settlements or in the process of being settled; workers subject to the seasonal nature of their occupation; the self-employed; domestic workers; former inmates. Among these groups, preferential access will be accorded to workers with low income and less schooling; and populations subjected to racial and social discrimination - Blacks, Indians, women, young people, handicapped persons, persons over 40 years and other vulnerable groups.

106. Between 2004 and 2006, about 60 per cent of the beneficiaries of the qualification courses were Blacks and Indigenous populations. Another group benefited was that of domestic employees, consisting of approximately eight million professionals, of which 95 per cent were women, of which 57.4 were Blacks.<sup>17</sup>

107. The legislation that provides the foundation for the National Qualification Plan-PNQ is Resolution No. 333 of 2003 adopted by CODEFAT, the decision-making body of the Workers' Assistance Fund-FAT, the Plan's main source of financing. In addition to fostering the integration of qualification and income policies, the Resolution stresses the need for gradually promoting the universalization of the workers' right to professional qualification. The activities are implemented in a decentralized way, through Territorial Qualification Plans (in partnership with states, municipalities, and non for profit organizations, proceeding from demands based on territoriality), Special Qualification Projects (in partnership with social movement entities and nongovernmental organizations, aiming at developing social and professional qualification methodologies and technologies), and Sector Qualification Plans (in partnership with trade unions, corporations, social movements, and state and municipal governments, in response to emergency, structural, or sector qualification demands).

108. PNQ's assessment process led to the establishment of indicators to measure its efficacy and social effectiveness. Efficacy is measured by the course completion rate. In 2003, 143,897 people were enrolled in the qualification courses; 139,207 of them completed the course, which makes for a 96.74-per cent completion rate. In 2004, of the 144,462 enrollees, 137,215 finished the courses, which makes for a 94.98 per cent completion rate.

109. The social effectiveness indicators were established in accordance with the plan's major objectives. One indicator, *Integration of Public Policies on Qualification for Work, Social Inclusion, and Development* allows the measurement of the relative participation of the following

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<sup>17</sup> Source: *Retrato das Desigualdades* (IPEA, UNIFEM).

groups: beneficiaries of work policies; beneficiaries of social inclusion policies; and beneficiaries of development and employment generation policies.<sup>18</sup> The indicator for this objective is obtained by the summation of the percentages of participation of each priority public. If the sum is greater than 65 per cent, the PNQ has high social effectiveness; if less than 65 per cent, the program has low social effectiveness. This indicator was 75 per cent in 2004 and 74 per cent in 2003, higher than the 65 per cent target.

110. The indicator on *Relative Coverage by Specific Group of the Vulnerable Population* shows the relative participation by calculating the difference between the groups' percentage shares in the Economically Active Population-EAP. On the basis of demand estimated per population group, targets were established for each group. Thus, to assess effectiveness, it is necessary to compare the target percentages with those actually achieved by PNQ's implementation.

111. Data for 2004 show that the target for women was 120 per cent and that 139.31 per cent were achieved. For Blacks, Darks, and Indians, the target was 150 per cent but only 119.03 per cent were achieved. For groups with little school education, the target was 100 per cent but only 88.6 per cent were achieved. For young people, the target was 150 per cent and 210.03 per cent were achieved. These results show that the PNQ has benefited the more vulnerable populations, achieving higher percentages than these groups' percentage share in the EAP. The PNQ benefited 39.31 per cent more women than their percentage share in the EAP. With regard to ethnicity, the plan benefited 19.03 per cent more of Afro-descendants, Mulattos, Indians and Asians than their share in the EAP. As to the group with little school education, the plan benefited a contingent below their participation in the EAP, 11.4 per cent. For young people, the result far exceeded the target and surpassed their share in the EAP by 110.3 per cent.

112. Another effectiveness indicator, *Participation of Workers without Occupation*, shows their participation at 72.5 per cent in 2003 and at 71.7 per cent in 2004. These figures indicate a decisive impact by the plan on the unemployment of vulnerable groups.

113. The indicator, *Pedagogical Quality*, permits an assessment of the quality of courses and whether they abide by the average hour load deemed adequate for the professional and social qualification actions specified in the CODEFAT resolution. In 2004, the average hour load was 193.35 on a normal schedule and 170.7 in additional time. PNQ's target was 200 for the same year. The preceding data show that PNQ is yielding satisfactory results in the achievement of its objectives and targets.

114. In 2008, the workers' social and professional qualification initiatives became more effective due to CODEFAT's Resolution no. 575 of April 28, 2008, which set guidelines and criteria for the transfer of FAT funds for PNQ's execution. This resolution defined qualification

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<sup>18</sup> Programs pertaining to work policies were the following: First Employment; Labor Intermediation; Solidarity-based Economy; and Micro Credit. Programs pertaining to social inclusion were the following: Zero Hunger; Family Grant; and Affirmative policies on gender, ethnicity, disabilities, agricultural and agrarian, and territorial development. The development and job and income generation policies were implemented by the export sector, sectors that benefited from State investment, and by other local productive arrangements, and tourism.

as a citizen's right and established the following priorities: increasing the contingent of young people, women, Afro-descendants, Indians and persons with little school education as this policy's beneficiaries. A comparison with data from the 2006 National Household Sample Survey-PNAD shows that the qualification actions undertaken in 2008 benefited 49 per cent of young people aged 16 to 24 (as compared with their 22 per cent share in the Economically Active Population; 61 per cent of women (as compared with 44 per cent); 63 per cent of Afro-descendants, Mulattos and Indians (as compared with 49 per cent). The priority target public for the application of resources now includes handicapped persons and young trainees.

**Table 5**

**Percentage of participation of young people, women, Afro-descendants, Mulattos and Indians in PNQ qualification courses in comparison with their percentage share in the Economically Active Population-EAP**

	PNQ * (%)	EAP ** (%)
Young people	48.70	22.45
Women	61.31	43.92
Blacks. Darks. and Indians	62.61	48.71

\* *Source: Base de Gestão da Qualificação/MTE - 26/01/2009 - Agreements signed in 2007. Execution in 2007 and 2008.*

\*\* *Source: PNAD 2006/IBGE*

115. Thus, in all aspects, the PNQ exceeded these persons' percentage share in the EAP. In addition, CODEFAT's Resolution no. 577/2008 affected the hour cost per student, as the average cost per student jumped from R\$550 to R\$790, fostering the quality of the courses offered. In 2008, the Family Grant beneficiaries joined the Sector Qualification Plan-PLANSEQ; the objective was the qualification of 184,078 workers in civil construction in 2009. Other PlanSeqs will be implemented in the sectors of oil and natural gas, agro-extractivism, moto-freight, trade, tourism, solidarity-based economy, textiles, and naval and will qualify 35,764 workers. The Territorial Qualification Plans will benefit 51,159 workers. Thus, 271,001 workers will be qualified in 2009 under the PNQ nationwide.

116. Despite the above mentioned progress, Brazil recognizes that there is room for more qualification actions, as the demands addressed to the Ministry of Labor and Employment in its capacity as intermediate in the placement of workers on the labor market are not fully met due to the lack of qualified workers.

## **B. Article 7 - The right to just and favorable conditions of work**

***Question 13. Please provide information concerning the total number of cases registered under Law 10803/03 relating to crimes of “slave work”. Please also indicate what steps have been taken, in law and in practice, to eradicate all forms of forced labor, and provide details of recent cases in which offenders have been prosecuted and convicted.***

117. There is no reliable databank on the number of criminal actions brought on the basis of Law 10803/03 in relation to crimes of subjection to conditions similar to slavery. One of the reasons for this was the lack of understanding about the competence for the judgment of such actions. In this regard, two major recent decisions have been crucial for combating slave work and for the criminal prosecution of those involved in labor exploitation. In December 2006, the Federal Supreme Court’s final decisions in RE 398041/PA and RE 499143/PA defined the competence of Federal Courts to sue and judge the crime specified under Art. 149 of the Penal Code, namely, subjecting a person to conditions similar to those of slavery. The Supreme Court Justices considered subjection to work similar to slave work a crime against labor organization, thereby clearing up doctrine and jurisprudence controversies about the division of the Brazilian Judiciary’s structure.

118. Brazil has adopted various legal ways of combating work similar to slavery, implementing public policies and strengthening legislation. The detection of forced labor on an inspected property and the attendant depreciation of its social function trigger proceedings for the property’s expropriation by the National Settlement and Agrarian Reform Institute-INCRA pursuant to Administrative Ruling no. 101 of January 12, 1996 issued by the Ministry of Labor and Employment, and Complementary Law 76 of June 6, 1993. Similarly, Administrative Ruling no. 1150/2003 issued by the Ministry for National Integration recommends that financial loans should not be granted by public banks to employers entered into the register of exploiters of forced labor (the so-called “Dirty List” established by Administrative Ruling no. 540 issued by the Ministry of Labor and Employment).

119. Still with regard to legislation, the President’s Office’s Special Secretariat for Human Rights, rural social movements, and human rights organizations have advocated the proposed Constitutional Amendment-PEC no. 438/2001 that provides for the confiscation of properties where slave work is detected in flagrante delicto and destined for agrarian reform as a crucial instrument for curbing this practice. Although the Amendment has been approved by the Senate and at a first round by House of Representatives, the bill’s approval at a second round is facing political difficulties.

120. On the executive front, in September 2008 the National Commission on Eradication of Slave Work-CONATRAE introduced the Second National Plan for Eradication of Slave Work after evaluation, revision, and updating of the original plan introduced in 2003. The Second National Plan incorporates advances in the areas of prevention and recovery. With regard to repression, actions have recently increased, as shown by data from the Ministry of Labor and Employment’s Inspection Department.

**Table 6**  
**Overview of inspection operations to eradicate slave work**  
**SIT/SRTE 1995-2008**

Year	Operations	Inspected Properties	Rescued Workers	Compensation Payments	Assessment Notices
2008*	154	290	5 016	8 934 184.61	4 841
2007	116	206	5 999	9 914 276.59	3 319
2006	109	209	3 417	6 299 650.53	2 772
2005	85	189	4 348	7 820 211.26	2 286
2004	72	276	2 887	4 905 613.13	2 465
2003	67	188	5 223	6 085 918.49	1 433
2002	30	85	2 285	2 084 406.41	621
2001	29	149	1 305	957 936.46	796
2000	25	88	516	472 849.69	522
1999	19	56	725	NA	411
1998	17	47	159	NA	282
1997	20	95	394	NA	796
1996	26	219	425	NA	1 751
1995	11	77	84	NA	906
Total	780	2 174	32 783	47 475 047.17	23 201

*Source:* Specific inspection reports for eradication of slave work  
NA = Not-available (Data not compiled at the time)  
Updated on January 15, 2009

121. In recent years, government and nongovernmental agencies involved in combating slave work have faced difficulties but major progress has been achieved nevertheless. In 2007, the Special Slave Labor Mobile Inspection Group staged the largest operation in the recent past to rescue workers under slavery conditions, when 1,064 rural workers were set free at the Pagrisa farm and mill. This operation mobilized corporate and political leaders that came out in defense of the company and disqualified the government's inspection work. The pressure entailed the suspension of operations for over twenty days in September and October, after which the mobile inspection group resumed its activities after the celebration of a technical cooperation agreement between the Ministry of Labor and Employment and the Solicitor-General's Office.

122. With respect to recent indictments and condemnations, four cases are as follows:

- (i) Plaintiff: Agenilson José dos Santos. The Federal Court in the State of Pará decreed the businessman's preventive arrest in November 2008. He is being charged by the Public Prosecutor's Office in Pará of subjecting persons to slave work in Placas, in the state's western region. There were 30 children or adolescents (22 aged up to five years and eight aged 5-13 years) among the 163 workers found in conditions similar to slavery during an operation carried out by members of the Ministry of Labor and Employment, the Labor Prosecutor's Office, the Federal Police, and the Federal Highway Patrol. Weapons and ammunition were also found in the entrepreneur's possession;

(ii) Plaintiff: Geraldo José Ribeiro. In October 2007, the Federal Supreme Court Second Panel dismissed the habeas corpus request filed by Geraldo José Ribeiro (HC 91959). On May 13, 2005 the plaintiff was sentenced to three years and six months detention for crime contemplated under Art. 149 of the Penal Code. The basic sentence of two years was increased by half due to accumulation of offenses. Six months were also added to the punishment due to the aggravating circumstances set forth in Art. 62, I of the Penal Code (regarding a group's leader). Minister Eros Grau, reporting the opinion, declared the allegation of incompetence of the Federal Court unfounded;

(iii) Plaintiff: José Gomes dos Santos Neto. 8th Criminal Court, Rio de Janeiro. Judgment on April 29, 2008. The plaintiff was sentenced to four years and one month detention and has been incarcerated since October 2007 for alluring workers in the State of Paraíba to work in the State of Rio de Janeiro under precarious conditions. According to the sentence, it was proved that workers slept on the floor and/or in hammocks, subject to inclement weather conditions in a house in Paracambi, in the Baixada Fluminense district. The lodgings had inadequate sanitary facilities. Workers were clandestinely taken to the city of Rio de Janeiro for two days on a truck without minimum safety conditions;

(iv) Plaintiff: Gilberto Andrade (Caru and Baixa Verde Farms). São Luiz 1<sup>st</sup> Criminal Court. Judgment on May 15, 2008. A proprietor of lands in the States of Pará and Maranhão, the plaintiff was sentenced to 14 years in prison by the Maranhão Federal Court for the crimes of slave work, corpse concealment, and recruiting of minors. Fine: 7,200 minimum wages at the prevailing value at the time of the crimes. According to the sentence, suspension of the penalty execution will not be permitted nor the substitution of deprivation of liberty by other penalties such as donation of food baskets and community service. According to the Public Prosecutor's Office responsible for the action, the conviction was due to the rescuing of 19 slaves on one of the plaintiff's properties. The final decision was given in April. While appealing in freedom, the plaintiff was arrested again in early May and sent to the Pedrinhas Penitentiary on the basis of three preventive custody requests by the Federal Prosecutor's Office for being a recidivist offender. Thus, there are other suits before the Courts, which may entail further convictions.

123. Gilberto Andrade is on the "black list," the Federal Government's register of employers that have been proven to be slave labor exploiters. This means that he will not have access to loans from state-owned institutions or from some private banks and clients that have adhered to the National Pact on the Eradication of Slave Work. One of the slaughterhouses that used to buy his production is Mãe do Rio, which became a Pact signatory this year, thereby undertaking the commitment to adopt a trade restriction policy against anyone involved in this type of exploitation.

124. In addition to penal conviction, the indictment for which Federal Prosecutor's Office is responsible, the Labor Prosecutor's Office files tens of suits every year, requesting the rescission of the workers' contract and demanding severance payments, transportation to their original place, and repair for moral damages, in addition to other actions aimed at stopping the practice of labor under undignified conditions and encompassing the obligation to do or refrain from doing actions pertaining to the workers' hygiene, safety, comfort, and health. In 2002, the National Coordinating Office for Combating Slave Work was set up, consisting of representatives from all the regional Prosecutor's offices in the states, who work in cooperation with the Ministry of

Labor and Employment. Prosecutors are on permanent standby to participate in operations by the Mobile Groups anywhere on the national territory, so as to gather evidence to be used in civil suits leading to the offenders' conviction.

125. One of the instruments used to halt the use of human labor without the minimal conditions required by law is a public civil action accompanied by the imposition of fines of a considerable amount for noncompliance with the juridical order. In respect of certain cases, use has been made of public civil actions demanding repair for moral damages. Repair for collective moral damages imposed by the Labor Courts, together with the entry of infringing employers on the "Black List", is a very effective instrument in view of the high amount of the penalties applied, which makes the exploitation of slave work economically disadvantageous. In 2005 there were 548 administrative proceedings under way, 111 public civil actions, 24 collective actions, four interlocutory injunctions, 22 extrajudicial execution actions, and 167 conduct adjustment agreements.

***Question 14. Please provide detailed and updated information, including statistical data disaggregated by sex and age, on domestic workers in the State party, in particular on the legal norms regulating domestic work.***

126. The Ministry of Labor and Employment defines domestic work as the work performed by a person over 18 years of age that provide continuous services for a non-profit purpose to persons or families in the latter's home. Workers in this category are: cooks, housekeepers, washwomen, cleaners, guards, private drivers, gardeners, companions to the elderly, and housekeepers when the household where they work does not pursue profits. According to INSS data, in 2007 there were 6,731,705 domestic workers in Brazil, 1,833,338 of which had working documents signed and 6,731,705 workers had no working documents.

127. Law 5859 of December 11, 1972, regulated by Decree no. 71885 of March 9, 1973, provides for a domestic worker's profession, defining it and according to workers rights. The 1988 Federal Constitution granted other social rights to domestic employees, including the mandatory payment of the minimum salary; salary irreducibility; remunerated weekly rest; remunerated yearly paid vacation plus at least one third in addition to the normal salary; 120-day leave for pregnant workers, without prejudice to their job or salary; paternity leave; prior notice; and retirement and enrolment in Social Security.

128. Law 11324 of July 19, 2006 modified articles of Law 5859 of December 11, 1972, granting domestic workers the right to 30-day vacation; job stability for pregnant workers, right to civilian and religious holidays, in addition to prohibition of salary discounts for housing, food, and hygiene products used at the workplace.

129. Domestic employers contribute in a differentiated manner to Social Security. They make a monthly payment equal to 12 per cent of the taxable salary of their domestic employees, whereas other employers pay a percentage of their own payroll. It is incumbent upon the employer to make the monthly Social Security payment of his/her share and of his employee's share discounted from the latter's monthly salary. A significant change that contributed to the formalization of domestic workers was the permission for employers to deduct from their

personal income taxes their Social Security contribution on domestic worker's salaries. The deduction allowed is based on a worker's minimum monthly salary, including the 13<sup>th</sup> monthly salary and the 1/3 of salary for vacations. It has also allowed employers to pay the contribution due in November of each year by December 20.

130. The employer's payment to the Unemployment Fund Benefit-FGTS is, differently from the obligation related to other workers, optional in the case of domestic workers - the decision to contribute or not is up to the employer. This concession to the employer is justified as an incentive to the demand for domestic work but it implies that the domestic worker becomes ineligible for drawing unemployment benefit in case of dismissal. This benefit is granted only to workers that participate in the Fund.

131. A measure aimed at protecting domestic workers under 18 years of age is provided under Decree no. 6481 of June 12, 2008, which addresses the prohibition of the worst forms of child labor. Signed by the President of the Republic on June 12, the World Day against Child Labor, the decree regulates ILO's Convention 182 ratified by Brazil. The decree updated the list of economic activities considered unhealthy and hazardous to minors under 18 years of age. Pursuant to the Federal Constitution (Art. 7, XXXIII) the work of minors under 18 years of age is prohibited in 94 activities, including work prejudicial to morals and domestic work.

132. The prohibition of domestic work is based on the fact that young people working in such an activity may be subjected to intense physical effort; isolation; physical, psychological, and sexual abuse; long working hours; night work; heat; exposure to fire; anti-ergonomic positions, and repetitive movements, all of which are likely to jeopardize the young person's physical, social, and psychological development. This kind of work at the age of 16 is authorized only in situations in which adolescents are not exposed to hazards that compromise their health, safety, and morals. Thus, under the presidential decree, adolescents aged 16-18, who used to be allowed to engage in domestic work are now prohibited from doing so.

133. Domestic workers in Brazil have historically been afflicted by low social and monetary worth. Moreover, the percentage of women engaged in this kind of work is much higher than men's. In 2006, only 0.9 per cent of working men were domestic workers, following a decade-long trend. In that same year, the percentage of women engaged in domestic work was 16.5 per cent of employed women. In comparison with 1996, there was a slight drop of 1.0 per cent, which points to the tendency throughout the decade. Other data show that the percentage of white women engaged in domestic work declined from 13.4 per cent in 1996 to 12.6 per cent in 2006, while the percentage of black women engaged in domestic work fell from 23 per cent in 1996 to 21.7 per cent in 2006. Despite the slight decline in the two segments, domestic work in Brazil is performed predominantly by black women.

134. With regard to the breakdown of domestic workers by race/color and age range, one can detect a consistent drop in the number of girls and adolescent women in the course of that decade. In 1996, domestic workers aged 10-17 accounted for 14.2 per cent of the total, as compared with 6.1 per cent in 2006. Further disaggregated data show that white workers in this age range accounted for 12.8 per cent in 1996 and for 4.9 in 2006, while the figures for black women were 15.3 per cent in 1996, as compared with 6.9 in 2006. It is important to note that in that decade there was a significant drop in the number of school-age young people engaged in domestic work. Family Grant, Brazil's major social protection program conditions the benefit

granted families to school attendance by children and adolescents and is thus responsible in large measure for the drop in the percentage of children and adolescents in the labor market.

135. In respect of valorization of domestic work, one notes that between 1996 and 2006 the number of domestic workers with working papers, which grants them workers' rights, rose from 18.7 per cent to 23.9 per cent in the case of black women, and from 23.6 per cent to 30.2 per cent in the case of white women. Despite these positive developments in both segments, there is still a differential between black and white domestic workers, which may point to a racial discrimination question.

***Question 15. Please provide detailed information on accidents in the industrial and agriculture sectors in the State party, including fatal accidents, and on measures undertaken by the Federal and State labor inspections to enforce occupational safety and health standards.***

136. The Brazilian Constitution expressly establishes as a right of urban and rural workers the "reduction of risks inherent to the job through health, hygiene, and safety measures (Art. 7, XXII)." The Ministry of Labor and Employment defines as a labor accident the accident that occurs at the work site during working hours, which results in physical injury, functional disturbs or disease that reduces the worker's working and income earning capacity or that result in the worker's death.

137. The National Social Security 2007 Yearbook recorded 653,000 labor accidents in the previous year, and 2,800 deaths resulting from these accidents. This is a very high figure, as it means a 27.6-per cent increase over the preceding year. Under a Work Safety and Health Program, the Ministry of Labor and Employment promotes inspections and the filing of charges with a view to eliminating risk situations to workers. In 2006, the industrial sector recorded the highest number of accidents, with 129,000 occurrences, followed by the services sector, with 70,500 accidents. The trade sector recorded the lowest number of accidents.

138. With regard to charges filed by the Ministry of Labor and Employment inspection service, 849,795 irregularities were detected in respect of health and safety at work, 80,964 more than in the previous year. Of this total, civil construction accounted for 242,427 charges filed, followed by industry (204,417) and trade (165,331). Ministry of Labor and Employment's inspection activities play a determinant role in reducing the number of workers' deaths and cases of temporary and permanent incapacity.

139. It should be noted that Ministry of Labor and Employment statistics may be underestimated, as they pertain only to workers in the formal economy who have working documents and are enrolled in the Social Security System-INSS. In addition, informal workers are not covered by the accident benefit,<sup>19</sup> which is granted by the Ministry of Labor and

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<sup>19</sup> Accident benefit is granted to workers that were receiving illness benefit, which is paid to workers incapacitated for work for fifteen days. These workers, included in the previously mentioned categories, sustain permanent injury stemming from a work accident. This benefit has the nature of an indemnity and may be accumulated with other benefits, except for retirement pension. Payment of the benefit starts upon de interruption of the illness benefit.

Employment to workers that have a labor accident and suffer sequels that reduce their capacity for work. Workers entitled to this benefit are as follows: (1) employees; (2) domestic workers; and (3) the specially insured. Domestic workers, self-employed workers, and optional contributors to Social Security are not entitled to this benefit. and neither are informal workers.

140. In view of the large number of labor accidents recorded nationwide, the Ministry of Labor and Employment established a specific coordinating office for policies on combating all forms of degrading work, with emphasis on combating and preventing occupational diseases and work accidents. This office has carried out actions in the informal labor sector as well, such as in the case of outsourced motorcycle delivery services. Extensive negotiations with employers' associations and labor unions led to the express recognition of this occupation in collective instruments in various federation units, particularly in the states of Minas Gerais and São Paulo and in the Federal District, and to the issuing of norms pertaining to professional motorcyclists, including the establishment of better wages and minimum wages, the requirement of time for rest and meals, health plans, and life insurance, recognition of the employment relationship, notification of accidents to the competent authorities, periodic training and courses, and continuous provision of individual protection equipment, among other requirements.

141. With regard to assistance to workers' health, there are 60 Worker's Health Reference Centers distributed throughout all federation units; these centers are responsible for addressing five problems of greater gravity and prevalence: repetitive motion syndrome and diseases of the osteomuscular system in workers; pneumoconiosis (disease caused by the inhalation of dust); diseases caused by agricultural chemicals, heavy metals, and organic solvents; and serious and fatal accidents. To obtain more accurate data on accidents, in April 2007 Brazil adopted a mechanism known as Social Security Epidemiologic Technical Nexus, which relates diseases to professional activities that occur with greater frequency. Since then, the record of occupational diseases grew an average of 134 per cent, according to the Social Security Ministry-MPS. Notifications of diseases of the osteomuscular system, including repetitive motion syndrome, rose by 512 per cent. This mechanism facilitates notifications of labor accidents.

142. In addition to the enormous social losses stemming from labor accidents in terms of loss of human lives and physical incapacity, it is estimated that labor diseases cost the country 4 per cent of its GDP, taking into consideration the formal, informal, and rural sectors, public servants, cooperatives, and the self-employed.

### **C. Article 8 - Trade union rights**

***Question 16. Please provide information on the measures taken by the State party to protect the right of workers to form trade unions and to join the trade union of their choice. Please provide detailed, disaggregated statistical information on the number of strikes organized on large rural properties ("latifundia") and on the number of strikes declared by courts as illegal in the State party.***

143. The 1988 Federal Constitution establishes as fundamental norms in favor of workers and unions the "principle of trade union freedom," the "principle of prohibition of anti-trade union practices," the "principle of non-discrimination," and the "principle of freedom and human dignity." These principles function as restrictive norms for employers. Art. 8 provides for trade unions' autonomy, which implies freedom of association and non-intervention and

non-interference by the Government, a protection also ensured internationally by ILO's Convention no. 87 as well. Art. 8 of the Federal Constitution reads as follows:

“Art. 8. Affiliation with a professional association or trade union is free, with due regard to the following:

I. The law may not require State authorization for the establishment of a trade union, save for registration with the competent body and the State. The Government shall not interfere with or intervene in trade union organization.

(...)

V. No one shall be obligated to become or remain a trade union member.”

Art. 8 also sets forth norms to protect union members running for a leadership position or as a union representative, as this also integrates the principle of union freedom.

“VIII. The dismissal of a union member from the moment he or she applies to run as a candidate for a union leader or for a representative position shall not be allowed. If elected, even as an alternate, such ban shall be in force until the end of his or her term in office, save if he or she commits a serious fault pursuant to the law.”

Art. 5 further provides that

“XVII. Full freedom of association for lawful purposes shall be assured, except for association of a paramilitary nature.”

144. Thus, affiliation with a union or association in Brazil is voluntary, subject to the interested party's express wish. A member may withdraw his or her affiliation at any time, even though he or she may continue to perform his or her professional functions (either as employer or as employee). The guarantee of freedom of association and autonomy ensure that trade unions may draw up their own bylaws, freely elect their leaders, organize their own management, and formulate their own program of action, i.e., they have the right to self-determination, to govern themselves.

145. It should be made clear that Brazil constitutionally opted for having only one union to represent a given economic or professional category in a given area. A worker's freedom implies his or her decision as to whether or not to become a member of the union of his or her professional or economic category in his or her territorial base, pursuant to Art. 8, II:

“II. The establishment of more than one union or association at any level to represent a professional or economic category in the same territorial base to be defined by the workers or employers concerned shall not be permitted, and its coverage shall not be less than the municipality's area.”

146. The protection of trade union freedom is further reinforced by the penal legislation, which considers a crime any attempt against the freedom of association, or unionization, as provided under Art. 199 of the Penal Code:

“Art. 199. Coercing a person by violence or serious threat to join or not a trade union or professional association:

Penalty: detention from one month to one year, in addition to fine proportional to the violence.”

147. It should be pointed out that the rule banning State intervention in a trade union does not prevent the Judiciary from appreciating illegal acts of union members and much less the Public Prosecutor’s Office’s intervention to protect violated meta-rights. The rule that protects trade union autonomy refers only to political or administrative interference by the State. The Labor Courts’ competence for hearing and judging the matter is constitutionally guaranteed under Art. 114. The Federal Constitution has vested in the Labor Public Prosecutor’s Office powers to investigate anti-union practices and to determine the corresponding reparation.

148. Despite the aforesaid legal guarantees of the exercise of union rights in Brazil, there are frequent reports of impediments to the exercise of freedom for unionizing and collective bargaining. Anti-union practices in Brazil occur in different domains and in different forms. The Workers Single Central-CUT, one of the country’s main union federations alleges, for instance, that current labor legislation facilitates the dismissal of union leaders, does not guarantee labor organization, and does not recognize civil servants’ right to collective bargaining. In addition, unions often criticize the sluggishness of the Labor Courts and their anti-union interpretation of the law.

149. In CUT’s view, there is frequent pressure in the private sector for workers’ withdrawal from unions under risk of being dismissed for participating in union actions. Moreover, labor market dynamics are unfavorable to labor union organization: deregulation, precariousness, high turnover. The labor union’s very structure is a target of criticism by workers, as it makes for the unions’ low representativeness and does not meet the workers’ organizational needs in an environment marked by competitiveness and changes in the labor world, as well as failing to guarantee workers’ organization on their worksite.

150. In 2006 and 2007, with ILO’s support, trade unions undertook to make a diagnosis of the occurrence of anti-union practices in the country and to formulate a proposal for a unitary program for the action of labor union centrals. After the 2003 establishment of a National Contact Point for OECD Guidelines, trade union organizations have filed denunciation of anti-union practices on the part of multinational corporations, such as dismissal of union leaders and refusal to engage in collective bargaining.

151. National companies, in turn, have resorted to judicial measures to prevent the exercise of union rights, particularly to interdiction. Provided for under Art. 1.210 of the Civil Code, an interdiction is applied when possession or property rights are under threat. However, its use has proliferated as an instrument of the employers and public administration bodies to stifle union

activity or make it unviable, both in the city and in the country. It has been made intense use of by large property owners to prevent the occupation of their lands in agrarian conflicts and by entrepreneurs to disband sit-in strikes; and since the nineties it has been illegally used against demands by professional categories.

152. The allegation before the Courts of trespass and spoliation, anarchic inciting, and illegal constraint serve as the basis for the granting of temporary restraining orders so as to keep workers and their leaders apart from each other, as well as for imposing heavy fines and giving rise to police investigations against those exercising their legitimate right of manifestation. Interdiction incites and exacerbates police action, anticipates punishment even prior to the fact. Exemplary cases of its use were seen in the recent dismissal on January 4, 2009, of the elected board of the Amapá Teamsters Union; and the filing of a representation with the President of the Labor Superior Court on July 5, 2008, wherein CUT denounces anti-union practices adopted by both the private and the public sectors.

153. Thus, interdiction is used also to curtail the right to strike, to which the second part of the question refers. One example was the Writ of Intimidation and Interdiction no. 1781/2008 issued by the 2<sup>nd</sup> Regional Labor Court on September 29, 2008 against the Bank Employees' Union of São Paulo, Osasco Region, to prevent employees from entering the bank premises where a strike was being planned, with authorization for the use of police forces, forcible entry, and arrest of the recalcitrant.

It should be noted that the right to strike is guaranteed by the Brazilian Constitution:

“Art. 9. The right to strike is guaranteed; it is up to workers to decide about the opportunity to exercise such right and about the interests to be defended by the exercise of this right.”

154. Constitutional Amendment no. 45/2004 rewrote Art. 114 of the 1988 Federal Constitution, in regard to the right to strike as provided in item II, which vests in the Labor Courts the faculty of initiating and judging actions involving the right to strike; and in item III, which vests in the Labor Prosecutor's Office the power of decision regarding collective strike bargaining, should it occur in an activity considered essential to society.

“Art. 114 (...)

Paragraph 3. In case of strike in an essential activity likely to harm the public interest, the Labor Prosecutor's Office may bring a suit pertaining to collective bargaining, and it shall be incumbent upon the Labor Court do decide the conflict.”

155. Law 7783 of June 28, 1989, which disciplines the exercise of the right to strike, provides that during a strike a team of workers must be kept on duty to ensure the provision of essential services<sup>20</sup> or prevent the irreversible deterioration of goods, machines, and equipment; otherwise the strike may be considered abusive. On the other hand, the Labor Prosecutor's Office may have recourse to the Labor Courts to make prevail the worker's right to strike. One example of this was the public civil action filed in the State of Rio de Janeiro against a major financial institution. It should be also noted that lockouts are still illegal in Brazil.

156. By way of illustration, one may mention the action of the Labor Prosecutor's Office, which was praised by the International Labor Organization during the 2008 International Labor Conference in respect of anti-union acts committed by a company of a large multinational chemical group with branch offices in São Paulo. The Labor Prosecutor's Office filed with the Labor Courts a public civil action requesting a restraining order for immediate abstaining from anti-union practices. It was proven that the company did engage in discriminatory practices against leaders and members of the union's administration and against the union itself, making use of means such as fierce repression against the strike movement, imposition of the need to request company authorization for joining the union, facilitation of and incentive for withdrawal from the union, restriction or impediment of the access of union leaders to the enterprise's premises, impediment of participation of the representative appointed by the professional category union in the commission on participation in profits and results; transfer of an employee to another establishment - quite possibly with the intention of depriving him of the stability provided for under the Constitutional Provisory Dispositions-ADCT's Art. 10, II, *a* and Art. 165 of the Consolidated Labor Legislation - and noncompliance with collective clause regarding justification of union leaders' leave, all of this in the intent of blocking the union movement.

157. Lastly, as to the data requested in the Question, Table 7, prepared by the Inter-Union Department of Statistics and Socioeconomic Studies-DIEESE shows the number of strikes declared abusive by the Courts from 2003 to 2007 - 4 per cent of general strikes; 58 per cent of strikes subjected to some kind of judicial decision in 2003; and, respectively, 6 per cent and 54 per cent in 2004; 3 per cent and 30 per cent in 2005; 3 per cent and 26 per cent in 2006; and 6 per cent and 37 per cent in 2007.

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<sup>20</sup> Art. 10. The following services or activities shall be considered essential: I - water treatment and supplying; production and distribution of electric power, gas, and fuels; II - medical and hospital care; III - distribution and sale of medicine and food; IV - funerary services; V - public transportation; VI - sewage and trash collection and treatment; VII - telecommunications; VIII - custody, use, and control of radioactive substances, equipment, and nuclear materials; IX - data processing related to essential services; X - air traffic control; and XI -clearing houses.

**Table 7**  
**Number of strikes by selected types Brazil - 2003-2007**

Type of Strike	2003	2004	2005	2006	2007
Judged to be legal and/or not abusive	8	5	1	2	6
Judged illegal and/or abusive	15	19	8	8	20
Subject to judicial decisions as to legality and/or abusiveness	23	24	9	10	26
Subject to some kind of judicial decision	26	35	27	31	54
With court intervention/participation	54	59	41	61	77
Subject to informed conflict settlement mechanisms	176	150	166	175	202
Total	340	302	299	320	316

*Source:* SAG/DIEESE - DIEESE's Strike Monitoring System.

158. With regard to employers' reactions, of the 317 strikes for which DIEESE compiled reports, in 16 cases, police repression was used; in 14 cases, days on strike were deducted from strikers' pay; in 9, there was threat of dismissal; and in 6 cases there was report of punishment and dismissal of strikers.

159. In respect of the rural environment specifically, it should be mentioned that strikes organized on great rural properties often were not formalized, according to the National Confederation of Agricultural Workers-CONTAG. At these manifestations known as *paradeiros* [stoppages] rural workers stop working for three days to demand their rights. Still according to CONTAG, there are no reports of violence during these manifestations. They occur particularly in sugarcane-growing areas in the states of Goiás, Pernambuco, Alagoas, Paraíba, Rio Grande do Norte, and Paraná, and in areas where vegetables and fruit are grown, in the states of Bahia and Pernambuco. These are the two most unionized sectors in the rural area.

160. Data from the Land Pastoral Commission-CPT show that in 2007 there were 20 resistance actions by workers demanding their rights, all of them related to sugarcane cutting, 12 of which were officially declared strikes. In 2006, 9 resistance actions occurred in sugarcane areas and in the forestry/pulp and horticulture sectors. In 2005, 7 actions were reported, 6 in the sugarcane areas and one in horticulture.

***Question 17. Please provide information concerning the number of complaints or reports received in recent years about the murders and other acts of violence committed against union leaders and activists, the number of cases brought to trial and the number of current convictions. What other steps are being taken to combat these crimes and provide protection to labor unionists?***

161. There are no available data on the subject in Brazil, which poses an obstacle to the assessment of violations. It is expected that this deficiency will be overcome with the adoption of a legal framework for the National Program on the Protection of Human Rights Defenders-PPDDH, a category that encompasses labor unionists. This program, introduced in

2004 by the President's Office's Special Secretariat for Human Rights, was reinforced in February 2007 by the publication of Decree No. 6044, which established the National Policy on the Protection of Human Rights Defenders. The bill establishing rules for the protection of Human Rights Defenders was signed by the President of the Republic at the opening of the Eleventh National Conference on Human Rights in December 2008 and sent to the National Congress. Its approval will ensure greater juridical security for the initiatives to protect Human Rights Defenders, as well as the requisite budgetary allocations and the institutional commitment of the other public agencies involved, such as the police forces.

162. The Program's Coordinating Office has worked to enhance its protection network through partnerships with the states, Public Defenders' Offices, Public Prosecutor's Offices, the Judiciary, government agencies, and organized civil society. On the boards is a Multiministerial Commission involving federal agencies as an arena for discussion, coordination, and prevention of the causes that threaten Human Rights Defenders and thus human rights as well. The program is under implementation in different stages of execution under agreements in four states: Pará, Pernambuco, Espírito Santo, and Bahia. In 2009, it is to be extended to the states of Paraná and Mato Grosso.

163. In 2008, PPDDH's Coordinating Office handled 33 cases nationwide, five of which were related to unions, while the others related to individual liberties, indigenous rights, and agrarian issues, among others. To this figure should be added 63 cases handled by the state Coordinating Offices. The number of cases handled in 2008 was 39 in the state of Espírito Santo, 16 in the State of Pernambuco, and eight in the State of Pará. The conclusion of a survey commissioned by the Program was expected for March 2008; its objective was to make a national diagnostic of the situation of human rights defenders.

164. With regard to rural violence specifically by reason of the exercise of union rights, the data compiled by the Land Pastoral Commission, a nongovernmental organization, should be mentioned. In 2007, six labor unionists were threatened with death; in 2006, the President of the Labrea Rural Workers' Union in a municipality of the State of Amazonas was threatened with death, together with other nine rural unionists. In 2005, four union leaders, eight presidents of rural workers' unions, and 15 labor unionists were also threatened. It should be noted that in 2007 there was an attempt to assassinate the president of the rural workers' union of Santa Maria das Barreiras in the State of Pará, where there is the greatest occurrence of death threats to rural workers.

165. It should be mentioned that 2008 saw an increase in denunciations against unions and social movements, particularly against the Movement of Landless Rural Workers-MST, under the allegation that in various states there are frequent episodes of criminalization of human rights defenders. The case that received the broadest publicity occurred in the State of Rio Grande do Sul, whose Judiciary last June granted four requests from the Public Prosecutor's Office in regard to public class eviction actions against two MST settlements where 160 rural worker families lived. According to MST claims, violence was used in the eviction operation by the State Military Brigade. Moreover, on the initiative of some of its members, the Superior Council of the Rio Grande do Sul's Public Prosecutor's Office ordered investigations for the purpose of filing a public civil action aimed at disbanding the MST, declaring it illegal, and against the camp dwellers and MST leaders for engaging in organized crime.

166. To investigate the denunciations, the Council on the Defense of the Rights of the Human Being-CDDPH (See reply to Question 4) set up a Special Commission under Resolution no. 8 of August 12, 2008. The Special Commission concluded that there were indications of action against the rural social movements on the part of some public agencies and institutions of the State of Rio Grande do Sul. It added, though, in the State Legislature, the Federal Prosecutor's Office, and in the Public Security's Ombudsman Office there were dissenting voices that disagreed with this policy.

167. Unfortunately, this is not an isolated case of criminalization of social movements in the State of Rio Grande do Sul. The same Military Brigade was responsible for the assassination, on September 30, 2005 of Jair Antônio da Costa, the leader of the Igrejinha Shoemakers Union in the Sinos Valley. He was strangled with a club after being immobilized and put in handcuffs by military policemen as he participated in a peaceful protest against unemployment in his category and in the region. Nor can it be said that such happenings are exclusive to that region. Although it issued recommendations to the State of Rio Grande do Sul, CDDPH's Special Commission sees this as an emblematic case of criminalization of social movements elsewhere in the country.

#### **D. Article 9 - The right to social security**

***Question 18. Please provide detailed information on effective mechanisms within the social security system in the State party which grant coverage to orphans, children without parental care, families headed by single mothers or children, widows, older persons, persons with HIV/AIDS, handicapped persons as well as rural workers, quilombolas and "riverside dwellers".***

168. The Brazilian social security policy has available the following mechanisms: the Social Security system, of a contributive nature; the Social Welfare system, free and targeted at the poor without contributing capacity; the Unified Health System-SUS, free universal coverage; and the Unemployment Insurance subsystem, managed by the Ministry of Labor and Employment. This structure is highly complex and comprehensive, and benefits are granted through specific instruments that seek to reach the different vulnerable groups. The main mechanisms of the Brazilian social security system are described below.

169. The major social assistance program coordinated by the Ministry for Social Development and Fight Against Hunger-MDS is the *Comprehensive Family Assistance-PAIF* which forms part of Basic Social Protection. This program was introduced in 2004 and its objective is to provide basic actions and services for families in a situation of social vulnerability. Its actions are geared to family counseling, assistance for their inclusion in the Unified Register, home visits, interaction groups or workshops, in addition to socio-educational, qualification, and productive inclusion activities. In 2007, the Federal Government spent around R\$162 million to co-finance these actions in 2,626 municipalities. Also in 2007, 112 projects were selected to structure the basic social protection network, with a view to building and modernizing facilities.

170. The *National Program on the Inclusion of Young People* purports to create opportunities for young people aged 15 to 29 years who are living in a situation of social vulnerability - out of school, without professional qualification, without prospects of a productive life. In 2008, government action sought to ensure rights of and generate opportunities for these young people along five lines: institutional, juridical, international, participative, an inclusive.

171. The *Continued Benefit Program-BPC*'s objective is to guarantee an income to persons that by reason of old age or incapacity are out of the labor market. If such persons do not have a sufficient family income (per capita income of less than one fourth the minimum salary) or access to Social Security contributive benefits, BPC guarantees them a solidarity-based income by paying a monthly benefit equal to one minimum salary to the aged and to handicapped persons who are incapacitated for an autonomous life. With regard to the aged, under the Statute of the Aged (established in 2003) a person becomes eligible for the benefit at 65 years of age. As to handicapped persons, a large portion of the beneficiaries (about two thirds of them) are children, adolescents, and young people up to 24 years of age.

172. The BPC is considered a major innovation in the Brazilian social policy as it assists a public heretofore excluded from any public social welfare mechanism. It should be noted that although it is meant for both the rural and the urban population, it assists predominantly an urban population. This benefit has been granted since January 1996 and, according to IPEA data, accounts for nearly 30 per cent of the reduction in the inequality pointed out by the Gini Index between 1995 and 2004. In 2008, the program covered approximately 1.51 million handicapped persons and 1.42 million aged persons, having spent approximately R\$13.8 billion.

173. In April 2007, the *BPC at School Program* was introduced to ensure, on a priority basis, that children and young people with disabilities, aged up to 18 years, have access to and remain in school contemplated by the Continued Benefit. To ensure the constitutional right to school and to specialized educational attention at regular schools, the program follows four lines of action: (i) identification of BPC beneficiaries up to age 18 whether they are in school or not; (ii) detection of the main barriers BPC beneficiaries with disabilities face in having access to and in staying in school; (iii) undertaking of studies and the development of joint strategies to overcome such barriers; and (iv) systematic follow-up of actions and programs of the federation units that have joined the program.

174. The *Unified Health System-SUS* provides many services to handicapped persons. Last year the Federal Government spent R\$31.5 million on broadening the coverage of handicapped persons, assigning priority to the provision of orthoses and prostheses, medicinal drugs, and assisted technology. There was a marked expansion in the provision of locomotion aids combined with other rehabilitation procedures for persons with visual, hearing, or other kinds of physical deficiency. Priority is given to assisting handicapped persons who are living under more vulnerable conditions - BPC and Family Grant beneficiaries; children and adolescents in need of school; Hansen's disease patients; and those on SUS's rehabilitation waiting list.

175. To meet the repressed demand regarding ear health, the states, municipalities, and the Federal District have raised by 15 per cent their target for assisting persons with hearing deficiency (Administrative Rule no. 389 of March 3, 2008). New rehabilitation services aimed at persons with hearing deficiency have been made available. In October 2008, implementation of the State Networks of Ear Health Services was 89 per cent concluded (135 networks), with the completion of eight new networks in the states of Rio de Janeiro, Piau , Esp rito Santo, Par , and Bahia. These measures will allow assistance to another 23,395 people a year, at an additional annual cost of R\$35,688,602 in ear health costs per year. Annual spending should total R\$180,437,865 and an estimated 118,567 people should be assisted each year.

176. To meet the repressed demand regarding physical rehabilitation, the Federal Government has increased the amount of funds transferred to the states, municipalities, and the Federal District to strengthen the implementation of the National Policy on the Health of handicapped persons (Administrative Ruling GM/MS no. 2381 of October 10, 2008), as well as making available additional rehabilitation services: in October 2008, 72 per cent of the establishment of the State Physical Rehabilitation Networks (155 Services) were completed by the opening of 11 new services in the states of Bahia, Rio Grande do Norte, Minas Gerais, São Paulo, Rio Grande do Sul, and Santa Catarina. With these three measures it is estimated that an additional 185,286 persons per year will be assisted and an additional R\$53,791,160 will be spent per year on physical rehabilitation. A total of R\$ 145,194,997 will be spent and it is estimated that 380,434 people per year will be assisted. And to meet the repressed demand in visual rehabilitation, SUS now provides new optical resources and procedures.<sup>21</sup>

177. In addition to the aforesaid mechanisms, Social Security grants benefits to the aged (pension), widows, and orphans, as well as illness benefit to contributing enrolees in addition to retirement pension due to incapacity. These instruments were mentioned in Brazil's Second Report to the Committee on Economic, Social, and Cultural Rights (E/C.12/BRA/2, para. 256-282). Nevertheless, it is worth listing them again in relation to the groups mentioned in the question.

178. The aged receive an *age-based retirement pension* beginning at 65 for men and at 60 for women. For rural workers, this age limit is reduced by five years. In all these cases, 180 monthly contributions are required. It should be noted that rural workers that work under a family economy regime (individually or with their families), including *artisan fishermen, Indians, Quilombolas, and riverine populations* are entitled to the social security benefits listed below, except for the family salary, without their having to prove contribution time but only the exercise of a rural activity for a time equivalent to the regular contribution time. This is a specific *rural retirement* regime. In addition to receiving these social security benefits, these segments are covered by specific health programs described in the reply to Question 30.

179. *Widows and orphans* may be covered by the death benefit granted those that depended economically on a deceased insured, provided the deceased was still insured at the time of death, independently from contribution time (there is no grace period for this benefit). If the deceased was no longer insured by the time of death, dependents will still be entitled to a pension, provided that by the time of death the deceased had met the requirements for any kind of retirement pension.

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<sup>21</sup> Resources and procedures include magnifying glass with support, with or without lighting; manual magnifying glass, with or without lighting; glasses with filter lenses; framed binocular telescopes with focus; manual telescope system with adjustable focus; glasses with positive aspheric lenses; and glasses with sphero-prismatic lenses. These resources complement those already provided: articulated walking canes, tinted scleral lenses; ocular prosthesis; and glasses.

180. With regard to *maternity*, the maternity salary replaces the income workers would have earned in the case of birth or adoption, and is paid for up to 120 days. All insured women are entitled to this benefit. No grace period is required in the case of women that are employees, domestic workers, or self-employed no grace period is required.

181. The illness benefit is paid to an insured that becomes temporarily incapacitated for work or for his/her habitual activity for more than 15 consecutive days due to illness or accident. Retirement for incapacity is granted the insured in the case of permanent incapacity for any activity and will be paid for the duration of the incapacity caused by illness or accident. Both the retirement and the disease benefits require 12 monthly contributions in the case of common illness; in the case of accidents of any kind (labor accident or not) and of more serious diseases (specified in Multiministerial Administrative Ruling MPS/MS no. 2998 of August 23, 2001) there is no required contribution time. All insured are eligible for these benefits.

182. Persons living with HIV/AIDS are covered by both mechanisms described above, provided they are enrolled in the Social Security General Regime, and no grace period is required. To assess some of the social impacts of the AIDS epidemics in Brazil, the National Program on STD/AIDS has analyzed the benefits paid by Social Security in connection with AIDS to determine these benefits' share in the context of the general social security system.<sup>22</sup> The number of people living with HIV account for a relatively small percentage of those receiving disease benefit from Social Security - 0.9 per cent. Between 2004 and 2006, Social Security paid a total of 42,100 benefits to persons living with HIV, or 7.4 benefits per 100 persons receiving anti-retroviral therapy in 2006.

183. The number of people living with HIV and receiving social security and social welfare benefits due to the disease has declined over the years. One of the reasons is Social Security's adoption of stricter criteria for granting new benefits. The higher incidence of the epidemics among the poor challenges the strategies for combating sexually transmissible diseases and AIDS, as the demand for compensatory social benefits rises, and not all patients are covered by the Social Security's General Regime. The Federal Government is thus conscious that efforts in the area of health alone are insufficient. As a result, it has promoted efforts involving other areas of government, companies, and social movements to ensure good quality of life for persons living with HIV/AIDS, and expects to conclude in 2009 a "Social Inclusion Plan," which integrates the various areas.

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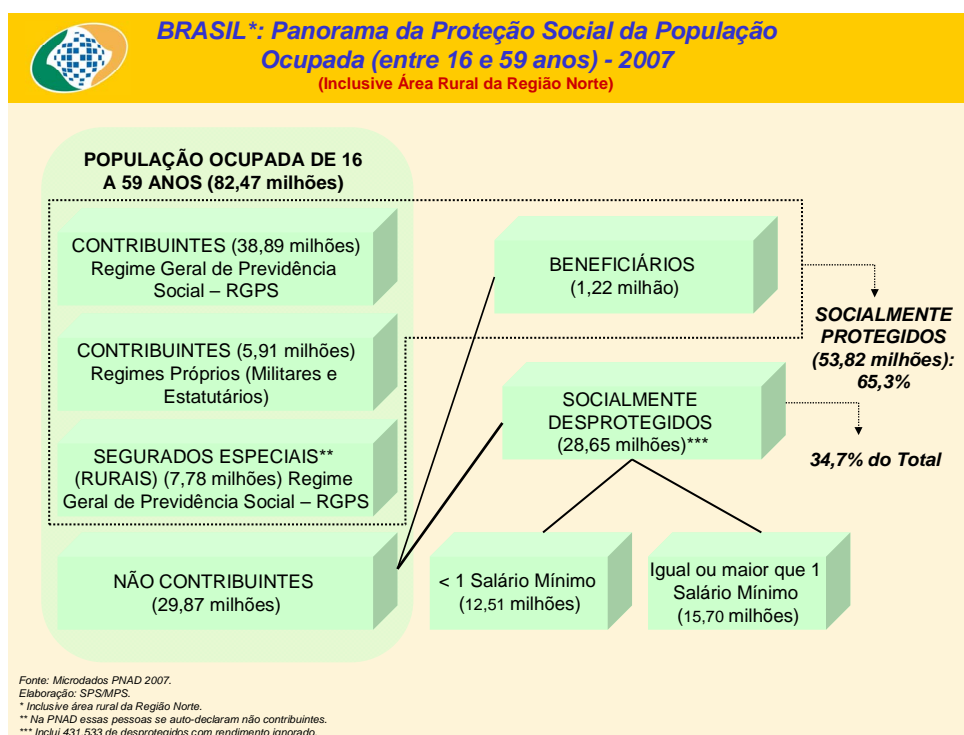
<sup>22</sup> See BRAZIL. Targets and Commitments made by the Member States at the United Nations General Assembly. Special Session on HIV/AIDS. UNGASS - HIV/AIDS. Brazilian Response. 2005/2007. Country Progress Report. Available at: [http://data.unAids.org/pub/Report/2008/brazil\\_country\\_progress\\_report\\_en.pdf](http://data.unAids.org/pub/Report/2008/brazil_country_progress_report_en.pdf).

**Question 19.** *Please provide information on the numbers of citizens who are not yet covered by social security and the reasons for their exclusion. What measures are contemplated to extend the benefits of social security to everyone as required by the Agreement? What, if any, are the penalties imposed on employers of domestic workers for failing to “formalize” such employment?*

184. Brazilian social security’s main principle is the universality of benefits, particularly with regard to groups that need State protection the most. This means that from a legal standpoint, all Brazilian citizens are protected by social security under any social conditions. The reply to Question 18 details the social security structure and addresses specific groups and the policies adopted by the Federal Government to realize the rights focused by the Agreement. With regard to coverage specifically, some particularities should be noted: health is a right of all and a duty of the State, and as such it is accessible to all people living in Brazil, independently from contribution; social welfare is targeted at society segments living in a situation of vulnerability, particularly because of insufficient income, and all are eligible for its benefits, independently from contribution. As to social security, as pointed out in the answer to the preceding question, eligibility for benefits depends on prior contribution by the beneficiaries in some cases.

185. By law, all Brazilian workers must be enrolled in Social Security. However, workers in the very extensive informal sector do not have working documents; as such, they do not receive the benefits granted workers in the formal sector. Of the 82.47 million people occupied in 2007, 29.87 million did not contribute to social security. However, 1.22 million out of those 29.87 million were already receiving some kind of social security benefit and were thus protected under the system. This means that in 2007 there were 28.65 million workers without social security protection, as shown in Figure 1.

**Figure 1**



**Legend of figure:**

**BRAZIL\**Overview of Social Security Coverage of the Population Occupied  
(aged 16-59 years) - 2007***  
(Including Rural Areas in the Northern Region)

**POPULATION OCCUPIED**

**AGED 16-59 (82.47 million)**

CONTRIBUTORS (38.89 million) - Social Security General Regime - RGPS

CONTRIBUTORS (5.91 million) - Specific Regime s (Military and Public Workers)

SPECIAL INSURED\*\* - (RURAL WORKERS: 7.78 million) - Social Security General Regime-RGPS

NON-CONTRIBUTORS - (29.87 million)

BENEFICIARIES - (1.22 million)

SOCIALLY UNPROTECTED - (28.65 million)\*\*\*

< Minimum Wage = or > Minimum Wage

(12.51 million) (15.7 million)

SOCIALLY PROTECTED - (53.82 million) - 65.3%

**[LEGENDAS]**

*Source:* Microdata PNAD 2007.

Prepared by SPS/MPS

\* Including rural areas in the Northern Region

\*\* Self-declared non-contributors according to PNAD

\*\*\* Including 431.533 uncovered under ignored regime

186. The main reason for exclusion from social security coverage is insufficient income. Of the 28.65 million unprotected workers in 2007, 12.51 million earned less than one minimum wage. Informality is greater in certain occupations, including domestic work.

187. To reverse this situation, a Social Security Education Program-PEP was introduced in February 2000 to inform society and make it aware of its rights and duties regarding social security, so as to ensure that all workers are covered. The program consists of actions to facilitate enrolment in social security and to speed up the benefit granting process. It also produces

institutional information on the importance of social security for workers and regularly offers orientation courses on social security benefits and services, as well as establishing partnerships with segments of organized civil society.

188. In addition to PEP, various legal mechanisms have been implemented to encourage enrolment in social security. One such mechanism is Law 11324 of July 19, 2006, which allows domestic employers to deduct from their income tax their employer contribution on their domestic workers' salary. Another example is Complementary Law 123 of December 14, 2006, which allows a reduction from 20 per cent to 11 per cent of the minimum salary the rate of contribution by the individual insured and of the optionally insured, so as to encourage low-income workers to enrol in the social security.

189. Lastly, it should be noted that all employers, including domestic employers, that do not formalize their workers' contract are subject to penalties. Penalties are the same as the ones imposed on those that fail to sign their workers Working Document in any other activity - whether these are domestic, rural, or urban workers - in conformity with Arts. 4 and 5 of the Consolidated Labor Legislation.

190. Under the labor administrative legislation, domestic employers that fail to formalize their workers' status are charged for not registering their workers' Working Document-CTPS and for not paying their share into social security. The Ministry of Labor and Employment imposes on such employers a fine of R\$296.12 per unregistered worker. In addition, the Ministry of Social Security also fines them for not enrolling their workers in the Social Security General Regime and for not paying the social security contribution. After being given administrative defense opportunities, these delinquent employers are subjected to a fine ranging from R\$1,254.89 to R\$125,487.95, starting with the lowest amount, which gradually increases in cases of repetitions.

191. It must be admitted, though, that it is difficult to inspect domestic work, as Art. 5, XI of the Federal Constitution prohibits auditors-inspectors from entering an employer's residence without his/her consent. This is why a fine is imposed only when the Labor Court, recognizing the employer-employee relation in judicial proceedings, files with the Ministry of Labor and Employment's Inspection Department a copy of its final decision to justify the filing of charges.

#### **E. Article 10 - Protection of the family, mothers and children**

***Question 20. Please indicate whether the "Maria da Penha Law" (Law on Domestic and Family Violence against Women) has been implemented in the State party. Please elaborate on the content of the Law including the mechanisms in place for the suppression of domestic violence against women. Please also indicate the role of the Special Secretariat on Women's Policies in the fight against domestic violence as well as detailed information on the establishment of the State and Municipal Councils on the Women Rights (E/C.12/BRA/2, paras. 145 and 150).***

192. On August 7, 2006, in compliance with international agreements under the Convention of Belém do Pará (Inter-American Convention on the Prevention, Punishment, and Eradication of All Forms of Violence against Women, and the Committee on the Elimination of Discrimination against Women-CEDAW, the President of the Republic sanctioned Law 11340/06 named *Maria*

*da Penha Law* in honor of the pharmacist that was twice victim of an assassination attempt by her husband. This law meant a great victory for women. It provides for unprecedented measures of prevention and of assistance to and protection of women in a situation of violence. It also establishes various emergency measures to protect women in a situation of risk. These measures vary from case to case, from the husband's expelling from the home to the prohibition of his physical approximation of the wife and children to the woman's right to repossess her assets and to cancel proxies issued in the aggressor's name. The law further established social assistance measures, such as the woman's inclusion in the registry of social programs run by the federal, state, and municipal governments.

193. Before the sanctioning of the *Maria da Penha Law*, domestic and family violence against women was considered as having a "lesser offensive potential" and was handled by Special Criminal Courts together with neighbour or street quarrels and traffic accidents, among other issues. The new law recognized the extremely offensive potential of domestic violence and determined that such crimes be handled by the Special Courts on Domestic and Family Violence against Women, with civil and criminal competence, established by the State and Federal District Judiciaries. Another innovation is the fact that the law considers domestic and family violence against women as a human rights violation and recognizes psychological violence as a form of violence.

194. Since the sanctioning of the law, the Special Secretariat for Women's Policies has concentrated its attention on its implementation and full enforcement. It has issued a public notice inviting nongovernmental organizations and/or university institutions organized into consortiums to establish an Observatory for Monitoring the Implementation and Enforcement of the *Maria da Penha Law* in Brazil; encouraged the State Judiciaries to establish Special Courts on Domestic and Family Violence against Women; supported the establishment of an integrated network of social services aimed at women; and trained public security professionals.

195. As a result of this strategy, there has been a significant expansion of specialized services targeted at women: by end-2008, the country had 415 Police Stations or Posts Specializing in Assisting Women; 121 Women's Assistance Reference Centers; 66 shelter homes; 15 Women's Public Defenders' Offices; a Women's Assistance Dial Service - "Dial 180" - and an SPM Ombudsperson Office, in addition to new services such as the 61 Courts and Wards specializing in Domestic and Family Violence against Women, established since the *Maria da Penha Law*. Since 2003, there has been a 22-per cent increase in the number of Specialized Police Stations, a 50 per cent increase in the number of shelter homes; and a 200-per cent in the number of reference centers.

196. A major assistance service that compiles information on the existing networks is the Women's Assistance Central, a service provided by the SPM since November 2005 for receiving denunciations or reports of violence, complaints about network services, as well as offering women orientation about laws and their rights, and referring them to the appropriate services. The Central operates 24 hours a day and calls are free of charge. In 2008, assistance was extended to 216,000 women throughout the country.

197. At the opening of the Second National Conference on Women Policies on August 17, 2007, President Luiz Inácio Lula da Silva launched *the National Pact on Combating Violence against Women*. The Pact lists initiatives to be implemented in the next four years by

different government agencies to prevent and combat all forms of violence against women, so as to reduce violence indicators not only through repression but also through prevention, care, protection, and guarantee of the rights of women in a situation of violence, as well as promoting a cultural change to disseminate equality concerns and ethical values, including strict respect for diversity and peace. Overall, 11 ministries and special secretariats, as well as public enterprises, the Judiciary, the Public Prosecutor's Office, international and nongovernmental organizations, states, and municipalities are partners involved in the Pact.

198. In addition to the specific actions to be implemented by the National Council on the Rights of Women-CNDM pursuant to Decree no. 6412 of March 25, 2008, which provides for its composition, structure, competence, and functioning, its work will also be directed at the strengthening of the State and Municipal Councils on the Rights of Women. To this end, it maintains contact with these councils, provides information about CNDM activities, meets requests, and maintains a databank. In 2008, there were 25 State and 400 Municipal Councils in activity. The CNDM also seeks to encourage the establishment of other councils through contact with local women's movements and the qualification of council members.

199. No less important is public opinion on the matter. A survey on "Human Rights Perception in Brazil" commissioned by the President's Office's Special Secretariat for Human Rights SEDH/PR, published in December 2008, asked which kinds of violence should be combated on a priority basis. Of a list of nine types of violence, first place went to "sexual abuse and exploitation of children and adolescents," with 67 per cent, followed by "domestic violence against children, adolescents, and the aged (59 per cent), and by "violence against women" (44 per cent). Moreover, out of a list of 18 Federal Government programs and policies, combating violence against women was considered the second most important according to 96 per cent of interviewees.

***Question 21. Please provide information on the number of street children and the measures taken to protect them from economic and social exploitation, work harmful to their morals or health or dangerous to life. What measures are being taken to rescue and rehabilitate street children, especially in Sao Paulo and Rio de Janeiro?***

200. Brazilian society does not know the exact number of children and adolescents living on the streets of its cities. First, because it is necessary to define what is meant by "street children;" secondly, because of this population's mobility and shifting pattern. The generic expression "street children" encompasses different but interrelated social phenomena. In the early 1980s a clear distinction was made between "children on the street" and "street children." Children on the street were children who worked on the informal market, attended school, and returned home every day. Street children were children and adolescents that lived on the streets, surviving on a combination of informal market activities, government and nongovernmental services, and minor delinquency acts.

201. In the 1990s, street children began to be called "children in a street situation," as research pointed out that there were different groups: (a) working children who had a family base; (b) independent working street children; (c) street children; and (d) children of street families. The vast contingent of children and adolescents seen on the streets of Brazilian cities consists, according to estimates that vary according to city size, of 80 per cent to 100 per cent of children

working on the urban informal market, who use these activities as a their own means of survival and the survival of their family groups (*a* and *b*) and not of “street children.” The percentage of children considered “street children” (safeguarded the different meanings of the expression) may reach 20 per cent in the great metropolitan areas and 0 per cent in small cities.

202. No national statistical data on children in a street situation that observe these differences have yet been produced. Neither have data been produced on children that live or spend long periods on Brazilian streets. Since 1986 researchers have done a headcount of street children in several Brazilian cities. Their headcount has been consistently lower than expected but has provided a basis for estimating that the number of children living or spending long periods on the street or in social welfare institutions may total 25,000 in the country. São Paulo, Rio de Janeiro, and Recife are the cities with the largest number of these children.

203. Living on the street is a situation that is aggravated by these children’s exposure to urban violence. Experience has shown that cities that implement a combination of at least four programs - street social education; temporary shelter; social and family counseling; and income generation or transfer - have the potential for drastically reducing their number. However, even when the number of children and adolescents in a street situation declines in some cities, this reduction is not always consistent over time in a same municipality or in the country as a whole.

204. Today’s aggravating circumstance is that, differently from the 1980s and the 1990s, when street children occupied a key place in policies and programs targeted at poor children and adolescents, the issue is no longer on the agenda of the media nor of public policies. The President’s Office’s Special Secretariat for Human Rights-SEDH/PR, recognizing the level of rights violations and of violence to which children are subjected on a daily basis, saw the need to restore this issue to the agenda of Brazilian social policies targeted at this population segment and to improve and reinforce Federal Government actions aimed at the protection and defense of the rights of these children and adolescents.

205. Regrettably, information about measures taken in Rio de Janeiro and São Paulo were not available.

***Question 22. Please provide more detailed information on the Child Labor Eradication Program. Please also provide information on the effectiveness of the Program for Integrated Reference Initiatives for Combating Sexual Violence in the protection of children (E/C.12/BRA/2, paras. 263 and 311).***

206. Introduced in 1996, the Program for the Eradication of Child Labor-PETI has adopted as an intervention methodology the transfer of income to families in a situation of social vulnerability, and the provision of social-educational activities in off-school hours for children and adolescents removed from child labor, subject to a record of 85-per cent school attendance. Since 2005, PETI has formed part of the Family Grant Program-PBF but continues to transfer income to 100,000 families not eligible for the PBF (see answer to Question 23).

207. In October 2008, PETI was assisting 856,499 children and adolescents withdrawn from labor, which means that 589,503 families are being helped. However, the curve of child labor reduction in Brazil has been on the decline since this phenomenon began to be measured. This seems all the more serious because the 2007 National Household Sample Survey-PNAD, showed

that there are 2.5 million children aged 5-15 who work. It should be noted that the Brazilian legislation prohibits all forms of child labor in this age range, except for adolescents aged 14-18 working as apprentices. PNAD further showed that more than 70 per cent of working adolescents are in an irregular situation, i.e., working on the informal market, which exposes them to exploitation. In the Northeast, this figure exceeds 80 per cent.

208. The National Commission on Child Labor Eradication has conducted the evaluation of PETI [...] and Protection of Working Adolescents Program and the preparation of the improved edition, based on discussions and measures related to the enforcement of Decree no. 6481 of June 12, 2008, which approved the List of the Worst Forms of Child Labor (known as “Lista Tip”) applicable to minors under 18 years of age.

209. With regard to the effectiveness of the Program on Integrated Reference Initiatives for Combating Sexual Violation against Children and Adolescents-PAIR in Brazil, it should be noted that its main indicator is the number of federation units that use the Program’s methodology. Its objective is the adoption, particularly at the local level, of a set of integrated policies geared to assistance to and protection and defense of victims, as well as repression of occurrences and punishment of violators. This methodology’s effectiveness was proven in 2004 by the Government Accounting Office-TCU. During an operational audit of the Program for Combating Sexual Abuse and Exploitation of Children and adolescents, TCU noticed a difference in the municipalities covered by PAIR, which showed better results due to PAIR’s coordination.

210. PAIR’s geographical coverage is being gradually expanded and now extends to 19 states and 204 municipalities. In 2002 it was first established only in the municipalities of Pacaraima-RR; Manaus-AM; Rio Branco, AC; Corumbá, MS; Feira de Santana, BA; and Campina Grande, PB. In 2005 its coverage was extended to Belo Horizonte-MB and Fortaleza-CE and in 2006 to São Luiz, MA. After a seminar to evaluate the program, held in 2005 in Brasília, the Federal University of Mato Grosso do Sul-UFMS assumed responsibility for disseminating the methodology among other public universities charged with further expanding PAIR in their respective states.

211. In February 2006, a Technical Cooperation Agreement was executed between the President’s Office’s Special Secretariat for Human Rights and the National Forum of Extension Departments of Public Universities-PROPROEX to support government action in combating sexual violence against children and adolescents. As coordinators of PAIR expansion policies, state governments play a strategic role before the municipalities assigned priority by the Matrix on Commercial Sexual Exploitation of Children and Adolescents-ESCCA.

212. In 2007, agreements were executed for PAIR’s implementation in the states of Mato Grosso, Rio de Janeiro, and Rondônia. In 2008, other agreements were executed for implementation in the state of Goiás and in the Federal District and for the program’s extension to 40 municipalities in the state of Minas Gerais. In August a National PAIR Encounter was held, with the participation of 40 PAIR partner executors to discuss PAIR’s Evaluation, Implementation, and Management.

213. In October, Argentinean, Uruguayan, Paraguayan, and Brazilian authorities met in Foz do Iguaçu, PR to agree on political, technical, and institutional arrangements toward the implementation of a Program for the Establishment of Children and Adolescents Protection Networks in fifteen sister cities in the four countries. In November, the four governments signed an agreement in Brasilia for joint action in combating sexual exploitation of children in border zones, with funding provided by the Inter-American Development Bank. The objective is to make a diagnostic of the situation and train teams in the areas of health and social assistance for combating the crime. The agreement was executed at the opening of the Fourteenth Meeting of Senior Officials on Human Rights and Foreign Ministers of Mercosur and Associated States (RAADH). Work will be started by the UFMS in 2009 in partnership with the Federal Government.

214. In conclusion, it should be noted that in November 2008 Brazil hosted the Third World Congress against Sexual Exploitation of Children and Adolescents, attended by 160 country delegations, 3,515 delegates, 357 journalists, 55 high-ranking government authorities (ministers and vice-ministers), and Brazilian state governors, municipal authorities, and parliamentarians. The most varied aspects of the issue were addressed at 88 workshops and during 12 sector dialogues. This massive mobilization of actors around the issue yielded concrete results domestically as well, with the sanctioning of a law providing on punishment for child pornography on the internet, and the celebration of a partnership agreement by the Special Secretariat for Human Rights, the Federal Police Department, and SaferNet Brazil to set in operation a hotline to identify and penalize those guilty of crimes against human rights through the internet.

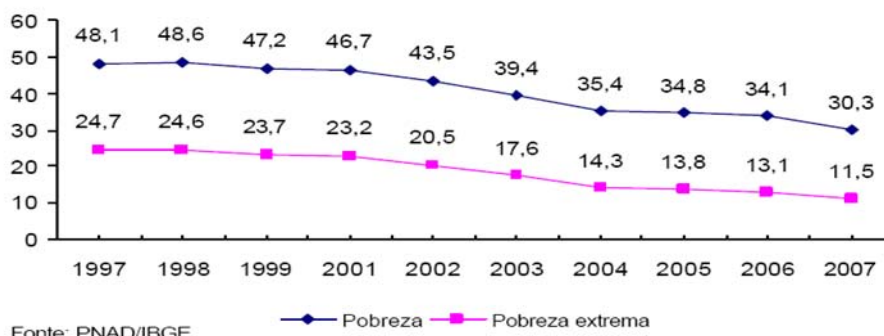
#### **F. Article 11 - The right to an adequate standard of living**

***Question 23. Please indicate the steps being taken to set up effective mechanisms in order to reduce poverty in the State party. Has a time-frame been established for achieving the objectives of the State party's National Program against Poverty?***

215. Brazil has significantly improved social indicators pertaining to poverty. Social investments have consistently risen, although much still remains to be done to achieve the living standards hoped for by society. According to the National Household Sample Survey, between 2002 and 2007 the percentage of people living in poverty (per capita family income less than one minimum wage) dropped from 43.5 per cent to 30.3 per cent. In addition, inequality continued to decline in this period. The Gini index fell from 0.593 in 2001 to 0.552 in 2007, a 7.0 per cent drop. The decline in inequality is also shown by the fact that in 2002, the richest 20 per cent had an income 24.7 times greater than the poorest 20 per cent, while PNAD data show that this ratio dropped to 20.2, reflecting a higher increase in the income of the poor than in the income of the rich in recent years. With regard to extreme poverty, the data show that while 20.5 per cent of the population lived in extreme poverty in 2002, that figure dropped to 11.5 per cent in 2007. The Chart 3 below shows this trend.

Chart 3

**Reduction of poverty and extreme poverty in Brazil  
1997-2007 (in percentage of the population)**



216. This trend is also shown by a study of the Getúlio Vargas Foundation,<sup>23</sup> according to which poverty was reduced from 19 per cent of the population in 2006 to 18 per cent in 2007, i.e., in one year about 1.5 million people left behind an income of less than R\$135 per month. It should be noted that Brazil has already achieved the Millennium Development Goal of reducing to half the number of people living in extreme poverty by 2015, from 8.8 per cent of the population in 1990 to 4.2 per cent in 2005.<sup>24</sup> The country has also undertaken to reduce the number of Brazilians living in extreme poverty to 25 per cent of the 1990 figure by 2015.<sup>25</sup>

217. Since 2005 Brazil has been one of the countries with High Human Development Index, having achieved 0.802 in 2005 and 0.807 in 2006. The most relevant factor for this improvement was the literacy index. Per capita GDP and longevity, two other index components, also improved.

218. Spending on social policies has a direct impact on the reduction of poverty and social inequalities. Chart 4 below shows the impact of increased recourses spent on social welfare between 2000 and 2008, reflecting the priority assigned this area in recent years.

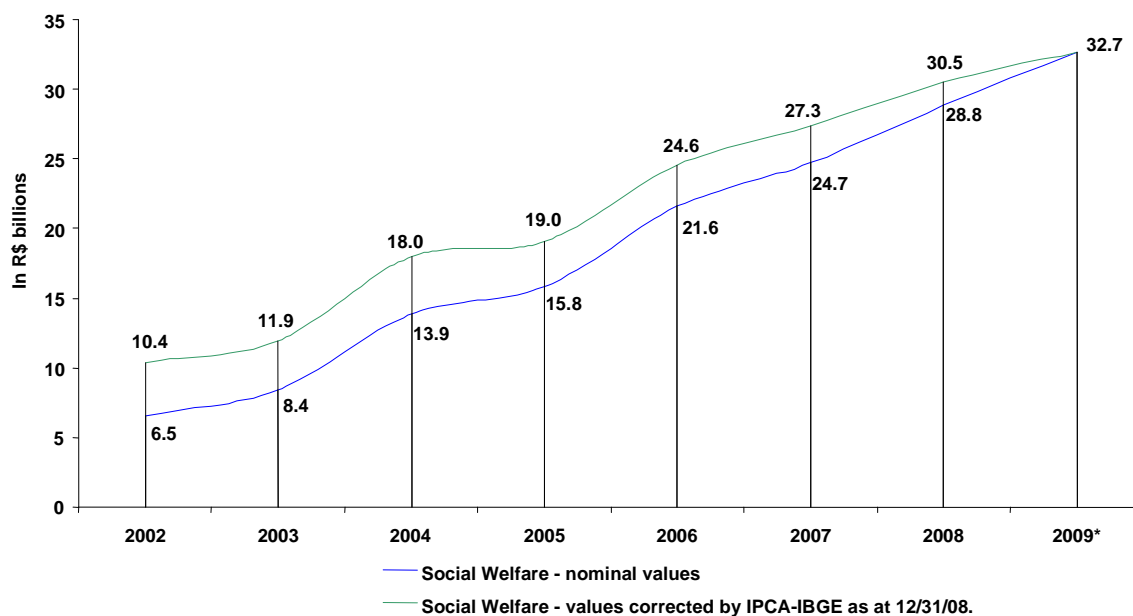
<sup>23</sup> NERI, Marcelo and CARVALHAES, Luísa. “Será esta a década da igualdade”? In *Conjuntura Econômica*, October 2008.

<sup>24</sup> The extreme poverty criterion to be used in the MDG Report is the percentage of the population surviving on less than one PPP dollar a day. The PPP dollar is used to compare the currency’s purchasing power parity between nations.

<sup>25</sup> Third National Report on the Millennium Development Goals.

Chart 4

Financial evolution of federal resources spent to social welfare



Source: SIAFI

Note: \*LOA 2009 - Law 11897 of 1230/08]

219. The expansion of income transfer policies appear as the key element in this picture and has become the strategy for reducing hunger, poverty, and social inequality. The issue stands out on the public agenda. The Family Grant Program-PBF and the *Continued Benefit Program-BPC*, according to an IPEA study<sup>26</sup>, account for nearly 30 per cent of the reduction in the inequality pointed out by the Gini Index between 1995 and 2004.

220. The Family Grant Program is the main income transfer policy in Brazil. Established by Law 10836 of January 9, 2004, its objective is to help overcome poverty in Brazil along three lines: direct income transfer to provide immediate assistance to the most vulnerable families; reinforcement of the families' access to basic health, education, and social welfare services, thereby contributing to break the poverty cycle between generations; and integration with other actions and programs developed by the Government and civil society to ensure the development of more vulnerable families.<sup>27</sup>

<sup>26</sup> VERAS et al. "Programas de transferência de Renda no Brasil: Impactos sobre a Desigualdade". Texto para Discussão no.1228. IPEA, Brasília, 2006.

<sup>27</sup> Actions to break the poverty cycle have been addressed in the responses to the other questions. They include programs in the areas of qualification, social security, health, and

221. In 2008 benefits were readjusted to preserve the families' purchasing power in view of the increase in food prices. The basic benefit to families living in extreme poverty was increased from R\$58 to R\$62; the variable benefit granted families in extreme poverty with children and adolescents up to age 15 - limited to three benefits - went from R\$18 to R\$20. In addition, the government established the Youth Variable Benefit-BVJ of R\$30 - limited to two benefits - for adolescents aged 16-17 per family.

222. The Family Grant Program's 2008 target was achieved; it now covers 10.61 million families in 5,564 municipalities. As it assigns priority to specific, more vulnerable groups, it has included 20,400 homeless families, 3,500 families rescued from slave work, 57,800 indigenous families, and 16,000 slave descendant, *Quilombola* families.

223. In 2008, the government spent R\$10.52 billion on the Family Grant Program, or 0.41 per cent of GDP. This shows that the program's cost is relatively low, given its positive impact on poverty reduction and income concentration. The average benefit received by families was increased from R\$73.67 in 2003 to R\$85.51 in 2008, after its adjustment and as a result of the broadening of some beneficiaries' age range.

224. The broadening of the age range to include adolescents aged 16-17 in the Family Grant Program, beginning in March 2008, was meant to extend their school education, reduce evasion, and return dropouts to school, thereby contributing to breaking the poverty cycle between generations. By end-2008, the program had benefited approximately 2 million youths in this age bracket.

225. A project for including Family Grant Program beneficiaries in the banking system was implemented in 2008 and was aimed at the social inclusion of beneficiary families. To certain extent, the exclusion of this population's segment from our banking system is due to the banking system's model, one of whose many requirements for opening an account is evidence of a minimum income, which hinders the access of this most vulnerable population segment.

226. The monitoring of compliance with Family Grant Program's conditionality has also yielded significant results. Regarding school attendance, according to municipalities and schools that provided this information, there has been an increase in the number of children monitored and the possibility of obtaining information on the reasons for nonattendance at school also improved. The number of students whose school attendance is monitored rose by 85 per cent, meaning that nearly 14 million students are being monitored.

227. By October 2008, a total of R\$248 million was transferred to the municipalities to support local management in accordance with the Decentralized Management Index-IGD, which shows the quality of the program's management at the local level in respect of controlling conditionality and keeping the family register current. In addition, a State Decentralized Management Index-IGDE was also established in 2008 as part of the policy to support states in

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education. More detailed information on the BPF have been sent by Brazil to the United Nations in December 2008 in response to the questionnaire on income transfer sent the Governments by the Independent Expert on human rights and extreme poverty.

their management of the Family Grant Program. By September 2008, the states had received about R\$9.04 million in compensation for the work they had already done to improve the Family Grant Program's management.

228. The Social Programs' Unified Registry-CadÚnico, regulated by Decree no. 6135 of June 26, 2007 is an instrument for the identification and socio-economic classification of low-income families. CadÚnico data permit the screening of families to be covered by social programs at the federal, local, and municipal levels. By end-2008, this database included 18.1 million families, or a total of 69.5 million people.

229. CadÚnico is the gateway to PBF. However, many enrolled families are not being assisted year, which points to the vast universe of potential beneficiaries. It has been detected that although they meet all the profile and income requirements, 2.2 million families are still uncovered by the PBF for lack of budgetary appropriations. A new model is to be adopted this year to establish spatial poverty maps to determine the current demand for the program's expansion. In addition, income range requirements for joining the program are to be broadened, as the "poverty line" set at R\$120 per capita has been depressed by inflation.

230. One of the major hindrances to poverty reduction through the Family Grant Program is the fact that most socially vulnerable segment lacks the requisite documents. The Ministry for Development and Combating Hunger estimates that about 5 million people are excluded from the program because they lack the documents required for being entered into the CadÚnico. To overcome this obstacle, in December 2008 the Federal Government launched a National Birth Registration and Basic Documentation Mobilization Campaign as one of social agenda's four top priorities. By way of conclusion, it should be noted that despite all the initiatives under implementation 30 per cent of the Brazilian population still live in poverty, and that one third of this segment still lives in extreme poverty. This one third consists mostly of homeless people and people without documents who are outside the reach of public policies.

***Question 24. Please provide detailed information on the Zero Hunger Program and explain whether it has been set up to eliminate "serious" and "moderate" food insecurity within specific timeframes. If not, please explain the reasons. Please also provide information on the National Food and Nutritional Security System (E/C.12/BRA/2, paras. 25 and 343).***

231. The National Food and Nutritional Security System-SISAN was established by Law 11346 of November 15, 2006 to ensure the right to food and nutrition. This law defined the system, its principles, guidelines, objectives, and structure. The system embodies a comprehensive, multisector concept of food and nutritional security. Under it, federal, state, and municipal governments and civil society organizations<sup>28</sup> work together on the formulation and

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<sup>28</sup> SISAN's makeup is as follows: National Food and Nutritional Security Conference; National Council on Food and Nutritional Security-CONSEA; Multiministerial Food and Nutritional Security Chamber, which consists of Ministers of State and Special Secretaries of the areas charged with achieving food and nutritional security; federal, state, and municipal food security agencies and organizations; and private institutions, both profit and nonprofit, interested in joining SISAN and willing to abide by its criteria, principles, and guidelines.

implementation of policies and actions to combat hunger and promote food and nutritional security, as well as monitoring and evaluating the population's nutritional condition and defining the rights and duties of the government, families, companies, and society.

232. The Zero Hunger Program is a strategy implemented by the Federal Government in conjunction with civil society to ensure the human right to proper nourishment, assigning priority to people for whom access to food is difficult. Zero Hunger was an innovation, as it introduced the issue on the political agenda and reinforced civil society's participation and mobilization. Additionally, this program welded together existing legislation, programs, and initiatives, identifying gaps between public policies with a view to develop new actions. It has a fourfold objective: (1) access to food; (2) the strengthening of family farming; (3) income generation; and (4) social coordination, mobilization, and control.

233. With regard to actions to eliminate serious and moderate food insecurity, attention should be drawn to the Program on the Procurement of Family Farming Food Products-PAA introduced in 2003 (Law 10696/2003, Art. 19). Since its introduction, the program has procured the production of over 100,000 poor family farmers living in a situation of serious or moderate food insecurity in all the states. In 2008, the Federal Government spent R\$69.7 million on the purchase of 42,900 tons of food. With regard to the northeastern and northern states, approximately 5,400 family farmers will be benefited under new agreements to purchase about 11,200 tons of their food products for R\$16 million.

234. By December 31, 2008, a total of R\$17.5 million had been spent on the milk PAA component in the northeastern states and in the northern region of the state of Minas Gerais. This benefited 65,000 families, who received one liter of milk each day, and small milk producers, who had guaranteed income from the sale of their milk to the government.

235. Food thus procured is destined for the social promotion and protection and public equipment network geared to food and nutrition, which distributes food to the population in a situation of vulnerability. To assist urban families that take their meals away from home, the government has established popular restaurants, kitchens, and food banks. There are 65 popular restaurants in operation, with a capacity to serve 93,000 meals a day, and an additional 64 are nearing completion. In 2008, the government spent R\$35 million to open new units and to modernize and improve the quality of the services provided by those in operation. For 2009, the government plans to spend an additional R\$39 million to open new restaurants and community kitchens and on the modernization and improvement of the services provided by those units already functioning.

236. Food Banks concentrate on combating food waste in urban centers. To this end they collect food products that do not meet marketing standards but are fit for human consumption and prepare them for donation to the food security public services network geared to food and nutritional security, school lunch, and social welfare organizations.

237. Between 2003 and 2008, the government spent about R\$16.5 million on establishing a food security public services network in 96 municipalities of 19 states. There are already 55 units in operation and 41 under implementation. In 2008, approximately 7,000 tons of food were distributed to 1,100 social welfare organizations. In 2009, an additional R\$7.7 million will be spent on the establishment of 15 new food banks and public markets.

238. The distribution of food baskets is an emergence action to assist families in a situation of food and nutritional insecurity, particularly remaining *Quilombola* communities, other poor Afro-descendant communities, indigenous populations, families living in camps while awaiting agrarian reform, mussel and crab gatherers affected by dam construction, and families affected by natural disasters in municipalities in an emergency situation recognized by the Government. From January thru November 2008, the Government spent R\$41 million on the distribution of 1.27 million food baskets to approximately 347,000 families.

239. The right to water is also contemplated by the Zero Hunger strategy. Under a program for digging cisterns for water storage to guarantee the provision of quality water in sufficient quantity to families in Brazil's semiarid region, established in partnership with civil society (Articulação Semi-árida-ASA), more than 238,000 cisterns were dug between 2003 and 2008 at a cost of approximately R\$378.5 million, thereby guaranteeing the right to water of 1.2 million people.

240. Various recent surveys show the positive impact of the Zero Hunger programs and actions on serious food insecurity. An evaluation of the Family Grant Program by an institute at the State of Minas Gerais Federal University-CEDEPLAR-UFMG in 2005 applied econometric techniques to the data collected among beneficiary and non-beneficiary families. The study concluded that families covered by the Family Grant Program spent R\$388 more on food in a year than did non-beneficiary families (nationwide sampling); in the Northeast, beneficiary families spent R\$588 more on food than did non-beneficiary families (highly significant differences).

241. The Nutritional Roll Call involving 16,239 children up to age 5 in the semiarid region showed that preschool children covered by the Family Grant Program suffered 30 per cent less from malnutrition as compared with children not covered (adjusted for the number of goods at home and the head of the family's schooling). A 2006 survey conducted by the Federal Fluminense University of Rio de Janeiro and the Bahia Federal University on a national sampling of Family Grant Program beneficiary families showed that, after they started receiving the benefit, 73 per cent of the families expanded their food variety and reduced by 10 percentage points the affirmative answer to the question: "Has someone in the household not eaten or has eaten less because there was no food?" A National Demography and Health Survey conducted by the Brazilian Analysis and Planning Center in 2006 found that 4.8 per cent of households experienced serious food insecurity.

242. Despite the progress, the number of families experiencing food insecurity is still high. The 2004 National Household Sample Survey showed that 65.2 per cent of households enjoyed food security; 16 per cent suffered from light food insecurity; 12.3 per cent suffered from moderate food insecurity; and 6.5 per cent suffered from serious food insecurity. The main challenges are the need for strengthening of current social policies, the coordination of the three levels of government, and the promotion of multisectoriality. There is no specific time frame for the Zero Hunger Program, as it is a strategy involving many actions, many of which are permanent, as is the school lunch case.

**Question 25. Please provide information on measures being taken by the State party to accelerate the process of identification of the *Quilombo* communities as well as the distribution of their respective title deeds to such communities and completing the removal of all illegal occupants from the specific indigenous communities.**

243. In order to speed up procedures for protecting the rights of remaining *Quilombola* communities, measures have been taken by the Legislative and the Executive. Art. 68 on Transitory Dispositions of the 1988 Federal Constitution granted the *Quilombola* communities permanent possession of the lands they were occupying. The procedure for implementing the constitutional norm, which is of automatic application, was established by other legal instruments, including Decree no. 3912/2001, which set provisional criteria for defining lands belonging to remaining *Quilombola* communities.

244. That normative instrument was deemed inadequate for protecting the rights of the remaining *Quilombola* communities and was revoked by Decree no. 4887/2003, which regulated the procedures for identification, recognition, delimitation, demarcation of the lands occupied by them and the granting of title deeds. The decree was drafted by a working group consisting of government agencies and civil society. One significant change was the utilization of the self-declaration criterion to identify remaining *Quilombos* according to the International Labor Organization Convention's 169.

245. With regard to administrative measures, until 2007 procedures for the regularization of remaining *Quilombo* areas followed the 2005 Normative Instruction no. 20 issued by the National Settlement and Agrarian Reform Institute-INCRA. Discussions begun in 2007 culminated in 2008 in the publication of a new legal instrument governing the instruction procedures for land regularization in those areas, for which a working group was set up, consisting of government agencies and coordinated by the Federal Attorney-General's Office-AGU. Its version of the instrument was submitted to the appreciation of *Quilombola* leaders in various states for their information and manifestation in the form of a Public Consultation based on ILO Convention no. 169. This marked the beginning of a new democratic process in the domain of the Executive, with the participation of the interested parties, the Government, and civil society. This led to the issuing of Normative Instruction no. 49 in 2008, applicable to the procedures under way at INCRA.

246. Implementation of the administrative process for land regularization in remaining *Quilombola* areas has been assigned priority by the Brazilian Government toward the construction of normative instruments to guarantee the effective procedural course, safeguarding the right of rebuttal and legal defense as well as the right of the remaining *Quilombola* communities to receive the title deed to their lands.

247. On the Executive front, the *Quilombola* Social Agenda, which is part of the *Quilombola* Brazil Program, calls for Land Regularization in the Remaining *Quilombola* Areas. Funds in the amount of R\$35,6 million have been appropriated for land identification, demarcation, and the issuing of title deeds from 2008 to 2011, and in the amount of R\$264,682,234 for compensating current occupants of the demarcated and regularized lands. These funds form part of INCRA's budget for this express purpose in relation to procedures under way at INCRA.

248. It should be noted that this land regularization process comes under the Executive, but is subject to rebutting by the Courts. Thus, INCRA closely follows the proceedings up to the publication of the requisite Administrative Ruling by the President, confirming the existence of remaining *Quilombola* areas. After this phase, the actions undertaken are subject to the Judiciary's review.

249. Currently there are 800 proceedings on the docket distributed through all INCRA Regional Offices, except for those in Roraima, Marabá, and Acre; 77 Published Identification and Delimitation Technical Reports; 37 Administrative Rulings issued; and 106 title deeds granted. The Government efforts to assign priority to granting title deeds for the remaining *Quilombola* areas is reflected in the granting of 14 title deeds in 2008, whereas only five title deeds were issued in 2007. Lastly, mention should be made of INCRA's hiring of personnel selected on the basis of public competitive examinations held in 2006, including anthropologists and other experts on the *Quilombola* issue.

***Question 26. Please provide information on the measures being taken to stop the violence caused by prospectors invading indigenous lands, in particular in the States of Mato Grosso, Roraima and Maranhão.***

250. The first step to halt violence committed by trespassers on indigenous lands is land demarcation. The National Indian Foundation-FUNAI has a Land Affairs Department whose purpose is the undertaking of technical studies and the identification, delimitation, demarcation, and protection of the country's indigenous lands. Official data show that there are currently 653 indigenous lands totalling 107 million hectares, equivalent to 12.57 per cent of the national territory or twice the size of France.

251. Since 2003, delimitation has been completed on 66 indigenous lands, based on anthropological reports and limits approved by FUNAI; 58 indigenous lands have been confirmed, based on anthropological and limits approved by the Ministry of Justice; 73 indigenous lands have been homologated, whose demarcation limits have been approved by the President of the Republic; 77 indigenous lands have been registered with the Federal Land Office; and 73 indigenous lands have been registered as federal property.

252. As mentioned earlier in the reply to Question 1, one of the most emblematic cases in connection with the demarcation of indigenous lands has been the process for demarcation of the Raposa Serra do Sol Indigenous Land, which is occupied by the Ingarikó, Makuxi, Taurepang, Wapixana, and Patamona peoples in the State of Roraima. This indigenous land has been officially homologated and destined for permanent possession by these peoples under a decree signed by the President of the Republic on April 15, 2005.

253. To preserve public order and the safety of all the parties involved after judicial rebuttal of the decree, the Federal Supreme Court handed down a preliminary order on April 9, 2008 suspending the eviction of the non-indigenous occupants of the area by the Federal Police, pursuant to a 2009 interlocutory injunction. The decision was unanimous and stands until the Court judges the merit of at least one of the main actions pertaining to the demarcation of that indigenous reservation.

254. Writing the decision for the Court, Minister Celso Ayres Britto considered as constitutional the demarcation of the Raposa Terra do Sol indigenous land as a continuous area, as required by Administrative Ruling no. 534/05 issued by the Ministry of Justice and homologated by presidential decree. In his view, the demarcation in form of islands as advocated by the State of Roraima and rice growers would suffocate the communities' culture and flagrantly violate the Federal Constitution. In the case of the Raposa Serra do Sol Land, the Minister explained that various ethnic groups indeed live on it but their respective areas abut on each other and these groups have been accustomed for decades to peaceful living together in the region and speak the same language. After analyzing the Administrative Order that defined the area, the Minister declared that no irregularity was found.

255. Eight Ministers concurred with Minister Ayres Britto but the Federal Supreme Court adjourned the plenary session due to a writ of certiorari. Judgment should be resumed soon.

256. The Federal Constitution had already considered the presence of the National Security Forces and of the Federal Police as legitimate and necessary to the security of the indigenous communities and to prevent the outbreak of new violent episodes in the region. According to the Federal Police, 150 members of the National Security Forces and 150 federal police officers will remain on site to guarantee security on the Raposa Serra do Sol Indigenous Land until a the Supreme Court hands down a decision on the case.

257. As an additional measure to make possible the continuous demarcation of the Raposa do Sol Indigenous Land and curb the violence perpetrated by the non-indigenous occupants of the area, the Executive and the Federal Attorney's Office filed a suit to guarantee the demarcation boundaries (AC 861/RR). The interlocutory injunction was filed by the Federal Supreme Court requesting a suspension of the laws of the Pacaraima municipality in the State of Roraima (Laws 110 and 111/2006) that permitted the expansion of the municipal boundaries and the establishment of districts within the new boundaries. The request implies the suspension of all urbanization and paving operations in the region. Accordingly, the Pacaraima municipality cannot promote any measure to expand the municipality's boundaries until further decision.

258. FUNAI is implementing measures to prevent invasions through the monitoring and surveillance of the demarcated areas. The program for the protection of these lands encompasses the qualification of specialists in environmental and indigenous legislation, GPS, basic cartography, boat maintenance, and monitoring of environmental degradation and irregular occupation promoted by non-Indians. Although it recognizes that more financial and human resources are needed for ensuring the physical protection of the indigenous lands and for the social, economic, and cultural strengthening of the country's indigenous societies, the Brazilian State is spending increasing efforts to guarantee the social dignity and the protection of these communities. Of the 653 indigenous lands on the national territory, 281 are being covered by the indigenous lands protection programs implemented by FUNAI.

259. Particularly regarding the states mentioned in the Report, the picture is as follows: in the State of Mato Grosso, 14 out of 86 recognized lands are covered by the indigenous lands protection program; in the State of Roraima, out of 29 recognized lands, 14 are covered; and in the State of Maranhão, 15 of the 21 recognized lands are also covered. A program databank has been established with a four-year historical series - 2005 to 2008 - to map out the environmental, social, and security problems faced by the communities on all the country's indigenous lands.

260. Still as a protection measure, all the acts of violence committed against indigenous populations reported to FUNAI are referred to the Federal Police to ensure the protection of the land and the communities affected. On the legal front, FUNAI operates through its Specialized Federal Prosecutor's Office, whose purpose is to provide legal defense to the indigenous populations in cases of land conflicts.

261. In the States of Mato Grosso, Roraima, and Maranhão, FUNAI, with the support of the Federal Police and of IBAMA, is carrying out operations of surveillance and inspection of the boundaries of the indigenous area and implementing community development plans. In Roraima, due mainly to the conflicts between rice growers and Indians over demarcation, the Raposa Serra do Sol-RR Operation is in effect. In Maranhão, the Araribóia Operation-MA acts to prevent the action of trespassers and to allow the indigenous communities to resume their internal activities. And in the State of Mato Grosso, the Cinta Larga Operation-MT seeks primarily to prevent prospectors from invading the area and promotes socioeconomic projects. In this State the Federal Prosecutor's Office has initiated a series of administrative procedures to prevent banditry and environmental crimes as well as the invasion of land grabbers (ANNEX IV).

***Question 27. Please provide information on the extent of the incidence of forced evictions in the State party, in particular in Curitiba, the State of Paraná and at Parque Oeste of Goiânia, including disaggregated data on the number of affected persons and families. Please also provide information on the implementation of the National Policy on Urban Development and the National System for Social Housing, including any measures contemplated to implement Resolution No. 31 of the National Council for Cities.***

262. The State Party does not have a comprehensive system to monitor urban land conflicts. Available information is based on cases brought to the Ministry of Cities by popular movements, dwellers of occupied areas, non-governmental organisations, and municipal and state administrations. Such data are inexpressive in view of the Brazilian reality, but provide a starting point to guide the subject's institutionalization by the Government. Currently, 68 conflict situations are being monitored in 16 states and 31 municipalities, in which 28,740 families are involved. In the last three years at least 21 cases in 8 states and 14 municipalities were taken up, involving 10,169 families.

263. With regard to Curitiba, according to the Paraná State Prosecutor's Office, irregular housing in the municipality is common as there is a large-scale housing deficit. Frequent threatened and actual forced evictions are addressed by the competent authorities and involve approximately 3,000 families (See list of cases in ANNEX V). Several communities in the Curitiba Metropolitan Area have been threatened with eviction, including 450 families in the irregular settlement of Vila União, in Almirante Tamandaré, that were threatened with forced eviction in 2006; 60 families in the Vila Graciosa community, in Pinhais, in 2007; 26 families in Vila União, also in Pinhais, in 2007; and 40 families in the Jardim Itaquí community, in São José dos Pinhais, in 2008, among other cases.

264. In 2007, the Curitiba Popular Housing Company-COHAB provided the information that a 2005 survey showed that there were 397 irregularly occupied areas in Curitiba; and that at end-2006, 59,395 families were registered for the purchase of a home in Curitiba and in the metropolitan area, whereas only an average of 4,000 families per year is successful. The Special

Coordinating Office for Land Conflict Mediation under the State Public Security Department provided the information that 50 occupied areas in the Curitiba municipality have been served writs of repossession by the local Justice Department, which are pending technical review for the adoption of the requisite measures.

265. In Parque Oeste de Goiânia, according to information provided by the Goiás State Prosecutor's Office, about 4,000 families and 14,000 people had settled irregularly. Eviction was carried out in February 2005 by judicial decision. During the eviction operation conducted by state authorities, force was employed, which resulted in two deaths, injured 27 people, and led to 800 police reports. Judicial proceedings no. 200 401 101 253, no. 200 400 932 371, and no. 200 400 884 750 were started to investigate the occurrences.

266. The resettlement of the evicted during the operation is still in progress under the responsibility of the state and municipal governments. Some families have not received the due benefit; 15 families entered into the registry by the two governments claim that they have not been included under the housing program. Thus, to this day they continue to live in tents near their former settlement.

267. Land regularization is done under a national program known as "Title Deed Issued" and follows four lines of action. The first consists in the transfer of federal budgetary appropriations for land regularization. The second consists in coordination with federal agencies and institutions with a view to the regularization of federal lands. The third involves the removal of juridical, legal, and procedural obstacles to regularization and the mediation of urban land conflicts through the provision of technical and institutional support. As a fourth line of action, the program seeks to encourage municipalities to promote land regularization within their boundaries in accordance with national guidelines, expanding specific actions under the program through mobilization and qualification of agents directly involved with the issue and of civil society.

268. Law 10257/2001 (Statute of Cities) was an extremely important milestone for controlling the production and use of urban space. The Statute of Cities states that the objective of urban policy is to ensure the city's and urban property's social function, realized by the guarantee of the right to urban land, housing, basic sanitation, and transportation (Law 10257/2001, Art. 2, I).

269. Although Brazil does not have an official urban development policy, departments of the Ministry of Cities develop sector initiatives for this purpose, as is the case of environmental sanitation, urban transportation and mobility, and housing policies as well as urban programs. The latter include institutional programs for strengthening urban management, rehabilitation of downtown areas, and the urbanization, regularization, and integration of precarious settlements.

270. With regard to the National System of Housing of Social Interest-SNHIS, it should be noted that it was regulated by Federal Law 11124 of June 2005 and is directed especially to the low-income population, which accounts for nearly the entire housing deficit in the country.

271. SNHIS funds go to the states and municipalities for initiatives connected with housing of social interest programs, with emphasis on precarious settlements and on the provision of housing. A provisional executive order was issued in 2007 to permit the direct transfer of SNHIS funds to housing cooperatives and associations (private non for profit entities). Also in 2007, SNHIS was assigned priority under the Growth Acceleration Program-PAC and since then R\$ 1.0 billion a year has been earmarked for the Fund through 2010.

272. Through SNHIS and other major sources of funds, including FAR and FGTS, the Federal Government has gradually increased spending on social housing. Between 2003 and November 2008, it spent R\$94.8 billion, consisting of R\$53.2 billion in federal funds and R\$43.8 in housing loans to families, in the amount of up to five minimum salaries. A total of 3.5 million families have benefited, 65.1 per cent of them with an amount of up to five minimum wages.

273. Housing needs involve a housing deficit of 7.3 million homes, a future demand for 27 million homes (until 2023), and the solution to the problem of the 3.2 million homes in precarious settlements. The recently prepared National Housing Plan-PlanHab envisages the following possible spending scenarios:

- (i) By maintaining PAC resources, totaling R\$9 billion destined for housing of social interest between 2007 and 2010, it would be possible to eliminate 40 per cent of the housing deficit and 70 per cent of homes in precarious settlements; and
- (ii) By increasing funds to 2 per cent of the General Federal Budget + 1 per cent of the states' budget + 1 per cent of the municipalities' budget, it would be possible to eliminate 70 per cent of the housing deficit and 100 per cent of homes in precarious settlements.

274. In addition to forecasting the required funds, the National Housing Plan establishes four strategic lines of action to meet housing needs: (i) encouragement of civil construction; (ii) adoption of a new model of financing and subsidies to potentiate the available credit in the FGTS and in the Brazilian Savings and Loan System-SBPE, as well as under the national subsidies policy to leverage FNHIS, in addition to providing the requisite model of guarantees and insurance to permit agents to assist lower-income families; (iii) the requisite institutional development to ensure a better qualified, coordinated action on the part of SNHIS agents; and (iv) encouragement and strengthening of the municipalities' urban and land policies. The latter poses a particularly serious challenge, as the availability of well-situated land for housing of social interest, at accessible prices is essential for the implementation of a sustainable, quality housing policy.

**G. Article 12 - The right to the highest attainable standard of physical and mental health**

*Question 28. Please provide information on the measures being taken to identify and combat the high maternal mortality rate, particularly in the more remote regions where access to health facilities is very limited and elaborate on the Committees on Maternal Mortality (E/C.12/BRA/2, para. 453) and the role of such Committees in reducing maternal mortality.*

275. On the issue of maternal mortality, the State Party notes the progress achieved through the 2004 introduction of the Pact on the Reduction of Maternal and Neonatal Mortality, which involves close coordination between managers and civil society, as well as multisector coordination. All 27 federation units have adhered to the pact, which includes a National Monitoring and Evaluation Commission that has worked since 2005 toward achieving the target of reducing maternal and neonatal mortality by 5 per cent each year.

276. But the beginnings of a major strategy supported by the Ministry of Health to combat maternal maternity in the country date back to 1987, when Committees on Maternal Mortality were set up. These committees rally different social actors, including managers, health professionals, scientific societies, social movements, and rights defense councils, among others, round the common task of giving visibility to maternal mortality and of identifying its circumstances. The work of these committees is of great strategic relevance because as they expose maternal deaths and the circumstances under which they occur, it becomes possible to propose evidence-based actions, such as the prevention of avoidable deaths through appropriate interventions. In addition to the 27 Committees on Maternal Mortality encompassing all federation units, 191 Regional Committees, 893 Municipal Committees, and 265 Hospital Committees are currently active.

277. The Committees on Maternal Mortality perform a technical-scientific, confidential task, without any coercive or punishing intent, focused on education and on following up public policies. Their attributions are as follows: encouragement to the establishment of committees and their sustainability by means of awareness-raising seminars in coordination with organized civil society, and the ongoing qualification of their members; investigation of deaths, specifying the nature of deaths, identifying unnotified deaths, and verifying the conditions of assistance to women and the services' structure; analysis of death cases, defining factors found in the community and in institutions among other factors that could prevent maternal death; dissemination of information susceptible of correcting official statistics, through the publicizing of reports among competent institutions and agencies that could intervene in maternal deaths; education based on the discussion of clinical cases and discussions about the persistence of maternal mortality, based on epidemiological evidence, with emphasis on the ongoing education of those involved; definition of preventive measures based on occurrences; and mobilization of public authorities and civil society for implementation of the measures indicated.

278. As a result of the work of the Committees on Maternal Mortality, maternal death has gained numerical visibility, which does not mean an increase in the percentage of mortality deaths in the country. The compulsory notification of maternal deaths, pursuant to Administrative Ruling/GM no. 653 of May 28, 2003, has played a crucial role in the improvement of the national ratio of maternal mortality. This ratio tends to stabilization as at the

same time while undernotification is being overcome, with the increase in the number of notified deaths, death statistics are making possible a more effective preventive action on the part of federal, state, and municipal management.

279. The recognition of the prevalence of direct causes of maternal mortality has triggered direct Federal Government intervention initiatives in 457 maternities to reduce the mortality rate by changing the obstetric care model. The high rate of Caesarian procedures (44 per cent in 2006), often unnecessary, expose women to preventable risks. This has led to the recent launching of a National Campaign to Encourage Natural Delivery and Reduce Unnecessary Caesarian Procedures.

280. Another positive development was the considerable progress in structuring urgent and emergency care pertaining to women's health, thanks to the adoption of the National Urgent Care Policy, one of whose components is the Mobil Urgent Care Service (SAMU 192). The skills SAMU 192 teams must have include knowing how to handle obstetric urgencies; accordingly, in 2007, professionals received training for these urgencies and emergencies.

281. In addition to the actions already pointed out, the following additional initiatives were identified and implemented, as being relevant to the quality of obstetric care: qualification of blood banks in municipalities with higher maternal mortality rates; support for the installation of beds for adult and neonatal intensive care at maternities; measures aimed at eliminating pregnancy and congenital syphilis and at reducing vertical HIV transmission; monitoring of the situation and technical assistance to state health departments-SES for the implementation of actions aimed at eliminating neonatal tetanus; training of health professionals at Ongoing Education Centers, under the national policy on the development of Ministry of Health human resources by May 2007.

282. Challenges to reducing maternal mortality in Brazil include complications associated with abortion; violence against women; and feminization of the HIV/AIDS epidemics, which highlight the need to strengthen the care services network aimed at women subject to violence. Regrettably it has not been possible to obtain information on combating maternal mortality in remote areas.

***Question 29. Please also comment on the high rate of clandestine abortions and its causes, linked to poverty, exclusion, and lack of access to information, among other factors.***

283. Differently from miscarriage, abortion is the interruption of pregnancy through medical intervention or induced by someone else, even by the pregnant woman herself. In medicine, abortion is defined as pregnancy interruption at less than twenty weeks or as the death of a fetus weighing less than 500 g.

284. In Brazil, abortion is a public health issue, particularly because it is one of the major causes of maternal mortality, which in most cases could have been prevented. It also has a major impact on the causes of hospital morbidity addressed under Chapter XV of ICD10 - "Pregnancy, Parturition, and Puerperium." The consequences of unsafe abortion are serious: surviving women may sustain serious complications, such as haemorrhage, septicaemia, peritonitis, and shock, as well as physical sequels, including gynaecological problems and infertility. There is also a

greater possibility of complications in subsequent pregnancies. Complications are more frequent in poorer women, who often have abortion under unsafe conditions. Today, abortion is seen as silent a pandemic requiring imperative, urgent actions in the areas of public health and human rights.

285. A study performed in Latin America in 1994 showed that different popular techniques and procedures are used to induce abortion. In Brazil, the use of misoprostol (substance used as the active principle in drugs for stomach ulcer, which has abortive effects) has risen since 1990, although there is no information about its extent. Some authors claim that since its use became widespread, there has been a reduction in serious post-abortion complications.

286. The Brazilian Penal Code classifies abortion as a punishable crime in the following cases: when a pregnant woman provokes abortion on herself (self-abortion) (Art. 123) or allows someone else to do it (consented abortion) (Art. 124); when someone provokes the abortion with or without the patient's consent (Arts. 125 and 126). The penalty is aggravated if the crime is practiced on a minor or on mentally impaired women (Art. 125) or when it is done through violence (Art. 128); and the penalty is heavier when serious lesions or death ensue (Art. 126). Abortion performed by a doctor is not punishable when there is no other way of saving the mother or in case of pregnancy resulting from rape (Art. 128). The legislation does not address fetal malformation. Since the 1990s, though, the courts have resorted to jurisprudence to recognize the right of abortion in cases of serious fetal anomalies that make extra-uterine life impossible. A case currently before the Federal Supreme Court that should be decided in 2009 will determine whether or not abortion is a crime in cases of fetal anencephaly.

287. Before 1994 there was no public service available for Brazilian women to address cases in which the law provides that abortion is not a crime (risk of the mother's death, or rape). In states where this service is not available, many cases are brought to Court and the babies are born before the cases are decided. The pioneering state in providing this public service was São Paulo, which introduced Legal Abortion in 1994 at the Dr. Arthur Ribeiro de Saboya Municipal Hospital, known as the Jabaquara Hospital after the district where it is located.

288. Currently, municipal health services handle cases in which abortion is permitted by law and offer clinical, psychological, and social follow-up during and after the interruption of pregnancy or during pre-natal care, as the case may be; lab exams for STD diagnostic, including serological test for HIV; emergency contraception in rape cases up to 72 hours after the occurrence; and collection of material for DNA tests for identification of the aggressor. To have access to legal abortion, women must submit proof of consent or, in case of incapacity, their legal proxies must do so; and a birth certificate, but a police report on the rape is not required.

289. More recently, the Ministry of Health added to the document titled "National Policy on Comprehensive Women's Care," as a specific objective, the chapter on "Promoting Quality, Humanized Neonatal Obstetric Care, including Assistance to Women and Adolescents in Case of Abortion under Unsafe Conditions," recognizing that abortion performed under hazardous conditions is a significant cause of maternal mortality.

290. The actual number of abortions in the country is unknown as they are illegally performed in most cases and remain unnotified. Table 8 below shows estimates of about 750,000 to 1 million abortions per year, based on about 250,000 cases of hospital admissions a year due to complications after abortions performed and recorded under the Unified Health Service-SUS.

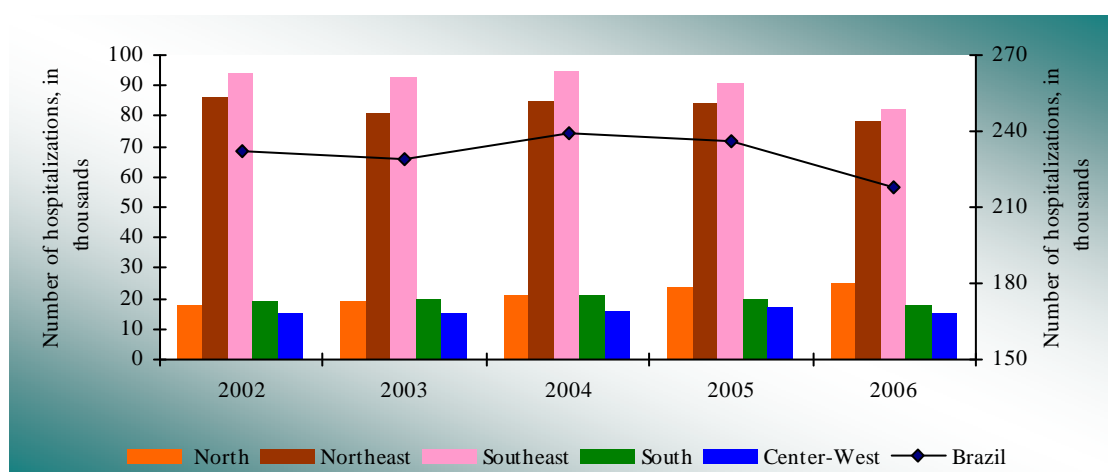
**Table 8**  
**Estimated number of abortions in Brazil and in major regions**  
**2002-2006**

Region	2002	2003	2004	2005	2006
North	85 964	90 961	101 067	114 891	120 066
Northeast	404 695	390 136	406 575	402 150	373 392
Southeast	447 117	461 273	465 797	444 389	406 875
South	90 497	98 770	105 647	104 161	96 267
Center-West	70 598	74 986	79 964	82 467	77 531
Brazil	1 098 872	1 116 127	1 159 050	1 148 058	1 074 131

Source: SIH/SAS/MS

291. Between 2002 and 2006 the number of hospitalizations associated with abortion dropped from 232,448 to 218,785. A study comparing figures for 1992 and 2005 shows a decline in hospitalizations associated with abortion in all age ranges. One cannot say that there is now a declining trend in abortion-related admissions, as the decline from 2002 to 2006 was less than 10 per cent. This apparent stabilization of declining rates shows some significant regional differences: 27 per cent in the North; 12.4 per cent in the Southeast; 9.5 per cent in the Northeast; and 5 per cent in the South; and a slight increase of 2.3 per cent in the Center-West. This increase may be due to a higher number of women in the population. As can be seen, the North, Northeast, and Center-West are the regions with the largest number of abortion-related hospitalizations (See Figures 2 and 3).

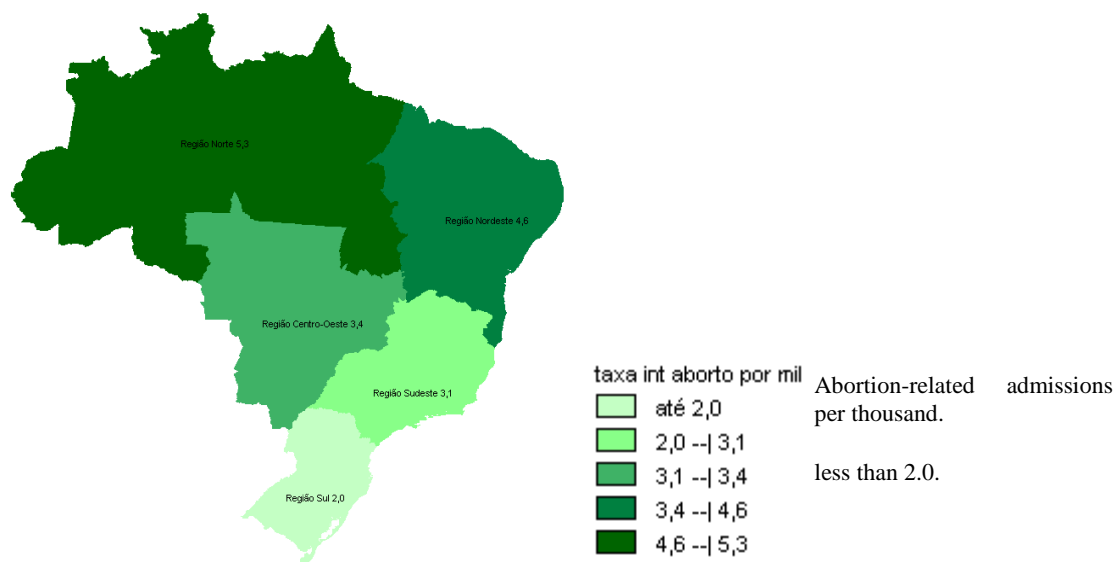
**Figure 2**  
**Number of abortion-related hospitalizations under SUS (in thousands)**  
**per major regions and for the country, 2002-2006**



Source: SIH/SAS/MS

**Figure 3**

**Map showing rates of abortion-related hospitalizations (in thousands) under SUS, of women aged 10-49 per region in 2006**



*Source:* SIH/SAS/MS

292. Data on hysterectomy (removal of the uterus) in the SUS information system-SIH show the performance of this procedure in young and adolescent women. Hysterectomy in young women may be related to abortion and delivery complications. One may infer that these complications include infections and haemorrhages due to unsafe abortion, complicated delivery, or uterus rupture. One cannot dismiss hysterectomy due to myomas, which has become very common in Brazil in recent years and which is one more violation of women's bodies, including adolescent and young women's bodies.

293. In contrast with the great number of unsafe abortion-related hospitalisations, abortions for medical reasons as provided for in Art. 128 seem to be rare, as shown in Table 9 below. Studies covering Brazilian public hospitals point to numerous obstacles to the effective adoption of legal abortion in the country.

**Table 9**

**Distribution of abortions for medical and legal reasons indicated in ICD's Chapter XV and the averages for the period under consideration, recorded by SIH/SUS pertaining to women aged 10-49. Brazil. 2002-2006**

ICD10 Main diagnostic	2002	2003	2004	2005	2006	Period average %
O02 Other abnormal proc, conception	47 707	48 326	49 968	51 019	47 982	21.9
O03 Miscarriage	111 567	118 174	126 803	127 554	119 361	54.6
O04 Abortion for medical/legal reasons	942	1 916	1 591	1 769	2 067	0.9
O05 Other types of abortion	7 175	6 736	6 438	6 230	5 041	2.3
O06 Abortions	51 254	48 434	48 344	44 680	40 402	18.5
O07 Failed abortion attempt	304	741	500	485	509	0.2
O08 Abortion-related complications	13 499	5 412	5 677	4 465	3 423	1.6
Total	232 448	229 739	239 321	236 202	218 785	100.0

*Source:* SIH/SAS/MS

294. In summary, SUS hospitalisations due to abortion-related complications are significantly high in respect of all causes. Given the risks and consequences of unsafe abortion and the attendant complications, this is a serious public health problem that affects mainly younger women in Brazil. The introduction of referral services for legal abortion, the expansion of SUS offer of contraceptive methods, and increased access to emergency contraceptives should be seen as major, urgent measures to prevent unsafe abortions.

295. Lastly, it is important to discuss initiatives in support of research and to reflect on the issue of abortion and its decriminalization. There is a Study Group on Abortion-GEA, in which the Ministry of Health, the Special Secretariat for Women Policies, as well as medical, juridical, and feminist organizations of civil society participate. One of GEA's initiatives in 2008 was to participate in public hearings held by the Federal Supreme Court on the Action pertaining to Noncompliance with a Fundamental Precept-ADPF for the Therapeutic Anticipation of Delivery of Anencephalic Fetuses.

296. On the political front, it should be mentioned that the Special Secretariat for Women Policies chaired the Multimministerial Commission consisting of the Ministry of Justice and the Ministry of Health that visited the city of Cuiabá in 2008 to learn about the situation of women threatened with detention for performing abortions after the closing of a clinic in the city. No less significant were public statements by the Minister of Health and President Luis Inácio Lula da Silva in favor of the State's and civil society's transition to a position in which the issue should be treated primarily as a public health issue.

**Question 30.** *Please provide updated information on the State party's National Health Service, including disaggregated statistical data on those covered by such system. Please also indicate the measures taken to guarantee effective access to health-care facilities, goods and services of the most disadvantaged and marginalized individuals and groups, including members of indigenous communities and persons of African descent.*

297. Health in Brazil is seen as being determined by the individual's social conditions. The main determinants are associated with society's structural conditions and this understanding is reflected in the Federal Constitution as evidenced in Art. 196: "*Health is a right of all and a duty of the State and shall be guaranteed by social and economic policies aimed at reducing the risk of diseases and other hazards, as well as at ensuring universal, equal access to medical actions aimed at health promotion, protection, and recovery.*" This concept has been expanded to include individual and family choices, such as lifestyle, which influence health but whose primary causes are the objective conditions that make possible certain choices to the detriment of others.

298. The Unified Health System-SUS which has been in place for twenty years reflects the constitutional orientation and has established a federative arrangement that entails the need for intense negotiations at the three levels of government for the definition of norms and mechanisms for the transfer of federal funds to the federation units. The main SUS programs that encompass the three government levels are as follows: (a) Family Health Program-PSF; (b) Community Health Agents Program-PACS; (c) National Pact on Reducing Maternal and Neonatal Mortality; (d) Agenda of Commitments pertaining to Children's Integral Health and Reduction of Infant Mortality; and (e) National Immunization Program.

#### **Family health program-PSF**

299. The Family Health Program is understood as a strategy for reorienting the care model through the establishment of multiprofessional teams at basic health units. These teams are responsible for following up a previously defined number of families located in a circumscribed geographical area. The program offers a series of preventive and curative services that are usually provided by a team consisting of a doctor, a nurse, a nursing aide, and community health agents.

300. Fifteen years after its introduction, the Family Health Program covers 92.1 per cent of Brazilian municipalities (5,125 municipalities). It has experienced a remarkable growth since 1994, when it covered only 1.1 per cent of municipalities. This growth has occurred uniformly in the different regions of the country. Today's coverage is as follows: 91.3 per cent in the North; 98.3 per cent in the Northeast; 86.8 per cent in the Southeast; and 88.8 per cent in the South. There are 29,239 Family Health Teams in activity, which cover 49.44 per cent of the Brazilian population, or 93 million people.

301. The Family Health Program's importance is underlined in a 2006 study that shows that a 10 per cent increase in its coverage entails a 4.5 per cent reduction in the number of infant deaths. Infant mortality has dropped from 53.7 per one thousand live births in 1990 to 28.7 in 2005. The average rate of reduction in the period was 46.4 per cent, but in the Northeast it was 55.4 per cent. Despite a substantial decline in infant mortality nationwide, in the states where

living conditions are less favorable - in the Northeast (31.6 per one thousand live births) and in the North (31.6 per one thousand live births) - the rates are far higher than in the South (13.8), in the Southeast (14.1) and in the Center-West (17.8).

302. Between 2005 and 2006, according to data from the Applied Economic Research Institute-IPEA, the Family Health Program increased by 10 per cent its coverage in poorer municipalities with higher infant mortality rates. Despite this increase, the great challenge that SUS faces is to reduce regional disparities by expanding coverage per municipality and number of citizens. To this end, initiatives under the program must encompass the various causes of infant mortality, from prenatal infections, which are related to factors such as prenatal care and the conditions of delivery assistance, to infectious diseases, which accounted for 7.1 per cent of infant mortality in 2005. Some of the Family Health Program's major actions include the following: expanded vaccination coverage (95 per cent in several years) and introduction of new vaccines; expanded prenatal care; improved environmental conditions, such as increased provision of potable water and nutritional conditions ensured by the Family Grant Program; and higher schooling rates and introduction of oral rehydration therapy for children.

303. Infant mortality data show that infectious diseases affect indigenous children three times more. Respiratory infections, which rank as the third cause of deaths, are more prevalent among indigenous children. In addition to the program's universal coverage, the indigenous populations are covered by a specific subsystem consisting of 34 Special Indigenous Health Districts. Actions in the area of health are complemented by political actions to ensure food security and by nutritional surveillance systems and emergence interventions in indigenous settlements. In 2006, the National Health Foundation-FUNASA set up a task force to act in emergency situations.

304. The Federal Government introduced a Program for Expanding the Family Health Program-PROEST for municipalities with a population of over 100,000. PROEST encompasses the 2002-2009 period, and has set targets to be achieved in three phases: 2002-June 2005; July 2005-June 2007; and July 2007-2009. In 2006, though, the Ministry of Health concluded that the 2007 target would not be achieved and revised the estimated coverage downward, from 48 per cent to 35 per cent. The difficulty in achieving the targets shows that the coverage of municipalities with larger populations remains relatively low (less than 35 per cent). This is the case of Rio de Janeiro, which experienced a recent dengue epidemic, possibly due to insufficient Family Health Program actions.

305. Notwithstanding the problems that afflict the health sector, the three levels of government are making joint efforts to achieve universal coverage, as provided by the Federal Constitution. In March 2006, agreements were entered into under SUS in six areas assigned priority by the Government: health of the aged; control of colon, uterus, and breast cancer; reduction of maternal and infant mortality; strengthening of the capacity of response to emerging and endemic diseases, such as dengue, Hansen's disease, tuberculosis, malaria, and influenza; and health promotion and strengthening of basic care.

306. As a complementation of the actions under SUS, the National Medicinal Drugs Policy provides drugs of three kinds: (i) those used in basic care, procured by the states and municipalities; (ii) those considered strategic for actions under the Ministry of Health, which procures them directly; and (iii) those of an exceptional character, programmed, procured, and

distributed by the states and funded with state and federal resources. In addition to these drugs, the government now distributes, under the Sexual and Reproductive Health Program, contraceptives on the list of subsidized drugs and sold at authorized pharmacies.

### **National pact for reducing maternal and neonatal mortality**

307. One of the Millennium Development Goals is to reduce by 75 per cent the rate of maternal mortality by 2015. According to official statistics, maternal mortality dropped from 61.2 to 53.4 deaths per 100,000 inhabitants between 1997 and 2005. This 12.7-reduction is viewed with some caution, though, as a high rate of undernotification is estimated. To improve data quality, new Committees on Maternal Mortality were established in 1998 to identify the causes of death. Family Health Program's expansion and the higher amounts paid as incentive for the municipalities to provide prenatal care are the main Federal Government actions to increase the number of expecting mothers assisted.

308. In 2006, the Brazilian Government introduced the National Policy on Sexual Rights and Reproductive Rights, which contemplated the implementation of multiple family planning initiatives by 2007, including assistance in abortion cases and combating domestic and sexual violence. Since 1997 actions are being implemented to detect and treat colon cancer but only recently a joint initiative by government agencies and civil society led to a Plan of Action for Controlling Colon and Breast Cancer for the 2005-2007 period. This was an unprecedented measure, as it incorporated detection of these types of cancer into SUS routines.

### **Black populations and health services**

309. Although the Brazilian Constitution guarantees health services to all Brazilians, black population indicators expose persistent weaknesses when compared with the white population's average. The risk that a black child may die before reaching the age of five due to infectious and parasitic diseases is 60 per cent higher than in the case of a white child; the risk of death from malnutrition is 90 per cent higher among black children than among white children; the risk of a black person dying from an accident and other forms of violence is 56 per cent higher than for a white person, and in the case of a black man, this risk is 70 per cent higher than for a white man; and, in general, the risk of death by homicide is higher in the black population, independently from gender.

310. To eliminate racial discrimination in the access to health, the Brazilian Government established a National Policy on the Black Population's Health. This policy encompasses actions aimed at expanding the black population's access to SUS; improving basic sanitation infrastructure; strengthening assistance to *Quilombola* communities; promoting health in worship premises of religious communities of African roots; and at the adoption of the National Program on Sickle Cell Anemia by the states with larger black populations. This policy envisages a wide spectrum of actions, including the following:

(a) Establishment of mechanisms and strategies for including issues related to the specificities of black population health in the academic and technical curriculum of health, research, and university extension program professionals to involve principally public institutions - universities, foundations, research institutes, development agencies, and technical health schools;

(b) Development of research on traditional populations, especially on *Quilombola* communities and religious communities of African roots;

(c) Priority ascribed to research on the black population's health, with emphasis on mental disturbances, psychic damages, nutrition, infectious and parasitic diseases, and most prevalent diseases and disorders;

(d) Preparation of a booklet on Black Population's Health and SUS - Affirmative Actions to Promote Equality, by the Executive Secretariat of the Technical Committee on Black Population's Health.<sup>29</sup>

**Question 31.** *Please provide information on the educational preventive measures being taken to combat HIV/AIDS and to eliminate discrimination against persons with HIV/AIDS. Please elaborate on the National Sexually Transmissible Diseases and AIDS Program (E/C.12/BRA/2, para. 440). Please also provide information on the health protection available to persons with HIV/AIDS, including information on achievements and plans to provide equal access to adequate and affordable treatment and medication for these persons.*

311. The National Program on Sexually Transmissible Diseases and AIDS is the national mechanism for combating the epidemic. Its main objective is to reduce the incidence of HIV/AIDS; to control other sexually transmissible diseases; to improve the quality of life of people living with HIV/AIDS - to this end, guidelines have been established for improving the quality of the public services provided to patients of AIDS and other sexually transmissible diseases; to reduce the vertical transmission of HIV and syphilis; to broaden the coverage of the diagnosis and treatment of sexually transmissible diseases and HIV infection; to expand the coverage of preventive actions targeted at women and more vulnerable populations; to reduce stigmatization and prejudice; and to improve management and enhance sustainability.

312. To enhance quality and widen the access to interventions, efforts have sought to expand promotion and prevention actions; to include the most vulnerable groups in the care networks; to provide access to inputs for the adoption of safer practices (condoms, lubricating gel, damage reduction kits); and to implement the *Quality Improvement* project. Still for the purpose of expanding coverage and equality through the implementation of reference care services and shelter homes, attention has been targeted at emerging populations, populations in remote areas, and persons living with HIV/AIDS. In addition, agreements have been executed by the Ministry of Health, the states, and the municipalities for the procurement and distribution of antiretroviral drugs and for the treatment of opportunistic infections and other sexually transmissible diseases. Another initiative seeks to expand access to diagnosis of HIV and other sexually transmissible diseases. These initiatives are being implemented thanks to the strengthening of partnerships and multisector government and nongovernmental coordination to promote the human rights of people living with HIV/AIDS.

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<sup>29</sup> Available at Ministry of Health's site: [http://portal.saude.gov.br/portal/arquivos/pdf/caderno\\_spn.pdf](http://portal.saude.gov.br/portal/arquivos/pdf/caderno_spn.pdf).

313. To enhance the actions' effectiveness, funds are spent on the production and dissemination of timely, quality information to provide decision-makers with inputs, on the basis of an information and data processing master plan. This plan encompasses the following: knowledge about the prevalence of HIV, syphilis, and STD (in the general population and in specific populations); consolidation of a system to monitor indicators or MonitorAids, a national program; monitoring of HIV resistance to antiretroviral drugs and of gonococcus to antibiotics; establishment of a network for the surveillance of clinical events and adverse reactions; establishment of the system of lab tests control (CD4 and Viral Load), SISCEL, and improvement of biological and behavioral surveillance; establishment of a management system; and dissemination of research results.

314. Promotion of knowledge production is also done through the development and incorporation of new technologies; characterization of HIV subtypes in circulation; identification of primary resistance to antiretroviral drugs; and the funding of research and technological development to achieve national scientific and technological competence. Endeavors purport also to establish national networks for technological development of vaccines and microbicides and for clinical research; the formulation of a strategic plan for the development of drugs and medicines, as well as of diagnostic tests and clinical follow-up; improvement of management; institutionalization of monitoring and evaluation; implementation of a human resources training and regulation policy; and strengthening and expansion of technical, scientific, and technological cooperation among countries.

315. Brazil recently published the Progress Report pursuant to commitments undertaken before the United Nations in respect of HIV/AIDS; this report is available on the Web site of the Joint United Nations Program on HIV/AIDS.<sup>30</sup> In addition to strategies implemented by Brazil, the report also presents 2005-2007 results. Reports for 2001-2005 are also available on the same site. Currently Brazil has 474,273 accumulated AIDS cases, with approximately 32,000 new cases per year.<sup>31</sup> The number of people infected with HIV is estimated at 630,000 (2006). Most of the population spontaneously cites the forms of HIV transmission (sexual relations, 91 per cent) and of protection (contraceptives use, 94 per cent).<sup>32</sup>

316. With regard to preventive measures, the national program - PN-DST/Aids - develops information strategies (campaigns, support to civil society organizations for education among peers, etc.), as well as making free provision of available means to the population for prevention. In 2007, the Government purchased one billion condoms and 6 million female contraceptives. And in April 2008, the Brazilian Government's first contraceptives manufacturing plant was

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<sup>30</sup> BRAZIL. Targets and Commitments made by the Member-Sates at the United Nations General Assembly. Special Session on HIV/AIDS. UNGASS - HIV/AIDS. Brazilian Response. 2005/2007. Country Progress Report. Available at: [http://data.unAids.org/pub/Report/2008/brazil\\_2008\\_country\\_progress\\_report\\_en.pdf](http://data.unAids.org/pub/Report/2008/brazil_2008_country_progress_report_en.pdf), 2008.

<sup>31</sup> Notified cases in SINAN and entered into SISCEL/SICLOM as at June 30, 2007 and into SIM from 2000 to 2006.

<sup>32</sup> PN-DST/AIDS, PCAP-BR 2004.

opened in Xapuri, State of Acre, using latex from native rubber trees. The plant forms part of the sustainable development plans for the region and its yearly output is estimated at 100 million units. The expansion of preventive actions poses a major challenge for the country. Accordingly, plans call for increasing the number of available contraceptives and for distributing them in association with educational programs such as Health in Schools Program.<sup>33</sup>

317. In 2003, to encourage HIV testing, the Brazilian Government launched a national campaign under the motto "*Fique sabendo*" [Get Wise] for the purpose of expanding diagnosis. The campaign motto is used by a considerable portion of the 384 Testing and Counseling Centers-CTA in the country. In addition to the CTAs, the entire public health network offers HIV tests. In 2007, 4.6 million AIDS tests were performed. Approximately 40 per cent of the Brazilian adult population has been tested sometime. However, between 2003 and 2006, 44 per cent of the patients that submitted to the first CD4 presented severe immunologic deficiency ( $CD4 < 200$ ) or a clinical case of AIDS. Early diagnosis of the infection thus still poses a major challenge for the country.

318. Access to prevention, diagnosis, and treatment by population segments deemed more vulnerable (intravenous drug users, gays, and other men that have sex with other men - HSH, transvestites, transsexuals, and sex professionals) poses another challenge. To ensure these groups' access to health services, actions have been implemented to reduce damage and combat discrimination (gender discrimination, racism, homophobia), which have led to plans for specific, multisector plans with the participation of organized civil society. These plans are as follows: Strategic Program on Affirmative Actions: Black Population and AIDS - which addresses racism and its interface with vulnerability; Integrated Plan for Combating the Feminization of the HIV/AIDS and Other STD Epidemics; National Plan for Combating the AIDS and Other STD Epidemics among Gays, Men who Have Sex with Other Men (HSH) and Transvestites. This last program includes the fight against homophobia and distinguishes the different gender identities and sexual orientations.<sup>34</sup>

319. The fight against stigmatization and discrimination continues to pose an enduring challenge. To ensure respect for the privacy of persons living with HIV/AIDS, the Brazilian Government promoted the availability of appropriate environments for diagnosis information at health services facilities, included respect for human rights as part of the training of health professionals that handle information on patients living with HIV/AIDS, as well as promoting actions for combating stigmatization and discrimination. One of the strategies to address this

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<sup>33</sup> On the Health and Prevention in Schools Program, see BRAZIL. Targets and Commitments made by the Member-Sates at the United Nations General Assembly. Special Session on HIV/AIDS. UNGASS - HIV/AIDS. Brazilian Response. 2005/2007. Country Progress Report. Available at: [http://data.unAids.org/pub/Report/2008/brazil\\_2008\\_country\\_progress\\_report\\_en.pdf](http://data.unAids.org/pub/Report/2008/brazil_2008_country_progress_report_en.pdf), pp. 43 and 44.

<sup>34</sup> Further information is available on the report submitted to UNAIDS: BRAZIL. Targets and Commitments made by the Member-Sates at the United Nations General Assembly. Special Session on HIV/AIDS. UNGASS - HIV/AIDS. Brazilian Response. 2005/2007. Country Progress Report. Available at: U 2008, pp. 59-87.

issue is support for legal counseling services for the defense of the human rights of people living with HIV/AIDS; these legal services are endowed with specific resources and a system for recording cases of violations of human rights in connection with HIV/AIDS.

320. With regard to information on health protection offered persons living with HIV/AIDS, including information on the results of plans to promote such persons' equal access to adequate treatment and to affordable medication, it should be noted that the Unified Health System ensures universal, free access to antiretroviral therapy (E/C.12/BRA/2, para. 440). By December 2008, a total of 185,000 people were receiving antiretroviral treatment. Of those that began treatments begun, 94.8 per cent kept up the antiretroviral treatment - 95.3 per cent of the women and 94.5 per cent of the men. Of the people who began treatment between 2003 and 2006, 97 per cent were alive after 12 months of treatment, and 91 per cent were alive after four years of treatment.<sup>35</sup> As the report states:

“In 2007 the healthcare network for people living with HIV was comprised of 2,211 services. The number of services has gradually increased. The absolute number of services increased by 33.51% between 2005 and 2007, whilst the increase in relation to the universe of people living with HIV and taking antiretroviral treatment was 22.09%.”  
(BRAZIL, 2008, p. 73)

321. Access to ARV therapy has made possible the survival of persons living with HIV/AIDS. But a motive of concern is the prevalence of co-infections (such as tuberculosis and hepatitis) and co-morbidities (neoplasias, hypertension, and diabetes) in this population. With regard to medication, it should be noted that:

“In 2007, 18 antiretroviral drugs were available for the treatment of people with HIV in Brazil (Brazil, 2007c), 8 of which were produced in Brazil by 6 different state laboratories and 1 private laboratory, comprising a total of 37 formulations (pediatric and adult).”  
(BRAZIL, 2008, p. 80)

322. The sustainability of universal access poses a major challenge. In 2007, Brazil made use of the flexibilities provided in the TRIPS Agreement to issue a compulsory license for the Efavirenz antiretroviral to guarantee access to the most widely consumed imported antiretroviral in the country (by 80,000 patients in 2007). Since the mid-1990s, the State party has endeavoured at intellectual and public health multilateral forums to prevent the strengthening of the multilateral intellectual property regime for raising obstacles to the access to medication in the developing countries, particularly in countries that adopt universal health system, as is the case of Brazil. The Ministry of Health forecasts savings of approximately US\$236.8 million (US\$30 million in 2007 alone) by 2012. Brazil intends to expand the national production

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<sup>35</sup> Further information is available in the report submitted to UNAIDS. BRAZIL. Targets and Commitments made by the Member-Sates at the United Nations General Assembly. Special Session on HIV/AIDS. UNGASS - HIV/AIDS. Brazilian Response. 2005/2007. Country Progress Report. Available at: [http://data.unAids.org/pub/Report/2008/brazil\\_2008\\_country\\_progress\\_report\\_en.pdf](http://data.unAids.org/pub/Report/2008/brazil_2008_country_progress_report_en.pdf), 2008, pp. 59-87.

capacity, channeling more resources to the production of drugs (raw material), new molecules, and new prevention technologies (Research and Development-R&D), and lab inputs for diagnosis and monitoring (R&D), as well as improving some antiretroviral formulas.

#### **H. Articles 13 and 14 - The right to education**

***Question 32. Please provide detailed information on the concrete measures being taken to combat the high dropout rate of children from schools at all levels across the country, particularly among the poor, mestizo children, children of African descent, indigenous children and children living in remote areas. Please also provide information on the measures being taken to address the problem of the high illiteracy rate in the State party, including the adoption of a national plan of action in respect of education. Furthermore, what concrete measures has the State party taken in respect of education of street children, especially in Sao Paulo and Rio de Janeiro?***

323. Access to and permanence in school is a *sine qua non* condition for breaking the cycle of poverty between generations. Guaranteeing access to education and preventing students from dropping out as development strategies was the ideal core that gave rise to the Family Grant Program. Established by Law 10836 of January 9, 2004, and regulated by Decree no. 5209 of December 17, 2004, the program consists in conditioned direct income transfer to families living in poverty and extreme poverty.

324. The objective is to ensure and reinforce the right to education, health, and social welfare as a basic right. The conditionality pertaining to education under the Family Grant Program consists in the monitoring of school attendance. As they are brought under the program, families undertake the commitment to enroll their children and adolescents and keep them in school. Children and adolescents aged 6-15 must attend at least 85 per cent of classes each month. Adolescents aged 15-17 who are beneficiaries of the Variable Youth Benefit must attend at least 75 per cent of classes each month. The collection of beneficiaries' school attendance information is done by the Ministry of Education since October 2004. Since December 2006 the 5,564 Brazilian municipalities can monitor school attendance via internet:  
<http://frequenciaescolarpbf.mec.gov.br>.

325. The inequalities observed in the field of education are closely related to income, ethnic/racial, and territorial inequalities. Moreover, the ethnic/racial, generational, gender, and sexual orientation discriminatory practices, among others, contribute to the creation and maintenance of inequalities. Looking at IBGE data from an ethnic-racial standpoint, we can notice in the course of one century the disturbing persistence of the difference in schooling between whites and blacks, despite the steady increase in the average schooling in both groups in the same period.

326. The consequences of persistent inequality indicators are perverse. On the one hand, the persistence of inequalities makes it seem a natural thing the differentiated participation of Afro-descendants, Indians, the poor, the rural poor, children and youths lagging behind their natural school grade, and young people and adults with little schooling, thereby reinforcing the stigmatization suffered by these groups of the population, hindering the development of their individual potential, and keeping them from fully enjoying their citizen rights. These Brazilians

are denied the equal opportunities the country should guarantee to all. Their exclusion within the educational system reinforces society's hierarchic, authoritarian characteristics, widens social gaps, and compromises the country's democratic development and the building of a more just, cohesive society.

327. The UniAfro program calls for the implementation and monitoring of programs and actions to guarantee black students' access to and stay in universities; the establishment of subsidies for the formulation, follow-up, and evaluation of affirmative action policies; and incentive for the strengthening and establishment of specialized ethnic/racial study centers, in addition to the preparation of specific bibliographical material on the subject. Beginning in 2007, the focus of the program enhanced so as to include integration between university (Higher Education) and schools (Basic Education), thereby promoting teacher's qualification and the preparation of specific teaching materials for the teaching of Afro-Brazilian and African history and culture and for education in ethnic/racial relations, as well as encouraging greater integration, through extension services, between the community and the academic world.

328. The objective of the *Quilombola Brazil Program* is the training of teachers, the preparation of teaching materials, and the building or overhauling and expansion of schools in remaining *Quilombola* areas. The purpose is to promote, through the provision of technical and financial support to the municipalities where such areas exist, the affirmation of ethnic/racial values in the educational systems. For the production of teaching materials and the purchase of construction materials and the building of schools, R\$836,402 were spent in 2006, benefiting 87,839 students, while R\$1,052,943 were spent on teachers' training, benefiting 103,726 teachers.

329. From 2002 to 20007, the *Diversity at the University Program* backed 116 innovative course projects, benefiting 15,067 students, 22 per cent of which, approximately 3,370, entered higher education institutions. The reply to Question 5 lists other affirmative action programs in the area of education for Afro-descendants, while the answer to Question 1 encompasses actions for the education of indigenous children.

330. The illiteracy rate in the population aged over 15 dropped from 17.2 per cent in 1992 to 9.9 per cent in 2007, according to data from the 2007 National Household Sample Survey-PNAD. But there are sharp regional disparities, with much higher rates in some localities. To combat the high illiteracy rates that still prevail in some places, the State party introduced the "*Literate Brazil*" program. Teaching youths and adults to read and write is done principally by teachers of the public educational systems during off-school hours. For this, they receive grants from the Ministry of Education. The goal is to have most literacy teachers from the public and municipal educational systems, without neglecting literacy teachers in the local communities and other education professionals or social movements involved with the cause. Literacy teachers receive grants from the Federal Government, which also provides funds for teaching materials, school lunch and transportation, and for glasses, in partnership with the Ministry of Health, as well as for school inspection. Priority is assigned to municipalities with illiteracy rates above 35 per cent, located particularly in the North and the Northeast.

331. Continuity of studies is another program goal. Participating states and municipalities must devise and implement strategies for ensuring that literacy graduates continue to study. Literacy is viewed as a step toward youth and adult education. Municipalities that assign priority to educating people in this age range receive more funding. Teachers working as adult literacy

teachers can reinforce their income, especially in the Northeast, where 62 per cent of public school teachers work 20 hours a week and have free time available, according to PNAD data. As they participate in the program, they earn more in addition to benefiting from the training and qualification courses offered them. Total funding for *Literate Brazil* rose from R\$207 million in 2006 to R\$315 million in 2007. The number of people assisted by the program was 1,528,516 in 2004; 1,876,943 in 2005; 1,548,101 in 2007; and 1,278,357 in 2008. Higher spending helps explain the reduction in the number of total illiterates from 17.2 per cent in 1992 to 9.9 per cent in 2007.

332. In 2007, the Ministry of education introduced the National Program of Textbooks for Literacy Teaching of Youths and Adults for the purpose of providing textbooks to *Literate Brazil* students. The objective is to overcome one of the difficulties consistently pointed out by literacy teachers, namely, the lack of textbooks targeted at youths and adults being taught to read and write. It is estimated that students in about 4,000 municipalities benefit from textbook distribution. Yet, despite the Ministry of Education's success in enrolling 7.7 million youths and adults in the program, one of its punctual advances in addressing the high illiteracy rates in recent years, some obstacles still remain. With regard to such an important issue for guaranteeing the right to education.

333. With regard to the education of street children, it should be noted that in Brazil basic education is compulsory for children aged 6-14, pursuant to the Law on Education Guidelines and Bases. Thus, public authorities, who have the duty of guaranteeing the right to education, have ensured approximately 98 per cent of education universalization. The remaining 2 per cent pose a major challenge for the Government, as this percentage refers to one of society's most marginalized sectors: working children, particularly in rural areas, and street children.

334. In the eighties, there was a discussion as to whether to set up schools specifically for street children or to include these children in public schools. The choice was to develop actions in their own environment, as conventional institutions were not able to attract them. One of the experiences of alternative schools exclusively for street boys and girls was the Tia Ciata School in Rio de Janeiro. One obstacle faced by such schools was the lack of resources and the difficulty in being integrated into the official educational system. Then, there is the experience of professionals working with street children at the behest of municipal authorities, who develop informal education activities, which nevertheless do not replace schooling. This policy has been adopted by the municipal governments of nearly all Brazilian capitals and hundreds of medium- and large-size cities.

335. In the late nineties, the orientation shifted toward returning street children to school and to their families and communities. The challenge is to have inclusive schools so as not to perpetuate these children's exclusion. The *Axé Project* in Salvador, State of Bahia, develops a hybrid experiment: the program decided to hand over the direction of a public school to the community and street children would be included in this school. The objective was to develop a methodology for reintegrating them and to prepare schools to receive these children that had been symbolically and literally expelled from school. The Brazilian State recognizes that many street children are still out of school, despite their participation in educational activities offered by government and nongovernmental organizations.

336. Regrettably, it has not been possible to obtain the requested information on the education of children in a street situation in São Paulo and in Rio de Janeiro.

**Question 33. *Has the State party implemented the constitutional right to cultural diversity, which provides for the adjustment of particular educational programs to the specific needs of each community?***

337. Brazil ratified the Convention on the Protection and Promotion of the Diversity of Cultural Expressions on January 16, 2007, thereby assuming multilateral obligations to guarantee the right to cultural diversity. In June 2007, the Ministry of Culture held an International Seminar on Cultural Diversity to discuss the new Convention. The Identity and Cultural Diversity Secretariat introduced an Identity and Cultural Diversity Program to ensure that the groups and networks of cultural producers who are responsible for characteristic manifestations of Brazilian cultural diversity have access to mechanisms for cultural support, promotion, and exchange among the regions of the country.

338. Some of the program's main initiatives include the following: 2008 Popular Cultures Master Humberto de Maracanã Prize, awarded to 190 initiatives geared to the culture of formal and informal masters and groups; actions aimed at groups based on age, such as the granting of awards to initiatives aimed at the Cultural Inclusion of the Aged and at a Playing with Diversity Workshop-Culture in Childhood, whose purpose was to systematize information and proposals related to the formulation of public policies targeted at children; the National Workshop for Indicating Cultural Public Policies on the Inclusion of Persons with Disability; the Indigenous Cultures Award, conferred on 102 projects in 2008; launching of the Gypsy Cultures Award to strengthen and give visibility to Gypsy manifestations.

339. Mention should be made to the *Griô* initiative to learn anew with the *griôs* [storytellers] and masters of oral tradition the way of building knowledge connected with the ancestors. The purpose is to encourage oral tradition in the communities by extending R\$350 monthly grants to active storytellers for a one-year period. In 2006, 250 such grants were extended. This initiative was expanded and included in the Live Culture Program through the National *Griô* Action Culture Point.

340. The Ministry of Education actions in the area of cultural diversity were endowed with a legal framework with the passing of Law 10639/03, which modified the Law on Education Guidelines and Bases and made compulsory the teaching of Afro-Brazilian and African history and culture in basic education. The new law was in its turn modified by Law 11645 of March 10, 2008, which added the indigenous issue. Some of the Ministry of Education actions include the following:

(a) Forums on Education and Ethnic-Racial Diversity, to encourage coordination among entities connected with the education systems and entities connected with the Black movement for promoting and consolidating affirmative action public policies, with a view to combating racism, sexism, discrimination, and ethnic-racial inequalities;

(b) National Technical Commission on Diversity for Issues Related to Afro-Brazilians' Education, for providing subsidies to and strengthen the implementation of public policies related to ethnic-racial themes under the Ministry of Education-MEC and for extending advisory assistance for the planning, monitoring, and evaluation of educational initiatives in compliance with Law 10639/03;

(c) Qualification of teachers to disseminate basic knowledge about education for ethnic-racial relations and about Afro-Brazilian and African history and culture;

(d) Bibliographic production on education for ethnic-racial relations and on Afro-Brazilian and African history and culture, so as to encourage the discussion and dissemination of Afro-Brazilian and African history and culture, and of issues related to the inequalities between blacks and non-blacks, as well as combating racism and discrimination. Between 2005 and 2008, CGDI published or supported the publication of 23 titles totalling 1,223,900 copies.

### **I. Article 15 - Cultural rights**

***Question 34. Please provide detailed information on the concrete measures adopted by the State party to implement the right of everyone to participate in cultural life and to enjoy the benefits of scientific progress and its application.***

341. The public policies on the realization of cultural rights in Brazil follow the strategies and guidelines set under the National Cultural Plan, which was jointly prepared by civil society, the Federal Government, and the National Congress after a cycle of seminars held in all the federation units in 2008. Some of these public policies are mentioned below.

342. The National Museum Policy seeks to promote the valorization, preservation, and usufruct of the Brazilian cultural assets as one of the social inclusion and citizenship instruments, through the development and revitalization of existing museums and incentive to new processes of production and institutionalization of memories that constitute the country's social, ethnic, and cultural diversity.

343. The Monumenta Program follows a policy of valorization of Brazilian historic urban assets. It currently benefits 83 municipalities that harbor 101 National Urban Sites considered as historical, artistic, or architectonic assets. Municipalities included in the program are eligible for assistance to implement self-sustaining programs involving the local communities. In addition, members of the community are eligible for a credit line for restoration of private property at no interest and for a repayment term of up to twenty years.

344. The Live Culture Program has made progress in addressing problems related to the lack of instruments and incentives for the production and dissemination of local cultural expressions by increasing the number of Culture Points under agreements with the Federal Government in the form of partnerships with the states. This co-ordination made possible the raising to 2,000 the number of Culture Points in 2008, on which the Ministry of Culture spent R\$109,327,721.

345. In October 2007, the Federal Government introduced the *More Culture Program*, on which it plans to spend R\$4.7 billion by 2010. The program seeks to widen the Brazilians' access to

cultural goods and to mechanisms of support to this sector, so as to promote self-esteem, belongingness, citizenship, and cultural diversity; to improve the social environment and city spaces, expanding the offer of equipment and means of access to cultural production and expression; to improve the economic environment for investment in culture, by directly promoting the sector's economy, so as to create business opportunities and generate employment and income for workers, liberal professionals, and micro, small, and medium enterprises on the Brazilian cultural market.

346. In 2008, the *Open Book Program* purchased what was needed to install 395 municipal libraries, including books, furniture, and data processing equipment in sufficient quantity to ensure that all municipalities have a public library. Under the More Culture Program an initiative was adopted for the Modernization of Municipal Public Libraries. Still in 2008, 410 municipalities were to have their collections and furniture brought up to date and, in partnership with the Ministry of Communications, a Community TeleCenter (consisting of 11 computers connected to the internet, data show, and furniture). The modernized libraries will have a team of Reading Agents, consisting of young people aged 18-29 who have completed at least secondary school and who will update collections and stage cultural events at the libraries. They will also register families in their community to develop activities aimed at democratization of the access to books and at the formation of readers, through book loaning, reading circles, storytelling, literary soirees, readers' clubs, and the writing down of their community's traditional stories.

347. Significant indicators regarding inclusion in cultural offerings include the following:

- (i) Over 3000 municipalities have dance groups (3,123, or 56.1 per cent);
- (ii) Nearly 3,000 municipalities have music bands and *capoeira* groups (2,962; and 2,737 municipalities, respectively, or 53.2 per cent and 48.8 per cent);
- (iii) 2,740 municipalities (48.6 per cent) have a community radio;
- (iv) In the two years prior to 2006, 2,737 municipalities (49.2 per cent) staged festivals of traditional popular expressions; 3,094 (55.6 per cent) had official crafts and skills fairs and nearly 60 per cent had crafts exhibits.

348. Significant indicators of exclusion from cultural offerings include the following:

- (i) Only 912 municipalities (16.4 per cent) had held book fairs in the two years prior to 2006 and only 940 (16.9 per cent) had organized literary competitions;
- (ii) Despite culinary wealth, only 679 municipalities (12.2 per cent) had held gastronomy festivals in the two years prior to 2006;
- (iii) Only 482 municipalities (8.7 per cent) had movie theaters and only 128 (2.3 per cent) had community TV.

**Question 35. Please provide information on the linguistic diversity programs, in particular regarding members of indigenous communities and persons of African descent.**

349. Brazil is one of the eight countries that concentrate over half the languages in the world. More than 200 languages are spoken in Brazil. About 180 of these languages are indigenous or autochthonous (they are distributed into 41 families, two linguistic groups, and ten separate languages); and 30 are immigrants' languages (including Japanese, German, Italian, and African languages). There are African-Brazilian languages and differentiated linguistic practices in the *Quilombos*, and at least two sign languages are used by the deaf. The Brazilian policy on linguistic diversity is very recent. Throughout history the country maintained a monolingual policy that favored Portuguese. Thus, according to the Special Secretariat for Policies on the Promotion of Racial Equality, most of the Brazilian Afro-descendants have Portuguese as their mother tongue, including people in the remaining *Quilombola* communities.

350. It is estimated that 85 per cent of the autochthonous languages are extinct and several others are on the way to extinction. The difference with the past is that today the extinction of a language is viewed as a cultural disaster. Thus, although Art. 13 of the Federal Constitution states that Portuguese is Brazil's official language, there are policies aimed at valorizing the country's linguistic diversity. The Ministry of Culture, through the National Historical and Artistic Heritage Institute-IPHAN, is charged with formulating the patrimonial policy and recording the languages spoken in Brazilian communities. A Working Group on Brazil's Linguistic Diversity was set up as a result of the Seminar on the Establishment of a Languages Register, held at the National Congress in 2006 at the initiative of the Chamber of Congressmen's Education and Culture Commission, the Immaterial Assets Department of the National Historical and Artistic Heritage Institute-IPHAN, and the Linguistic Policy Research and Development Institute. After one year and a half of discussions, the report was submitted to a public hearing at the Chamber of Congressmen in December 2007.

351. The Working Group discussed the methodology of the National Linguistic Diversity Inventory established for identifying and recognizing the languages spoken in the country. It also proposed the establishment of a *Languages Register* as part of the strategy to recognize our immaterial heritage. In partnership with the Brazilian Historical and Geographical Institute-IBGE, the 2010 Census will include questions aimed at identifying the languages spoken on the national territory and the number of speakers of each language. To obtain information on languages of African origin, the Working Group asked the Palmares Foundation to do a scanning of the anthropological reports leading to the recognition of *Quilombola* communities, but this yielded no results. For the same purpose, it has asked the National Settlement and Agrarian Reform Institute-INCRA to include the language issue in the new reports necessary for recognition. According to the Working Group's final report, the extinction of African languages in Brazil was due to the physical elimination of slaves, their relatively short life, and the difficulty they had in establishing communities and raising families, and most of all, to the depreciation of the slaves' culture by the Brazilian Government and Brazilian society. Nevertheless, the Working Group affirms that there are still languages in Afro-Brazilian communities spoken in the *Quilombos* that have not been studied yet.

352. With regard to indigenous languages, the 1988 Federal Constitution set a milestone in redefining the rights of the indigenous populations on the basis of recognition, valorization, and maintenance of cultural plurality (Arts. 210 and 230). Accordingly, the indigenous school

education policy purports to ensure the realization of the right of the indigenous populations to intercultural, bilingual/multilingual, community education, consistently with their projects for cultural continuity and socio-environmental sustainability. This differentiated education is now offered to over 174,000 indigenous students in bilingual and/or multilingual schools (See reply to Question 1).

353. Structuring initiatives include the following: initial and ongoing training of indigenous teachers for basic and secondary education and at the college level under Intercultural Bachelor's Degree programs; production of teaching materials culturally and linguistically relevant to indigenous communities; implementation of intercultural secondary education; establishment of a network of indigenous schools and establishment and functioning of the National Commission on Indigenous School Education-CNEEI. The pedagogical and curriculum proposals are aimed at the realization of the linguistic rights of the indigenous populations, and are based on the discussion of the role school education can play in the maintenance, revitalization, and modernization of these languages, as well as the impact of linguistic uses on the learning process.

354. In 2005, the Program in Support of Indigenous Higher Education and Intercultural Bachelor's Degree Programs-PROLIND was introduced. One of its objectives is to extend support to public universities in the 2007-2010 triennials for the training of 4,000 indigenous teachers. The budget for these initiatives has been substantially increased. Appropriations for the ongoing training of indigenous teachers in the states of the North, Center-West, and Northeast rose from R\$2 million in 2003 to R\$7.614.961 for initial training, R\$2,480,180 for ongoing teachers' training, and R\$4,050,000 for PROLIND in 2008.

355. The production of specific teaching materials and/or teaching aids in the original languages, multilingual, or in Portuguese, prepared by indigenous authors, include different supports - books, posters, CDs and DVDs - collectively produced by indigenous teachers during their training and based on consultation with indigenous specialists in the communities. Under these initiatives, 84 works were published and distributed on indigenous territories between 2004 and 2008. Also worth mentioning is the convening of a First National Conference on Indigenous School Education to be held in 2009, preceded by local, regional, and national preparatory events. This conference will provide an important opportunity for the indigenous populations' expression and participation in the discussion, evaluation, and proposition of policies to ensure the socio-cultural quality of public policies on Indigenous Intercultural School Education in the country.

356. Lastly, mention should be made of the pioneering spirit of the municipality of São Gabriel da Cachoeira, in the State of Amazonas, in passing a law that conferred official status to three indigenous languages - tukano, nheengatu, and baniwa - for use in public offices. As the report of the Working Group on Brazil's Linguistic Diversity, this unprecedented initiative paves the way for the realization of the linguistic rights of the other Brazilian linguistic communities.

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