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

**Second periodic reports submitted by States parties
under articles 16 and 17 of the Covenant**

BRAZIL* **

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** Annexes can be consulted in the files of the Secretariat.

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I. GENERAL INFORMATION ON BRAZIL

A. Demographics

1. In recent decades Brazil has undergone a demographic transition. The growth rate peaked in the 1950s at 3 percent a year and has steadily declined since the 1960s, down to 1.64 percent between 1991 and 2000, the lowest rate since the 1940 census. In that decade, absolute growth totaled nearly 23 million people. In 2000, the total population was around 170 million and the growth rate in the decade was of about 1.64% (Annexes, Table I). Projections estimate that total population may have reached about 186 million by the end of 2005.

2. Population growth has differed among regions. Between 1991 and 2000, the North and the Center-West regions recorded growth rates above the national average, at 2.9% and 2.4%, respectively. The other regions recorded rates lower than the national average, the lowest rate being recorded by the Northeast (1.31%). Population distribution by regions, though, has remained unchanged for the last 25 years. Thus, the Southeast concentrated about 42% of the total population (77.5 million), followed by the Northeast (28%), the South (15%) the North (8%) and the Center-West (7%).

3. This deceleration in the pace of growth is owed in large measure to the drop in the fertility rate between 1970 and 2002, from 5.8 to 2.15 children per woman in child-bearing age. This rate is close to the average number of children per woman that is necessary for generational replacement (Annexes, Table 2).

4. The drop in fertility rates - owing primarily to the dissemination of contraceptive methods and to social and cultural changes associated with urbanization - and in mortality rates, owing to technological advances and to wider access to health services and sanitation, characterizes the above-mentioned demographic transition. The main consequence of this process is reflected in the age bracket pyramids, whose base shrunk while their middle and top widened between 1980 and 2000 (Annexes, Figs. 1 and 2). In 1980, for instance, the population under 15 accounted for 38 percent of the total population, while people over 60 accounted for only 6% of the total. In 2000, these figures changed to 29.6% and 8.6%, respectively, reflecting the ageing of the population (Annexes, Table 3).

5. Figures from the last census confirm the trend to urbanization in Brazilian society. In 1980, for instance, 67% of the population was concentrated in urban areas. By 2000, this figure had jumped to 81%, or nearly 138 million people living in urban areas (Annexes, Table 4).

6. In 2004, women accounted for 51 percent of the total population while men accounted for 49%, a condition that remained practically unchanged between 1993 and 2004 (Annexes,

Table 5). A little over half the Brazilian population declared itself as being of the white race or color (51.4%), while blacks and mulattoes totaled 48% and only less than 1% was made up of yellow and indigenous races (Annexes, Table 6).¹

7. The 2000 Census figures show that 14.5% of the Brazilian population suffered from some form of permanent physical (motion, visual or hearing) or mental deficiency. The largest group was of people who responded by acknowledging some type of sight - about 16.6 million - or hearing - about 5.7 million - impairment: over 24 million Brazilians (Annexes, Table 7). No data are available on people with deficiency in the country, as the methodology for gathering this type of information underwent drastic changes in the 2000 Census.

8. As regards religion, in 2000, two thirds of the Brazilian population classified themselves as Catholic and 15% as evangelical. A drop in the percentage of Catholics occurred between 1980 and 2000, from 89% to 73%, while in the same period the evangelicals grew from 6.6% to 15.4%. (Annexes, Table 8).

9. Lastly, it is worth noting the increase in the number of households headed by women. The definition of head of household adopted here is based on data gathered by the National Household Sample Survey-PNAD, which asks household members who is the most important member of the household. It is understood that the member considered to be the most important is the household head. In the last decade (1993-2004), there was a 36% increase in the number of households headed by women (Annexes, Table 9). In 1993, about 20% of households were headed by women, while by 2004 this figure had climbed to 27%. A large portion of these households are headed by women alone (who are separated, widowed, or who live alone), while households headed by a man are in general formed by a couple. Some of the factors that explain this new trend in Brazil are the increase in the number of divorces and separations and of single mothers, women's longer life expectancy, and women's stronger presence in the labor market, which has given them greater autonomy.

B. Social and economic information

1. The economy

10. In early 2006, the Brazilian economic situation is more stable than in the beginning of 2001, when the previous report was submitted. Brazil no longer needs to resort to loans from the International Monetary Fund, the net public debt is no longer growing in relation to

¹ The gathering of racial or color data in Brazil is based on information voluntarily provided, i.e., the interviewee is asked to choose among the five groups indicated in home surveys one that best corresponds to his/her condition. In general, though, data compilation works with four categories: *white*, *black*, *yellow*, and *indigenous*. The category *black* is constructed by the sum of the *black* and the *mulatto* population, as the indicators for the two groups have a similar behavior and because this allows for greater disaggregation for the Black population, i.e., for greater statistical consistency. Accordingly, the data presented in this report refers to the black vis-à-vis the white population.

the Gross Domestic Product, and the economy is not stagnated. In 2005, Brazil recorded the highest economic growth rates since 1995-1996, with GDP growing 4.9% percent in 2004 and 2.3% in 2005 (Annexes, Box 1).

11. Inflation is under control: the 5.6 percent Broad Consumer Price Index in 2005 was the lowest since 1999 (Annexes, Box 2). As inflation forecasts for 2006² are, in the year's second quarter, lower than the 4.5% target set by the National Monetary Council, the Central Bank has reduced its SELIC interest rate to 15.25%. Interest rate reduction encourages higher domestic investment and demand, which is conducive to economic growth. The current forecasts estimate annual GDP growth between 3% and 4%.

12. In 2004 and 2005 the devaluation of the dollar vis-à-vis the real and the purchase of dollars by the Central Bank allowed the settling of debts with the International Monetary Fund and the World Bank and the early redemption of foreign debt papers. By late 2005, Brazil's net foreign debt stood at its lowest dollar value since 1996: US\$115 billion (Annexes, Box 3). After years of strong growth, the public sector's net debt in relation to Gross Domestic Product-GDP has also begun to decline in the last two years (Annexes, Box 4). At the end of 2003, it stood at 57.2% of GDP and at the end of 2005, at 51.6%. This reduction was achieved through strong contention of expenditures by the State and the achievement of yearly primary surpluses since 1999, notably a surplus of 4.48% of GDP in 2005 (Annexes, Box 5). This notwithstanding, federal government per capita social outlays have risen (Annexes, Box 6).

2. Social indicators

13. Social indicators have improved in the last decade, causing a decline in the poverty and inequality indexes between 2001 and 2004. These results show that Brazil's social policies have yielded significant results and decisively contributed to the population's improved living conditions and welfare. But despite improvements, the country is far from achieving social indicators that would make it one of the developed countries. Brazil has 52 million people living in poverty (30% of the population), highly disparate income levels, and regional gender and race inequalities that pervade all the social segments reviewed here. These conditions hamper the full achievement of equitable citizenship for all (Annexes, Table 10).

14. The first major indicator to be mentioned is the Brazilian population's illiteracy level and how this level has changed in the last decade. In 1993, slightly over 16% of the population aged 15 or older could be considered illiterate, i.e., were unable to read a simple note (Annexes, Table 11). This percentage dropped to 11.4% in 2004. No significant differences exist between men and women in this respect. Educational figures show that women are in a better situation than men (see comments to Art. 13 PIDESC) as regards both participation in the educational system and school performance.

² Banco Central do Brasil, *Market Report*, May 26, 2006.

15. Racial data (Annexes, Table 12) show that the illiteracy rates for blacks and whites have had a similar behavior over the years, having dropped in both cases, but more noticeably in the case of blacks. Inequalities remain quite substantial, though, as in 2004, 7.2% of whites and 16.2% of blacks were still illiterate.

16. Universal access to basic education has led to a significant drop in the illiteracy rate. A look at the proportion of illiterates according to age bracket shows that the concentration of people who are unable to read a simple note was considerably lower in the lower age brackets in 2004: 3.8% in the group aged 10-14; 2.1% among those between 15 and 17; and 31.9% percent in the population aged 60 or older (Annexes, Table 12). These figures show that illiteracy in the country is still high, owing in large measure to the accumulation of people (adults and the elderly) who did not have access to basic education in their childhood or youth and who are not yet included in the adult literacy programs.

17. With respect to the Brazilian labor market (see comments to Articles 6 and 8), it is worth pointing out, for illustration purposes, the behavior of employment rates in the different population groups over the 1993-2004 period. In general, one can notice an increase of about 3 percentage points in unemployment rates from early in the period under review till the last year for which data are available (Annexes, Tables 7 and 13). The increase from 6.2% to 9.3% is due mainly to the internal and external economic difficulties the country had to face, particularly in the second half of the 1990s, including the international crises in Mexico, the Asian countries, and Russia, coupled with the low economic growth caused by the economic stabilization strategies. This led to higher unemployment, informal labor relations, and lower average income.

18. More recently, the Brazilian labor market has undergone a recovery, with the unemployment rate dropping from 9.9% in 1999 to 9.3% in 2004. This reduction, though, is not equally shared by the different social segments and does not make possible a reduction in the inequalities associated with gender, race, or age. The drop in the unemployment rate among men was more marked than among women, so that in 2004 the percentage of unemployed women was five percentage points higher than that of unemployed men (12.1% as compared with 7.1%).

19. Racial inequalities with respect to access to jobs have widened over the decade. In 1993, the difference in unemployment rates among blacks and whites was only 1.3 percentage points (blacks, 6.9%; whites, 5.6%). In 2004, this difference widened to 2.3 percentage points, with an unemployment rate of 8.2% among whites and of 10.5% among blacks. From an age-bracket viewpoint, the unemployment problem is more acute in the young population (aged 16 to 24). In an attempt to remedy this, the federal Government has adopted a series of specific measures to qualify the members of this group. These measures include a *Pro-Youth Program* and other programs such as *Factory Schools*, *Integration of Vocational Training and Secondary Education for Youths and Adults* (Proeja), and *Youth Consortiums*, under the *First Job Program* (See Art. 6).

20. As regards health indicators among the Brazilian population, the steady rising of life expectancy deserves to be pointed out. Between 1990 and 2004, Brazilians' life expectancy rose by approximately five years, from 65.6 years in the early 1990s to 71.6 years in 2004 (Annexes, Table 14). Life expectancy varies according to gender and race. In the case of women, this indicator has always been higher than for men and this gap has not changed over the years, as the

indicator has risen equally for both genders. In 2004, women's life expectancy at birth was 7.6 years higher than men's: 75.5 years for women and 67.9 for men (Annexes, Table 15). Between whites and blacks, the difference in 2000 was approximately 7.7 years, i.e., a white's life expectancy at birth was 77.4 years as compared with 66.7 years in the case of a black (Annexes, Table 16).

21. The good news provided by the 2004 National Household Sample Survey-PNAD was the decline in the indigence and poverty levels, the lowest since the early 1990s. People with a monthly family income of less than one fourth the minimum salary are considered indigent and those with a monthly family income of less than half the minimum salary are considered poor. Between 2001 and 2004, by this criterion, the proportion of indigents dropped 17.2% (from 14.3% of the population in 2001 to 11.3% in 2004), while the proportion of poor dropped 5.6% (from 30.3% in 2001 to 30.1% in 2004). In absolute numbers, indigents totaled 19.8 million in 2004, while the poor totaled 52.5 million. These figures are still very high and make combating poverty and indigence one of the major challenges for Brazil's public policies (Annexes, Tables 10 and 17).

22. Poverty has not declined at the same pace nationwide. It has remained a strong characteristic of the populations in the Northeast and the North. Despite some decline between 2001 and 2004, poverty levels in these two regions are still the highest in the country: 53.7% in the Northeast and 36.9% in the North. Poverty levels in the South, Southeast, and Center-West, which were the lowest in the country, dropped further in the period under consideration. In 2004, they stood at 16.9% in the South, at 19.3% in the southeast, and at 23.3% in the Center-West.

23. From the standpoint of color or race, it should be noted that the 2001-2004 period saw a reduction in poverty among both whites and blacks. However, the proportion of blacks in a situation of poverty remains twice as large as that of whites. In 2004, 19.6% of the white population earned less than half the minimum salary per capita, whereas this figure for the black population was 41.7%.

24. It should be pointed out that the Millennium Development Objectives have established as a target for the signatory countries the reduction by half, between 1990 and 2015, of the number of people living in extreme poverty (or indigence), i.e., people with an income of less than one parity purchasing power-PPP dollar a day. By this definition, Brazil has already cut nearly in half the population living in extreme poverty, from 9.9% of the population in 1990 to 5.7% in 2003, a 42.4% reduction. In view of the results already achieved in relation to the original target and of the still large number of people living in extreme poverty (about 10 million, according to this definition), Brazil has set a new target for the 1990-2015 period, namely, to reduce to one fourth the number of people living on a daily income of less than one PPP dollar.

25. With respect to the second target of the First Millennium Development Goal,³ which prescribes the reduction in half, between 1990 and 2015, of the number of people suffering from

³ See in the Annexes Brazil's 2005 Report on the Millennium Development Goals submitted to the UN.

hunger, attention should be called to the launching of the *Zero Hunger* Program in 2003, encompassing a set of measures adopted for widening the access to food, strengthening family farming, promoting income-generating means, and measures aimed at social coordination, mobilization, and control (See comments to Arts. 10 and 11 PIDESC).

26. The 2004 PNAD also showed a steady decline in the unequal income distribution since 2001 and a further, more marked decline in 2003-2004. Between 1999 and 2004, the Gini index fell from 0.592 to 0.570, indicating an income deconcentration process consisting in a higher average per capita income of the poorer and in a drop in the income of the richer. (Annexes, Table 18).

27. Thus, the share of income earned by the poorer 50 percent rose from 12.7% to 14.0% between 2001 and 2004. In the same period, the share of income earned by the richer 10% fell from 47.2% to 45.0%, while the share of income earned by the richest 1 percent fell from 13.8% to 12.8%. A similar pattern is seen in the average per capita family income in the various socioeconomic segments. Between 2001 and 2004, Brazilians saw their average total income shrink by 2.9%. However, the poorest half gained 7.3% in real terms in this same period, when their average per capita income rose from R\$103.19 to R\$110.74.⁴ The richest 10% sustained a drop of 7.4% (from R\$1,916.54 to R\$1,774.27), while the richest 1% lost 9.8% (from R\$5,593.04 to R\$5,047.16).

28. The changes occurred may be ascribed to the following factors: *i*) the improvement in the Brazilian economy, as the Gross Domestic Product grew 4.9% in 2004, positively impacting on the labor market, the employment level, and the income from labor; *ii*) the real increase in the value of the minimum salary - a 75% increase in the last three years, which has been significant for the proper functioning of the labor market and for income associated with federal transfers (Social Security and Welfare); and *iii*) transfers under the *Family Grant Program*.

3. Political structure and normative framework

29. Federalism is the Brazilian form of State, bringing together the Federal Union, States, Municipalities, and the Federal District, and the Republic is its form of government, with representatives elected through direct, periodic elections for temporary mandates. It also adopts a presidential government system, in which the President of the Republic is both Chief of Government and Head of State. The Federative Republic of Brazil's political regime is the democratic regime.

30. The 1988 Federal Constitution, an outcome of the country's redemocratization process in the 1980s, reflects the fundamental norms governing the federation, the distribution of powers, and the rights guaranteed to citizens and aliens. As regards some of the fundamental principles on which the Constitutional Charter rests, it can be said that the Federative Republic of Brazil (1) has as its foundation: *(i)* sovereignty; *(ii)* citizenship; *(iii)* the dignity of the human person; *(iv)* the social values of work and free initiative (Art. 1 of the Federal Constitution - CF);

⁴ September 2004 constant values deflated by the broad National General Consumer Price Index.

(2) has the following objectives: (i) to build a free, just, and solidarity society; (ii) to ensure national development; (iii) to eradicate poverty and marginalization and to reduce social and regional inequalities; (iv) to promote the welfare of all, without prejudice regarding origin, race, gender, color, age, and any other form of discrimination (Art. 3 CF); and (c) is governed in its foreign relations by principles such as the prevalence of human rights (Art. 4, II CF).

31. The Brazilian federative covenant encompasses the Union, the States, the Municipalities, and the Federal District, which have autonomy for establishing their own organization and legislation, subject to the Constitution's supremacy. It must be mentioned that the Union is barred from intervening in the State's domain, except in cases expressly authorized by the Federal Constitution. The investigation and punishment of a large number of human rights violations are incumbent on the States, although one of the cases of federal intervention in the States authorized by the Constitution is precisely the need to ensure compliance with the rights of the human person (Art. 34, VII, b).

32. To convey an accurate picture of the implementation of the International Covenant on Economic, Social, and Cultural Rights in Brazil it would be necessary to list all the measures adopted by each federative member. This would pose an insurmountable difficulty for a report that cannot be exhaustive. Accordingly, state and municipal experiences are shown here as an illustration of the possibilities they offer for ensuring human rights as well as of the limitations to be encountered.

33. The Legislative, Executive, and Judiciary Branches are independent from each other but operate in harmony among themselves (Art. 2 CF).

34. At the federal level, the Executive Branch consists of the Presidency of the Republic, assisted by the Ministries. This is reflected at the state and municipal levels, where the Executive Branch consists of the State and Municipal Governments, which are assisted by their respective Departments.

35. As mentioned in the Brazilian State's First Report to the Committee, participation in the 1993 Vienna Conference helped the establishment of the National Human Rights Secretariat at the Ministry of Justice and of the Human Rights and Social Issues Department at the Ministry of Foreign Relations. In 1999, The National Human Rights Secretariat was reorganized as State Secretariat for Human Rights at the Ministry of Justice. In 2003, the Federal Government made the State Secretariat into the Special Secretariat for Human Rights, assigning it ministerial status and bringing it under the President's Office. Also established at that time were the Special Secretariat on Women's Policies-SPM and the Special Secretariat on Racial Equality Promotion Policies-SEPPIR, both also under the President's Office and enjoying ministerial status. The Special Secretariats have the specific responsibility of coordination with other bodies at the federal, state, and municipal levels, including the Executive, the Legislative, and the Judiciary Branches and the Department of Justice, as well as civil society organizations, with a view to encouraging and promoting public policies pertaining to human rights, gender, and race.

36. These institutional additions by the Federal Executive Branch show that the Brazilian State's commitment to the effective realization of human rights is overcoming partisan political barriers and the limitations of a president's term in office, thereby demonstrating that the human rights policy is a State policy and not a government initiative.

37. The bicameral federal Legislative Branch consists of the Federal Senate and the Chamber of Deputies, which together form the National Congress. The State and Municipal Legislative Branches are unicameral. The Senators, the Federal, State, and Federal District Deputies, and the Municipal Councilmen are elected in direct, periodic elections and may be reelected an unlimited number of times. Today, all State Legislatures have Human Rights Commissions and the number of Human Rights Commissions at the Municipal Legislatures is fast increasing. These Commissions are important forums for the formulation of norms and effective instruments for ensuring the observance of human rights.

38. The Chamber of Deputies represents the people. Deputies are elected on a proportional demographic basis. Each federative unit elects a minimum of eight and a maximum of seventy deputies. Today there are five hundred thirteen deputies elected for a four-year term. Since 1995, the Chamber of Deputies has a Human Rights and Minorities Commission - one of its twenty standing commissions - consisting of sixteen members and sixteen alternates. The Commission's duties include the following: to receive reports of human rights violations; to discuss and vote on bills related to this matter; to supervise and monitor the execution of government programs in this area; to cooperate with non-governmental bodies; to undertake research and studies regarding the human rights situation in Brazil and in the world, for publication and for providing inputs to the other Commissions, besides addressing issues pertaining to ethnic and social minorities, particularly the preservation and protection of the country's popular and ethnic cultures.⁵

39. The Federal Senate has 81 members who represent the 26 States and the Federal District, which elect three senators each. Every four years, the States and the Federal District elect, alternately, one and two senators for an eight-year term. Senators can be reelected an unlimited number of times. In 2005, the Senate added to its standing commissions a Human Rights and Participative Legislation Commission, consisting of 19 members and an equal number of alternates. Just like the relevant Commission at the Chamber of Deputies, it is incumbent on this Commission to discuss legislative bills, to supervise public policies, and to coordinate with civil society with a view to promoting human rights.

40. It is incumbent upon the Judiciary, which has administrative and financial autonomy, to review infringement or threat of infringement of human rights (FC, Art. 5, XXXV). In the exercise of their jurisdictional duties, higher courts justices and judges⁶ enjoy guarantees such as life tenure, irremovability, and irreducibility of earnings (FC, Art. 95).

41. Judiciary Branch bodies include the Federal Supreme Court-STF,⁷ the Superior Court of Justice, the Regional Federal Courts and Federal Judges, the Military Courts and Military

⁵ See <http://www2.camara.gov.br/comissoes/cdhm/oquee.html>.

⁶ On this question see Annexes, Fig. 3.

⁷ Data on the number of cases judged by the Federal Supreme Court between 1989 and 2004 are shown in the Annexes, Fig. 04.

Judges, and the State and the Federal District Courts and Judges (FC, Art. 92). In brief, there are common courts (federal and state) and specialized courts (military, electoral, and labor). It is incumbent upon the Federal Supreme Court to ensure the constitutionality of the laws.

42. The improvement of Brazil's juridical institutions is being democratically debated by the three government branches. In 2003, the Ministry of Justice established a Judiciary Reform Secretariat (Annexes, Box 8) for systematizing discussions and submitting matters to voting by the National Congress. The first stage of this process has led to Constitutional Amendment No. 45 of December 8, 2004, whose main innovations are as follows:

- (i) Institution of a new fundamental right, namely, the right to procedural speed, both in the administrative and in the judicial spheres, thereby broadening the range of rights embodied in the Federal Constitution (FC, Art. 5, LXXVIII);
- (ii) Establishment of the National Justice Council, which allows social control of the Judiciary and consists of magistrates, members of the Public Defenders' Office, and citizens appointed by the Chamber of Deputies and the Federal Senate. One of its main functions is the disciplinary control of the Judiciary, without interference in its requisite autonomy in concluding for conviction in cases brought to it. Another function is the systematization of information about the Judiciary; and
- (iii) Creation of new proceeding instruments, such as the federalization of grave human rights violations. The new wording of Art. 109 permits the Republic's General Attorney, acting for the purpose of ensuring compliance with obligations arising from international human rights treaties, to raise before the Superior Court of Justice, at any phase of a given investigation or proceeding, the need to transfer the case to the Federal Justice. This institutional innovation should be understood from two main angles: (1) as a relevant step to counter impunity and to guarantee rights, as the omission or precarious functioning on the part of institutions should not entail violation of the right to fair, impartial trial in reasonable time; and (2) as a matter of international accountability, as the Brazilian State cannot allege reasons of internal organization as ground for being relieved from responsibility, federalization allows the Federal Judiciary to investigate such violations.

43. It is worth noting that Judiciary Reform has not been restricted to amending the Constitution. It rests on three pillars: (1) Legal Reform (Annex, Box 8 of the Introduction); (2) Diagnostic of the Judiciary and of its Essential Functions (Annex, Figs. 1 and 2 of the Introduction); and (3) Public Policies for democratization of the access to justice. Among the innovations introduced by legal reform it is worth noting the implementation of measures aimed at "decongesting" the courts from repetitive legal suits already pacified by higher courts, as well as at the introduction of modern management methods. Also worth noting are some pilot projects that are being tested as a way of easing the citizens' access to their rights: (a) the establishment of Federal Justice Outposts in Integration and Citizenship Centers (CICs) newly open in São Paulo's municipality outlying neighborhoods, which allows the residents to have direct access to Special Civil Court services; educational courses about human rights and citizenship defense; social welfare and development; employability and income generation; public security,

housing, health, culture, and economic development; and (b) the pilot experiences in Restorative Justice,⁸ which give the victim, the author of the infraction, and society the possibility of solving the conflict without the need for judicial intervention. At any stage of the legal proceedings the parts may agree on the adoption of a Restorative Justice procedure. In this procedure, a mediator helps the parts to arrive at a solution (penally admissible and reasonable in relation to the situation), whereby the author of the infraction realizes the damage caused by his act and is involved in its reparation. At any time, the parts may decide to return to formal judicial proceedings.

44. The exercise of the jurisdictional function is accompanied by the so-called Justice's essential functions, exercised by the Attorney General's Office (Federal Attorney General's Office and Attorney General's Offices in the States); private attorneys (lawyers registered with the Brazilian Bar Association); the Department of Justice; and the Public Defender's Office.

45. It is incumbent on the Attorney General's Office to defend the juridical order, the democratic regime, and unalienable collective and individual rights. Similarly to the guarantees granted the Judiciary, members of the Attorney General's Office are entitled to life tenure, irremovability, and irreducibility of earnings. The unity of the Attorney General's Office does not preclude a distribution of functions - Federal Attorney General's Office, Labor Attorney General's Office, Military Attorney General's Office, and Attorney General's Office of the Federal District and the Territories - and the States' Attorney General's Offices. In addition to its traditional role as guarantor of compliance with the law and as public prosecutor, it is incumbent upon the Attorney General's Office to receive denunciations, to judge cases as a procedural proxy for claimants alleging violation of their economic, social, and cultural rights.⁹ In December 2005, the National Council of Attorneys-General from the State and Federal Attorney-General Offices (CNPAG) established the Nation Group for the Promotion of Human Rights "Rossini Alves Couto", in honor of the Attorney who had been murdered that year. Its specific mission is to seek the establishment of a national policy in the field of human rights.

⁸ These experiences are being carried out in the localities of : (1) Nucleo Bandeirante, DF, through assistance to adults at the Special Civil Court; São Caetano do Sul, SP, through the Juvenile Court and the public school system; and Porto Alegre, RS, through the Special Juvenile Court but more specifically through the implementation of socio-educational measures. Project mold: investment geared mainly to the training of para-proceeding agents, workshops on restorative justice, and specific training in mediation and nonviolent communication; attention to the documentation of the training process and its practical application.

⁹ In August 2003, by way of Edict no. 303, the Attorney general's Office established the Human Rights Commission, with a view to providing systematization and guidance on the action of that institution regarding the rights of citizens, children, teenagers, elderly and handicapped, as well with regard to the promotion of equality and rights of ethnic and racial individuals and groups.

46. Under the Attorney General's Office, this is precisely the task of the Federal Prosecutor's Office and the Regional Prosecutor Offices and of the Prosecutors charged with defending the rights of citizens, as mandated by Complementary Law 75/93. These bodies' main duties are: (1) to request information; (2) to initiate public and penal civil inquiries; (3) to investigate; (4) to notify violations of individual, collective, or social rights; (5) to issue recommendations to public authorities so that they can put a stop to human rights violations - all these recommendations are of an extrajudicial nature and address illegalities practiced by any sphere of public administration; and (6) to judge civil cases demanding compensation for collective pain and suffering stemming from human rights violations.

47. For its primordial role in ensuring the prevalence of social rights, the Labor Attorney General's Office also deserves special mention. It has the same attributions as the Federal Attorney General's Office, with the peculiarity of being an institution charged with watching over the juridical order in the labor market, as well as combating child labor and the exploitation of child and adolescent labor, combating all forms of discrimination on the job, and promoting initiatives for bringing persons with deficiency into the labor market, all of which is consistent with the provisions of the Covenant under review.

48. The Public Defender's Office plays a judicial and an extrajudicial role in solving conflicts pursuant to the constitutionally established right of low-income persons to free legal assistance (FC Art. 134). The Federal Public Defender's Office¹⁰ acts at the federal level, while the state public defender's offices act at the federated states' level. Constitutional Amendment No. 45/2004 has granted the public defender's offices financial and budgetary autonomy, which has given public defenders greater independence and allowed structural improvements to the institution. Currently, 22 states and the Federal District have a public defender's office and offices are being established in the remaining states (Annexes, Boxes 9 and 10).

49. All the institutions so far mentioned have guaranteed judicial support to economic, social, and cultural rights. One can also point out other national institutions that, joining the combined government and civil society efforts, have demanded stricter enforcement of these rights.

50. At the federal level, for instance, there are specific bodies under the Special Secretariat for Human Rights devoted to the defense of human rights, such as the *Council on the Defense of the Rights of the Human Person-CDDPH*; the *National Council on the Rights of the Child and the Adolescent-CONANDA*; the *National Council on the Defense of the Rights of Persons with Deficiency-CONADE*; the *National Council on Combating Discrimination-CNCD*; the *National Council on the Rights of the Aged-CNDI*; the *National Commission on the Eradication of Slave Labor-CONATRAE*; and the *National Human Rights Educational Committee*. Bodies under the

¹⁰ Despite the deficit of professionals, given the extensive demand placed on the Federal Public Defender's Office, it is possible to note a steady increase in its funding, which climbed from R\$10,505,447.20 in 2001 to R\$20,519,448.00 in 2002 to R\$25,074,341.03 in 2003, a 239% nominal increase in three years.

Ministry of Justice include *the National Council on Criminal and Penitentiary Policy-CNPCP* and the *National Council on Refugees-CONARE*. Also worth mentioning are the *National Council on Racial Equality Promotion-CNPIR*, the *National Council on Women's Rights-CNDM*, and the *National Council on Food and Nutrition-CONSEA*, all of which will receive closer attention further on in this report.

51. To illustrate the importance of these bodies, one must mention the work of the Council on the Defense of the Rights of the Human Person, which this year marks its 42nd anniversary in promoting human rights through measures aimed at preventing, correcting, redressing, and punishing behavior and situations of violation. Since the introduction of the *National Human Rights Program* in 1996, the Council has played an active role in some particularly serious cases of rights violation, visiting the locations where violations have taken place and systematically proposing investigations by the Federal Police Department and other bodies. The Council meetings are often attended by Governors, Secretaries of Justice and Security, General Prosecutors, and police authorities. The Council has regularly sent out commissions to the States to investigate denunciations; this has resulted in detailed reports proposing specific measures for addressing the cases and preventing their recurrence. A bill is currently under discussion by the National Congress, calling for the setting-up of a *National Human Rights Council* that would supersede the *Council on the Defense of the Rights of the Human Person*, have greater autonomy and authority, and allow broader participation by civil society organizations. Fifteen States have also established *State Councils on the Defense of Human Rights* and there has been an increasing number of Municipal Human Rights Councils, all of which consist of representatives of both government and civil society and are committed to discussing, implementing, and evaluating public policies in this area. Their purpose is also to forward denunciations, suggest projects, and supervise government action.

52. Having described the institutional structure for guaranteeing rights, the Brazilian State will now explain how the national juridical order seeks to ensure the promotion and protection of human rights.

53. First, consistently with the prevalence of human rights as determinants of the Federative Republic of Brazil's international relations, the Federal Constitution provides for mechanisms for the incorporation of treaties, including human rights treaties, and specifically for the normative character ascribed to them.

54. The Federal Constitution establishes the competence and the procedures for incorporating treaties into the national legal system. In brief, the undertaking of international commitments by the Federal Executive Branch must be supported by the ratification process led by the National Congress's two chambers. Once the legislative decree is approved, it is incumbent upon the President to issue a decree putting it into effect internally. As of this decree's publication, the provisions of human rights treaties can be invoked before the courts and administrative bodies.

55. As regards the normative status of human rights treaties, Constitutional Amendment No. 45 appeased a doctrinal and jurisprudential divergence by ascribing constitutional force to such norms after they have been approved on two voting rounds in each Congressional Chamber by 3/5 of Congress members, the same procedure followed for approving constitutional amendments.

56. With respect to economic, social, and cultural rights, Art. 6 of the Brazilian Constitution guarantees the right to education, health, work, housing, leisure, security, social welfare, as well as to the protection of motherhood and the child, and assistance to the destitute. Arts. 7-11 list the rights of workers. The Constitution also devotes specific titles to the Social and the Economic Orders, of which these rights are pillars. There are also specific provisions on the exercise of cultural rights. Constitutional and legal protection of each of these rights will be addressed further on in this report.

57. The resumption of the constitutional debate on human rights triggered by the participation of the Brazilian State and Civil Society in the Vienna Conference led to the formulation of the *National Human Rights Program-PNDH* that was introduced in May 1996. This program set priorities and targets for making civil and political rights effective. The program's first installment permitted not only the dialogue and coordination among various government bodies but also the designing of state programs, as occurred in the states of São Paulo (1997), Pernambuco (1999), Minas Gerais (2001) and Rio Grande do Norte (2002).

58. Heeding to the principles of indivisibility and interdependence of human rights, a new coordination between civil society and the Government led to the designing of the *II National Human Rights Program* in 2002. The inclusion of economic, social, and cultural rights followed the lineaments defined in the 1988 Federal Constitution and was also inspired by the *1966 International Covenant on Economic, Social, and Cultural Rights* and by the Additional (San Salvador) Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, both ratified by Brazil in 1992 and 1996, respectively. PNDH II includes specific action in the field of the right to education, health, social security and welfare, work, housing, a healthy environment, food, culture, and leisure, as well as proposals for education and awareness-raising measures to lead Brazilian society to build and consolidate a culture of respect for human rights.

59. More than conceiving of various juridical norms capable of making effective the rights provided for by the Covenant, the Committee expressed its concern for not knowing of any judicial measures capable of ensuring them. The Brazilian Constitution prescribes various proceeding instruments for ensuring the enforcement of economic, social, and cultural rights.

60. The writ of mandamus is meant to protect any and all clear legal rights that are not backed by a writ of habeas corpus or a writ of habeas data in an illegality or abuse of power case. The 1988 Constitution innovated by introducing a collective writ of mandamus, which can be applied by a political party, a labor union, a class or an association. Another important novelty was the creation of the writ of injunction, an instrument meant to ensure, through the Judiciary, the exercise of constitutional rights and freedoms even in the absence of a regulatory norm. In addition, it is possible, through a popular action, to annul an act that is damaging to public property, administrative morality, the environment, or the historical, artistic, and cultural patrimony or to other diffuse collective rights. The drafters of the Constitution also devised constitutionality control measures for the protection of rights: a Direct Action of Unconstitutionality by Omission, which can be brought by segments of society (FC, Art. 103),

seeks to prove that legislators failed to discharge their regulatory duty as mandated by the Constitution; and the Challenge to Noncompliance with a Fundamental Precept brought to the Federal Supreme Court is aimed at preventing or repairing the breach of a fundamental precept caused by a Government action. There are many other types of judicial recourse in addition to these. Under Brazilian Law, any private individual may bring Innominate Common Action in the lack of a specific instrument to ensure his right.

61. In this way, the Brazilian State guarantees the right to an effective remedy to any person whose recognized rights have been violated. The authorities must comply with judicial decisions under penalty of incurring in a crime of responsibility.

62. The normative consolidation of rights and of remedies against their violation must be ingrained in a human rights culture, pursuant to a concern expressed by the Committee in relation to the Covenant's implementation and to the lack of knowledge in the matter of human rights on the part of law enforcers and the Judiciary.

63. Aware of this, the *Special Secretariat for Human Rights*, acting on the United Nations recommendation for the *Decade for Human Rights Education (1995-1994)*, established the *National Committee on Education for Human Rights* in July 2003, consisting of specialists in the subject and representatives of government agencies and civil society, for the purpose of drafting, in partnership with the Ministry of Education, the National Plan for Human Rights Education, and proposing policies aimed at encouraging programs and initiatives at the state and municipal levels. In December 2003, the *National Plan for Human Rights Education-PNEDH* was launched for the main purpose of disseminating knowledge, values, skills, and attitudes geared to the building of a democratic, citizenship-conscious society based on tolerance and on dialogue, and on respect for equality, differences, and cultural diversity. The Plan assigned priority to five thematic areas: basic education, higher education, informal education, the media, and justice and security systems, identifying, for each area, initiatives, their target public, and those responsible for their implementation.

64. In 2004, the *Special Secretariat for Human Rights* established the *Education for Human Rights Coordinating Office* to carry out the actions prescribed by the Plan. Through international cooperation and in partnership with the National Committee, the Secretariat elaborated the *Human Rights Education Project: Building a Culture of Respect for Democracy and Justice*, in order to facilitate the implementation of the right to education through the National Plan for Human Rights Education. In 2006, the Project will provide support, in partnership with UNESCO, to ten selected projects to train multipliers in education and human rights and 14 projects for the reinforcement and training of State committees on human rights education, the latter in partnership with the Continuing Education, Literacy and Diversity Secretariat of the Ministry of Education. In coordination with the National Committee, 15 State Committees on Human Rights Education have already been established, as agencies for the monitoring of the implementation of the National Plan of Education in Human Rights (PNEDH).

65. A National Consultation was held in 2003 through 26 State Meetings and one Municipal Meeting, aimed at nationwide publicity of the PNEDH and promotion of national mobilization. These meetings mobilized more than 5.000 participants all over Brazil. The contributions were systematized and included in an updated version of the Plan, launched in August 2006, during the 4-day long Inter-American Congress on Human Rights Education, in Brasilia, with the participation of more than 700 delegates, including invitees from 15 countries.

66. Among the various initiatives implemented by the Special Secretariat for Human Rights, the establishment of Rights Desks, aimed at ensuring access to justice to all, deserve special mention. The Desks, which operate in partnership with various non-governmental organizations, particularly with neighborhood associations, provide free legal advice and mediation in conflicts. They are set up mainly in low-income communities and in localities with difficult access to public services. Stressing training for the exercise of citizenship and handing out educational materials, these Desks encourage the discussion of the main human rights treaties and the National Human Rights Program.

67. One of the services provided is the issuing of basic civil documents. Although verification of the results of this service can be complex, it should be pointed out that possession of the proper documents is the gateway for the exercise of a series of other rights, such as access to education, to the formal labor market, and to benefits provided under social programs.

68. In the last two years, 400,000 people have benefited from the Desks' services, including low-income people, *quilombolas*, indigenous communities, and people working under conditions similar to slavery. The Special Secretariat for Human Rights has entered into agreements with government agencies and civil society organizations for the operation of 368 Rights Desks under the project. There are today 20 agreements in force and 10 undergoing the selection process. In addition to this initiative, a growing number of desks is being set up by other members of the Federation.

4. Methodology

69. The sources of data used for this report are scattered through national censuses, research projects, official documents, and other technical publications issued by research institutes and centers and by government bodies responsible for monitoring the country's public policies.

70. The information here submitted follows the line of *Observaciones Finales del Comité de Derechos Económicos, Sociales y Culturales: Brasil 23/05*, prepared by the United Nations Economic and Social Council. The procedure adopted in answering each item was the following: (1) norms and legal instruments in force during the period; (2) public policies adopted; and (3) existing challenges. Pursuant to the Committee's recommendations, the data have been, to the extent possible, disaggregated according to gender, race, and other vulnerable groups.

71. The main sources used for this report are from the sectoral ministries and from two major research institutes: the Brazilian Geography and Statistics Institute-IBGE, responsible for national censuses and surveys, particularly the National Household Sample Survey (PNAD) and the Applied Economic Research Institute (IPEA), which issues biannual bulletins on

social policies and a specific publication on the country's social situation (*Radar Social 2005 and 2006*), as well as books and articles with thematic analyses of Brazilian social issues. Other major sources were the 2004 and 2005 monitoring reports on the Millennium Objectives, coordinated by IPEA.

72. In addition to these sources, the report incorporates assessments of public policies, written by specialists in the different ministries, and a bibliography on the topics addressed, including academic and technical studies and research findings.

73. In this connection, the report incorporates a qualitative and quantitative analysis of the different social policies implemented by the Brazilian State in recent years, which are directly related to the implementation of the economic, social, and cultural rights guaranteed under national and international legal instruments.

74. It should be further pointed out that throughout the report public expenditures amounts will be deflated by the IPCA average index, to reflect current values in the first quarter of 2006. In view of the wide variation of the exchange rate in recent years, conversion will be based on the dollar's average exchange rate in 2005 and will be preceded by the application of the deflator.

5. Preparation of Brazil's Report

75. The II Brazilian Report on the implementation of the International Covenant on Economic, Social, and Cultural Rights was prepared by an Intersectoral Working Group coordinated by the Ministry of Foreign Affairs, the President's Office Special Secretariat for Human Rights, and the Applied Economic Research Institute. The Working Group consisted of representatives of the Ministries of Education, Justice, Planning, Budget and Management, Social Security, Health, Culture, Cities, Science and Technology, Agrarian Development, Social Development and Combat against Hunger, the Environment, Labor and Employment, and of the Special Secretariats for the Promotion of Racial Equality and on Women's Policies. The Group also counted on contributions from the Federal Prosecutor on Citizens' Rights, from the Federal Attorney General's Office.

76. The preparation benefited also from a dialogue with organized civil society through public consultation carried out through the Web. The preliminary version of the text was made available on the web site of the Special Secretariat for Human Rights between September 6 and November 7, when a public hearing was held at the National Congress on the initiative of the Human Rights and Minorities Committee of the Chamber of Deputies, for the discussion of that document among congressmen and members of the civil society.

77. The publication and distribution of about 6000 copies of the book "Human Rights Today: II Brazilian Report to the Committee on Economic, Social and Cultural Rights of the United Nations", in partnership with the Federal Savings Bank, the largest Brazilian official bank, will contribute to the understanding that economic, social and cultural rights belong to the field of human rights. In this connection, readers may also consult documents such as the International Covenant on Economic, Social and Cultural Rights, as well as the Observations of the 2003 Committee.

6. International cooperation on human rights

78. The Brazilian State values the importance of international cooperation: it concluded hundreds of agreements with international organizations, and its main partners are UNDP, UNICEF, UNESCO, OPAS and WHO. They provide technical and financial support for the implementation of public policies, study and evaluation aiming at implementing economic, social and cultural rights.

II. IMPLEMENTATION OF SPECIFIC ARTICLES OF THE CONVENTION

Article 1

79. Brazil has reaffirmed its commitment to the principle of the people's self-determination as the political condition that is most favorable to its economic, social, and cultural development. The Brazilian State's commitment to this fundamental principle of international relations, conducive to peace and cooperation among nations, has been reiterated on several occasions through its stance at the United Nations, whose Charter proclaims the principle of the peoples' self-determination as a foundation of world political equilibrium. Brazil supported Resolution 3016 (XXVII) of 1972 on the States' sovereignty over their resources, lands, and national waters and Resolution 1815 (XVII) of December 18, 1962, which sets forth the principles that provide the foundation for peaceful and friendly relations among States.

80. Brazil's position on the international field have also been manifested in the negotiations of the *Draft Universal Declaration on the Rights of Indigenous Peoples* and of the *Draft Inter-American Declaration on the Rights of the Indigenous Peoples*. In this connection, it must be stressed that at the opening Session of the United Nations Human Rights Council, in June 2006, Brazil supported the adoption of the Declaration on the Rights of Indigenous Peoples (resolution 2006/2, of June 29 2006). In the negotiations of these two draft international instruments, Brazil's stance has been based on the recognition of the indigenous peoples' collective rights and autonomous spaces in the State's interior with respect to the management of indigenous lands and the exploitation of natural resources, as well as to the possibility of the indigenous people's effective participation in the formulation and implementation of public policies pertaining to matters of their interest. Coordination of policies geared to indigenous peoples and the peoples' self-determination has been improved by the Brazilian State's ratification, in April 2004, of the International Labor Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

81. Moreover, these rights are provided for in the Brazilian legislation: the commitment to the self-determination of peoples has been incorporated into the 1988 Constitution, Article 4 (Fundamental Principles). Arts. 231 and 232 of the Federal Constitution's Chapter VIII, Title VIII (Social Order) also provide a foundation for the Brazilian State's *indigenist* policy. From the standpoint of both autonomy and self-determination, the right to the lands traditionally occupied by indigenous peoples is a key issue, as these lands allow the gathering of subsistence resources and serve the needs of indigenous ritual celebrations. The autochthonous peoples' social organization, customs, language, beliefs, and traditions are recognized, as are their original right to the lands they have traditionally occupied and from which they cannot be removed.

In addition, the exploitation of water resources, including their power-generating potential, and the prospecting and extraction of mineral riches by non-Indians can be authorized solely by the National Congress, after consultation with the affected community. Should exploitation be authorized, the Indians are entitled to a share of the profits generated.

82. The increase in the number of indigenous lands (IL) under consideration by the State in the last ten years reflects the firmness of Brazil's commitment. In the period 2003-2006 alone, there was: (1) physical demarcation¹¹ of 40 areas; (2) declaration of 18 lands as Indian lands by the Ministry of Justice; and (3) homologation, by the President of the Republic, of 60 declaratory acts (Annexes, Box 11), covering about 103 million hectares.

83. The demarcation of the *Raposa Serra do Sol* Indigenous Land is a prime example of the Government's action in behalf of the peoples' self-determination. This area, the ancestral dwelling place of the Macuxi, Wapichana, Ingariko, Taurepang, and Patamona peoples, located in the northeast of the State of Roraima and bounded by the rivers Tacutu, Mau, Miang, and Surumu on the Venezuelan border, has a population estimated at 15,000 people. On April 15, 2005, the President of the Republic signed a decree homologating the declaration of that continuous expanse of land as indigenous land (thereby granting property title over more than 1.7 million hectares) and set up a Managing Committee to coordinate the implementation of federal initiatives in Roraima.

84. The *indigenist* policy is not restricted to land demarcation and legalization. There are several programs aimed at improving the living conditions of autochthonous peoples. An indication of this is the fact that the Brazilian indigenous population has grown significantly in recent years. This increase is a sign that policies aimed at indigenous peoples are yielding

¹¹ The process of delimiting indigenous lands in Brazil, as regulated by Decree 1775/96, consists of several phases. The first - **identification** or **delimitation** - begins with the setting-up of an Identification and Delimitation Technical Group (TG) that, together with the indigenous community involved, carries out studies and field surveys and prepares the requisite reports. After the publication of the TG's report, the National Indian Foundation-FUNAI is ready to receive and review any claims from third parties to the area that has been identified and delimited. In the second phase - **declaration** - the Minister of Justice, in accordance with paragraph 1 of Art. 231 of the Federal Constitution, reviews the report prepared by the TG and approved by FUNAI as well as any challenges raised, and may issue an Administrative Order declaring the land in question an indigenous land. In the third phase - **demarcation** - the boundaries of the land are established on the field, on the basis of the Minister of Justice's declaration, through the clearing of trails, the laying of geodesic and azimuthal markers, and the setting-up of signposts. The fourth phase - **homologation** - is completed by the publication of a Homologation Decree whereby the Public Administration confirms the legality of the ensemble of juridical acts on which the administrative demarcation procedure was based. Brazilian law confers on the President of the Republic exclusive competence for homologating, through a decree, the administrative demarcation done by the National Indian Foundation-FUNAI, pursuant to the boundaries set forth in the Minister of Justice's Administrative Order. After homologation, the Indian land must be registered with the Property Registration Office and with the Federal Patrimony Secretariat.

positive results, triggering, since 1955, a population increase of over 350%, at an yearly average of 3% to 5%, a higher rate than the national average among non-Indians (1.7%) (Annexes, Table 19 and Fig. 5). Accordingly, in 1955, the indigenous population totaled 120,000; by 2004, it had climbed to 410,000. This contingent is scattered through 600 Indian lands and comprises individuals belonging to 220 ethnic groups and 180 languages other than Portuguese, Brazil's official idiom (Annexes, Tables 20 and 21, Figs. 6 and 7). As mentioned, these lands, totaling about 103 million hectares, correspond to 13% of the Brazilian territory. According to the National Indian Foundation (FUNAI), the agency responsible for the *indigenist* policies in Brazil, 75 percent of them have already been demarcated and the remainder is undergoing demarcation (Annexes, Fig. 8).

85. Late in 2005, the Brazilian State signed the Agreement on Compliance with Recommendations pertaining to the decision of the OAS Inter-American Human Rights Commission, which imputed the State with international liability for rights violation in connection with the killing of the young Indian Ovelario Tames by civilian police in the Roraima Territory in 1988. The following actions have taken place: (1) the victim's family has received an indemnity of R\$90,000; (2) federal public defenders have been appointed to Roraima; (3) an "Ovelario Tames" green area has been established in the Civic Center of Boa Vista, the State capital, as a symbolic reparation; and (4) financial support has been granted the *Rights Desk* Project, managed by the Roraima *Indigenist* Council, in coordination with the Special Secretariat for Human Rights.

86. At the national level, regional conferences and, more recently, the 1st National Conference of Indigenous Peoples held in Brasilia, April 12-19, 2006, have contributed to the formulation of an *indigenist* policy better attuned to the ethnic, socio-cultural, economic and political specificities of the indigenous peoples. Such conferences are a novel organization mechanism for indigenous peoples' participation in decisions pertaining to legislation and public policies that affect them. About 800 indigenous representatives were elected by their communities during regional conferences sponsored by FUNAI. The regional conferences served as preparation for the discussions at the 1st Conference about various issues of interest to the indigenous communities, such as political autonomy, education, health, land administration, and establishment of the *National Indigenous Policies Council*. Participants represented 230 ethnic groups from the country's five major regions and, for the preparatory regional conferences, they met in nine cities: Maceió (Alagoas); Florianópolis (Santa Catarina); Dourados (Mato-Grosso do Sul); Pirenópolis (Goiás); Cuiabá (Mato Grosso); Manaus (Amazonas); Porto Velho (Rondônia); São Vicente (São Paulo) and Belém (Pará). In the 1995-2006 period, funds allocated to FUNAI increased gradually, except in 2000 and 2002, and were a little more than doubled in 2005 (Annexes, Box 12).

87. Despite the several advancements already mentioned, many indigenous groups still live in highly vulnerable conditions. Repeated situations of fierce dispute for their lands by private concerns and farmers, have generated intolerable instances of murder of leaders and police violence in restitution action decided by the courts. There were also problems in the field of indigenous peoples' health and disquieting statistics related to infant mortality in groups such as the Guaranis in Southern Mato Grosso, among others. That situation required the establishment of Emergency Working Groups with the participation of managers from SEDH/PR, MDS, Funai, Funasa and other government agencies.

88. Another traditional type of community in Brazil is the *quilombola* community, a word that refers to remnants of communities established by runaway slaves. Historically, these communities have lived in isolated places that provided a safe haven or on lands received as labor compensation. *Quilombo* remnants can be found in practically every State and are part of the identity-territory binomial. According to a survey carried out by the Ministry of Culture's Palmares Cultural Foundation, there are today 743 of these communities scattered throughout Brazil.¹²

89. The Constitution (Art. 216, 5) places under governmental trust all documents and sites holding historical vestiges of the old *quilombos*, and assigns property title deeds to the lands to *quilombola* descendants that dwell on them (FC, Temporary Provisions, Art. 68). In fact, the link with the land is the central feature, as it guarantees the maintenance of the culture, of the connection with the ancestors, of traditions and of material development.

90. Decree No. 4887 of 2003 regulated the recording and preservation of these areas under governmental trust. Based on the *quilombolas'* sense of self-awareness, this decree grants these communities the possibility of defining themselves as *quilombo* remnants and indicating the area that belongs to them, which will be certified by the Palmares Cultural Foundation. It is incumbent upon the Ministry of Agrarian Development, through the National Settlement and Agrarian Reform Institute, to delimit and demarcate the lands occupied by *quilombo* remnants and to issue collective property title deeds. Since the decree was issued, 270 land regularization proceedings have been initiated on behalf of 400 communities.

91. The above-mentioned decree has been the target of a Direct Action of Unconstitutionality, whose request for a preliminary order has been denied by the Federal Supreme Court. As the constitutionality control proceedings in Brazil admit social participation in the form of *Amicus Curiae*, several civil society organizations have defended the constitutionality of the decree. The Direct Action of Unconstitutionality has reinforced the social pressure for immediate regularization of these lands and this is being done.

92. The establishment of the Special Secretariat on Racial Equality Promotion Policies (March 2003) has been decisive for expediting the regularization of *quilombola* lands, as the issue has received specific allocations under the 2004-2007 Pluriannual Plan and become the subject of broad debate with civil society. The *Brasil Quilombola* Program has organized innovative measures into three groups: (1) promotion of intersectoral public intervention, which seeks to involve resources from the different government bodies in an integrated, convergent, and coordinated manner; (2) respect for the communities' ethnic identity, as the Program is based on the understanding that the *quilombos* have sociopolitical, economic, and cultural assets of their own, all of which are important for the construction and realization of their identity; and (3) speeding-up of the procedure for the *quilombo* remnant communities to obtain title to the occupied lands.

93. As regards the gypsy people, the Brazilian Constitution (Arts. 250 and 255) prohibits any type of arbitrary discrimination. Moreover, the National Human Rights Program (1996-2000)

¹² Available at www.planalto.gov.br/seppir. Access from June 11, 2006.

established a list of specific rights, including respect for gypsy history and culture, support for Municipalities that have gypsy communities, encouragement of the revision of documents, dictionaries and textbooks that contain derogatory stereotypes about gypsies, and the need to promote educational initiatives in this area.

94. Gypsies also participated in the mobilization of society for the 1st National Conference on Racial Equality Promotion held in July 2005, and their needs are contemplated in the *National Racial Equality Promotion Plan*, whose preparation is now nearing completion. The Plan's general guidelines are the same as those of the three groups of initiatives already mentioned: (1) introduction of training programs in private enterprises about black, gypsy, and indigenous culture, in partnership with Regional Labor Offices and the rights movements; (2) encouragement for ensuring that education take into consideration cultural diversity and nurture respect for diversity; (3) inclusion in the school curriculum of history and literature of indigenous peoples, blacks, gypsies, and other minorities, according to the characteristics of each people; (4) training of elementary and secondary school teachers to prevent discrimination; (5) encouragement, with the help of development agencies, for pursuing lines of research and work by research groups about cultural diversity; and (6) promotion of access to study scholarships for scientific initiation, without age limits, for African descendants, indigenous and gypsy peoples, and those of *quilombola* origin.

95. The nomadic nature of gypsy culture requires some specific educational guidelines, such as the establishment of a mobile, traveling school to teach nomad gypsies - children, adolescents, and adults - to read and write, with special programs and professionals trained in speedy, effective, and bilingual programs - a subject that was also addressed at the 1st Conference.

96. Recently, another gypsy demand put forward at the 1st Conference on Racial Equality Promotion was met when May 24 was proclaimed the National Gypsy Day. On this day, different gypsy clans over the world celebrate St. Sara Kali, their patron saint. In establishing this day, the Federal Government set an official memorial conducive to injecting gypsy issues into Brazilian policies.

Article 2

97. Preserving equality requires the prohibition of discrimination as to race, ethnic background, and sexual orientation and toward persons with deficiency, the elderly, convicts, and foreigners. Moreover, the Brazilian State has adopted positive steps to encourage the specification of individual rights, although violations connected with discrimination persist.

A. Measures adopted for the progressive implementation of the right to equality

98. Several legislative measures and public policies aimed at the defense of vulnerable groups have been adopted by the Brazilian State since the first Report on the Implementation of the International Covenant on Economic, Social, and Cultural Rights.

99. Three Special Secretariats under the President's Office, endowed with ministry status, were set up in 2003: the *Special Secretariat for Human Rights* (SEDH); the *Special Secretariat for Women's Policies* (SPM); and the *Special Secretariat on Racial Equality Promotion Policies* (SEPPIR).

100. SEPPIR is entrusted with implementing the ethnic and racial equality provisions of the International Human Rights Law and the Brazilian Constitution. SEPPIR across-the-border activity to counter racial inequities in public policies requires coordination with other government branches. Its work will be addressed in the course of this report in accordance with the racial perspective of each right under review.

101. The National Council on Racial Equality Promotion was also established in 2003, consisting of 17 representatives from ministries, 20 from civil society, and three personalities of recognized expertise in racial relations. Chaired by the Special Secretariat on Racial Equality Promotion, the Council's purpose is to propose policies on racial equality promotion nationwide, with emphasis on the black population and other ethnic segments of the Brazilian population; and on combating racial discrimination and reducing racial inequalities, including in the economic, financial, social, political, and cultural areas.

102. An Intergovernmental Racial Equality Promotion Forum (FIPIR) was established in May 2004, which is made up of various state and municipal administration bodies, enterprises, and non-governmental organizations. Its purpose is to coordinate efforts aimed at combating existing racial inequalities. In 2006, 23 States and 427 Municipalities composed FIPIR, and among the latter, 184 counted on the support of some kind of official structure, working together toward creating jobs and generating income as well as promoting health, education, and the socioeconomic development of the black population. Coordination between SEPPIR and the Intergovernmental Forum ensures the implementation of a wide range of initiatives, including the training of managers, technical assistance for the preparation of local racial equality promotion plans, and the exchange of good practices.

103. The 1st National Conference on Racial Equality Promotion mentioned in Art. 1 herein, led to 27 local conferences held in the states and in the Federal District, which were attended by about 90,000 people nationwide. More than 2,000 delegates and invited guests participated and discussed the issues pertaining to the achievement of racial equality under the *National Racial Equality Plan* now under review by the Chief of Staff's Office of the President's Office, which will accord it the requisite normative status.

104. Brazilian efforts toward progressively implementing the specific rights of racial groups can be internationally attested by the support and funding extended by the Inter-American Human Rights Commission to the Special Secretariat on the Rights of People of African Descent and against Racial Discrimination, and by the fact that Brazil is chairing the Working Group entrusted with Preparing the Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance. Brazil has also hosted, in July 2006, the Regional Conference of the Americas on the Advances and Challenges regarding the Plan of Action against Racism, Racial Discrimination, Xenophobia and Related Intolerance, with 350 participants from 21 countries, as well as the Conference of African Intellectuals and the Diaspora (II CIAD), in which 350 individuals from 53 countries participated.

105. As regards the protection of homosexuals (gays, lesbians, bisexuals, transsexuals, and transgender), mention should be made of the *Brazil Free of Homophobia Program - Program for Combating Violence and Discrimination against GLBTTs and Promotion of Homosexuals' Citizen Rights*, which calls for various actions aimed at protecting and promoting the right to security, education, health, work, culture, youth and women's policies, and policies against

racism and homophobia. In 2004, the Federal Government spent R\$200,000 on the implementation of this Program; this allocation was increased to R\$2.9 million in 2005 and to R\$7.019.087 in 2006, with the significant help of congressional amendments for that purpose.

106. Among ongoing initiatives to combat the violence, discrimination and murder to which this vulnerable segment of the Brazilian population is routinely subjected, one must mention the creation of Human Rights Reference Centers. These centers, which are run under a partnership of federal, state, and municipal governments and civil society organizations, now number 17 and two will be opened in the near future. A network linking these centers and legal assistance offices has also been established in 2006 to seek judicial and extrajudicial solutions to conflicts involving members of this group. A pioneer structure for the permanent management of the “No Homophobia Brazilian Program” is currently in the final stage of implementation, through an agreement with the Federal Savings Bank (Caixa Econômica Federal), in order to start operating already in 2006.

107. The National Congress has played a fundamental, leading role in the discussion of homosexual rights. With a view to systematizing the proposals for legislation changes, a *Parliamentary Front for Free Sexual Expression* was established in 2004. This Front is now considering a bill establishing penalty for discrimination based on sexual orientation.

108. There has been a considerable number of Court decisions ensuring the protection of GLBTT rights, such as a recent decision that cancelled the signal of an open television concessionaire for not having abided by the order to take off the air a program suggestive of homophobia and assigned broadcasting time at the same hour to air responses for 60 days.

109. Efforts for consolidating specific homosexual rights are also reflected in Brazilian initiatives on the international plane. In 2003 and 2004, the Brazilian State submitted draft resolutions to the UN Commission on Human Rights, characterizing discrimination based on sexual orientation as a human rights violation. Parliamentary circumstances prevented this initiative from succeeding but it has not been discarded from Brazilian foreign policy, as attested by the fact that nondiscrimination against homosexuals was included on the agenda of the IV and V Meetings of High Officials in Human Rights of Mercosul (RAADH), held respectively in June and August 2006, following a Brazilian proposal. It should also be stressed that a working group on discrimination based on sexual orientation has been established within RAADH, again through a Brazilian proposal.

110. With respect to persons with deficiency, Braz has policies for ensuring the inclusion of over 24 million Brazilians with special needs, so as to guarantee their effective participation in the country's life.

111. Specific rights of people with deficiency include accessibility, which involves not only the right of greater autonomy in respect of physical locomotion but also the possibility of benefiting from service networks (education, transportation, culture, leisure, etc.) and information (television, the press, libraries, the Internet, etc.). This possibility requires the adaptation of the collective environment to the demands of the entire population and depends on the principle of *universal design*, the only one that takes into account the anthropometric and sensorial differences among people.

112. The Brazilian State's commitment to accessibility has been reaffirmed in December 2004, with the issuing of Decree No. 5296, which regulates two federal laws on this matter (Laws 10.048/00 and 10.098/00). The decree has detailed provisions on architectonic and urban-planning requirements to ensure accessibility of transportation, information, and communication, as well as technical assistance (instruments, equipment or technologies adapted or specially developed for improving the functionality of persons with deficiency). The following activities are subject to the norms set forth in the decree: (1) approval of projects and works for public or collective use; (2) granting of concession, permission, authorization, or license of any type; (3) approval of project financing with public funds through agreements, arrangements, and contracts; and (4) provision of Federal guarantee to public or private entities for obtaining international loans and financing.

113. To ensure compliance with its provisions, the above-mentioned decree assigns competence and determines measures to be adopted, according to a specific timetable, by Public Administration agencies and areas and public services concessionaires. It also provides for administrative, civil, and penal sanctions applicable to noncompliance with these norms. It is worth stressing that public vehicles and other means of public transportation currently in operation in the country must be adapted to the accessibility norms within two years. As regards telephone services, enterprises must ensure the availability of public sets adapted to hearing-impaired persons and wheelchair users, and have centers for intermediation of telephone communication operating full time nationwide.

114. A report by the non-governmental organization *Center for International Rehabilitation* issued in August 2004 - months before the decree - ranks Brazil among the five most inclusive countries in the Americas. This positive assessment of Brazilian policies aimed at persons with deficiency is based on various aspects, such as protection legislation, well-structured sectoral policies (in the areas of social welfare, education, job training, health care, and deficiency prevention), and social mobilization in this regard.

115. The incorporation of the *National Accessibility Program* into the 2004-2007 Pluriannual Plan, through the efforts of the *National Coordinating Office for Integration of Persons with Deficiency* (CORDE), of the *Special Secretariat for Human Rights*, has given the issue greater visibility on the national scene. The Program's purpose is to develop coordination and to foster initiatives, particularly through the training and specialization of technical personnel and social agents in accessibility, as well as to raise the awareness of this issue.

116. The First National Conference on the Rights of Persons with Deficiency, held in May 2006, had as its central theme *Accessibility: you are responsible also*. It was attended by 1,500 people, including delegates, invited guests, and international observers. During the Conference, an accessibility campaign was launched as a joint undertaking by the Government, private entities, and civil society. The Conference also approved proposals that are being worked on for the preparation of the National Plan on the Rights of Persons with Deficiency.

117. Protection accorded to persons with deficiency has implications at the international level as well. At the United Nations Economic and Social Development Council, the drafting of the *International Convention on the Rights of Persons with Deficiency*, under consideration since 2002, has been completed in December 2006. The Brazilian Permanent Mission to the United Nations in Geneva actively participated in that process, which received contributions

from Brazilian government bodies, such as the *National Coordinating Office for Integration of Persons with Deficiency* (CORDE) and the *National Council on the Rights of Persons with Deficiency* (CONADE), both under the Special Secretariat for Human Rights of the President's Office. In 2005 and 2006, CORDE sent specialists, comments, and documents on the subject to help the formulation of an official stance at the sessions of ECOSOC's Ad Hoc Drafting Committee. Also in December 2005, CORDE, under an agreement with Paradigma Institute, a non-governmental organization, held a seminar aimed at arriving at a basic proposal to be submitted to the Brazilian Government and civil society. The Committee's meeting held in August 2006 consolidated the text for submission to the United Nations General Assembly as of 30 March 2007, when it was signed by the Brazilian representative.

118. The importance ascribed to the Brazilian legislation that guarantees the rights of persons with deficiency has not yet done away with the persisting inadequacy of public spaces and services in the country. The effectiveness of the provisions of Decree No. 5296 of 2004 will depend on the commitment of the different sectors of the Brazilian State and society to the dissemination of the concept of accessibility.

119. The rights of the child and the adolescent are safeguarded by normative provisions that treat them as persons at a developmental stage. Art. 227 of the Federal Constitution makes it incumbent upon the family, society, and the State to ensure the right of the child and the adolescent to life, health, food, education, leisure, vocational training, culture, dignity, respect, freedom, and family and community life. The central importance of this subject is expressed in the following United Nations instruments of which Brazil is signatory: (1) Convention on the Rights of the Child; (2) Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); (3) Guidelines for the Prevention of Juvenile Delinquency; (4) and Minimum Rules for the Protection of Juveniles Deprived of their Liberty.

120. On the domestic front, the 1990 Statute of the Child and the Adolescent is known worldwide for its adherence to the protection parameters contained in the Convention on the Rights of the Child. It includes specific civil, penal, labor, administrative, and proceeding rules for addressing the child's vulnerable condition, in accordance with the full protection doctrine.

121. In addition to legislation, there is a range of institutions entrusted with the promotion and guarantee of these rights. First comes the *National Council on the Rights of the Child and the Adolescent* (Conanda), in which both government bodies and civil society participate and which manages the *National Child and Adolescent Fund*. At the federal level, there is a *Subsecretariat on the Rights of the Child and the Adolescent*, subordinated to the *Special Secretariat for Human Rights* of the President's Office.

122. The rights of the child and the adolescent make institutional decentralization necessary. Thus, most states have their own State Councils on the Rights of the Child and the Adolescent. The Statute of the Child and the Adolescent provides for an important social control mechanism, whereby each municipality should have, as a minimum, a Custodial Council consisting of five members elected by the local community for a three-year term. This is a permanent, autonomous, nonjurisdictional body responsible for ensuring compliance with the rights of the child and the adolescent.

B. Public Policies

123. In conformity with the Federal Supreme Courts' understanding that the right to one's name is part of the concept of a human person's dignity,¹³ a *National Mobilization for Birth Registration*, a coordinated effort by government agencies and civil society, was launched to allow thousands of Brazilians to register their births. As a birth certificate is the instrument that opens the door for the enjoyment of rights and public policies, the birth register's strengthening will fill a gap.

124. The plan, titled "*The President, a Friend of Children*", is based on a document called *A World for Children*, which sums up the debates at the Special Session of the United Nations General Assembly on Children in 2002. This program is included in the 2004-2007 Pluriannual Plan, with a R\$55.9 billion budget, for the purpose of promoting healthy lives, quality education, protection against abuse, protection against violence, and combating HIV/AIDS. To ensure observance of these commitments, 16 challenges have been identified, which the Federal Government intends to meet through 200 initiatives carried out by various ministries (Annexes, Box 13).

125. Lastly, note should be taken of the *Disque Denúncia Nacional de Combate ao Abuso e à Exploração Sexual contra Crianças e Adolescentes* [National Dial-a-Denunciation for Combating Abuse and Sexual Exploitation of Children and Adolescents], which provides a free telephone number that can be used nationwide. This service receives reports of sexual, physical, and psychological violence against children and adolescents, and passes them on to the pertinent authorities, while preserving the caller's anonymity. This number can be dialed to obtain information on what Custodial Councils are and on how they function and the telephone number of the pertinent agency nearest the caller's home, as well as for providing information on the whereabouts of disappeared children and adolescents and reporting cases of trafficking in persons. Since May 2003, this service has received over 120,000 calls from 2,500 municipalities, and referred 17,000 reports to the prosecution and defense authorities. Through *Disque Denúncia*, all of Brazilian society can help protect the country's children and adolescents. The number to dial is easy to remember: 100. Anonymity is guaranteed and an intense publicity effort was done on May 18, 2006.

126. Young adults are in the same vulnerability condition as children and adolescents. On February 1, 2005, a wide-ranging national policy was launched aimed at this social group: (1) establishment of the *National Youth Council*; (2) establishment of the *National Secretariat on Youth* under the President's Office's Secretariat; and (3) introduction of the *National Youth Policy* and the *National Program for the Inclusion of Young Adults (Pro-Jovem)*.

127. Priority attention to youth meets the demands of different types of social youth movements, civil society organizations, and Legislative Branch initiatives. It is incumbent upon the National Youth Council to propose and define guidelines for government action for the

¹³ *Recurso Extraordinário no. 248.869*, Relator Maurício Corrêa, *Diário de Justiça* 12/03/04.

promotion of youth public policies. The National Youth Secretariat has coordinated and introduced various federal Government programs and actions aimed at the young public. The main of these programs, *Pro-Jovem*, will be addressed under Article 6.

128. Regarding the highly vulnerable segment of adolescents who commit offenses, the adoption of the National System of Socio-Education Attention - Sinase - in 2006 represented an important step. Sinase stems from a collective effort that involved several areas of the Administration, representatives of organizations and specialists. The System establishes a plan of directives for the internment units and defines the duties and responsibilities of the Federal State and Municipal governments in the attention to juvenile delinquents and guides the socio-educational action by establishing pedagogic criteria and basic conditions for the operation of the institutions. Among the measures adopted by the Plan, is the linkage of the schools at the internment units with the formal educational system of each State; the adoption of a model architecture for the centers, allowing for spaces devoted to sports and cultural and training workshops. Sinase also mandates that assisted freedom be preferred over the reclusion of adolescents. The system reaffirms the directive given by the Statute of the Child and the Adolescent (ECA) on the pedagogic nature of socio-educational measures.

129. The aged are also the subjects of specific rights and public policies. The Federal Constitution (Art. 230) disposes that it is the duty of the family, society, and the State to assist the elderly, ensuring their participation in community life. The National Policy on the Elderly (Law 8842/94) and the recent Statute of the Aged (Law 10741/2003) are significant milestones to ensure a better quality of life for the elderly. Protection provided by the State entitles persons aged 60 years or older to the following: priority in respect of public services; access to free medication; prohibition of age-related adjustments in health plans; free public transportation; and 50-percent discount on tickets for cultural events. Certain types of conduct toward the aged have been classified as crimes (discrimination, abandonment, ill-treatment), punishable with detention from two months to 12 years.

130. Still in 2002 a National Institute on the Rights of the Aged was established. Its membership consists of government and civil society representatives on a parity basis. The Institute encourages the coordination of different areas of government and social control entities for the proposal and implementation of public policies aimed at the aged.

131. The *Plan of Action for Combating Violence against the Elderly*, which is coordinated by the *Special Secretariat for Human Rights*, is currently under implementation. In 2006, five *Reference Centers on Prevention of Violence against and Ill-treatment of the Aged* will enter into operation, through coordination among states, municipalities, and civil society organizations.

132. The theme of the First Conference on Rights of the Aged, held in May 2006, was *Building a Network for the Protection and Defense of the Aged*. The Conference was preceded by regional conferences held in every state and in the Federal District and was attended by about 700 delegates from government and civil society. It provided opportunity for the discussion of issues such as violence, health, social welfare, education, leisure, culture, and funding of government initiatives.

133. Given the Brazilian Geography and Statistics Institute's estimate that in 20 years Brazil will have the sixth largest elderly population in the world, the country forms part of the worldwide front fighting for the rights of the aged. As a follow-up to the Second World Assembly on Ageing held by the United Nations in Madrid in 2002, in 2007 Brazil will host the Latin America and Caribbean Regional Intergovernmental Conference on Ageing (Madrid+5), which will evaluate the *International Plan of Action on Ageing*.

134. As regards the prison population in Brazil, an issue of special attention to the Committee, it is estimated that 300.000 men and women are currently placed under the jurisdiction of the penal system, 40.000 of whom in semi-open regime for serving their time. There is a significant deficit of places, triggering specific public policies that resulted in the reduction of the shortage from 111.000 to 90.000.

135. The Penal Execution Law permits the reduction of an inmate's time through work or education; for each three days spent in such activities, the sentence is reduced by one day. Working inmates earn a minimum retribution established by law. According to data from the Ministry of Justice, about 50.000 inmates currently benefit from labor therapy.

136. Law no. 872/90, also known as Heinous Crimes Law, established that for certain crimes (armed robbery, qualified manslaughter, extortion by kidnapping or rape, torture, illicit drug trafficking, terrorism, etc.) the sentence must be served in closed system. In February 2006, the Federal Supreme Court ruled that this provision runs counter to the individualization of the sentence, a fundamental right of prisoners. According to the Court, it is finally incumbent upon the State to take into account the personal characteristics of the convict in the execution of his or her sentence.

137. It must be stressed that, as a rule, the prison system falls under the purview of the States comprising the Federation, which must follow the directives issued by the National Council for Criminal and Correctional Policy. In 2003, the Federal Government started the implementation of the Federal Penitentiary System with the construction of five federal penitentiaries, one in each of the country's regions. The Catanduvas unit, in the State of Paraná, Southern Region, was the first to be opened, in June 2006.

138. Lastly, reference should be made to the rights conferred on foreigners. Immigration is a significant factor for understanding Brazil's social fabric. African and European immigrant inflows have contributed to the country's characteristic multiculturalism. In recent years, though, Brazil has become a major source of emigrants. Ministry of Justice figures show that an estimated 1.5 million foreigners now live in Brazil while approximately 3.5 Brazilians live abroad, particularly in the United States, Europe, Japan, Canada, Australia, New Zealand, and Paraguay.¹⁴

¹⁴ Source: Ministry of Justice: www.mj.gov.br (Foreigners) May 2006.

139. The Brazilian Constitution provides for equal treatment of all Brazilians and resident aliens.¹⁵ The entitlement of foreigners on Brazilian territory to fundamental rights informs penal policy in respect of such persons, which prohibits the extradition¹⁶ of foreigners persecuted for political crimes or their extradition to other countries where there is risk of their being condemned to death.

140. As regards the serving of sentence by a foreigner convicted in Brazil, the Ministry of Justice has shown that it is favorable to the signing of treaties on the transfer of prisoners, making it possible for foreigners sentenced to deprivation of freedom in Brazil to serve their sentence in their home country. Likewise, Brazilians sentenced abroad could serve their sentence on Brazilian territory. These treaties include an important provision allowing convicts to serve their sentence in their home country, closer to their family and fellow-countrymen. In fact, it is of fundamental importance that the penitentiary system responsible for the rehabilitation of inmates be the same as the one that exists where they will be reintegrated into the community after serving their sentence.

141. The foreign contingent on Brazilian territory includes 2,978 political refugees from 50 countries. The largest number come from Angola, 1,692, followed by Liberia, 258; Democratic Republic of Congo, 186; Sierra Leone, 161; Cuba, 90; Colombia, 83; Iraq, 72; Serbia, 48; and Peru, 40. Abiding by the directives of the I National Human Rights Program, the mechanisms for the implementation of the Refugees Law were set forth through the adoption of Law no. 9474. In 1988, the National Council for Refugees (Conare) was established, being the competent organ competent to issue normative instructions regarding the implementation of the said law.

142. The references to racial equality and to vulnerable groups such as homosexuals, persons with deficiency, children and adolescents, youths, the elderly, and foreigners will be complemented with disaggregated data in the discussion of each article. Other groups not referred to under this article will also be addressed in this Report. Thus, Article 3 will provide specific information on gender equality.

Article 3

143. Although provided for in the Brazilian legal framework (ratified treaties, Art. 5, I of the Federal Constitution, and ordinary legislation), gender equality in entitlement to rights and obligations still remains to be achieved by Brazilian society.

¹⁵ The expression “resident aliens” is understood by the Federal Supreme Court and by doctrine in a comprehensive sense and applies to all foreigners on Brazilian territory: *according to the heading of Art. 5 of the Federal Constitution, resident aliens in the country are entitled to the same fundamental rights and guarantees.* (HC74051, opinion writer Justice Marco Aurélio, *Diário Judicial*, 20/09/96).

¹⁶ The extradition of Brazilians is prohibited, except for naturalized citizens, in case of common crimes committed before naturalization or of proven involvement in illicit drug trafficking.

144. As regards economic, social, and cultural rights, although women in general have a higher educational level than men, they are still concentrated in less attractive jobs and receive lower pay and social protection. Working women have eight years of schooling, while men have seven (National Household Sample Survey-PNAD); yet, approximately 17 percent of women work as domestics, an occupation characterized by precariousness, exploitation, low pay (average pay is less than the minimum salary) and rarely is of a formal nature. In general, the average hourly pay earned by women is equivalent to only 80 percent of pay earned by men; this difference widens as the educational level rises: women with 12 years or more of schooling earn only 60 percent of what men with the same level of education earn (see Article 7).

145. Finally, it is important to stress the issue of domestic violence, which has a heavy impact on the lives of women. A 2001 nationwide study by the Perseu Abramo Foundation showed that 19 percent of women interviewed spontaneously said that they had been victims of violence. When shown a list of different types of aggression, this figure climbed to 43 percent. It is believed, on the basis of this study, that at least 2.1 million women are beaten each year in Brazil, or one every 15 seconds. This violence, which takes many forms (physical, psychological, moral, sexual, patrimonial), is due to the unequal power and authority relations between men and women in all areas of life, and particularly in the private area, which reflect the persistent gender inequalities in Brazilian society.

A. Measures adopted for the gradual implementation of the right to gender equality

146. Various public policies and normative changes have been implemented for promoting substantive equality between men and women. Brazil has been party to the Convention on the Elimination of All Forms of Discrimination against Women since 1984 and in 2002 it ratified the Optional Protocol to the Convention, which allows the submission of individual petitions to the United Nations Committee on the Elimination of Discrimination against Women. Since 1995, Brazil has also been party to the *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará)*. The Inter-American Convention was the first international human rights protection instrument to recognize violence against women as a widespread phenomenon, which affects a large number of women without distinction to race, class, religion, age, or any other condition. Brazil supported the 1993 *Vienna Declaration on Human Rights* (which condemned violence against women and stated that the rights of women and girls are an inalienable, integral, and indivisible part of universal human rights); the 1993 *Declaration on the Elimination of Violence against Women*; the 1994 *Cairo Declaration on Population and Development*; and the 1995 *Beijing Declaration and Platform for Action*, approved by the Fourth World Conference on Women. In addition, in March 2006, Brazil ratified the *Protocol to the United Nations Convention against Transnational Organized Crime to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children*.

147. Legislation changes include the elimination of the expression “honest woman” from Arts. 215 and 216 of the Penal Code, which refer to crimes of seduction and indecent assault by fraud. Previously, in establishing a criminal act, a woman had to prove her “honesty”. On the recommendation of the *Committee on Economic, Social, and Cultural Rights*, Law 11106/05 suppressed that expression and increased the penalty by 50 percent if the author of the crime is the victim’s relative, spouse, companion, or employer or, on any other grounds, has authority over her. This law led to other significant changes: (1) Art. 231 of the Penal Code, which

classified as crime only the “trafficking in women” for the purpose of prostitution, now considers crime the “trafficking in persons”, of which both women and men may be victims; (2) Art. 231-A made it a crime to promote, abet or facilitate, in the territory of Brazil, the recruitment, transportation, transfer, sheltering or receiving a person intending to engage in prostitution. (3) Art. 227, which addresses the crime of inducing someone to satisfy someone else’s lasciviousness, makes the partner liable to be considered agent of the crime, for sentencing purposes; and (4) Art. 148, which refers to the crime of kidnapping and false imprisonment, now makes the penalty applicable to the victims companion if he is the author of the crime or if the crime is for libidinous purposes. Lastly, the following has been revoked: cases in which punishability is extinguished when the victim marries the agent or a third party; and the crimes of seducing a virgin woman, kidnapping an honest woman, kidnapping a minor girl by consent, and adultery.

148. Further to changes in the Penal Code, Law 10886/2004 has expanded the Code’s Art. 129, pertaining to assault and battery, so as to establish a special type of “domestic violence”. The law defines the crime of domestic violence, provides for detention of six months to one year for the aggressor, and adds a third to the penalty if assault and battery results in serious injury or death, when the crime is committed by a relative or companion of the victim or by someone that has lived close to the victim.

149. There have been changes in the civil area also. The new Civil Code (Law 10406/02), which entered into force in early 2003, suppressed anachronous provisions that treated women derogatorily. Its Art. 1 now establishes that all persons - and not all men as the 1916 Code read - are entitled to rights and obligations. The new Code puts an end to a man’s right to apply for the annulment of the marriage in case the wife was no longer a virgin at the time of the marriage, as well as to the possibility a father had to disinherit a “dishonest” daughter. The parents’ power over the children is no longer called *pátrio poder* [parental power] but *family power*; in case of the parents’ separation child custody is no longer obligatorily granted to the mother and the principle of the child’s or adolescent’s best interest must prevail; and both man and woman can now adopt the family name of the other at marriage, whereas the previous code allowed only the woman to change her name.

150. Still with regard to legal innovations following the recommendations of the 29th Session of the Committee on the Elimination of Discrimination Against Women and of the Merit Report no. 51/01 (Maria da Penha case), prepared by the Inter-American Commission on Human Rights, dealing with the need to pass law on domestic violence and the adoption of measures to prevent and combat violence against women, the Executive put forth in 2004 a bill to repress domestic and family violence against women in Brazil. That law was adopted in August 7 2006 under number 11.340 and is known as “Maria da Penha Law”. It provides mechanisms to repress domestic and family violence against women and sets forth measures for their protection, as well as for assistance to the victims and punishment for those responsible. It was prepared following a debate among government agencies and representatives of the civil society, which shows the concern of the Special Secretariat for Women Policies to make sure that the project would be built on democratic bases and with wide participation of the society.

151. Within the purview of the Executive Branch, in addition to the setting-up of the *Special Secretariat on Women’s Policies*, it is worth stressing the existence of the National Council on Women’s Rights, established 21 years ago and revamped in 2003 with a view to provide the

possibility of membership by working women. Lately, the creation of a mechanism for the implementation of public policies in the several federative levels was encouraged, as well as the establishment of additional State and Municipal Councils on the Rights of Women. Mention should also be made to the First National Conference on Women's Policies held in Brasilia in July 2004, which was attended by more than 2,000 women, both delegates and observers, from all over the country. The holding of this Conference involved more than 120,000 women, who participated in the Municipal and Regional Plenary Sessions and in the 27 State and Federal District Conferences. The Conference approved the guidelines that were followed in the preparation of the National Women's Policies Plan.

152. The National Women's Policies Plan was drafted in 2004 by an interministerial group, in which civil society was represented by members of the *National Council on Women's Rights*, and comprises five strategic areas: (1) autonomy, equality on the job, and citizenship; (2) inclusive, nonsexist education; (3) women's health, sexual rights, and reproductive rights; (4) combating violence against women; and (5) Plan's management and monitoring. The initiatives in these five areas are being implemented by 22 federal bodies that have committed themselves to devote efforts and resources to achieving the Plan's objectives and targets. The Plan's implementation should be completed by 2007, when the Second National Conference will take place, pursuant to the guidelines approved by the 2004 Conference.

153. The Federal Government's activity in promoting gender equality in the areas of labor, education, and health, the Plan's first three pillars, will be addressed further on under Articles 7, 13, and 12 respectively. Under this Article, the main initiatives pertaining to the Plan's fourth and fifth pillar will be pointed out, with greater emphasis on combating violence against women.

154. Notable among the policy measures adopted by the Government is the compulsory notification of violence against women when the victim is treated by public or private health services (Law no. 10.778/03). Thus, whenever a woman looks for help in a health facility because of injuries sustained because of domestic or sexual violence, a notification to the municipal and state health agencies and to the Ministry of Health must be compulsorily issued. This procedure allows for the construction of an integrated database of information on violence against women and contributes to a more precise evaluation of the question, as well as to compose the profile of victims and aggressors.

155. Still in connection with combating domestic violence, a Central *Office for Assistance to Women-Dial 180* was established in November 2005, as called for by Law 10714/03, for receiving reports, providing guidance, and referring cases of violence against women to the pertinent authorities. This service is also an important instrument for a broader understanding of this issue.

156. The policy on combating violence against women is aimed at prevention and at assisting and protecting women subject to violence and at punishing aggressors. It is implemented through service networks, the training of professionals, the establishment of norms and standards for assistance, legislation improvement, and initiatives capable of intervening in cultural standards inconsistent with respect for human rights, which still persist in the Brazilian society. Funds allocated to the various actions of the Program of Repression to Violence Against Women in the period 2003-2005 are shown in Annexes, Fig. 9. The protection networks seek to provide

integrated care for women that are victims of violence, including legal and social assistance and health, security, education, and employment services. Networks comprise the following services and organizations: *Specialized Police Stations for Assisting Women-DEAMs*, *Reference Centers*, *Public Defender's Offices and Women's Public Defender's Office*, *Public Ombudsman's Office of the Special Secretariat on Women's Policies*, Legal Medical Institutes, Health Services, Military Police, Fire Brigades, and Safe Havens. Team coordination, information exchange, and joint planning of complementary initiatives are essential requisites for operational networks, whose construction remains a challenge, particularly as the services that form part of them are incumbent on different spheres of state and municipal public administration (Annexes, Figs 10, 11, 12, 13, and 14).

157. Between 2003 and 2004, the *Special Secretariat on Women's Policies-SPM* supported the reconditioning or the establishment of 27 reference centers and 34 safe havens. In 2005, 46 centers were established and three services were overhauled. SPM's financial backing also allowed the establishment of 12 women's public defender's offices and four nuclei specializing in assisting women at common public defender's offices between 2003 and 2005. Fourteen publicity campaigns carried out between 2003 and 2005 alerted society about the perpetuation of domestic violence and its consequences.

158. The Brazilian Government has invested in increasing the number of reference services in the area of health to handle the abortion cases contemplated in legislation (Art. 128, I and II of the Brazilian Penal Code). In 1997 there were 17 *Reference Services for Integrated Assistance to Women in a Situation of Violence*. In 2004, the services for assisting women and adolescent victims of sexual violence by providing them with emergency contraceptives numbered 250-77 hospitals, 173 health clinics, and 44 legal abortion services - and this network is expected to grow 30% by 2007.

159. Between 2003 and 2005, fifteen *Police Stations Specializing in Assisting Women* were opened, as were four nuclei for assisting women in Police Districts. Fifty police stations were reequipped in 2004 and 150 more are being refurbished in 2005 and 2006 (Annexes, Figs. 11 and 130).

160. With respect to special, interdisciplinary training, a course on gender and violence against women has been added to the curriculum of Police Academies. Since 2003, the interdisciplinary training methodology has been applied in the training of professionals in the areas of public security (Federal Highway Patrol Department, Federal Police Department, Civil and Military Police, etc.), health and reference centers, safe havens, public defender's offices, and agencies of the state and municipal governments. Between 2003 and 2005, about 5,000 professionals received training nationwide.

161. The *Gender and Diversity in School Program*, introduced in May 2005 and still at an experimental stage, aims at preparing public school teachers to deal with diversity in the classroom, so as to reduce attitudes and behavior indicative of prejudice related to gender, ethnic-racial relations, and sexual orientation. The program consists in a course for 1,200 educators in the public school system, offered by the *Special Secretariat on Women's Policies* and the Ministry of Education, in partnership with the *Special Secretariat on Policies for the Promotion of Racial Equality*, the British Council, and the *Latin American Center on Sexuality and Human Rights*.

162. Two specific activities by the Ministry of Justice were included in the Pluriannual Plan for 2004-2007 and constitute an important innovation in the field of combating the traffic of persons in Brazil: (1) the training of professionals in the network of care for the victims and (2) the diagnosing of the traffic of human being in the country. In partnership with the Special Secretariat for Human Rights and the Special Secretariat of Policies for Women, the National Justice Secretariat of the Ministry of Justice is developing a project called *Measures against Trafficking in Human Beings in Brazil*. The pilot action is coordinated by the United Nations Office Against Drugs and Crime (UNODC) in accordance with the *United Nations Global Program against Trafficking in Human Beings*. The project made a diagnostic and offered four courses for law and public security professionals, which were attended by more than 300 people. The publication of a *Manual about Trafficking in Persons for the Purpose of Sexual Exploitation*, targeted at professionals who handle directly cases of trafficking in persons for sexual exploitation and indict the aggressors has helped combat the crime of trafficking in people. Upon the initiative of those agencies, the *National Policy on Combating Trafficking in Persons* was put together and was submitted to public consultation in June 2006. Decree no. 5.948, signed on October 26 2006, approved the National Policy and established the Interagency Working Group for the purpose of preparing a draft National Plan to Combat the Traffic in Persons.

163. The Brazilian Government has expended efforts on building a broad integrated database for managing the policy on combating sexual violence, and to keep data on violence against women, provided by the assistance services that are part of the above-mentioned protection network. Such a database would help in the assessment of the situation and in the designing, monitoring, and modifying of the policy on combating violence against women.

164. Initiatives aimed at producing knowledge about gender issues include the introduction, in 2005, of the *Women and Science* Program, whose purpose is to encourage scientific production and reflection on gender relations in the country and to promote women's participation in the field of science and in academic careers. This initiative has received financial support totaling R\$1.2 million from the National Council on Scientific and Technological Development and has selected 130 of the 338 proposals submitted. The program's implementation included promotion of the *National Encounter of Research Nuclei and Centers* and the establishment of the *Constructing Gender Equality First Prize* open to secondary, university, and post-graduate students.

165. Similarly, the *National Gender Information System*, introduced in May 2006, was developed for providing public policy formulators, gender specialists, teachers, students, and other interested groups of civil society with a set of information on gender issues, selected among major social issues, including changes undergone by Brazilian society in the last two decades. This system provides a picture of Brazilian women's situation by means of census data gathered between 1991 and 2000.

166. Lastly, the Brazilian Government has adopted specific measures to erase the inequalities that affect rural women. Among those, the following should be stressed: (1) compulsory issuing of joint land titles in the name of the couple; (2) guarantee of microcredit to women, through the earmarking of at least 30 percent of the funds of the *National Family Farming Program-PRONAF*, preferably to farming women, and the establishment of the *PRONAF-Women*, a special credit line for women enrolled under the *2005/2006 Crop Plan*; and

(3) introduction of the *National Program for Documentation of Rural Working Women*, aimed at providing, free of charge, basic civil documentation for women settled under agrarian reform and to family farming women, thereby making them eligible for a series of social security benefits and for obtaining joint land titles. More than 211, 000 documents have been granted to the benefit of over 122,000 rural working women. These Government actions are presented in greater detail in the *Fourth Brazilian Report to the Committee on the Elimination of All Forms of Discrimination against Women*.

Article 4

167. The juridical system in force in the country is based on the dignity of the human person, one of the underpinnings of the Federal Constitution (Art. 1, III) and an interpretive touchstone for the state bodies, functions, and activities, which have the duty to respect and protect it.

168. It gives rise to important corollaries, such as the exceptionality of rights restrictions, which are expressly specified by the Federal Constitution, such as in the case of declaration of state of defense or state of siege. The President of the Republic may declare state of defense for a maximum of 60 days, if this is necessary to preserve or promptly restore public order or social peace that are under threat of imminent institutional instability or affected by natural disasters of great magnitude. Such events allow the restriction to the rights of gathering and the rights to confidentiality of correspondence and telegraph and telephone communications. If the measures adopted in a state of defense are ineffective or in case of war declaration or of response to foreign aggression, the decreeing of a state of siege is admissible, provided that the President of the Republic has the National Congress's prior approval. Such link between the two Branches occurs precisely because in a state of siege a exceptional restriction, for a limited time, on certain rights is imposed, such as: (1) obligation to remain in certain locations; (2) detention in facilities not meant for persons accused or condemned for common crimes; (3) restriction on the inviolability of correspondence, the confidentiality of communications, the provision of information, and freedom of the press, radio broadcasting, and television; (4) suspension of the freedom of gathering; (5) household search and seizure; (6) intervention in public service enterprises; and (7) requisition of goods.

169. The characteristic progressiveness of economic, social, and cultural rights cannot be used by the Government as grounds for indefinitely postponing their implementation. As the Covenant establishes, only legal limitations are admissible. The Federal Supreme Court, which is the guardian and interpreter of the Constitution as regards the validity of economic, social, and cultural rights, handed down a decision on this matter with respect to Challenge of Noncompliance with Fundamental Rights-ADP No. 45 of April 29, 2004. Without a review of the object of the proceeding, the President of the Republic vetoed an article of the 2003 Budgetary Guidelines Law that guaranteed funds for health services, setting the framework for the Judiciary's action with respect to economic, social, and cultural rights: "*Despite the fact that the formulation and implementation of public policies depend on political options by those that, by popular delegation, have been invested with an elective mandate, it must be recognized that, in this respect, the legislator's freedom of formulation and the Executive Branch's freedom of action are not seen as absolute. (...) Should these Branches of the Government act unreasonably or with the clear intention of neutralizing or compromising the effectiveness of social, economic, and cultural rights, thereby causing an unjustifiable State inertia or an abusive governmental behavior, that intangible nucleus that consists in an irreducible set of minimum*

conditions necessary to a life with dignity and essential to an individual's very existence, then the possibility would be justifiable, as a precedent, as already emphasized, and on grounds of an ethical-judicial imperative, of the Judiciary's intervention so as to ensure to all the access to the goods whose enjoyment has been unjustly denied by the State.”¹⁷

170. In view of the preceding, should unjustifiable State inertia affect the irreducible set of minimum conditions necessary to a life with dignity and essential to the individual's very survival, it is possible for the Judiciary to intervene so as to ensure the enjoyment of economic, social, and cultural rights.

171. The distinction between rights restrictions and weighing of rights must be understood, the latter limitations being of a juridical character, as there are no absolute rights. In conformity with the *International Covenant on Economic, Social, and Cultural Rights*, the Federal Supreme Court has understood that the *constitutional statute of human rights, in delineating the juridical system to which they are subjected - and in considering the ethical underpinnings that inform them - permits that limitations of a juridical order intervene on them so as to protect the integrity of the social interest, on the one hand, and on the other, so as to ensure the peaceful coexistence of freedoms, as no right or guarantee may be exercised to the detriment of public order or in disrespect of the rights and guarantees of others.*¹⁸ The Supreme Court emphasizes that only the general welfare and the rights of others may limit the implementation of economic, social, and cultural rights.

172. The Federal Supreme Court decisions herein mentioned show the degree of relevance that the demandable and judicially-guaranteed economic, social, and cultural rights have attained in Brazil.

Article 5

173. In ratifying *the International Covenant on Economic, Social, and Cultural Rights*, the Brazilian State endowed its provisions with the force of internal norms. The Federal Constitution also encompasses a wide range of economic, social, and cultural rights. Accordingly, only in periods of exception may the expressly specified restrictions apply. The imposition of illegal restrictions is thus inconsistent with the commitment undertaken by the Brazilian Government and society to implement these rights.

Article 6

174. With respect to the implementation of the right to work, the next paragraphs will focus on the Brazilian State's actions for the realization of this right, according to three principles for the performance of dignified work: (1) availability of employment as required under the general

¹⁷ Excerpt from Opinion on ADP No. 45, by Justice Celso de Mello, Judgement on July 4, 2005: www.stf.gov.br , accessed on May 22, 2006.

¹⁸ Excerpt from Opinion on MS 23452, written by Justice Celso de Mello, DJ, 5/12/00 in: *A Constituição e o Supremo*, www.stf.gov.br accessed on May 12, 2006.

policy; (2) accessibility, in relation to distribution by workers' personal characteristics (gender, race, youth, and disability) in the work environment; and (3) acceptability and quality, and protection of workers' health and safety (see comments on Art. 7 on data pertaining to suppression of underemployment, slave labor, and child labor).

175. The Brazilian economy has achieved greater stability since 1994. Since the last quarter of 2003 it has grown further each year. It grew 4.9 % in 2004 and 2.3% in 2005. With economic growth, unemployment rate dropped (Annexes, Fig. 15). Export earnings jumped from US\$60 billion in 2003 to US\$118 billion in 2005. The 2004 unemployment rate - 9.0% - was the lowest since 1999. The most important aspect of this period is the fact that the reduction of unemployment was due to a higher number of people working, which rose from 76.1 million to 82.8 million, owing particularly to a more intensive generation of formal jobs rather than jobs without formal links and underemployment. The number of workers in the formal labor market rose from 28.8 million in 2001 to 32.8 million in 2004. The Brazilian economy's greater stability is also reflected in the payment of the debt with the International Monetary Fund early in 2006 and in the interest rate reduction policy, two factors that have had a decisive influence on the country's growth.

176. The realization of the right to work takes different forms among the different social groups. In Brazil, women and blacks constitute large majorities in the economically active population (EAP). According to 2004 data (National Household Sample Survey-PNAD), women account for 43% of the economically active population while blacks make up 48% (Annexes, Tables 26, 27, and 28). Although better qualified (working women in 2003 had an average of 7.8 years of schooling as compared with 6.8 for working men), women still earn a consistently lower pay than men. Recent studies show that the average monthly earnings of white workers (R\$864.70) were approximately twice as much of those of working blacks (R\$439.00). An analysis of these figures, taking into consideration the gender variable, show that black women's monthly earnings (R\$347.90) are nearly 70% less than those of white men (R\$1,027.50) and are equivalent to approximately 50 percent of the earnings of white women (R\$652.20). Black female workers' average monthly earnings are even lower than the average monthly earnings of black men (R\$500.40).

177. The employability of persons with disabilities is ensured by the reservation of 5 to 20% of public service positions that are filled through competitive exams. Private enterprises must employ persons with disabilities as follows: 2% of positions in enterprises with 100 to 200 employees; 3% of positions in enterprises with 201 to 500 employees; 4% of positions in enterprises with 501 to 1,000 employees; and 5% of positions in enterprises with more than 1,000 employees.

178. As regards young people, the Federal Constitution prohibits labor by children aged up to 14 years. Youths aged 14 to 16 may work as apprentices; and those aged 16 to 24 may work either as apprentices or on regular jobs. The Government has also implemented policies encouraging first jobs.

**A. Measures adopted for the progressive implementation
of the right to work**

179. Labor rights are enshrined in the Federal Constitution. Freedom to work forms part of the individual and collective rights and duties ensured by the Federal Constitution (Art. 5, XIII CF), which establishes that no circumstance, job included, may violate fundamental political and economic liberties, and that the economic order must be grounded on the valorization of human work. Accordingly, even though Brazil has not eluded the international tendency that has fueled discussions in recent years about making labor norms more flexible, this possibility is limited, as made clear by the Federal Supreme Court: *the Constitution in force authorizes social interlocutors, by means of collective agreements, to attenuate the rigidity of the social rights of urban and rural workers when, for instance, they permit the reduction of work; the compensation of hours during the week and the duration of a day's work rendered in continuous, alternating shifts. [...] But his right, which is not restricted, must be exercised according to principles and rules that do not compromise the workers' physical, psychological, and financial health (Recurso de Revista No. 635122/2000).*

180. The principle of autonomous will in the area of the right to work is subject to severe limitations owing to the legally established minimum working conditions, whose noncompliance to the workers' detriment is not possible, given their role in public order. Constitutional authorization to relax labor relations is not broad and unrestricted to the point of allowing reduction of rights expressly ensured by law (*Embargo em Recurso de Revista nº 764185*).

181. The State has launched employment, work, and income policies, together with initiatives aimed at consolidating and restructure the Public System of Employment, involving: (1) unemployment insurance initiatives; (2) intermediation of labor; (3) social and professional qualification; (4) granting of directed microcredit; (5) forms of solidarity economy; (6) public policies on first job for young people; (7) information on the labor market; (8) combat against discrimination based on gender, race, or disability; and (9) enforcement of norms that ensure the worker's health and safety.

182. To this end, the federal public administration has at its disposal a significant amount of resources derived primarily from collections of the *Social Integration Program-PIS* tax and the *Civil Servant Patrimony-PASEP* tax. Those resources are complemented by fines imposed by the Labor Public Prosecutor's Office on enterprises for noncompliance with labor laws, and indemnity for collective pain and suffering under the *Terms of Conduct Adjustment* (extrajudicial document that imposes on employers the obligation of doing and of refraining from doing certain things) or under Civil Actions brought to the Labor Courts. The sum of these resources goes into the *Workers' Assistance Fund-FAT*. In the 2003-2005 triennial, the resources of the FAT job and income generation programs nearly doubled as compared with the previous triennial, exceeding R\$41 billion (Annexes, Box 14).

183. The tripartite, parity management of FAT carries out an ongoing dialogue with the main segments of society through FAT's *Deliberative Council-CODEFAT*, in which Government, workers, and employers are represented.

184. The programs implemented with FAT resources are aimed at strengthening employment policies, with particular emphasis on vulnerable groups, by increasing the number of workers assisted by the Employment Public System, reducing the lapse of time for workers' (re)integration into the productive forces, and reducing the social costs of unemployment.

185. The first thing to be pointed out is the financial assistance provided to people recently excluded from the labor market, in the form of unemployment insurance. On average, 5 million people receive unemployment insurance in about 4.2 installments (Annexes, Table 29). Recent years have seen an increase in the number of recipients, owing to the need to assist segments of the workers' contingent that recognizably deserve special attention, such as domestics, artisanal fishermen, workers rescued from a condition similar to slavery, and workers whose work contract has been suspended.

186. Since 2002, all forms of unemployment insurance have increased as regards both the actual number of beneficiaries and the financial outlays.

187. Labor intermediation's purpose is to redress the information asymmetry that occurs naturally in the labor market, thus helping to combat unemployment. In this connection, the assistance network that comprises *the National Unemployment System-SINE* keeps a database with a record of the worker's professional and personal life and a file of openings found in the labor market. SINE maintains this information to match the interests of the workers using the System with positions in the labor market and the enterprises' labor requirements. It should be further noted that one fourth of these placements gives priority to young people (aged 16 to 24 years), to people over 40 and to women.

188. Measures aimed at continuing to protect the less privileged include the uninterrupted effort to increase the efficiency of the labor intermediation system. In 2005, growth occurred in all variables (number of people registered, vacancies identified, referrals, placements) as compared with 2004. Of the 5.25 million workers registered with SINE, 4,046,060 were referred to job openings and 934,000 were (re)placed on the labor market, an increase of 5 percent over 2004 and of 10 percent over 2003. The 934,000 that were placed took 53 percent of the openings identified in 2005, the same percentage as in the preceding years.

189. In 2003, the Government introduced a *National Qualification Plan-PNQ* for integrating and coordinating public policies on employment and undertook the gradual universalization of the workers' right to social and professional qualification. This Plan's major difference is that it concentrates its initiatives on the needs of regional markets. It is directed preferentially at unemployed youths, persons of African and of Indigenous descent, women that are heads of households, persons over 40 years of age, persons with disabilities, rural workers, family farmers, persons settled under the agrarian reform program, self-employed persons, home servants, ex-convicts, and workers of enterprises that have been affected by modernization processes.

190. The Plan operates in a coordinated manner, according to common institutional guidelines and procedures, and in a decentralized form, through three distinct, complementary mechanisms: *Territorial Qualification Plans-PlanTeQs*, *Special Qualification Projects (ProEsQs)*, and *Sectoral Qualification Plans*.

191. The *Territorial Qualification Plans* seek to match the qualification supply with the demands derived from regional/local development policies. They may be carried out by states, municipalities with a population of over 1 million, and municipalities' consortiums of the same region or micro region. They are jointly managed by state or municipal labor departments and employment commissions (in which workers and employers are represented). Most of the PNQ is implemented through PlanTeQs.

192. The *Sectoral Qualification Plans* have the following characteristics: they may last for up to two years; they are implemented through public-private partnerships; they are being implemented in 51 municipalities in seven Brazilian states; and they are funded by the *Workers' Assistance Fund*. The first initiatives were directed at aeronautics, metallurgy, tourism, and domestic labor, while the next ones will be directed at civil construction, agriculture, and oil and gas exploration.

193. The *Special Qualification Projects-ProEsQs* are implemented under agreements between the Qualification Department of the Ministry of Labor and Employment's *Public Policies and Employment Secretariat* and national or regional nonprofit organizations with proven specialization, technical competence, and execution capacity in the area of Social and Professional Qualification, which are willing to develop projects leading to the improvement and universalization of Qualification Public Policies.

194. Some of the objectives of the *National Directed Productive Microcredit Program-PNMPO* include encouraging job and income generation among small-scale micro entrepreneurs, providing financial resources, and extending technical assistance to institutions connected with the program, so as to strengthen them for rendering services to small-scale entrepreneurs. Fifty-five *Directed Productive Microcredit Institutions-IMPO* were benefited in 2005, and R\$214 million in microcredit were loaned by public and development banks. Of this amount, 25 percent consisted of new resources generated by the National Program. During the same period, 145,000 small-scale entrepreneurs made use of Productive Microcredit.

195. In addition, the *Worker's Assistance Fund-FAT* also finances the *National Industrial Park Modernization Program-Modermaq*, introduced for the purpose of promoting industrial modernization and instilling dynamism into the capital goods sector. The program consists in lines of credit with resources from the National Development Bank and FAT. Fixed-interest rate credit operations are permitted and the risks stemming from variations in the Long-Term Interest Rates are covered by the Federal Government under specific budget allocations.

196. Credit lines for civil construction performed well in 2003-2005, growing at a much higher rate than in the previous period and totaling about R\$2 billion. Also worth mentioning are the lines of credit directed at exports, in which resources totaling about R\$6.6 billion were applied, five times the amount applied in the previous triennial; and at technological innovation and dissemination, in which were applied resources totaling about R\$321 million, twelve times the amount applied in the previous period.

197. Another significant initiative aims at training credit agents with respect to the gender issue. The purpose is to make agents sensitive in the performance of their functions, with a view to improving the quality of service and thus to expand the demand of credit among women, particularly those with less purchasing power. So as to widen women's access to credit and to

urban productive microcredit, in 2005, the project titled *Access to Microcredit-Gender Need: Strategic Project for Expanding the Female Clientele* made 250 professional microcredit operators more sensitive and better qualified in ten Brazilian states in the country's macro regions.

198. The lines of credit under the *Job and Income Generation Program-PROGER* were also a major factor in workers' incorporation into the labor market. It stresses support to labor-intensive sectors that have priority under government development policies, including micro and small enterprises, cooperatives, and workers' associations, liberal professionals, and low-income micro entrepreneurs in urban and rural areas.

199. In addition, there are also programs for meeting investment needs of specific sectors and regions, with a view to developing infrastructure, increasing competitiveness and exports, and (re)incorporating low-income workers into productive activities.

200. One of the innovative elements of the employment policy is encouragement of the protagonist role played by self-employed persons with no ties to entrepreneurs or employers, through programs that foster a solidarity economy. A 2005 survey showed that at least 1.25 million workers exercise the right to work as self-employed. Self-employment covers a wide range of activities, from family farming to huge, collective metallurgical parks or services sector enterprises. These activities are characterized by workers' capital ownership¹⁹ and capital management through democratic mechanisms in which workers' participation is guaranteed.

201. The considerable contingent of workers occupied in Solidarity Economy activities led the Federal Government to establish the *National Secretariat on Solidarity Economy* under the Ministry of Labor and Employment in 2003, which has adopted the following measures to ensure the success of alternatives open to workers: (1) support to the network of public and private universities that back Popular Cooperatives; (2) assistance for production marketing and outflow; (3) establishment of partnerships with city and state governments for joint implementation of solidarity economy on their territories, as currently illustrated by 21 *Solidarity Economy Public Centers* (a reference for these policies in their respective locations); (4) establishment of specific credit lines for the sector in association with official financial institutions; and (5) *Program for Recuperation of Enterprises by Workers Organized into Self-Management*, which assisted in the recuperation of 139 bankrupt enterprises in the first year.

202. *Solidarity Economy* programs include special initiatives in favor of remnants of *quilombo* communities, which have benefited over 76,000 families through the establishment of Solidarity Development Agents. The success of this initiative was such that in 2006 it was extended to

¹⁹ Capital is not always owned entirely by the workers. But what is important is that relations are such that the enterprise can be said to be a workers' enterprise, i.e., an enterprise in which there is no distinction between boss and owner.

other sectors, including those that have resulted from the *Jobless Workers' Movement* and a large number of specific Productive Chains. *Solidarity Economy* initiatives are also reaching health service users under a partnership between the Ministry of Labor and Employment and the Ministry of Health to support the establishment of social cooperatives.

203. With respect to work by young people, the inexperience and poor qualification of this contingent of young workers are cited as the reason for the lack of interest in part of some enterprises in hiring them. In order to promote and support the access of young people to employment opportunities, the Federal Government has introduced the following vocational training programs: *Pró-Jovem*, *Factory School*, *Program for the Incorporation of Vocational Training into Secondary Education*, in the form of Youth and Adult Education, and *Youth Consortiums*.

204. *Pró-Jovem* is the main federal program aimed at young people. Its purpose is to respond to the demand for emergence assistance to an extremely vulnerable segment of the juvenile population, which has a low schooling level and difficulty in entering the structured labor market. The Program aims at raising the level of schooling and professional qualification of young people aged 18 to 24, and to encourage their involvement in community work. To be eligible, applicants must have completed the fourth grade but not the eighth grade of Basic Education. For a 12-month period, program participants are offered (1) a course to raise their learning ability for completion of Basic Education; (2) vocational training; and (3) training modules aimed at digital inclusion. During this period, participants receive a monthly grant of \$100 and must render community services.

205. In 2005, *Pró-Jovem*, with a R\$311-million budget, was implemented in every state capital and in the Federal District. The budgetary appropriation projected for 2006 will permit the program's expansion into the capitals' metropolitan areas with a population of over 200,000 - a total of 34 cities, with 57,600 openings. After just one and a half year, the program now has about 95,000 young people enrolled and 111,000 in the process of registration (eligibility exam) in the capitals and other cities.

206. The *Factory Schools* program, developed in partnership with non-governmental organizations, public managers, and enterprises, prepares low-income young people to enter the labor market, offering beginners' vocational courses to 12,000 applicants in 250 municipalities. To participate, applicants must be 16 to 24 years of age, have a per capita family income of up to 1.5 minimum salary, and be enrolled in the public elementary or secondary school system or in Federal Government educational programs. The Ministry of Education has invested R\$25 million on this program since 2005, including a school grant to each student. Investment in 2006 is expected to total R\$54 million and the target is the training of 40,000 young people by the end of the year.

207. The *Program for the Incorporation of Vocational Training into Secondary Education, in the form of Youth and Adult Education (Proeja)* reinforces the Brazilian Government's social inclusion projects by providing vocational training and by raising the school level of workers older than 18 years of age who have interrupted their studies. Established in June 2005, this program had trained 8,000 workers by the end of the year through beginners' and continuing

education courses totaling 1.6 thousand hours and technical courses totaling 2.4 thousand hours. The program's budget for 2006 is R\$21 million - R\$15 million will go to the 144 institutions of the Federal Vocational and Technological Education Network and R\$6 million will go to the federal states.

208. The Brazilian State provides for young people facing difficulties to benefit from those government sponsored programs - such as *quilombolas*, indigenous, juveniles under custody for social and educational rehabilitation and young people with disabilities - with the opportunity of participating in Social Youth Consortiums. Youths who have been refused employment three times owing to lack of qualifications may also participate in the program. Each consortium - consisting of youth organizations that have been legally established for more than five years and, at least, for ten social entities or movements - should seek support from public institutions, the entrepreneurial sector and financing and cooperation organisms, with a view to qualifying youths and incorporating them into the labor market (Annexes, Table 31). It is incumbent upon the Ministry of Labor and Employment to sign agreements with institutions, called "anchor entities", suggested by the Managing Council, the Regional Labor Office-DRT, and the Secretariat on Public Policies on Employment.

209. A Consortium provides basic qualification oriented toward digital inclusion; human ethical and citizenship values; environmental, health, and quality of life education; initiatives aimed at encouraging and supporting a higher schooling level; and participation in some entrepreneurial teaching workshops. These youths must be enrolled in school but not have completed secondary education and come from families with a per capita income of up to half a minimum salary. The Consortiums' objective is to place at least 40 percent of the participants in formal jobs or income-generating alternative occupations.

210. In conformity with the provisions of Conventions 100 and 111 of the International Labor Organization-ILO and of the Federal Constitution with respect to the promotion of equal opportunities for men and women and to combating all forms of discrimination on the job and in occupations, the above-mentioned initiatives are based on the principle of gender and racial equality, particularly in connection with vocational qualification for entering the labor market.

211. In August 2004, the Brazilian State joined the other Southern Cone countries in establishing a *Tripartite Commission on Equal Opportunities and Gender and Racial Issues on the Job*, under the Brazilian Ministry of Labor and Employment. This Commission consists of representatives of the Government, employers, and workers and is an illustration of the Federal Government's efforts to bridge the historical lag in respect of equal opportunity and of combating discrimination. Its main purpose is to make recommendations and proposals for public policies on equal opportunity and on combating discrimination on the job, with emphasis on gender and racial issues.

212. As regards the elimination of discrimination on the labor market, initiatives implemented include the following: (1) development of a *National Policy on Elimination of Racial Discrimination on the Job and in Occupations and Promotion of Racial Equality* through regional and national seminars; and (2) *Institutional Strengthening Program for Gender and Racial Equality, Eradication of Poverty, and Job Creation*. This program's objective is

to foster the inclusion of the gender and racial issue in the strategies for combating poverty and in job- and income-generating policies and programs, by strengthening the institutional capacities of governments, social organizations and labor and employers organizations, with emphasis on the training of managers who formulate and implement these policies.

213. The legislation provides for the protection of working women. The Federal Constitution guarantees them maternity leave for 120 days without loss of job or salary (FC Art. 7, XVIII) and protects against arbitrary or purposeless dismissal of a pregnant employer, from the date pregnancy is confirmed to five months after delivery (Art. 10, I, b of the Constitutional Transitory Provisions). The *Consolidated Labor Legislation-CLT* also guarantees women to change functions for health reasons and to be reinstated in their original function, medical leave during working hours (Art. 392, paragraph 4), rescission of contract for work performed in conditions that are detrimental to health (Art. 395), and the right to two 30-minuting rest periods during work hours for nursing infants aged up to six months (Art. 396).

214. CLT guarantees are extended only to women employed on the formal labor market, who have a legal, registered work record booklet and contribute to the Brazilian social security system. Not all of these rights are extended to domestics, who account for 17 percent of economically active women and who are not under the CLT regime. Domestics are not entitled to job stability in case of pregnancy nor do they have access to unemployment insurance or pay for overtime.

215. November 2005 saw the introduction of the *Qualification Plan for Domestic Work and Citizenship* aimed at the vocational and social qualification of female domestics. In the seven cities where the pilot project has been implemented (Recife, Salvador, Aracaju, São Luiz, Campinas, São Paulo, and Rio de Janeiro), domestics have been given access to qualification programs combined with the raising of their schooling level (elementary school). With a view to eliminating the lack of registration of domestic workers as a limiting factor for the enjoyment of labor rights, the recent Provisional Measure No. 284/2006 allows employers to deduct from their income tax the employer's contribution to Social Security on domestics' salaries (12% of the total). This measure seeks to encourage these workers to formalize their work situation so as to be eligible for social security benefits. The Federal Government expects initially to formalize the job situation of a little over 1.2 million domestics. Mention should also be made of the distribution of 50,000 booklets explaining the rights of domestics and of the National Radio Campaign backed by the Federal Government to encourage the formalization and valorization of domestics in Brazil.

216. Increasing the number of women who actually have access to these social rights remains a persistent challenge, not only to domestics and other informal workers but also to women protected by the legislation, whose access to these rights is hampered by the employers' noncompliance with specific norms regulating these matters. With respect to working women's rights, inspection by labor authorities follows the same procedures applicable to other rights, suppressing criminal activities, applying penalties, and promoting fair labor practices. Employers' noncompliance with any of these norms is subject to judicial reparation.

217. The *Pró-Eqüidade de Gênero Program* [Gender Equality Program], introduced in September 2005, has the following objectives: (1) to contribute toward the elimination of all forms of discrimination in respect of access, remuneration, promotion, and job stability;

(2) to encourage employers to adopt management practices that promote equal opportunities for men and women in their enterprises; and (3) to establish a database on management practices that respect gender equality in the labor market. At its initial stage, this program is directed at public enterprises willing to undertake the commitment to implement, for one year, initiatives aimed at promoting gender equality and combating all forms of discrimination in two key areas: personnel management and organizational culture. Seventeen public enterprises that have already adhered to the program will be eligible for receiving the *Pró-Eqüidade de Gênero Seal* if, by the end of the first year, they have completed the proposed plan of action. One of the forms adopted for eliminating discrimination on the job is the overrepresentation of women and blacks in the encouragement programs.

218. To prevent discrimination of the 537,000 persons with some kind of disability who are already working and to promote better access of other persons with disabilities to work, the Government has been diligently supervising compliance with the Quotas Legislation. In 2005, authorities were able to find jobs for 12,786 people under the quotas system (Annexes, Box 18). *The National Coordinating Office for the Integration of Persons with Disabilities-CORDE* implements across-the-board initiatives in various ministries aimed at the employment of persons with disabilities. These initiatives include seminars and meetings with enterprises to ensure compliance with the Quotas Law, particularly with those that provide outsourcing services to the Government.

219. The *Jovem Rumo ao Futuro* [Youngster towards the Future] project, supported by the Inter-American Bank with the backing of the *Japanese Society for Rehabilitation of Persons with Disabilities*, implements a pilot-project in Brazil and Japan aimed at increasing the opportunities for schooling and access to work for young people with disabilities, qualifying them for work and full citizenship.

220. The right to protect a workers' health and physical integrity is ensured by the Federal Constitution (Art. 7, XXII), the *Consolidated Labor Legislation* (Art. 154 ff.) and their respective *Regulatory Norms*. It is incumbent on the Ministry of Labor and Employment to set such norms and to supervise work environment and conditions.

221. The normative function consists in formulating and revising *Regulatory Norms* (Annexes, Box 19) issued by the Ministry of Labor and Employment after public consultation and tripartite negotiations, pursuant to the model prescribed by the International Labor Organization. Since the 1990s, the *Standing National Committee on Work Conditions and Environment in the Construction Industry* and the *Parity Tripartite Standing Commission* set up for consultation, diagnostic, technical proposal, validation, and revision of norms has encouraged the Government's dialogue with society, resulting in greater effectiveness in the implementation of the agreed instruments. Currently, there are 20 tripartite commissions in operation, dealing with specific issues in this area.

222. Compliance with legal and regulatory provisions on work safety and health is verified by labor inspectors, who are also competent for initiating proceedings to punish violators. The reduction in the number of work-related accidents and illnesses, owing to the action of

inspectors, the existence of a regulatory framework and the *Workers' Food Program* has improved the workers' welfare and reduced social security costs. Between 1996 and 2004, work accident indicators remained relatively stable while the number of deaths and permanent incapacity cases dropped.

Article 7

223. Brazil is one of the States that participate in the International Labor Organization's deliberations for the establishment of a *Hemispheric Agenda on Decent Work* that would ensure just and favorable work conditions for workers.

224. In Brazil's case, the discussion about underemployment focuses primarily on earnings lower than the minimum wage, as the trend is toward longer working hours. The following review of underemployment will be limited to the reduction in the number of workers that receive pay lower than the minimum wage.

225. In 2006, the minimum salary reached its highest level in 21 years. In the last three years, the minimum salary's nominal value (without discounting inflation) rose 75 percent, from R\$200 in March 2003 to R\$350 in April 2006 (Annexes, Figs. 16 and 17). Even so, it does not meet the constitutional requirement that the minimum salary should be sufficient for meeting the needs of the worker and his family with respect to health, education, housing, clothing, and leisure. The *Inter-Union Department of Statistics and Socioeconomic Studies-DIEESE* estimates that the amount needed to achieve these objectives for a household of two adults and two children would be approximately R\$1,550.²⁰

226. The Brazilian State's initiatives against child labor and slave labor have intensified in recent years. Its work toward the eradication of child labor has earned commendation in the International Labor Organization's 2006 Global Report on Child Labor.²¹ In recognition of the Brazilian progress, ILO's Office issued a *National Supplement to the Global Report* so as to provide details on the progress achieved and on the facts that elicited the commendation of Brazil in the Global Report, as well as on the challenges the country may have to face for further reducing the contingent of girls, boys, and adolescents working under conditions that compromise their future and the future of Brazilian economy and society (see *Suplemento Brasil OIT 2006*).²²

²⁰ DIEESE, *Salário mínimo, nominal e necessário*.
<http://www.dieese.org.br/rel/rac/salminout05>, accessed on 10/22/05.

²¹ *The examples of Asia and Brazil reinforce the message that poverty reduction and mass education are important prerequisites for moving countries to the transition point in child labor elimination. If Brazil and China can manage this historical transition, other countries can too.* The end of child labor: Within reach. ILO's 2006 Global Report, paragraph 60.

²² *Suplemento - Brasil, Relatório Global, 2006, pg. 04.*

227. ILO's 2005 report on a *Global Alliance against Forced Labor* estimated that there are up to 25,000 workers under conditions similar to slavery in Brazil. The most common form of slavery today is "slavery because of debt": workers generally living in rural or border areas are physically and morally coerced to remain on farms or other establishments until they have finished settling the debts they were forced to incur by fraudulent means or work under contract provisions.

228. The Brazilian labor legislation provides for guaranteed access to forms of decent work, and the Penal Code, which was revised in 2003 (Law 10803), defines the crime of slave work and provides for the penalty of two to eight years of detention, in addition to a fine, for noncompliance, without prejudice to penalties imposed for any violence committed.

A. Measures adopted for the gradual implementation of the right to free and just work

229. The Brazilian Government has determined an annual increase of the minimum salary, far above the inflation rate prevailing in the country, with a view to the gradual, responsible implementation of the normative provisions of the Federal Constitution and the *International Covenant on Economic, Social, and Cultural Rights*. Between 1995 and 2005, minimum salary adjustments sought to offset losses owing to inflation. This changed in 2005, when a *Quadripartite Commission on Minimum Salary Restructuring* was set up by the President of the Republic. This *Quadripartite Commission* is made up of representatives of the Federal Government, states, municipalities, employers, workers, and retirees and its role is to formulate proposals for an ongoing valorization of the minimum salary. In its deliberations, it considers the amounts paid by the social security and welfare programs that benefit 15 million people directly and at least 40 million people indirectly. The national minimum salary's real value, i.e., its purchasing power, declined sharply in the 1980s and particularly in the early 1990s. Since 1995, it has gradually increased until it reached R\$350 in April 2006, its highest level in 21 years, which exceeded its 1975 purchasing power.

230. A *Senate and Chamber of Deputies Joint Commission* was also set up in 2005 for similar purposes, owing to the need to formulate a medium- and long-term policy redefining the role of this powerful instrument for improving income distribution and reducing social inequality in Brazil. The minimum salary valorization policy, as a concern of the State and not only of the Government, resulted in its incorporation into the budgetary instruments. In principle, it seeks to offset the inflation accumulated in the period, and reflects the economy's productivity growth as measured by the per capita Gross Domestic Product, although the readjustment percent can be increased through negotiation between representatives of workers and employers and the Government, always within the limits imposed by the need to keep public accounts under control.

231. This practice has allowed a valorization of the minimum salary in real terms, of about 25%, between April 2002 and April 2006, five percent points above the increase achieved in the previous four years, with no substantial change in the number of workers that receive less than the minimum salary. The percentage of workers that receive up to one minimum salary

remained practically stable, declining from 27.7% to 27.6% of the economically active population (2003-2004 PNAD). In absolute figures, about 17 million people earn less than the minimum salary (Annexes, Table 13). Lastly, the alleviation of taxes on products that go into the basic food basket has raised the minimum salary's purchasing power from 1.3 to 2.2 basic food baskets (Annexes, Fig. 18).

232. As regards the decent labor agenda, and specifically the curbing of slave labor, the *National Plan for the Eradication of Slave Labor* (2003) comprises 76 initiatives that define and coordinate the different roles of public and civil society entities in tackling this problem, as well as introducing into the Government's agenda the element of slave labor prevention and reintegration of rescued workers into society. The implementation of this Plan, which involves a partnership with the Ministry of Labor and Employment, SEDH/PR and other agencies is under the scrutiny of the National Commission for the Elimination of Slave Labor (Conatrae), composed by 18 members who represent official agencies and civil society.

233. Between 1995 and 2000, 119 operations were undertaken by the Ministry of Labor and Employment's Mobile Inspection Special Group-GEFM, which inspected 582 farms and rescued 2,303 workers. In the succeeding five years (2001-2006), the Special Group undertook 301 operations, visiting 928 farms and rescuing 16,799 workers. Since 2000, newly rescued workers have been registered, which has added over 19,000 names to the register. This register makes it possible for rescued workers to be represented by the Labor Public Attorney's Office in reparation proceedings at which the Labor Courts set the compensation to be paid to them. In 2006, compensations totaled R\$22 million (Annexes, Box 20).

234. The Supervision Group undertakes routine checks in the regions of highest occurrence of exploitation of workers in slave-like conditions, such as the States of Mato Grosso, Maranhão and Pará. The Group is composed of labor auditors-inspectors and federal police agents. Their actions are routinely followed by the Labor Public Attorney's Office, which established the National Coordinating Office to Combat Slave Labor (Conaete) in order to carry out that action, with a view to enforcing the labor rights of the rescued workers, such as indemnity payments and moral damage indemnity. The Federal Public Attorney's Office participates in the implementation of the State policies and receives the reports stemming from the checks and pursues penal action as required.

235. Compensation for collective pain and suffering sought by the Labor Public Defender's Office and determined by the Labor Courts has proven to be a highly effective dissuasion tool owing to the high amounts of convictions, which make the exploitation of slave labor economically unprofitable. In May 2005, the State of Pará's Regional Labor Court set the compensation owed by an enterprise at R\$5 million, the highest ever imposed, for reducing some 180 people to slavery, including nine adolescents and one child.

236. Delinquent entrepreneurs and enterprises are entered into a Delinquent Employers Register established by the Ministry of Labor and Employment through *Portaria* no. 540, of 2004, and are thereby barred from receiving credits and tax incentives from official banks and development

agencies (negotiations are under way to extend this measure to all financial institutions operating in the country). In its most recent edition (August 28 2006), this register contained 158 names, 30 of which have been granted temporary suspension by a Court Temporary Injunction Order. After two years without relapsing into the practice of slave work, 12 entrepreneurs have had their names taken off the register.

237. The campaigns carried out by the State and ILO have also contributed to alert society. They have resulted in the celebration of over 100 entrepreneurial anti-slavery covenants that provide for commercial and financial sanctions for entrepreneurs that violate rights; formalization of labor relations; information of workers vulnerable to entrapment; qualification of rescued workers; and other related measures. Signatories include major supermarket chains, industrial, and financial groups, employer's associations, and non-governmental organizations.

238. Moreover, a draft Constitutional Amendment (No. 438/01) is under discussion at the National Congress, calling for the expropriation of lands on which the exploitation of slave work is detected, in addition to draft bills prohibiting public administration from contracting natural persons or legal entities involved in the exploitation of slave work and these persons and entities from obtaining public credits (Bills no. 487/03 and 108/05); making enslavement of workers into heinous and thus non-bailable crime subject to stricter punishment; and endowing the *Delinquent Employers Register* with legal status by making public the name of entrepreneurs that subject their workers to conditions similar to slavery.

239. As regards the repression of child labor, and pursuant to various international child protection instruments, the Brazilian State's concern has been reflected in several initiatives, such as the *National Forum on Prevention and Eradication of Child Labor*, the *Child Labor Eradication Program-PETI*, implemented with ILO's support, and the *Map of Child and Adolescent Labor Indicators*. A *National Commission for the Eradication of Child Labor-CONAETI* was set up in 2003, consisting of representatives from the federal administration, civil society, workers and employers, and international organizations. The Commission drafted the *National Plan for the Eradication of Child Labor and the Protection of Adolescent Workers*, whose main innovation consists in integrating existing federal programs and in incorporating new initiatives focused on issues pertaining to gender, race, economic condition, and type of occupation.

240. Repression of child labor is carried out by Mobile Inspection Teams of the Regional Labor Offices-DRTs, backed in certain cases by Labor Prosecuting Attorney Offices and Federal Police agents. Inspection gives priority to child labor foci and to municipalities and economic activities with higher incidence of this problem, which are identified by the *Map of Child and Adolescent Labor Indicators*. Child labor is the target of routine inspections and of inspections triggered by denunciations.

241. Labor inspection has decisively contributed to reducing child labor indicators, which have markedly declined since the early 1990s and up to 2004. Between 2002 and 2004, labor by children aged 5 to 9 dropped 60.9%, i.e., half a million fewer children were doing

child labor in a two-year period; the number of children aged 5 to 15 dropped from 13.74% (5.1 million children) in 1995 to 6.9% in 2004 (Source: *Suplemento Brasil OIT 2006*). There has thus been a 47.5% reduction in the use of child labor²³ in this period, which means that 2.4 million children and adolescents stopped working.

242. The Labor Public Attorney's Office, which is responsible for intervening in legal suits incumbent on the Labor Courts whenever there is a need to protect the public interest, indicts employers of children and adolescents and demands compensation for collective moral damage, acting as supervisors in the enforcement of the law. It has a *National Coordinating Office for Combating Child Labor and Regularizing Adolescent Work-COORDINFÂNCIA*, with branches in all Brazilian states, at which policies on prevention and suppression of child labor are collectively formulated.

243. In addition to repressive measures, the State is providing incentive for mothers to see that their children under 16 do not start working too early. In 1996, it introduced *Vale Cidadania* [Citizenship Coupon] to curb the use of child and adolescent labor in activities considered as the worst forms of work (slavery, picking landfills, etc.), providing mothers with a monthly grant. In 1999, the program was renamed Child Labor Eradication Program and was expanded to prevent any form of work by minors up to age 16 (except as apprentices). The Federal Government transfers funds to the states that have programs for keeping children in school for extended hours and for providing enrolled families with a monthly per-child grant of R\$25 in urban areas and of R\$40 in rural areas.²⁴ The program's coverage has been expanded since its earlier phase, when it was directed at states with a higher concentration of children subjected to the worst forms of work; it has now a nationwide coverage.

244. In 1996, the budget for these initiatives totaled R\$931,500. In 2005, the State spent R\$533.3 million (Annexes, Box 21) on scholarships and extended school hours to the benefit of one million children. Extended school hours is an incentive granted to states for funding socioeducational activities offered on a complementary daily schedule, so as to keep children longer at school. Currently, the program benefits 1.1 million working children and adolescents up to age 16, and the target for 2006 is to assist 3.2 million children and adolescents.

²³ Child labor data are from 2001-2004 PNAD/IBGE surveys. The number of adolescents that were not working on the reference week but were looking for work has been included separately. Note should be taken of the fact that the PNAD coverage has been expanded to include rural areas of all states of the Northern Region (previously it covered only the rural areas of the state of Tocantins). This results in a significantly higher number of working children and adolescents. To ensure comparability with previous years, a number has been generated for 2004, which excludes areas that were not previously covered.

²⁴ Available at <http://nds.gov.br/programas/programas04.asp>, accessed on November 13, 2005.

245. In 2005, the *Child Labor Eradication Program*-PETI and the *Family Grant Program*-PBF, to be explained in the comments to Article 10, began to be merged with a view to upgrade both programs, expand their coverage of children and adolescents in labor situation, extend PETI socio-educational initiatives to children and adolescents assisted by PBF who are in a labor situation, as well as extend PBF benefits to all eligible families.

Article 8

246. The labor legislation introduced during the *Estado Novo* period (1937-1945) prohibited strikes and lockouts (interruption of production on the initiative of employers to gain concessions or resist demands of employees) and determined that workers and employers syndicates could function only with prior authorization from the Ministry of Labor, which would issue the requisite Union or Association Charter. It also determined that only one such union could exist for each economic category in a given geographical area (district, city, or state), which collected the compulsory union fee from all workers represented by the union, whether they were members or not. Moreover, the Government could intervene in the unions and replace their leadership.

247. The 1988 Constitution, prepared after the end of the military regime, changed some elements of the structure inherited from the Vargas period, and suspended the requirement of prior authorization by the Ministry of Labor for the operation of unions, and allowed the formation of union centrals. However, it asserted the principle of one union per category and the compulsory contribution to the unions.

248. As regards the requirement that only one union can exist for each category, the Federal Supreme Court understands that “the constitutional norm establishes that professional or union association is free and that the law cannot require prior State authorization for its organization, except for the union’s registration with the competent body - the Ministry of Labor and Employment, which is responsible for overseeing the compliance with the requirement of one union for each category, and in conjunction with the interested third parties (unions), in accordance with the provisions of Normative Instructions Nos. 5/90 and 9/90, which permit, within the time period therein prescribed, the impugnation of an union’s registration, being it incumbent on the Public Administration to annul the registration if it deems the allegation pertinent” (*Recurso Extraordinário* No. 207910).

249. The requirement of one union for each category contributed to the pulverization of unions, some of which are often little representative, as they are established and perpetuated to benefit from the compulsory union fees. Ministry of Labor and Employment figures show that there were about 8,000 unions in 1988 and 23,000 in 2006.

A. Measures adopted for the implementation of the right to form unions

250. Seeking a negotiated solution to the current system, the Federal Government established the National Labor Forum, a tripartite body consisting of representatives of the Government,

employers, and workers. Presidential Decree No. 4976 of 2003 and Administrative Order GM/MTE No. 1029, also of 2003, assign to the Forum the task of promoting comprehension of the Brazilian labor relations system, and particularly of the union and labor legislation, as well as providing inputs for the drafting of bills aimed at union and labor reform in both the constitutional and infraconstitutional spheres.

251. The Forum met for almost two years to reach a consensus on the drafting of Constitution Amendment Bill No. 369 in 2005, and the Union Relations Bill, which thoroughly modified the Brazilian union structure in conformity with ILO's Convention No. 87. Significant progress has also been achieved in the implementation of better guarantees pertaining to public servants' right to union organization, collective bargaining and strike. After these changes, discussions are now under way for ratification of ILO's Conventions Nos. 151, as well as 150 and 185.

252. The completion of the Forum's task was followed by the establishment of the *National Labor Relations Council-CNRT*, a key element of the package known as "May 2006 Package", in commemoration of Labor Day. The Council consists of five representatives from each participating sector - Government, workers, and employers. Its purpose is to seek consensus on issues such as mediation of conflicts between unions, and the formulation of public policies. The CNRT has two bipartite chambers - one of Government and employers representatives, and one of workers and Government representatives.

253. At the same time, union federations were legalized, a long-standing demand of the union movement and a subject of ILO recommendations. The legal recognition of these entities gives their representatives juridical support for negotiating with the Government and participating in public collegiate bodies, such as the *Deliberative Council of the Workers Assistance Fund-CODEFAT* and the *Board of Trustees of the Guarantee for Time in Service-FGTS*. Participation in public councils is subject to the following requirements: (1) membership consisting of at least one hundred unions distributed through the country's five regions; (2) representation of 20 unions in three of these regions; (3) membership of unions in at least five economic activity sectors; and (4) affiliation of workers with unions belonging to the Council with a minimum of 10 percent of affiliated workers nationwide. In brief, the participation of hundreds of union federations in councils and collegiate bodies becomes objective and linked to union representativeness - a guarantee of a greater degree of democracy in decision-making processes in the country.

254. The right to strike is fully guaranteed by the Federal Constitution. Law 7783/89 sets the legal limits to its exercise, such as general assembly approval and prior notice to employers. It also provides for the maintenance of essential services for meeting undelayable community needs, i.e., needs that, if unmet, entail imminent danger to the population's survival, health, and security. Agreements between employers and workers have provided for the maintenance of teams to prevent strikes from causing irreparable damage to property, machinery, and equipment, and to make possible the prompt resumption of operations when the strike is over. It is incumbent upon the Labor Public Defender's Office to bring Strike Disputes before the Labor Courts to ensure that essential activities are maintained.

255. The Federal Constitution also recognizes the civilian public servants' right to strike (Art. 37, VII) under the terms and limits set by a complementary law to be issued. In the absence of regulation, there occur differences among national courts. The Supreme Federal Court has

been against the exercise of this right, based on the allegation that “the right of civil servants to strike requires the completion of the norm set by Art. 37, VII of the Federal Constitution, through the issuing of a complementary law defining the terms and limits of the exercise of civil servants’ right to strike. Impossibility of analogical application of Law 7783/89”.²⁵

256. The growing number of complaints regarding murders of union leaders, as well as police investigations and legal suits which would involve, in the view of organs representative of labor, the criminalization of union activities in several States of the federation, elicited concern and required swift intervention of the public agents of the three Powers.

Article 9

257. After the promulgation of the 1988 Federal Constitution, Brazil set up its social security system in line with the recommendations contained in ILO’s Convention No. 102 of 1952, what means, in conventional terms, “*social protection provided by society to its members through a series of public measures against economic and social deprivation, whose lack would cause the disappearance or drastic reduction of their earnings owing to sickness, maternity, employment injury, professional sickness, unemployment, incapacity, old age, and death, as well as medical care and support to families with children*”.

258. Accordingly, the Brazilian system implicitly adopted the above concept and, explicitly, some key principles that should govern all policies pertaining to social security, welfare, and health: (1) universal coverage and assistance; (2) uniformity and equivalence of rural and urban benefits; (3) irreducibility of the value of benefits; (4) diversity of the financing base in the form of a Social Security Budget (autonomous); and (5) democratic character of social security subsystems (social security, health, and welfare).

²⁵ Writ of injunction no. 485. Similarly, the Court decided in connection with Direct Unconstitutionality Action No. 3235 that “it is not unconstitutional the state law that determines the prompt dismissal of a civil servant under probation for his participation in the paralyzation of services by strike. The civil servants’ right to strike has not yet been regulated and thus Art. 37, VII of the Federal Constitution does not apply.” The Superior Labor Court has decided in a similar manner (RMS No. 8811): “Strikes by civil servants shall remain illegal as long as the complementary law required by the Federal Constitution, Art. 37, VII is not issued.” On the other hand, the position of Federal Supreme Court Justice Marco Aurélio Mello summarizes the magistrates’ thinking that recognizes the exercise of the right to strike by civilian public servants: “The fact that the right to strike, constitutionally granted to civil servants, has not yet been regulated should not be ascribed decisive force although ten years have passed since the promulgation of the 1988 Federal Constitution. Until this happens, there prevails not the lack of the right, but the lack of guideposts to shape it. Nonpayment of the strikers’ salaries is an enormous act of force, alien to the principle of reasonability, that ignores the workers’ dignity and makes unfeasible the enjoyment of a constitutionally guaranteed right (SS 2061).”

259. The social policy implemented on the basis of these principles seeks to provide social protection to individuals that are at social risk and their families. These individuals are assisted in a specific way under a contributive Social Security system; a free Social Welfare system directed at poorer segments that have no contributive capacity; and a free Unified Health Service (see comments to Article 12).

260. The Brazilian contributive social security system has three branches. The first consists of the separate social security systems for civilian civil servants and for the military at the federal, state, and municipal levels.²⁶ A second subsystem consists of voluntary Complementary Social Security, whose objective is to provide complementary benefits to those insured by the private sector. Constitutional amendments no. 41/2003 and 47/2005 allow the establishment of voluntary complementary social security for the public sector also. A third subsystem is compulsory social security covered by the General Social Security Regime (RGPS), managed by the National Social Security Institute (INSS).

261. The General Social Security System allows differentiated norms that apply to rural workers under the family farming regime (insured rural workers). This differentiated treatment contemplates a form of contribution based on marketed production (paid by the purchaser), proof of time of service in family farming instead of individualized contribution time, age, and criteria of access to benefits different from the criteria for the urban insured. This category encompasses the spouse, companions, and children over 16 who work with the family in a rural activity. Also included in this category are artisanal fishermen, Indians, and *quilombolas* that engage in rural activities and their families.

262. These differences are justified by the fact that farmers under the family farming regime do not earn their income in the same way as urban workers, who can contribute regularly on the basis of their monthly salary. Just as there is no classic contributive link, the determination of the value of the benefit pertaining to retirement; death pension; sickness; or maternity follows the logical universal model of benefit whose constant value is equivalent to the minimum salary.

263. The noncontributive Social Welfare is based on the principle of decentralized management and is directed at the most vulnerable segments of Brazilian society. The system provides a series of services aimed at children, adolescents, the aged, and persons with disabilities, including home care, daily care, social services, nurseries, and shelters, among other services. Social Welfare also encompasses income transfer programs, such as the *Child Labor Eradication Program-PETI*, referred to under Art. 6, and the *Continued Benefit-BPC*, directed at the aged and persons with disabilities whose income places them below the indigence line.

²⁶ The separate social security regime is optional for the Federal Government. Civil servants of government levels that do not have their own social security system may be assisted under the same rules of the Social Security General Regime-RGPS.

264. Social Security and Social Welfare, coupled with other policies that are part of the social security system, provide benefits in the various areas covered by this Report: effective assistance pertaining to sickness, maternity, the elderly, invalidity, survivors, employment injury, and family. Benefits paid under the National Social Security Institute in each area will be addressed in the following paragraphs.

265. Social security in Brazil is a contributive system. This means that to be eligible for benefits under the system, an individual must contribute a share of his income throughout his life. Coverage is thus universal, provided the insured meets the eligibility requirements established by law (Annexes, Figs. 19 and 20). Between 1992 and 2002, the number of those considered socially unprotected increased. Since 2002, though, the unprotected percentage has declined, while the protected percentage has risen.

266. In 2005, spending on social security benefits accounted for 7.50% of GDP (Annexes, Table 34), as compared with net collections equivalent to 5.57% of GDP, entailing a financing requirement equal to 1.93% of GDP. There are two main reasons for the higher financing requirement. This growth is directly related to demographic factors in the last decade, which in turn are influenced by two phenomena: (1) lower birth rate; and (2) longer life expectancy and the attendant increase in the contingent of the aged in the Brazilian population. In 2000, life expectancy was 64.5 years for men and 68.6 for women; in 2004, it was 67.9 for men and 71.7 for women (Annexes, Fig. 21). The birth rate, on the other hand, dropped from 3.2% in the 1980s to 2.0% in the current decade (Annexes, Fig. 22). The second factor is related to the benefit readjustment policy, particularly as concerns benefits equal to a minimum salary, which accounted for 65.7% of total benefits paid out in December 2005. Readjustments have exceeded inflation, thereby increasing the beneficiaries' purchasing power and quality of life. Between 1998 and 2005, the average value of social security benefits had a real increase of 16.2 percent (Annexes, Fig. 23). In 2005, the system paid an average of 23.5 million social security benefits, which are social policies' main form of contributing to the fight against poverty and income inequality in the Brazilian economy (Annexes, Box 22).

A. Measures adopted for the implementation of the right to social security

267. The most significant change in the legislation in the period covered by this Report was the reform of the civil servant's Social Security system in 2003 (Constitutional Amendment No. 41/2003), which was complemented in 2005 (Constitutional Amendment No. 47/2005). This reform approximated the rules of the civil servant's social security to those of the social security of private sector workers. The main changes introduced by Constitutional Amendment No. 41/2003 were as follows: the setting of a ceiling on the remuneration of civil servants and of Federal Supreme Court Justices; the setting of a ceiling on the pension of employees who joined the civil service after the reform's promulgation (as of January 2004), equal to the maximum benefit paid by the private sector worker's social security, with the option of a complementary social security fund still to be regulated; the establishment of the solidarity social security contribution by retirees and pensioners to the financing of separate regimes; and the adoption of incentives for civil servants eligible for retirement to stay active longer. Constitutional Amendment No. 47 introduced innovations such as the possibility of the establishment of a special, inclusive social security system for low-income workers and for those that have no personal income or work at home; and allowed the adoption of differentiated requirements and criteria for persons with disabilities.

268. With respect to specific social security aspects, there are various programs for the implementation of specific rights. Effective assistance in case of sickness is rendered through the sickness and work accident benefit. The latter is granted in case of temporary incapacity for work for reasons related to the insured's job and work environment. This benefit is granted for all types of incapacity. To be eligible for sickness benefits, the worker must have paid 12 contributions, whereas the work accident benefit requires no previous payment. To claim benefits, the insured must submit proof of contributions and undergo an examination by a medical panel, which will determine the temporary incapacity and its duration.

269. Recent years have seen a marked increase in the number of sickness benefits granted. Between 2000 and 2005, there was a 143-percent increase in new sickness benefits (Annexes, Box 23). In 2000, 766,900 sickness benefits were granted; in 2005, this number jumped to 1.86 million. In 2000, 492,000 benefits were paid out, as compared with 1,492,000 benefits paid in 2005, an increase of about 203 percent (Annexes, box 22).

270. Maternity benefit is granted in the form of a maternity salary. Women are entitled to the maternity benefit for a period of up to 120 days. Between 2000 and 2005, the maternity benefit coverage was expanded. Until then only women in the formal sector of the economy had access to this benefit. Although domestics and rural women had right to the benefit, they did not always exercise this right, a situation that began to change during these past five years. As from 2000, women that contributed individually were also extended this right. Moreover, in 2000 a rights awareness campaign carried out in rural areas had an impact on the number of maternity benefits paid to special insureds. Still with respect to expanded coverage, it should be noted that, as from 2002, adoptive mothers became eligible for maternity leave, varying from 30 to 120 days, depending on the child's age, and provided that the adopted child is not over eight years old.

271. Assistance to the aged encompasses social security and social welfare benefits. Social security benefits consist of retirement based on age and on the length of contribution time, while social welfare benefits consist of the *Continued Benefit* in the elderly category. Age-based retirement in the urban and in the rural setting is subject to different rules. Urban workers become eligible at age 65 for men and 60 for women, subject to a minimum 15-year contribution period. In the case of this minimum period of contribution, the pension corresponds to 70 percent of the salary on which the contribution was based. This percentage can be raised, should the insured postpone retirement, but not beyond the compulsory retirement age. In the rural setting, men retire at age 60 and women at age 55. The age difference is justified by the difference in life expectancy, which is lower in the rural environment than in an urban setting. To be eligible for retirement in the rural environment, applicants have only to provide proof of having exercised rural activity, the benefit corresponding to the social welfare threshold (one minimum salary). Considering urban and rural benefits and taking the month of December of each year as a reference, one notes a 19-percent increase in the number of age-based retirements between 2000 and 2005.

272. In the 1990s there was a rising trend in the granting of the age-based retirement benefit, as that was the period of regulation and maturation of the changes introduced by the 1988 Federal Constitution in the social security system for the rural environment, the main factor in the expanded coverage of this benefit. In 1992, for instance, when the payment of rural benefits

pursuant to the new regulation began, 4 million benefits were paid, as compared with 7.3 million in December 2005.²⁷ Age-based retirements in the rural environment predominate: out of 6.7 age-based retirements paid in December 2005, 4.6 million were rural retirements. With the consolidation of the inclusion of rural social security, the increase in the number of age-based retirements has basically followed demographic dynamics. Between 2000 and 2005, the number of benefits granted rose by 10.5%.

273. Social Welfare protect the elderly by granting the *Continued Benefit to the aged (BPC aged category)*. This benefit was created in 1996 to supersede the *Monthly Income for Life-RMV*. The latter was established in the 1970s and granted until the *Continued Benefit* under the Organic Social Welfare Law was regulated. It was paid to people aged 70 or older or to persons with disabilities and was relatively exclusive, as applicants must have paid at least 12 social security contributions in the course of their lives. This requirement excluded the most vulnerable groups, which had never participated in the formal economy. In addition, it amounted to only half a minimum salary.

274. The *Continued Benefit* corresponds to one minimum salary and requires no financial contribution but is directed only at people having an income of less than ¼ of the minimum salary. It is coordinated by the *National Social Welfare Secretariat*, implemented by the *National Social Welfare Institute*, and financed by the National Social Welfare Fund. At its creation, the eligibility age was 70, which was lowered to 67 in 1998. With the advent of the Statute of the Aged, the eligibility age was set at 65. The lowering of the eligibility age explains the rising trend in the number of *Continued Benefits* granted: in 2000, they totaled 107,500; in 2004, when the Statute of the Aged entered into force, 317,000 benefits to the aged were granted. In 2005, the total was 185,000. The changes in the minimum eligibility age for Continued Benefits meant great progress in terms of coverage of the extremely poor. In December 2005, a total 2.27 million Continued Benefits were paid to the aged, at a monthly cost of R\$365.4 million. There is still much room for expanding the coverage of the Continued Benefit, as, according to the 2003 National Household Sample Survey, there were about 150,000 people over 65 with a per capita income of less than ¼ of the minimum salary, who were receiving no benefit.

275. The Continued Benefit to the Aged (which does not require financial contribution) and the age-based retirement in rural areas (for which workers must produce proof of the time they have worked on family farming in lieu of time of contribution and for which a different form of contribution applies, based on the marketing of their rural production, if any), both equivalent to one minimum salary, are meant to lift out of poverty a significant portion of the Brazilian population. In 2004, according to the National Household Sample Survey, 30 percent of Brazilian households that declared their income lived below the poverty line. This figure would rise to 42.1 percent, were it not for the Social Welfare and the Continued Benefit payments, i.e., these benefits reduced the poverty level by 11.5 percentage points, which means that 20.4 million people rose above the poverty line (Annexes, Fig. 24). It is also noticeable that

²⁷ Welfare benefits included, whereas social security benefits alone totaled 7.1 million.

the poverty level among the aged is substantially lower than among the younger population; without social security transfers, poverty among the aged would substantially rise. The linking of benefits to the minimum salary helps to lift people out of poverty because the minimum salary is annually adjusted above the inflation rate.

276. There is also pension based on contribution time (ATC). This type of pension does not exactly cover a social security risk, as the eligibility criterion is linked to the time of contribution and not to age or other social security risk. It may be full or proportional, in the case of covered individuals who enrolled prior to December 16, 1998. To be eligible for full pension, a male worker must prove that he has contributed for at least 35 years, while the requirement of contribution time for women is 30 years. To be eligible for proportional pension, the worker must meet two criteria: contribution time and minimum age. The number of retirements based on contribution time rose 10 percent between 2000 and 2005.²⁸ (Annexes, Box 22). Since the 1998 social security reform, contribution time-based retirement (ATC) replaced retirement based on time of service and is subject to the incidence of the *Social Security Factor*.

277. The *Social Security Factor* was introduced in 1999 and consists in a formula for calculating the initial value of pensions based on time of service or age, as the retiree may choose. It takes into account the applicant's time of service and life expectancy and provides a premium for his or her remaining active. Its implementation was gradual, so that it became fully operational only in 2004. The purpose was to raise the average retirement age and in this regard it has been successful. Since this factor's introduction, women's average retirement age rose from 49.7 to 52.2 years and men's from 54.3 to 56.9 years. Time of contribution rose from 27.5 to 28.7 years for women and from 32.7 to 33.8 for men.

278. Retirement for invalidity, in case of incapacity or illness, is subject to the opinion of a medical panel of the National Social Security Institute confirming that the insured is wholly or partially incapacitated to discharge his functions. According to the usual procedure, a worker receives initially a sickness-based pension, which is then changed into invalidity pension if he can no longer resume working.

279. There is also a Social Welfare benefit for persons with disabilities (BPC-PPD), introduced in 1996. The number of persons receiving this benefit rose 22.8% between 2000 and 2005. To be eligible a person must have an income of less than $\frac{1}{4}$ the minimum salary and provide proof of his or her disability. Every two years a review occurs to determine whether the conditions on which the benefit was granted still persist. The review process consists of assessments by social workers on home visits and by medical experts.

280. The pace of applications stabilized between 2000 and 2005. The peak occurred between 1996 and 1997, when the Continued Benefit began to be granted on the basis of a new definition of disability, as the right to the benefit was extended to persons with a congenital disability, without the requirement of prior financial contribution.

²⁸ December of each year is the reference month

281. Survivor's benefit is extended as a death pension. A worker's family is entitled to the benefit if the deceased was insured by the time of his or her death, regardless of contribution time. If death occurs when the worker was no longer insured, dependents will be entitled to the pension, provided that he or she had met all the retirement requirements by the time of death. In 2000, 291,800 death pensions were granted; this number rose to 319,900 in 2005, a 9.6-percent increase (Annexes, Box 23).

282. Assistance to workers who are victims of work accidents may take the form of retirement for invalidity, death pension, sickness allowance, accident allowance, and supplementary allowance. Accident and supplementary allowances are indemnity benefits and may be cumulative with other types of social security benefits (retirement for invalidity, sickness allowance, death pension). The determination that an accident has occurred is conveyed by the enterprise through a *Work Accident Communication (CAT)*. The number of work accident benefits granted rose 4.6% between 2000 and 2005.

283. The forms of assistance to the family include a family allowance, which is paid to workers up to a certain age to help with the upkeep of children up to age 14 or to invalids of any age. Both employees and independent workers are eligible for this benefit. In 2005, the family allowance was R\$21.27 in the case of a worker earning up to R\$414.78, and R\$ 14.99 in the case of a worker earning up to R\$623.44. This allowance is adjusted annually. Payment of this benefit, just as the maternity salary, is incumbent on the enterprises, which may deduct from their social security contributions.

284. With a view to eliminating all forms of labor market's discrimination of certain categories and to expanding social security coverage to groups excluded from the labor market, the *Social Security Education Program-PEP*²⁹ aims at bringing under Social Security a segment of the population that, although eligible for enrolling and for receiving social security benefits, fail to do so because of lack of knowledge or indifference.

285. The *Social Security Education Program-PEP* promotes enrollment in Social Security and other initiatives aimed at expediting services and ensuring the users' convenience. It publishes institutional information on the importance of social security for workers and regularly holds orientation sessions on social security benefits and services, as well as establishing partnerships with segments of organized civil society.

286. To meet the challenge of expanding as much as possible social security inclusion, the Government issued Provisional Measure 284 on March 6, 2006, providing an incentive for the formalization of domestics by allowing employers to deduct from their income tax the social security contribution pertaining to the hiring of domestics.

287. To strengthen Social Welfare and ensure wider access to benefits in a sustainable manner, the Brazilian Government has acted on various fronts for improving the management and quality of the services provided by the social security system. The Assistance Management Program

²⁹ This program was mentioned in the 2001 Report as *Social Stability Program-PES*.

seeks to shorten lines, reduce waiting time, and improve the quality of services. The daily office hours for the public were extended by two hours. Several services are also provided through the Internet, such as application for the sickness benefit and scheduling appointments.

288. At the same time, the Brazilian Government has intensified its fight against fraud, setting up task forces that work in conjunction with the Public Prosecutor's Office and the Federal Police, and undertaking a social security census, which by re-enrolling recipients, seeks to cancel undue benefits paid or that should already have stopped.

289. As regards international assistance, the Brazilian Government is a signatory, with Argentina, Paraguay, and Uruguay, of the *Mercosul's Social Security Multilateral Agreement* that went into force on June 1, 2005. This agreement establishes norms for regulating social security relations among the signatory countries and grants social security coverage to international migrants from within the bloc. From now on, under the agreement, a Brazilian worker who has contributed to the Paraguayan social security system, for instance, will receive benefits at retirement in that country, according to the time of employment under that system. In connection with the agreement, there was discussion for the first time of the possibility of including civil servants in a social security system of their own. It is expected that about 2.1 million workers who are active away from their home countries will benefit from it. There are about 733,000 foreign workers in Brazil, 370,000 of them from Mercosul countries. Under international retirement agreements, beneficiaries may receive pension from the two countries, proportionate to their contribution time in each country. A worker who works in another country for a determined period of time is issued a Temporary Move Certificate, which allows him to continue contributing to his home country's social security system.

Article 10

290. In establishing the family as the foundation unit of Brazilian society and according it the State's special protection, Art. 226 of the Federal Constitution incorporates Art. 16 of the Universal Declaration of Human Rights. For the Brazilian Constitution, the family is formed through the union of [two] people in marriage - a stable union between man and woman - and the group formed by an adult and his or her children, with no distinction among children born in or out of wedlock or adopted. All children are equally legitimate.

291. The family's centrality is reiterated in the specific legislation pertaining to Social Welfare - the Organic Law on Social Welfare (LOAS-Law 8742/93), the Statute of the Child and the Adolescent (ECA-Law 8063/90), the Statute of the Aged - and more recently, in the National Social Welfare Policy that places the family at the center of social protection.

292. The 1988 Federal Constitution, in its Chapter VII. Article 229, has specific provisions on the family, children, adolescents, and the elderly and on the reciprocity of care between parents and children: "*It is the duty of parents to assist, raise, and educate their minor children and it is the duty of children of age to help and assist their parents in old age, need, or sickness.*"

293. Protection of the family³⁰ in Brazil encompasses three areas of rights protection: assistance to families in a situation of poverty; assistance to families in which domestic violence occurs; and recognition of the changes in the family format and dynamics. Protection is accorded through (1) income transfer programs, particularly the *Family Grant Program*, directed at families with a monthly per capita income of less than R\$120; (2) social support to families in a vulnerable situation and that are victims of rights violations; (3) the Judiciary, which in response to the new family patterns interprets the Constitution in a comprehensive way, as is required today.

294. The *Family Grant Program* is characterized by the conditional income transfer for the protection of families in a situation of poverty. Initially, the target was to assist 11.2 million families with a per capita income of less than R\$100. In May 2006, over 9 million received the benefit and the target should be achieved by end-2006 (Annexes, Table 35).

295. The social counterpart under the *Family Grant Program* helps families to enjoy the social rights guaranteed by the Federal Constitution. Thus, the provision of the cash benefit requires the monitoring of the family members' attendance at school and at educational, health, maternal-infant, and food security services. Recipient families must (1) enroll their children aged 6 to 15 in school; (2) ensure that their children attend at least 85 percent of classes each month; (3) keep up-to-date the vaccination of their children and follow up the development of their minor children up to age 7, in conformity with the timetables established by the Ministry of Health; (4) in the case of pregnant women, to present themselves for examinations before and after delivery; and (5) in the case of nursing mothers, to participate in activities related to breast feeding and healthy food, promoted by local health care agents. Compliance with these requirements is monitored by the Ministries of Education and of Health in their respective fields, on the basis of data provided by the local administration.

296. *Family Grant* is the most comprehensive income transfer program implemented by the Brazilian Government, but not the first. At the time of its establishment, there were six similar federal programs: *School Grant* (Ministry of Education); *Food Grant* (Ministry of Health); *Cooking Gas Allowance* (Ministry of Mines and Energy); *Meal Ticket, Child Labor Eradication Program (PETI)*, and *Agente Jovem* [Young Agent]. The target public, the implementation of these programs by different ministries, and the difficulty in sharing data on beneficiaries entailed distortions. The *Family Grant* was conceived as a form of rationalizing these programs and making them more effective.³¹ Merging these programs made possible a Unified Register of

³⁰ Social benefits for protection of the family pursuant to the Organic Law on Social Welfare have been addressed under Article 9 of this Report.

³¹ Table 37 in the Annexes shows each program's outlays and the number of its beneficiaries. Even making allowance for errors such as duplication of benefits, not shown by the data, it is possible to note a significant increase in the number of recipients and in the amount received.

beneficiaries, subject to the same requirements and conditions. The merge is being accomplished in two phases: in the first, now nearing completion, the *School Grant*, the *Food Grant*, the *Cooking Gas Allowance*, and the *Meal Ticket* have been merged; in the second phase, begun in 2006, the *Child Labor Eradication Program* is being added to the four already merged. (Annexes, Tables 38 and 39)

297. The cash benefit directly transferred to families under the *Family Grant Program* varies from R\$15 to R\$95. The amount is determined in accordance with the family's makeup and financial situation and is split into two parts - basic and variable. Families living in extreme poverty, whether or not they have children and pregnant or nursing members, receive a fixed amount of R\$60 per capita. To this basic amount is added a variable amount equal to the benefit received by poor families (R\$120 per capita), paid to families with at least one child of up to age 15, a pregnant or a nursing member, as follows: one member, R\$15; two members, R\$30; three or more members, R\$45. As poor families do not receive the basic amount, the maximum they can receive is R\$50. Families living in extreme poverty receive up to R\$95. In some states, such as São Paulo, and in some municipalities, such as Recife, the benefit is larger because their respective governments add a counterpart to the amount paid by the Federal Government.

298. The *Family Grant Program* ascribes to the municipalities the responsibility for enrolling beneficiaries and the Ministry of Social Development and Struggle Against Hunger transfers the benefit funds directly to the municipal government. The program is funded by the social security budget, which forms part of the Federal Government's General Budget. In 2005, cash benefits to families totaled R\$6.78 billion, nearly 0.35 percent of GDP in the period, estimated at R\$1.947 trillion. These resources fund the *Family Grant Program* as well as the Remaining Programs that are being merged with it.

299. The treatment accorded to women under the *Family Grant Program* should be pointed out. Law 10836 of January 9, 2004 which established the Program, provides that the legal responsibility for the family vis-à-vis the program should be preferentially entrusted to women. Thus, in a beneficiary family, the woman is responsible for keeping the bank card and the password that must be used for withdrawing the benefit. It is estimated that in January 2006, 90 percent of recipient families had a woman in this role.

300. Studies undertaken by independent institutes commissioned by the Ministry of Social Development and Struggle Against Hunger show that the *Family Grant Program* has improved the life of beneficiary families and spurred the local economy. A survey in which 2,317 families were interviewed in 86 municipalities of different regions of the country showed that (1) the average monthly income of *Family Grant* recipients grew 21 percent; (2) 87.8 percent think their life conditions have become better or much better after they joined the program; (3) 82.4 percent of those interviewed think that their food quality improved since their inclusion in the program; and (4) 44.7 percent think that the benefit received is sufficient for all in the family to eat well (Source: Instituto Polis/MDS).

301. Another study found that the *Family Grant Program* has a positive impact on municipal revenues, as higher family income spurs the circulation of money in the locality. As the program is targeted at families in situation of poverty and extreme poverty, most of which are concentrated in the Northeast, the higher income stemming from the program was more pronounced when compared with the rest of the country. Moreover, the *Family Grant Program*

has helped reduce regional inequalities as, by helping poorer families, its positive effects are better noticed where the number of these families is greater (Source: *Pontifícia Universidade Católica de São Paulo/MDS*).

302. The poorer the municipality, the greater is the importance of the *Family Grant Program* for its economy. In some cases, the program accounts for much of its economic activities. In Medina, state of Minas Gerais, for instance, the program's contribution is 35 percent higher than the municipality's revenues from the sales tax, 30% higher than what the municipality receives from the Government as its share of federal tax revenues, 29 percent higher than its available receipts (local receipts plus constitutionally mandated transfers), and 165 percent higher than federal funds transferred under the Unified Health System. In Pedra Branca, state of Ceará, it equals 43 percent of available receipts; and in Vitória de Santo Antão, state of Pernambuco, it also equals 40 percent of available receipts.

303. The Ministry of Social Development and Struggle Against Hunger's most recent survey on school attendance by children of assisted families shows that in 24,965 families (0.31 percent of the total) there is at least one child whose attendance is short of the expected and this percentage is higher in the state of São Paulo - 8,823 families, or 1.08 percent of the total³²). Although the percentage of families that fail to comply with the school attendance requirement is relatively small, this is a problem that must be addressed.

304. In view of media reports of noncompliance with requirements and undue appropriation of benefits, the federal Government has intensified supervision, establishing quarterly deadlines for the municipalities to submit reports on the children's school attendance.³³ Sanctions are applied in successive steps when the child is included in the noncompliance list: written warning; suspension of the benefit for one month and double pay the following month; interruption of the benefit for 60 days, after which payment is resumed; new interruption of the benefit; cancellation of the benefit for repeaters.

305. The four steps before final cancellation may seem proof of the system's leniency, susceptible of being the target of criticism by stricter people, who might see any slip on the part of beneficiaries as proof of laziness. A well-rounded view of poverty, though, takes into account the social and psychological conditions produced by poverty. This is why the first sanctions are flexible, as the purpose is not to exclude these families but to convince them to comply with the established requirements and thus enjoy the right to health and basic education.

³² ANGÉLICO, Fabiano, *Projeto Reforça Requisitos do Bolsa Família*. www.pnud.org/pobreza_desigualdade/reportagens/index.php?id01=1721&lay=pde, accessed on January 13, 2006.

³³ ASCOM/MDS. *Patrus Ananias's lecture on the Family Grant Program before Public Prosecutors*. www.mds.gov.br, accessed on February 5, 2006.

306. The program's intent of facilitating the beneficiaries' access to various rights³⁴ includes psychosocial follow-up for promoting emancipation and autonomy. The *Family Grant Conditionalities Manager* announced the launching early in 2006 of a pilot project for the follow-up of families by specialized professionals.³⁵

307. As regards the second family protection component, targeted at women and children in a vulnerable situation, the main measures adopted are known as *Complementary Educational Initiatives*, *Protective School*, and the *Specialized Social Welfare Reference Center*.

308. The *Complementary Educational Initiatives* developed by the Ministry of Education aim at keeping children, adolescents, and young persons occupied with educational, sport, and leisure activities after school hours. These initiatives also support emancipating projects aimed at the families' inclusion and social promotion through vocational training, as well as projects aimed at the development of an ecological awareness; respect for racial and gender differences; respect for cultural diversity; knowledge about sexual orientation and disease prevention; and notions about ethics and citizenship.

309. Agreements were celebrated in 2004 with 34 non-governmental organizations located in 15 states, involving outlays totaling R\$3,627,905.38 to cover expenditures with monitors' qualification, training, and upkeep allowance; basic materials (school, art, sports, educational, and leisure supplies); and transportation for the target public. It is estimated that under these agreements 21,700 people have been benefited and about 1,540 teachers and other educational professionals of 403 schools have received training.

310. One of the *Educational Support Initiatives* is the *Protective School Program*, which has the following purposes: to train educational professionals for identifying children and adolescents that are victims of physical or psychological violence, negligence, abandonment, sexual violence and commercial sexual exploitation; to enlighten parents about the damage caused by the various forms of violence to the physical and psychosocial development of children and adolescents and to the whole family; to break the violence cycle in their daily lives through Family Pedagogical Groups to offer guidance and encourage reflection about their habits and behaviors and to restore the family's role as caretaker and provider.

311. Introduced in 2004, the *Protective School* pilot project has assisted 271 children and 187 adolescents in three capitals: Belém, Fortaleza, and Recife. In 2006, this program was incorporated into the federal Government's *Program for Integrated Reference Initiatives for Combating Sexual Violence against Children and Adolescents-PAIR*. This program has

³⁴ ROMANO, Jorge O. and ANTUNES, Marta. *Introdução ao debate sobre empoderamento e direitos no combate à pobreza*. In ROMANO, Jorge O. and ANTUNES, Marta (orgs.) *Empoderamento e direitos no combate à pobreza*, p. 6. www.actionaid.org.br, accessed on December 20, 2005.

³⁵ ANGELICO, fabiano. Projeto Reforça requisitos do Bolsa Família. www.pnud.org.br/pobreza_desigualdade/reportagens/index.php?id01=1721&lay=pde Accessed in January 13 2006.

strengthened the network for combating sexual violence in the municipalities through the coordination of educational, health, welfare, and public security efforts aimed at (1) preventing the fragmentation of assistance to victims; (2) reinforcing the prevention of this grave rights violation; and (3) strengthening the Government's capabilities for punishing perpetrators. The program, which is under implementation in nine states, is the result of continuous cooperation among the federal, state, and municipal governments, and civil society.

312. Combating sexual abuse and exploitation of children and adolescents has led to the establishment of a specific body, namely, the *Specialized Social Welfare Reference Center*, which carries out social welfare initiatives and provides psychosocial and legal assistance to children, adolescents, and families that are victims of violence. This service's coverage has been expanded from 314 to 1,104 municipalities, 760 of which were added in 2006. Its assistance capacity has been expanded to 51,800 children and adolescents. The program's implementation is decentralized and the responsibility for it is shared by the municipalities and states, which provide technical and financial support. About 99.5% of the budget (R\$35.2 million) have been earmarked and 98.40% were spent.

313. Psychosocial and legal assistance is important for children, adolescents, and families, as this raises their self-esteem and includes them under other public policies, such as health, education, work, housing, and income complementation policies. One of the challenges in assisting victims of and combating sexual exploitation of children and adolescents, a complex phenomenon of difficult solution, is the indicting of abusers and exploiters.

314. Regarding children and adolescents in a situation of abandonment and subject to social and personal risk, who live in shelters, the main goal of the Government is to guarantee their right to family and community life, by encouraging the development of actions on the part of local institutions and governments that will strengthen new modalities of non-institutional sheltering, as well as incentives to legal adoption and the implementation of actions, in tandem with the rights councils, to promote the reorganization of institutions according to the provisions of Article 92 of the Statute of the Child and the Adolescent. In order to prevent the abandonment of children and adolescents in institutions due to lack or shortage of material resources, the Federal Government has been implementing the National Plan of Integral Assistance to Families (PNAIF). This plan is focused on the family, which permits the integration and promotion of actions aimed at specific problems, thus avoiding the actual occurrence of situations of violation of rights, as would be the case of child labor and sexual violence. An essential element of the Nation Plan of Integral Assistance to Families is the complete attention to the needs of the families through the widening of the local networks of socio-assistance actions and the implementation of reference centers for social assistance in the municipalities.

315. In the international field, Brazil hosted in August 2006 the Meeting of Intergovernmental Specialists to Review the Draft International Directives on Alternative Protection and Care for Children Devoid of Parental Care, a question under debate by specialists since 2001. Armed conflict, great natural disasters (*tsunamis* and hurricanes), the global epidemics of HIV/AIDS, extreme poverty and social inequalities in some regions of the world have brought the severance of links between children and their families, which requires preventive action and alternative care. In designing international directives to guide the action of States and try to unify the different approaches to the issue, specialists and Government representatives took an important step to widen the legal framework in this field. Brazil was chosen to host the meeting because

the National Plan of Family and Community Companionship is at an advanced stage of debate. It is expected that the systematization of the contributions by the representatives of 50 countries be completed by October and that the final version of the document is submitted by Brazil to the 2007 United Nations General Assembly, for evaluation and discussion.

316. Changes undergone by society have led to the discussion of the concept of family, as the classic elements of its definition (sexuality, procreation, and life together) are no longer interwoven as before. A family can now be seen as a group of people united by blood, alliance, or affinity ties that determine reciprocal, mutual obligations, organized on the basis of generation and gender relations.

317. As a result of these changes, references to economic unit, time and place were superseded in the understanding of the concept of family. This poses a challenge for the State with respect to protecting through norms and public policies the contemporary familial groupings. The *Family Grant Program* itself has to deal on a daily basis with social groups that make up poorer family units (grandmother and grandchildren, unwed mothers with children, a mother that raises a brother's children in addition to her own children, and so on). The Judiciary has been quicker in incorporating advances in this area than the legal norms have been in adapting to this new reality.

318. The Judicial Power has played an important role in adapting legal norms to this new reality. The right to assistance from the family applies to both children and parents, depending on the situation. Upkeep may be ensured by the parent to minor children or to children of age in case of proven need, and by the children to their elderly parents who need it. For a better understanding of this protection, it is worth quoting a Superior Court of Justice decision: "The ex-husband's pretension to obtain from his ex-wife reimbursement of payments of child support on behalf of the daughter assisted by him (born of and adulterous relationship of the ex-wife) during their life together as a family, and to whom he paid alimony after separation under the homologated agreement, cannot be accepted. The child support obligation persists even in case of error about the de facto situation and is based on the life together and custody while the couple was married and living under the same roof, as well as on the separation agreement. What is paid as child support is neither repealed nor compensated. As regards a child born out of wedlock, it may be excluded from the inheritance and disinherited, but nothing is said about the obligation to return payments for its raising (Superior Court of Justice: REsp 412684)."

319. Regarding homo-affective relationships, in a recent decision regarding the family makeup, the Federal Supreme Court understood that: "The Constitution grants special protection to the family, independently from the celebration of marriage, as well as to families with one parent. But family is not defined solely on the basis of the bond between a man and a woman or of the life together of ascendants and descendants. People of the same sex or of different sexes that live together and are united by bonds of affection without sexual connotation should also be recognized as a familial entity. Offspring is not essential for two people living together

to deserve legal protection, which does not warrant excluding homo-affective relations from the concept of family. [...] This responsibility of seeing the new has been assumed by the Judiciary in endowing extramarital relations with juridical legitimacy. It should now display equal independence and courage with respect to same-sex unions.”³⁶

320. The Courts have recognized the homo-affective relationship in the case of inheritance, partition and child custody, as the following decision of the Court of Justice of the State of Rio Grande do Sul shows: “Summary; Declaratory Suit. Recognition. Stable union. Homosexual couple. Compliance with requirements. Pertinence. The declaratory action is the proper juridical instrument for recognizing the existence of a stable union in a homoerotic partnership, provided the presuppositions proper to that familial entity have been affirmed and proved. Modern society, subjected to the evolution of customs and to judicial decisions, is attuned to the intention of homo-affective couples to come out of the segregation and repudiation niches in search of the normalization of their condition and of equality with wedded couples.”³⁷

321. More recently, some decisions have won another victory for homosexuals, with the recognition of the right to adoption: “Civil Appellation. Adoption. Couple consisting of two people of the same sex. Possibility. As can be seen, there is nothing new under the sun, when the subject is the recognition of the right of two people of the same sex (two women, in this case), who are in a typically familial stable relation, to adopt children together. What has to be seen is whether this modality of adoption benefits the adopted child, a guiding criterion established by Art. 1625 of the Civil Code. [...] Specialized studies do not point to any inconvenience in having homosexuals adopt children; what is more important is the quality of the bonds and affection that characterize the familial environment into which the children will be incorporated and that link them to their care providers. It is thus high time to drop prejudices and hypocritical attitudes without scientific basis and to assume a firm stance in regard to the absolute priority set by the Constitution, which is to ensure the rights of children and adolescents (FC, Art. 227).”³⁸

Article 11

322. The Brazilian State did not have a specific way of measuring the degree of food insecurity in the population - neither through censuses nor through the yearly National Household Sample Surveys-PNAD. Thus, when the *Zero Hunger Program* was introduced in February 2003,

³⁶ Federal Supreme Court: Direct Unconstitutionality Action 300. Despite the Court’s position, judgment on the merit of the action did not occur owing to noncompliance with formal requirements. Access on August 25 2006. Available at www.stf.gov.br

³⁷ Hearing en banc approved by the majority. (Hearing en banc No. 70011120573. Fourth Civil Courts Group, Court of Justice, state of Rio Grande do Sul. Opinion writer: José Carlos Teixeira Giorgis, Decision of June 10, 2005).

³⁸ COURT OF JUSTICE OF THE STATE OF RIO GRANDE DO SUL.
Proceeding 70013801592.

the data utilized came from a 1993 study by the Applied Economic Research Institute-IPEA, titled *The Map of Hunger*, which identified 32 million people in a situation of food insecurity, i.e., without food in adequate quantities and of adequate quality.

323. 1990 PNAD data were used to figure the number of families that lacked sufficient income for adequate food. As family income and other indirect indicators are insufficient for identifying populations at food insecurity risk, a direct measuring scale similar to the one adopted by the United States Department of Agriculture-USDA³⁹ was used to measure food security and hunger. This food security and nutritional evaluation instrument by household is appropriate for diagnosing food insecurity and identifying populations at greater risk as well as for assessing the impact of public policies on the population's access to adequate food. The procedure was adopted for the first time in the 2004 PNAD, and the new methodology indicated a higher number of people in a food insecurity situation.

324. Nearly 400 people interviewed answered questions about their families' food security level. The recently released data show that 34.8 percent of those interviewed, approximately 72 million people, belonged to a family at a low-, middle- or high-level of food insecurity. This meant that in the previous 90 days, they had not had access to food in sufficient quantity and of adequate quality or felt they were at imminent risk of suffering some restriction in the near future.

325. In 12.3 percent of the households surveyed, people lived in a moderate food insecurity situation as compared with 6.5 percent living in a serious food insecurity situation. Serious food insecurity was understood as the situation in which people experienced hunger, which often was said to have occurred "nearly daily", "some days", or "one or two days" in the 90-day period that preceded the interview. Moderate food insecurity means limited access to food in sufficient quantity, without the experience of "going hungry". The total number of people living in one of these situations was estimated at 39.5 million.

A. Measures adopted for the gradual implementation of the human right to adequate food

326. In 2003, a marked change occurred in respect of the implementation of the right to food in Brazil. That was the year when the *Zero Hunger Program* was introduced, signaling the beginning of a new governmental policy for combating food insecurity. Since then, the right to food has been dealt with as a State responsibility, in conformity with the provisions of the International Covenant on Economic, Social, and Cultural Rights. Compliance with the human right to food by facilitating access to and direct provision of food in adequate quantity and of nutritional and sanitary quality in accordance with local cultural standards and respect for the environment became a Government priority.

³⁹ BICKEL et al., 2000.

327. *Zero Hunger* is an across-the-board policy under the responsibility of the Ministry of Social Development and Fight Against Hunger, encompassing initiatives by several other ministries and civil society's intense participation. Together with the Executive Branch, civil society forms part of the National Food Security Council, reestablished in 2003 - it had been established in 1993 and extinguished in 1995 (Annexes, Box 24).

328. The *Zero Hunger Program* consists of intersectoral, across-the-board State initiatives by all spheres of government; the implementation of joint initiatives by the State and society; the overcoming of economic, social, gender, and racial inequalities; the coordination of budget and management; and structuring initiatives and emergency measures. Its implementation is incumbent upon the Ministries of Social Development and Fight against Hunger; Agrarian Development; Health; Education; Agriculture, Livestock, and Supply; Labor and Employment; Science and Technology; National Integration; the Environment; and Finance. Coordination among the ministries that implement *Zero Hunger* policies makes possible well-planned, appropriate actions more likely to ensure access to food, the expansion of production and consumption of healthy food, job and income generation, higher schooling-level, better health conditions, access to sanitation and water supply, and improved municipal infrastructure - all taking citizenship rights into account.

329. Between 2003 and 2005, the federal Government spent R\$27.5 billion on *Zero Hunger*, in three main areas: (1) expansion of access to food; (2) strengthening of family farming; and (3) promotion of inclusive production, coordination, and mobilization. The program's main pillar is the expansion of access to food, which encompasses (1) income transfer programs and initiatives; (2) food and nutrition programs; and (3) access to information and education.

330. At first, income transfer was *Zero Hunger's* key initiative, implemented through the use of a Food Card, which granted R\$50 each month to families with a per capita income of less than this amount, on the condition that this amount had to be spent solely on food. Six months after its introduction, the Food Card and the other income programs were merged into the *Family Grant Program*, whose coverage has been gradually expanded, so that today it assists 11,1 million people, or 96,6 percent of poor families, which receive an average of R\$78 (US\$39) each month. Benefits are subject to the families participation in the educational and health programs designed to improve their living conditions and to promote their social inclusion. Surveys have shown that the money is actually spent on food.

331. The *National School Food Program* provides at least one quality meal a day for 37 million children and adolescents in public schools. Since the beginning of the current administration, the per capita/per day amount transferred to state and municipal governments has been readjusted by 40 percent, i.e., the unit value per day went from R\$0.13 (US \$0.06) to R\$0.22 (US\$0.091) (Annexes, Box 25).

332. The dissemination of knowledge about food is done through *Food and Nutrition Education* programs, which among other actions have distributed 54 million booklets in public and private elementary schools. Food waste is combated by *Food and Nutrition Education* programs and by the establishment of Food Banks, which manage donated stocks.

333. Employed workers benefit from the *Workers Food Program*, which assists 8.5 million people on the formal market, who receive a specific cash allowance for meals or food purchases. Coverage is 34 percent. There are also popular restaurants in great urban centers, where low-income workers can have a daily meal for R\$1 (about US\$0.45). The Food Banks, which now number 66, are also an efficient tool in combating food waste and promoting food donations to vulnerable groups. In addition, more than 112,949 families benefit from urban agricultural programs.

334. Efforts are also made to encourage cooperation between society and the federal Government to wage campaigns on combating hunger and on food and nutritional security. More than 106 partnerships have been established. The distribution of the above-mentioned 54 million booklets and of 700,000 notebooks for public school teachers countrywide has helped to inform and integrate families living in a social vulnerability situation.

335. Brazil's food security policy aims at guaranteeing food security now and in the future. The reinforcement of food production has three main components: the *National Family Farming Program-PRONAF*, the *Cistern Drilling Program*, and the *Purchase of Family Farming Products Program-PAA*.

336. PAA is one of *Zero Hunger's* mainstays. In 2003, the then Extraordinary Ministry for Food Security and Combating Hunger-MESA, in coordination with the Ministry of Agrarian Development-MDA and the Ministry of Agriculture-MAPA, and through the National Supply Company-CONAB, set up the *Food Procurement Program* as provided by Art. 19 of Law 10696 of July 2, 2003. PAA's main objectives are as follows: to guarantee that family farmers and those settled under the Agrarian Reform will be able to sell their agricultural and livestock production, encourage food production, and facilitate access to this food by families living in a food insecurity situation.

337. Vulnerable groups and traditional communities (*quilombolas*, Indians, and people of African descent) are also assisted. In addition to guaranteed free food distribution, programs fund projects in the area of food and nutritional security. One of these projects is the *Indigenous Portfolio*, which has invested R\$7,362,528 on indigenous communities' projects between 2004⁴⁰ and 2005, and another is *Equipment for Quilombola Communities* (assistance to *quilombo* remnants for the purchase and donation of equipment needed for food and nutritional security, such as manioc flour production equipment and fishing tackle).

338. Between 2003 and 2004, the *National Family Farming Program-PRONAF* celebrated about 4.3 million cost and investment contracts. Funding channeled to this program each year has been significantly increased in real terms. In 2002, R\$3.7 million were spent; in 2003, R\$4.7 million; and in 2004, R\$6.5 million, a 38-percent increase over the preceding year, while in 2005 the amount dropped to R\$5.8 million. This reduction was due in large measure to weather conditions, particularly to the long dry period in the South. Another positive fact was

⁴⁰ Year of the program's introduction.

the promulgation of the Family Farming Law in July 2006, which recognizes farmers and family farming as a productive segment, pursuant to the criteria adopted by PRONAF and the Ministry of Agrarian Development-MDA, thereby ensuring the institutionalization of public policies aimed at this sector.

339. In view of the fact that access to water is an essential element to solidify the right to food and nutritional security, the construction of cisterns in the semiarid northeastern region, where annual rainfall is concentrated in only four months and whose social indicators are the country's lowest, has provided farmers with water for domestic consumption. Since 2003, over 118,000 cisterns for collecting rainwater have been constructed through partnerships with civil society organizations. Residents are taught how to install the cisterns themselves with materials provided by the federal Government and civil society organizations. Since the project's beginning, more than 594,000 people have benefited from access to good quality water in their homes.

340. The promotion of productive inclusion encourages solidarity economy and comprises initiatives for qualifying low-income populations to help their own inclusion in the labor market. In this connection, 390,000 have already received training under projects implemented in association with the 27 state solidarity economy forums already in operation. Under these projects, whether or not coordinated at the national level by the Brazilian Solidarity Economy Forum, 15,000 undertakings have already been identified, all of which contribute to social inclusion.

341. Repeated reports of the death of Guarani Indian children from malnutrition in Dourados, state of Mato Grosso do Sul, led the federal Government to set up an *Indigenist Policy Managing Committee for Dourados* to formulate specific food security and nutritional security policies targeted at that community. Some of the initiatives implemented are as follows: (1) coordination and cooperation between agencies that operate on Indian lands and municipal governments; (2) setting up of *Aty* - an indigenous assembly consisting of 44 local leaders, as an implementation and social control instrument; (3) a higher number of basic food baskets distributed, giving priority to pregnant and nursing women, persons with disabilities, and the elderly - a total of 2,500 food baskets weighing 46 kilos is distributed each month; (4) construction of facilities for warehousing, assembling, and distributing food baskets in Dourados and Amambaí in partnership with the *National Indian Foundation-FUNAI* and the *National Health Fund-FUNASA*, under the Management Committee's coordination; (5) encouragement of the daily provision of *jakarupã*⁴¹ (soup) to children aged 6 months to 2 years that are at greater nutritional risk (indigenous women help prepare the soup, cutting and cooking the ingredients, while the children are weighed and vaccinated; and lectures by nutritionists on the importance of food and on food preparation; (6) completion of the drilling of artesian wells and the laying of pipes to supply with drinking water all homes in the Jaguapiru and Bororo villages; and (7) completion of the Dourados Indigenous Health Clinic-CASI.

⁴¹ A Guarani word meaning "we are eating, we are savoring".

342. In addition to these initiatives under implementation, the Brazilian State's interest in ensuring a food security environment in the country is reflected in efforts to rally the international community round the implementation of food and nutritional security in other developing countries; in the establishment of a legal framework for a *National Food and Nutritional Security System-SISAN* that will not be subject to political oscillations; and in the mapping out of food insecurity countrywide. It should be noted that the measuring of the food security level is now done annually through the National Household Sample Survey.

343. Combating hunger is a priority item on Brazil's domestic and external agenda. On the international front, the *Zero Hunger Program* stands out for contributing to the achievement of five of the eight Millennium Development Goals set by the United Nations: eradication of extreme poverty and hunger; universal basic education; promotion of gender equality and women's empowerment; reduction of infant mortality; and improvement of mothers' health. In respect of the first objective of reducing the percentage of the population living on an income of less than US\$1 a day, Brazil has already made significant progress and adopted a new target to be achieved by 2015: to reduce to one fourth the percentage of the population living on a daily income of less than US\$1.

344. The *Action against Hunger and Poverty* was launched by President Luiz Inácio da Silva in partnership with the Heads of State and Chiefs of Government of France, Chile, and Spain and with the support of UN Secretary-General Kofi Annan in New York in September 2004. This initiative's purpose is to foster international debate on innovative financing mechanisms for development and for combating hunger and poverty.

345. Also in 2004, at the *Food and Agriculture Organization's Council*, Brazil, together with 187 countries, adhered to the *Voluntary Guidelines to Support the Progressive Implementation of the Right to Adequate Food*. These voluntary guidelines were designed to provide practical orientation to the countries about their efforts toward the progressive realization of the human right to adequate food. In this connection, Brazil has rendered humanitarian assistance to Haiti, Thailand, and Sri Lanka by providing 142 tons of food.

346. In addition to these initiatives spurred by the *Zero Hunger Program*, Brazil has signed cooperation agreements and memorandums of understanding with Angola, Argentina, Bolivia, Cameroon, Egypt, Guatemala, Haiti, Mozambique, Peru, Uruguay, and Venezuela.

347. The II National Conference on Food Security, held in the city of Olinda (Pernambuco) in March 2004, adopted as its chief resolution the establishment of a *Food and Nutritional Security System (Sisan)*, under which the human right to food is to be realized in accordance with the aspirations and needs of the Brazilian people. From the time of the Conference until October 2005, when the issue was introduced at a National Congress seminar, there was wide debate of a bill on the requisite Sisan guidelines. Discussions took place at the *National Council on Food and Nutrition (CONSEA)* with the active participation of state and municipal Conseas, which had the opportunity to express their views through a nationwide videoconference.

348. After brief consideration by the Legislative, the draft submitted in October 2005 became Law no. 11.346, of September 15 2006. It is in conformity with the Covenant provisions and with the Committee's views, as one of the reference documents that helped to inspire it was General Comment No. 12 of the Committee on Economic, Social, and Cultural Rights.

349. The human right to adequate food has received attention from many quarters. In 2004, as a follow-up to the II National Conference on Food and Nutritional Security, Consea set up an ad-hoc Working Group to address the subject. At the meeting of July 2004, the Working Group proposed its transformation into a Standing Committee to the collegiate body and this was promptly done. It is incumbent upon the *Standing Committee on the Human Right to Adequate Food-DHAA* to monitor federal public policies for the realization of this right. A review of the National School Food Program led to the formulation of recommendations that have already been adopted by the Ministry of Education.

350. A DHAA meeting in January 2005 proposed the setting-up of a collegiate body consisting of Government and civil society representatives to examine denunciations of violations of the right to food. Negotiations involving the *Special Secretariat for Human Rights*, Consea, representatives of civil society, and the *Council on the Defense of the Rights of the Human Person* (CDDPH) resulted in the establishment, in 2005, of the Special Commission on the Right to Adequate Food. This Commission coordinates institutional responses to extremely serious hunger situations, malnutrition, and food insecurity, reflecting the Government efforts toward gradually reversing these situations through the employment of agile, effective instruments for investigating, preventing, and repairing violations of this right and expanding the opportunities for its enjoyment.⁴²

351. It must also be stressed that despite the progress achieved by the *Zero Hunger Program* regarding income transfer, social protection and promotion of the human right to proper food, the challenge to provide gradual “productive inclusion” of the families benefiting from the program still remains.

B. Right to housing

352. The right to adequate housing must be considered within the urban and the rural contexts. The framework of the national policy of urban development adopted by the Brazilian government falls under the wider perspective of the right to the city. This right, which is ensured under Arts. 182 and 183 of the Federal Constitution and regulated by the Urban Statute (Law 10257/2001), consists of the right to proper housing, full environmental sanitation, urban mobility for all, urban, legalized land, and a territorial order that meets the needs of all citizens. The establishment of the Ministry of Cities in 2003 sought to consolidate the right to the city at the institutional level, gathering under its umbrella the dwelling areas, environmental sanitation, urban mobility, and territorial planning, and formulating an integrated urban

⁴² The Commission membership consists of representatives of: (1) the National Council on Food and Nutritional Security-CONSEA; (2) the Council on the Defense of the Rights of the Human Person-CDDPH; (3) the Chamber of Deputies’ Commission on Human Rights; (4) the National Supply Company-CONAB; (5) the Federal Public Defender’s Office-DPU; (6) the National Health Fund-FUNASA; (7) the Ministry of Social Development-MDS; (8) the Federal Public Prosecutor’s Office-MPF; (9) the Special Secretariat for Human Rights-SEDH; (10) the National School Food Program-PNAE; (11) and the Office of the National Rapporteur for Human Rights to Adequate Food, Water, and Rural Land.

development policy. The recognition of the city's and of property's social function, expressed in the right to the city, is of particular relevance for Brazilian cities in view of the weight and extension of precarious settlements.

353. In terms of urban development, the realization of the right to the city means the effective incorporation of precarious settlements into the cities, where the right to adequate housing is actually realized, thereby making possible structural changes in the city's production and consumption patterns and in the form of appropriating the territory and the natural resources.

354. In recent decades Brazil has become urban to a high degree, with more than 80 percent of the population now living in the cities and their outskirts. The rapid urbanization process entailed a massive relocation of the poorest population segments, thereby making poverty an increasingly urban problem. Some figures illustrate the urbanization of poverty in Brazil. In 2002, over 85 percent of poverty were concentrated in urban areas, whereas 30 years ago poverty was a predominantly rural problem. Contrary to the usual perception of poverty in Brazil, the number of poor in the Southeast, the country's richest area, is practically the same as in the Northeast (37 percent and 39 percent, respectively). Poverty in the Southeast is metropolitan; in the Northeast it is concentrated in small and medium-size towns. The Brazilian housing deficit⁴³ is estimated at more than 7 million housing units, 80 percent of which in urban areas (5.5 million homes). The lack of adequate housing affects particularly the urban population with an income of up to five minimum salaries. It is further estimated that in 2005 there were over 25,000 homeless people in 35 cities, including 21 capitals and other 14 cities with a population of more than 300,000. In addition to the housing deficit, there is a large number of families living in precarious settlements. According to the 2000 demographic census, there were 1.6 million housing units in slums and similar settlements, where 6.6 million people lived (3.9 percent of the Brazilian population), distributed through 187 municipalities. The 2002 *Basic Municipal Data Survey-MUNIC* identified 16,400 slums, 33,400 tenement houses, 22,800 irregular subdivisions, and 16,800 clandestine subdivisions. The possibility of the emergence of slums and other types of informal settlements increases in proportion to a municipality's size.

355. Still according to the 2000 census, there were 168 million people living in permanent homes, of which 128 million in their own homes, 21 million in rented housing, and 4.5 million in loaned homes.

356. The 2002-2003 *Family Budget Survey-POF/IBGE* showed that a family's average monthly expenditure on housing is 30 percent.⁴⁴ This percentage is the family's maximum share of the

⁴³ The quantitative housing deficit is measured by the need of new constructions owing to the number of families sharing the same space, rustic and improvised housing, excessive rent burden, and replacement deficit. Data are from a study done by the João Pinheiro Foundation for the Ministry of Cities in 2005.

⁴⁴ It should be noted that POF data do not take into account the number of families that spend more than 30 percent of their income on housing but rather a family's average monthly housing expenditure.

family's income allocated to housing, according to the traditional criteria of the former *National Housing Bank*, now adopted by *Caixa Econômica Federal* [Federal Savings Bank], which considers this percentage the maximum tolerable direct expenditure on housing. A significant number of families earning up to 10 minimum salaries exceed this percentage. *Social Radar* (2005), an IPEA publication, reports, based on the 2003 PNAD, that rent places a burden on the domestic budget of about 5.7 million people (Annexes, Fig. 25) and that the number of people who pay rent grew 180 percent between 1992 and 2003. A typically urban problem, it assumes more acute forms in the metropolitan areas of Rio de Janeiro, São Paulo, and the Federal District.

357. The housing shortage is also reflected in the density of home occupation indicated by more than three people sharing one bedroom (Annexes, Fig. 26). Although there has been a reduction in the family's average size and an increase in the number of people living alone, about 17 million people (9.9 percent of the population) live in homes where more than three people share one bedroom. Of this total, 62.6 percent live in poor homes (household income of up to ½ a minimum salary per capita) and 66.7 percent in households headed by blacks (people who declared themselves to be black or mulatto), according to *Social Radar* (2005). However, there has been a 21-percent reduction in the number of people affected by excessive occupation density between 1992 and 2003).

358. With respect to insecure possession, there are in Brazil 9.8 million people living in homes on lots whose ownership is irregular, 7.3 million of which in urban areas (*Social Radar*, 2005).

359. As regards sanitation, indicators have improved despite the slow progress in expanding water and sewage coverage in the 1990s owing to the contraction of investments. Between 1993 and 2002, there was a 28.68-percent increase in the number of homes with access to water supply, owing to 10,703,347 new homes served by the general water supply system. Accordingly, the number of homes not served by the general water supply system⁴⁵ declined from 25 percent in 1993 to 16.8 percent in 2004 (Annexes, Box 26).

360. In respect of sewage, there was an increase of approximately 30 percent in the number of homes served by the sewage collection system⁴⁶ between 1993 and 1999, owing to the addition of 4.3 million new homes. A comparison between 1993 and 2004 shows a 73-percent increase, corresponding to 10,467,322 additional homes served by the sewage system. Between 2002 and 2004, a period of transition in the sanitation policy, the increase in sewerage collection was 12.51 percent, owing to the addition of 2,762,476 homes to the general sewage system in only two years (Annexes, Box 27).

⁴⁵ The source of water used in the homes was classified differently according to whether the water came from wells or springs, reservoirs supplied by water-tank trucks, rainwater, or other sources that could not be included in the categories mentioned.

⁴⁶ Collection system - Waste water and sewage disposed through a collection system leading to a general disposal location in the area, region, or municipality, even though the system may lack a waste treatment plant.

361. As regards home garbage collection, 3,407,593 homes gained access to this service in 2004, an 8.45% increase over 2002. Trash collection coverage in 2004 encompassed 85.8% of homes as compared with only 69.9 percent in 1993. Between 1993 and 1999 there was an increase of 15.9% and an 18% increase between 1999 and 2004 in the number of homes covered by garbage collection services (Annexes, Box 28).

362. Despite the increase in the number of homes between 2002 and 2004, the 2004 PNAD showed that sanitation services were significantly expanded in this period, indicating that investment in this area had a major impact. Based on the methodology used by PNAD until 2003 and disregarding the interior of the Northern Region, it is possible to make a homogeneous comparison with 2002. By this criterion, the increase in the number of homes between 2002 and 2004 was 7.14 percent, which added 3,397,658 new housing units to the 47,558,659 homes that existed in 2002, bringing the 2004 total to 50,956,357 homes (Annexes, Table 38).

363. On the other hand, the increase in the number of homes connected to the general water supply system between 2002 and 2004 was 8.81 percent, corresponding to the addition of 3,434,578 new homes, which exceeds the increase in housing units nationwide. The increase in sewage services, whose infrastructure is costlier, was 12.51 percent in 2002, which corresponds to the addition of 2,762,476 new homes to the general sewerage system. As regards home trash collection, 3,407,593 homes gained access to this service in 2004, an 8.45-percent increase over 2002 (Annexes, Fig. 27).

364. In this connection, absolute data on water supply, sewerage, and home garbage collection services between 2002 and 2004 point clearly to recent trends in sanitation policy. Whereas the increase in the number of homes in this period totaled 3,397,698 new homes, 3,434,578 additional homes were connected to the water supply system, 2,762,472 new homes gained access to the sewage system, and an additional 3,407,593 new homes received garbage collection coverage. Thus, with the exception of the sewerage services, which are considered costlier and have an adequate alternative in septic tanks, the other sanitation components exceeded the increase in the number of houses countrywide.

365. As regards home indicators of basic sanitation by region, in practically every region the expansion of services exceeded the increase in the number of homes. With the exception of the general sewage system in the South, largely complemented by the use of septic tanks, all basic sanitation indicators in every region exceeded the increase in the number of homes between 2002 and 2004. It should be noted that, given the previous deficit and the disorderly, highly expansive pattern of urban growth in the country, the indicator of expanded basic sanitation services points clearly to the Government's efforts toward the universalization of these services (Annexes, Fig. 25).

366. With respect to the inadequacy of homes, according to data especially compiled by the Applied Economic Research Institute, using the methodology proposed by UN-Habitat for monitoring the seventh Millennium Development Objective, there are still 17 million urban homes (40.3% of the total) that show some type of inadequacy, although the percentage of adequate homes climbed from 49.4% in 1992 to 59.7% in 2003. Types of inadequacy include lack of connection to the general water system; lack of connection to the general sewage system or of a septic tank; lack of bathroom for the exclusive use of the home residents; roof and walls made of improvised materials; occupation density above three people per sleeping area; lack of

conformity to building standards (subnormal sectors); and irregular use of the land (housing built on land belonging to others or other types of housing). When the data are broken down by color or race, it can be noted that the degree of housing adequacy is higher among whites (71.5%), as compared with households headed by people of African descent (46.9%).⁴⁷

367. Poor and indigent households (per capita family income of up to ½ and ¼ of the minimum salary, respectively), households situated in informal settlements and in rural areas, and households headed by blacks generally have a lower level of coverage of basic services, higher density per housing unit, and a higher degree of informality regarding home ownership.

368. With respect to gender issues, a comparison of housing conditions in households headed by women with the average housing conditions of the Brazilian population shows no significant differences. However, households headed by black women have worse housing conditions and less access to urban services as compared with households headed by women of the white and yellow races. Households headed by women in rural areas and in special sectors of subnormal settlements (slums and similar settlements) also have worse housing conditions as compared with their urban counterparts. Accordingly, the most vulnerable groups with respect to housing conditions and access to services are families headed by black women in rural areas or in informal urban settlements, who have low income and face greater difficulties on the labor market in terms of higher levels of unemployment or informal jobs.⁴⁸

C. Measures adopted for the progressive realization of the right to housing

369. The right to housing is ensured by the Brazilian juridical system. Art. 7, IV of the Federal Constitution establishes the urban and rural workers' right to a *minimum wage established by law nationwide, capable of satisfying their basic living needs and those of their families, such as housing (...)*. Furthermore, Art. 23, IX establishes that it is incumbent upon the federal Government, the states, the municipalities and the Federal District to promote programs for the construction of housing and for housing improvement. More recently, Constitutional Amendment 26/2000 explicitly added to the provisions of Art. 6 the right to housing, stating that *social rights include education, health, work, housing, leisure, security, social security, protection of motherhood and childhood, and assistance to the destitute, as provided in the Constitution*⁴⁹. The institution of constitutional usufruct established in Article 183 (urban policy)

⁴⁷ *Brasil - Relatório Nacional de Acompanhamento dos Objetivos de Desenvolvimento do Milênio*. Brasília, IPEA, 2006.

⁴⁸ See *A Mulher e o Direito a Moradia Adequada*, Brasil, Instituto de Pesquisa Econômica Aplicada, 2003.

⁴⁹ The 2000 Constitutional Amendment provided an important degree of justice to the right to housing. Some courts, such as the Regional Federal Court of the 2nd Region (2003) have issued decisions to ensure that right in consonance with other rights of equal hierarchy. Class AG *Agravo de instrumento* - 105708 Suit 2002.02.01 0460231 UF: RJ Judging Organ - 5th Team. Date of decision: 09.12.2003. Document TRF 2001 12858. DJU. Date: 18.12.2003. Page 149. Summary; civil suit. *Agravo de instrumento* - recovery of possession. Provisional decision denied - right do housing supersedes right of property - lack of damage of difficult or impossible

and Article 191 (agrarian policy), is based on the principle of the social function of property, through which acquisition of property is granted to whomever enjoys the possession of the area for dwelling purposes during five consecutive years.

370. Arts. 182 and 183 of the Federal Constitution provide the instruments for guaranteeing, in each municipality, the right to the city, the fulfillment of the city's and property's social function, as well as establishing the requirement of a master plan for municipalities with a population over 20,000. The Cities' Statute (Law 10257 of July 10, 2001) regulates Arts. 182 and 183 of the Federal Constitution and sets parameters and guidelines for urban policy in Brazil.

371. Under the Cities' Statute, the preparation of a compulsory master plan is incumbent upon municipalities with a population over 20,000; in metropolitan areas and urban settlements; in areas of special tourist interest; in areas where there are influential undertakings or activities that have a significant environmental impact on the region or the country. The master plan, the basic tool for the municipality's development and urban expansion, defines the conditions that property must meet to perform its social function. The municipal master plan should be discussed and approved by the City Council and sanctioned by the Mayor. The final document is formalized as a municipal law, as an expression of the covenant between society and the municipal legislative and executive bodies. In brief, the Cities' Statute provides instruments for the municipality to intervene in the urban and territorial planning and management, thereby guaranteeing the realization of the right to the city.

372. A significant legislative measure was the passing of Law 10683 of May 28, 2003 that established the Ministry of Cities, which is responsible for: urban development policy; sectoral policies on housing, environmental sanitation, urban transportation and transit; promotion, in conjunction with the various levels of government, the private sector, and non-governmental organizations, of initiatives and programs in the areas of urbanization, basic and environmental sanitation, urban transportation and transit, and urban development; policy on subsidies for popular housing, sanitation, and urban transportation; planning, regulation, normative rules, and management of the application of resources in policies pertaining to urban development, urbanization, housing, basic and environmental sanitation, urban transportation and transit; participation in the definition of general guidelines for the conservation of the urban water supply system and for the adoption of drainage basins as basic units of sanitation planning and management.

373. The *Council of Cities-ConCidades*, set up by Provisional Measure 2220/2001 and by Decree No. 5031/2004, has a vigorous representation of society. A result of broad participation, it was conceived and planned at the First National Conference on Cities (October 2003) and

reparation - The Court a quo decided to deny the preliminary, on grounds that in an evaluation of the interests to be taken into account in this case, the constitutional right to be protected in the first place is the right to housing, since here is no risk of irreparable damage of damage difficult to repair to the Plaintiff. The contested decision therefore holds. Agravo de instrumento denied. Rapporteur; Judge Vera Lúcia Lima. The Team denied unanimously the continuation of the suit, following the Rapporteur's vote.

is a collegiate body that forms permanent part of the Ministry of Cities. ConCidades is made up of eight social segments and serves as a negotiation forum for different players and their interests in respect of public policies. Its main function is to evaluate and propose guidelines for urban and regional development, with social participation, and to integrate policies on urban land use and housing, environmental sanitation and transit, transportation and urban mobility. At the II National Conference on Cities, held in November and December 2005, progress was achieved through a comprehensive dialogue on the issues under consideration.

374. In the area of housing, the formulation of the *National Housing Policy-PNH* received the contribution of broad social segments and was approved by ConCidades in December 2004. A National Housing Policy bill is currently under discussion before being submitted to the National Congress. This policy proposes the adoption of political, legal, and administrative measures for the realization of every citizen's right to housing, regardless of his income. There is a commitment to formally establish norms for two areas of the National Housing Policy: Housing of Social Interest and Commercial Housing.

375. The *National Housing of Social Interest System (SNHIS)* and the *National Fund for Housing of Social Interest (FNHIS)* and its Managing Council were established by Law 11124 of June 16, 2005. The pertinent bill remained in Congress for more than 13 years. The purpose of FNHIS is to centralize and manage budgetary resources for programs under the SNHIS, and its main task is to urbanize slums, build houses, and improve the housing conditions of low-income populations. For 2006, FNHIS has at its disposal R\$1 billion, a historic, unprecedented federal Government allocation for housing of social interest. Resources will be passed on to municipal and state governments for the construction of housing for families with a monthly income of up to three minimum salaries (Annexes, Fig. 26).

376. In its endeavors to reduce the housing deficit, the federal Government has allocated R\$1 billion to the *Residential Leasing Program-PAR*, whose function is to promote the building and restoration of housing units for residential leasing in metropolitan areas and in municipalities with a population of over 100,000.

377. With respect to the housing market, Law 10931/2004 improved the regulatory instruments, such as chattel mortgage, reserve assets of real estate companies, and the payment of uncontested claims, thereby providing further guarantee to real estate entrepreneurs and buyers. In complementation, the federal Government sanctioned Law 11196/2005 that creates secure instruments for real estate financing and tax incentives for real estate buyers.

378. Concerned over the low level of financing for the purchase of a first home of lower price, the Government decided to adjust the rules for the channeling of savings under the *Housing Financing System (SFH)*, so as to encourage the focusing of real estate financing on this segment. This measure helped add more than R\$2.5 billion in new SFH resources in 2004. In 2005, the redirecting of savings spurred the financial agents' offer of credit to the middle class, which made possible loan contracts totaling R\$4.2 billion (a 62% increase over 2004), signed with 49,820 borrowers. This stimulated the civil construction sector, job creation, and a higher number of borrowers. In 2006, the *Brazilian Savings and Loan System (SBPE)* plans to invest R\$8.7 in housing, twice the 2005 amount and four times the amount invested in 2003.

379. This major restructuring of the normative framework that guarantees the right to housing has guided the federal Government's action. In this connection, the Federal Government has allocated about R\$55 million to 1,700 municipalities for drawing their master plans, in accordance with the Cities' Statute. A set of technical support initiatives has been placed at their disposal for training, drawing master plans, and implementing the Cities' Statute. In May 2005, the Ministry of Cities, in cooperation with ConCidades, launched a national campaign titled *Participative Master Plan - a City for All* to raise civil society's awareness. Nuclei were established in all states, 256 workshops were offered, and about 10,000 people received training in nearly all the cities contemplated.

380. A Master Plan Network, encompassing more than 40,000 e-mail addresses from all over the country, has been set up, which provides a space for information, reflection, and criticism, and which has become a dynamic channel for debate and exchange of experiences. A *Participative Master Plan Experiences Bank* has also been set up for storing information on solutions, initiatives, and strategies applied in each phase of the plan's preparation. These solutions show how the municipalities are, in such different situations, applying the instruments provided by the Cities' Statute. A May 2006 survey by the Ministry of Cities showed that 88 percent of the 1,684 municipalities that are under the obligation to draw a master plan had done so or were in the process of doing so.

381. In 2003, the Federal Government formulated for the first time in the country a *National Policy for Land Regularization in urban areas*. This policy found concrete expression in the *Title Deed Program*, which supports the development of municipal and state programs and civil society initiatives along three main lines: financial support for regularization; elimination of juridical and legal obstacles; and support for the autonomy and training of municipal teams and local communities. These initiatives complement the land regularization measures under *Habitat Brasil*, the precarious settlements' urbanization program, which invests in the municipalities' institutional development and in the thorough urbanization of precarious settlements. The institutional coordination undertaken by the *National Secretariat on Urban Programs* aims at contributing to the solution of urban land conflicts and preventing violent eviction procedures. A joint plan for land regularization was set up for 2003-2006, encompassing 2.6 million families and contemplating direct and indirect actions, whose cumulative results warrant anticipation of the achievement of the stipulated targets, or a similar outcome, particularly in metropolitan areas that depend directly on federal Government intervention.

382. With a view to increasing the resources channeled to low-income populations, the *Subsidies for Housing of Social Interest Program* was revised so as to give higher priority to *Habitat Social*, the slum urbanization program supported by the Inter-American Development Bank, and the *Solidarity Credit Program* was introduced. These initiatives benefited families with an income of up to three times the minimum salary and allowed the municipalities to expand their participation in the programs, to develop their institutions as well as to provide assistance to rural areas and to specific categories, such as indigenous and *quilombola* communities. The *Social Development Fund-FDS* had made no investment in housing since 1996. Now it is a source of resources for *Solidarity Credit*, under which popular associations and cooperatives can once again participate in the production of housing of social interest.

383. Attention should be called to the priority assigned by the federal Government to allocating resources for families with an income of up to five times the minimum salary. In addition to the allocation of R\$1 billion from SPH resources, the review of the guidelines on the application of resources from the *Time of Service Guarantee Fund* led to a historic change, by allowing the use of subsidies for people with an income of up to five times the minimum salary. These subsidies favor operations carried out in conjunction with the states and municipalities. For the 2006 fiscal year, R\$1 billion has been allocated, 50 percent of which will go to families with an income of up to three times the minimum salary. In this way, the Government seeks to widen the access to resources allocated to the municipalities for planning and implementing their housing of social interest policy.

384. With respect to territorial planning policies, the *Downtown Rehabilitation Program* is aimed at reversing the emptying and degradation of downtown areas through the encouragement to the occupation of idle property. On a priority basis, the program assists families with an income of up to five times the minimum salary. Introduced in 2003, the program seeks to make good use of part of the 4.5 million vacant or underutilized urban downtown properties, so as to reverse the urbanization model based on the continuous expansion of city limits and to make available housing in established areas with guaranteed access to urban services.

385. Recent basic sanitation indicators point to the Government's efforts to change the serious situation of basic sanitation in the country after nearly a decade of restricted public investment in water and sewerage systems in all the regions, particularly in needier areas. Between 2003 and 2005, the Government authorized the contracting of about R\$9 billion with states and municipalities. This investment exceeds by R\$1 billion the initial yearly appropriation prescribed in the 2004-2007 Pluriannual Plan, thereby showing the Government's earnest commitment to improving sanitation conditions. This policy marks a significant change in relation to the 1995-2002 period and a departure from the investment policy of the 1990s, when about R\$13 billion at current value were invested.

386. Indicators of the progress achieved in respect of the various sanitation sector components could have been even more positive, as large amounts have been allocated to this sector. However, political and institutional variables affect the sanitation investment policy, many of them related to the assignment of responsibilities under the federative covenant and to the organizational legacy of the sanitation model followed in the last decades, adopted during the military regime. One of the main problems is the marked dependency of the national sanitation policy on the operating pace and management capacity of state enterprises, many of which lack the technical and operational support for contracting large loans in a short period of time. Furthermore, in a large number of the municipalities, particularly small and medium-size ones, there are problems related to unfinished projects, ineffective systems, pending loans, and unresolved administrative and juridical issues, all this pointing to serious management problems.

387. As regards urban mobility, priority has been assigned to universal access to opportunities, services, and equipment offered by urban life, and there is consensus about public urban transportation's paramount importance. This requires a reform of the legal framework. The proposed changes, still under discussion, strengthen the municipalities' competence and define guidelines and instruments for the planning and management of transportation systems and for contracting private sector operators for public transportation. Some of urban mobility's guiding principles are universal access, equality in public transportation, security in people mobility and

in public circulation areas, encouragement of the use of public transportation, and rationalization of the use of private motor vehicles.

388. One of the main urban mobility programs is *ProMobility*, which assists municipalities with a population of more than 100,000 in the implementation of infrastructure projects, giving priority to public transportation, so as to ensure universal access and the primacy of nonmotorized traffic. *ProMobility*'s funding equals the double of each municipality's CIDE⁵⁰ revenues. These municipalities - a total of 437 - are encouraged to design urban mobility plans using their own methodology and to implement training programs. Another program is *Bicicleta Brasil*, which encourages municipalities to expand the use of bicycles and their integration with public transportation so as to reduce locomotion costs and help people with a lower income. A third program is *Brasil Acessível*, which seeks to help with the implementation of Brazilian accessibility norms and to support the municipal and state governments in the implementation of initiatives in favor of persons with mobility restrictions, based on the concept of universal design of public transportation, urban equipment, and circulation in public areas. The 2006 budget has allocated R\$1 billion for these programs.

389. Federal Government efforts are complemented by programs and initiatives implemented by state and local governments. The *Municipal Information Basic Survey, MUNIC-Public Management* (IBGE, 2001), showed that 78.1 of municipalities with a population over 500,000 had housing programs or home construction initiatives; 56.3 percent, offered lots; 53.1% had settlement urbanization projects; 68.8% implemented land ownership regularization programs; 34.4% provided construction materials; 18.8% had tenement housing improvement programs; and 18.8% had other types of housing programs.

390. Several municipalities established *Zones of Special Social Interest-ZEIS* or *Areas of Special Social Interest-AEIS*, which have endowed with greater flexibility the urbanization criteria and the technical norms applied to providers of public infrastructure services in popular settlements. This provided a legal base for local initiatives pertaining to urbanization and land ownership regularization, which improve housing conditions and help reduce the occupation of risk areas and displacement of already existing housing units. The municipal land ownership regularization programs have, among other things, favored the granting of title deeds to women who are household heads, on the understanding that they ensure that the benefit will remain with the family. In 2001, 11.6% of all municipalities and 84.4% of municipalities with a population of over 500,000 had Zones of Special Social Interest.

391. As regards measures to ensure access to housing in communities of Afro-descendants (*quilombolas*), the target was to build 1,200 housing units and 800 sanitation facilities in several states. With respect to the *Lighting for All Program*, introduced by the Ministry of Mining and Energy, 155 *quilombola* communities were connected to the electricity grid in 2005, which benefited 4,621 people. In addition, 64 communities have initiated projects that will provide 1,732 families with electricity in their homes. In 2006, projects for another 435 communities will be implemented, seven of which are already under way, which will benefit 12,199 families.

⁵⁰ Fuel surtax.

392. In connection with development policies supported by the World Bank, note should be taken of the loan application for the housing sector under the *Programmatic Loan for Sustainable & Equitable Growth: Supporting Housing Sector Policy*. This loan program in support of housing policy involves two sequential credit operations. The World Bank's Board of Directors approved a first credit operation in the amount of US\$502.3 million. Subsequently, negotiations of the second credit operation, in the amount of US\$400 million will begin. The Brazilian State has negotiated a *Technical Assistance Loan* in the amount of US\$4.04 million to finance initiatives related to the agenda agreed under the *Development Policy for the Housing Sector*, aimed at strengthening the Government's capabilities for formulating and implementing housing policies. The amount earmarked for loans under *Technical Assistance for the Housing Sector* (Housing) is US\$4.04 million.

393. Despite the significant increase in federal funds as compared with previous years, the Ministry of Cities thinks that there is an urgent need to increase public investments, particularly in the form of soft resources, on housing, sanitation, and urban infrastructure at the three levels of government, and to pay proper attention to families with a monthly income of up to three times the minimum salary, which make up the vast majority of Brazilians affected by the housing and infrastructure deficit in Brazilian cities. In this connection, the Brazilian Government has understood that the needs of the poorer segments of the population and the need for universalizing services with a view to achieving the Millennium Development Goals exceed available public budget resources and that resources might be generated through various forms of partnership with the private sector. Changes in internationally agreed accounting methods would be necessary for according specific treatment to infrastructure investments, to permit their total or partial exclusion from current budgetary restrictions.

394. The full implementation of the *National Cities' Information System-SNIC* is essential for better planning, monitoring, and evaluation of the execution of housing and urban development programs and initiatives. The follow-up of public policies is necessary for better allocation of resources by public and private agents and for assessing the local impact, particularly as regards assistance to lower-income segments. The SNIC provides information via the Internet to all interested parties, thereby facilitating urban planning and control of the application of resources.

395. In respect of the private credit market, difficulties are due in large part precisely to the institutional framework. The volume of private credit as a share of national income - 23% of GDP - is small as compared with other emerging countries. The counterpart to the small volume of credit is a high spread, which negatively affects the welfare of families, either directly, by making personal loans for the purchase of durable goods or property too costly, or indirectly, by its impact on the cost of private investment, economic growth, and job generation.

396. The challenge faced by the national housing policy it is, thus, to replace punctual, scattered, and isolated interventions with the implementation of instruments and strategies geared to the coordination and complementariness of programs and initiatives, channeling investment to the lower-income segments of the population, in a joint, participative effort

involving the three government levels, the private sector, and civil society. Another challenge is to permanently guarantee federal budgetary resources that will permit the necessary investment to address the housing deficit in the current macroeconomic environment.

397. Universalizing sanitation services will require an estimated R\$176 billion from now until 2020. The Government is implementing measures for rationalizing management and will establish a new regulatory framework under a bill currently being considered by the National Congress. In addition, various strategic programs have been introduced, including the *Urban Environmental Sanitation*, *Rural Sanitation*, *Conviver* [Coexistence], *Urban Solid Waste*, and *Sustainable Urban Sewage* programs. In complementation, initiatives for training in sanitation management have been implemented in association with states and municipalities, training being provided by universities, non-governmental organizations, and sanitation research institutes. Under the *Program for the Modernization of the Sanitation Sector*, institutional development initiatives are being implemented by sanitation operators, which are now required to celebrate *Performance Improvement Agreements* to be eligible for resources and technical support. As regards rationalization of public expenditures, the beneficiaries' selection process now includes socioeconomic indicators as well as juridical and managerial requirements to ensure completion of unfinished projects and the technical complementariness of the components financed. But the structuring core of the national sanitation policy depends on the approval of the Sanitation Bill under consideration by the National Congress. This new legislation will permit the overcoming of a deficiency that has persisted since the 1980s and allow the players involved in the execution of this policy to act with transparency and juridical security.

398. The urban mobility challenges must be tackled by all government levels in a relatively short time, given the gravity of the forms of unequal occupation of circulation areas, congestion, and the high economic and environmental costs, particularly in metropolitan areas. In addition, means of transportation cannot continue to be fragmented; otherwise it will not be possible to adapt the cities to universal, sustainable urban mobility precepts.

399. The lack of regional planning and of policies that take into account the municipalities' peculiarities and potential tend to hinder the role cities could play in national development and thus in the solution of urban housing and infrastructure problems. This is particularly necessary in the case of metropolitan areas, which, in addition, face particularly serious financing challenges. Although major steps have been taken in this direction, there is still a long way ahead for the formulation of fully integrated policies to ensure the right to the city, which involves the right to adequate housing and other rights of people living in urban areas. Participative actions must be further developed so that the cities will be organically integrated with the federal Government and thereby gain relevance and become able to influence decision-making and the interaction between the Executive and the Legislative Branches.

400. Another issue of special interest for the Brazilian state has to do with agrarian reform. The Federal Constitution upholds the social function of property and permits expropriation for

Agrarian Reform purposes,⁵¹ the implementation of which is essential for the maintenance of peace in the rural area, since land ownership disputes produce constant tension in this social environment.

401. Through the *National Settlement and Agrarian Reform Institute-INCRA*, the Ministry of Agrarian Development has worked to reduce the occurrence of conflicts, acting particularly on two fronts: (1) implementation of agrarian reform; and (2) conflict settlement through the *Agrarian Ouvidoria*.

402. Agrarian reform is a complex process that comprises a series of stages, not all of them under the exclusive responsibility of INCRA, the institution charged with its implementation. Identifying and securing land in legal and agrological conditions to be used for new settlement projects face juridical, technical, and administrative difficulties. Between 1996 and 2,000, 3,525 settlement projects were launched, which now accommodate 283,598 families. Between 2001 and 2005, an additional 2,556 new projects were implemented, to the benefit 183,216 families. Between 2003 and 2005, the number of settled families increased significantly, reaching a total of 243,284, either through the occupation of lots in already existing projects or occupation under new projects established in this period (Annexes, Table 42).

403. As regards agrarian reform, the integrated program under implementation recognizes the specificities of each target public in each region, so as to make feasible the implementation of social infrastructure, roads, electricity, access to rights, and support to production and marketing. But the challenge is still great: settlements established prior to 2003 suffered from great needs, as 90% of the families did not have access to water supply, 80% had no roads or electricity, and 53% received no technical assistance. Despite difficulties, there has been progress in implementing infrastructure in the settlements, but this progress has not yet been measured.

404. Since 2003 there have been changes in the settlement model. Support credit for the establishment and recovery of settlements has been increased under the current Administration, from R\$4,500 to R\$11,300 per family. These resources cover housing construction or repair materials, the construction of cisterns in the semiarid regions, and the upkeep of the family until production starts. Between 2003 and 2005, these resources benefited more than 114,000 families. Investment on settlement infrastructure also increased. Over R\$340 million have been spent since 2003, which funded, among other things, the construction of more than 28,000 kilometers

⁵¹ A member State have competence to proceeding with expropriation of social interest for agrarian reform purposes under Art. 5, XXIV of the Federal Constitution and Art. 2, II of Law 4132/62. Expropriation, incumbent solely on the Federal Government, is provided for in Art. 184 of the Federal Constitution, is subject to specific requirements and is called "sanction expropriation" because the rural property in case is not performing its social function. Expropriation based on social interest does not take into account whether a property is productive or is a latifundium. It is not a question of punishing improper use of the property, but of public policies related to a specific social interest that may be implemented by the member State (Federal Supreme Court: SS 2217. Supreme Court of Justice: Appeal of Injunction 16627/RS; Appeal of Injunction 13959/RS. Against: Superior Court of Justice, Appeal of Injunction 15545/RS).

of roads and 5,000 cisterns for water supply, which shows the concern of the Brazilian Government to provide guaranteed, sustainable access to water for agriculture, an essential element for the realization of the right to food.

405. The *2006-2007 Family Farming Crop Plan* established a new credit line for people settled under the agrarian reform who have already used up PRONAF's credit A line without having completed the laying down of their productive infrastructure. Each borrower can get a loan of up to R\$6,000 with a grace period of three years and repayment parceled out over ten years, at 1%, but without a compliance bonus. The *2006-2007 Family Farming Crop Plan* also established a *Women's PRONAF* for farming women regardless of their marital status, under which women can get investment and maintenance credit for agricultural activities, rural tourism, crafts, and other activities in the rural environment. The credit limit varies according to the group to which borrowers belong: R\$1,500 (groups A, A/C, and B); R\$6,000 (Group C); R\$18,000 (Group D); and R\$36,000 (Group E).

406. Agrarian conflicts still hinder relations in the country to a large extent. One of the tasks of the Agrarian *Ouvidoria*, an Office under the Ministry of Agrarian Development, is to control and solve conflicts in this area. Assassinations in the country because of land disputes are still common and the victims are mostly leaders of unions and social movements.⁵² The Agrarian *Ouvidoria* is implementing a series of initiatives aimed at eradicating existing and possible focuses of violence (Annexes, Box 30).

407. Conflict mediation is carried out under various programs, including *Disque Terra e Paz* and *Paz no Campo* [Dial Land and Peace and Peace in the Country]. People can use *Disque Terra e Paz* free of charge to get information from the *Ouvidoria* about land issues nationwide and to report violence in the country, agrarian reform irregularities, inobservance of human and social rights on the part of the parties involved in agrarian conflicts, etc. *Paz no Campo* is a program developed by the Agrarian *Ouvidoria* for the following purposes: training of agrarian conflict mediators, attention to denunciations, mediation of agrarian conflicts, and the establishment of Agrarian *Ouvidorias* in every state - *Ouvidorias* have already been established in the states of *Mato Grosso do Sul*, *Ceará*, and *Pará*; others are now being established in the states of Minas Gerais and Maranhão.

408. The National Agrarian *Ouvidoria* coordinates the *National Commission on Combating Violence in the Country*, which in 2003 drafted the National Plan for Combating Violence. As part of the Government strategy for monitoring and implementing measures for combating violence in the country, the Commission has the following objectives: to undertake studies, projects, and coordinated actions that can be implemented in partnership with the states for combating, preventing, and reducing violence in the country, without prejudice of the judicial means of prevention and control adopted by the states in the exercise of their attributions; (2) to suggest measures to expedite administrative and judicial proceedings related to land acquisition for agrarian reform, as well as for the demarcation of indigenous lands, establishment of conservation units, land acquisition for remnants of *quilombola* communities, riverine populations affected by dam construction, and to penally relevant conflict-related occurrences;

⁵² Deaths in the rural areas.

(3) to suggest alternative measures for compliance with court decisions bearing on human and social rights of parties involved in land and agrarian conflicts, as well as on indigenous and environmental rights and on the rights of remaining *quilombola* communities and of riverine populations affected by dam construction; (4) to encourage dialogue and negotiation between government bodies and organized civil society in search of peaceful solutions for punctual situations of agrarian conflicts; (5) to coordinate the establishment, in the states and municipalities, of similar commissions to secure the participation of government bodies and entities and of organized civil society to facilitate denunciation or complaints from rural, indigenous, and *quilombola* communities and of riverine populations affected by dam construction; (6) to gather and keep up-to-date information on agrarian conflicts nationwide; and (7) to refer requests pertaining to the Commission's work to the federal, state, Federal District, and municipal governments and to their respective indirect administration bodies.

409. Demarches are under way within the Judiciary Branch through meetings with the Collegiate of the Presidents of Justice Courts and the College of General Justice Ombudsmen for the submission of a National Plan to Combat Violence in the Rural Areas and suggestion to adopt uniform procedures in all Justice Courts with regard to agrarian violence.

410. In this connection, several federal agrarian courts have been established, as well as state agrarian courts within the purview of the states' justice system. State Public Attorney Offices have established prosecuting units specializing in agrarian and land conflict. The Executive Branch has created federal and state police precincts similarly specialized. A bill has been drafted to amend Arts. 927 and 928 of the Civil Proceedings Code, making mandatory prior hearing by the Public Attorney's Office, the National Institute for Colonization and Agrarian Reform (INCRA) and the states' land institutes before judges' decisions on provisional requests in possession suits, laying on proprietors the burden of proving that their property serves a social function.

411. In June 2006, the Special Secretariat for Human Rights, the Ministry of Justice, the Ministry of Agrarian Development, and the Ministry of the Environment issued an Interministerial Administrative Order establishing the National Commission on Combating Violence in the Country (CNVC) for preventing, mediating, and solving various forms of violence committed against rural workers and proprietors, indigenous people, *quilombolas*, and riverine populations affected by dams. The Commission will have the participation of the Federal Police Department, the Federal Highway Patrollers Department, the Federal and State Public Prosecutor's Offices, the Labor Public Prosecutor's Office, the Brazilian Bar Association, and the National Council of Justice. As it encourages dialogue and negotiation as means for arriving at peaceful solutions to agrarian conflicts, within the framework of the National Plan to Combat Rural Violence, the Commission will become a major forum on prevention of violence in the field.

Article 12

412. The improvement in the population's educational and nutritional levels, the implementation of the Unified Health Service-SUS, and the upgrading of health services in general, as well as the changes in lifestyles, the urbanization process, and the improved basic sanitation systems are some factors that explain the drastic change in the profile of problems

affecting the Brazilian population. Since the late 1970s, mortality indicators have undergone major changes, with the increased incidence of non-transmissible diseases and of violence, together with a marked decline in transmissible diseases (Annexes, Box 31). It can be observed that infectious and parasitic diseases, the second cause of death in 1979, ranked fifth in 2002.

413. The main causes of death since the late 1970s have been diseases of the circulatory apparatus, particularly cerebral vascular accidents, the major killer disease in Brazil. Neoplasias were the second cause of death in 2002, followed by so-called external causes. The most common form of neoplasia in women is breast cancer, followed by tracheal, bronchial, lung, and cervical cancer; among men, the first causes were tracheal, bronchial, and lung cancer, followed by prostate and stomach cancer. Also noticeable was the increase in diseases of the respiratory apparatus and of endocrinal, nutritional, and metabolic diseases. This new epidemiological context that became consolidated in the last quarter of the last century affects principally people of a lower economic level, who die more from nontransmissible causes, such as cerebral vascular accidents and homicide, and who are at a greater risk of dying from infectious diseases, such as tuberculosis,⁵³ an indication of the inequality that still persists in the area of health.

414. The mortality rate among children under five has declined sharply. Between 1990 and 2003, the national reduction average was 38.3%. The Northeast recorded an even more impressive decline - 46.1%. The decline in mortality owing to infectious and parasitic diseases played a major role in the decline in infant mortality. Factors associated with social development, such as improved housing conditions, and demographic factors, such as the reduction in the fertility rate, also contributed to these favorable results. Some health programs and initiatives implemented in the period also contributed, such as the *Family Health Program*, the *Oral Rehydration Therapy*, the *Women's Integrated Health Care Program*, and the *Child Health Care and Breast Feeding Program*.

415. Between 1996 and 2004, a relatively short period, infant mortality dropped 32.8%, from 33.5 to 22.5 deaths of children under one year per thousand live births. The declining trend occurred in all regions, with the Northeast showing the sharpest reduction rate (35.6%). Despite significant progress, further reduction of the infant mortality rate still poses a major challenge to managers, health professionals, and society in general. Currently, given the decline of mortality among children under one year in the post-natal period, more than half the deaths of children under one year are due to perinatal causes related to the health and nutritional conditions of children at birth, the mother's educational and socioeconomic level, and the quality of prenatal and delivery care.

416. A further relevant change in the health picture has occurred in the last three decades owing to the so-called nutritional transition. During this period, Brazil experienced a significant reduction in the incidence of malnutrition in children and adults. Stature deficiency, for instance, diminished by more than 70 percent in all regions since the 1980s. Simultaneously with the reduction in the incidence of malnutrition, there occurred a marked increase in overweight

⁵³ *Saúde no Brasil: uma análise da situação de saúde*. Ministry of Health, Brasília, 2005.

and obesity problems, which took on an epidemic character similar to what happens in developed countries. Particularly in urban areas, inadequate, highly caloric food, causing overweight and obesity - which in turn lead to diseases such as diabetes and cardiovascular problems - is now a public health problem as serious as malnutrition.

417. There are other worrisome indicators. In 2003, the maternal mortality rate was 50 deaths per 1,000 live births. But it should be noted that although indicators remain high, the maternal mortality rate declined from 57.1 maternal deaths per 1,000 live births in 1999 to 51.6 in 2003. Among regions, this rate increased only in the Northeast, while dropping considerably in the Southeast (29.9%) and in the South (17.1%) in the same period. A look at the causes of maternal mortality in the different regions shows certain heterogeneity. Whereas the percentage of direct causes is higher in all regions, particularly in the North and the Northeast, the percentage of indirect causes is higher in the South and in the Center-West, where diseases of the circulatory apparatus are the main indirect causes of death.

418. Although maternal mortality is not one of the ten causes of death of women in reproductive age, it is an extremely serious concern, as in 90 percent of cases, death could be prevented through adequate medical care.

419. In 2003, more than 240,000 women were admitted to the hospital under the Unified Health System for curettage owing to complications after miscarriage or clandestine abortion. Curettage is the second most common obstetrical procedure in hospitals, after normal delivery. Despite undernotification, 10 percent of maternal deaths in 2003 were caused by abortion.

420. External causes of mortality, which affect particularly young men, should also be taken into account in this overview of the situation. In this case, overmortality is due to the large number of homicides - about 27 per 100,000 people. In general, mortality owing to external causes is about 70 deaths per 100,000.

421. An overall diagnostic of morbi-mortality in Brazil requires a look into some infectious and parasitic diseases. Malaria, tuberculosis, and Hansen's disease remain a public health problem.

422. The incidence of malaria, a disease practically restricted to the Amazon region today, has declined, but cases of its more serious form have risen. Between 1990 and 2004, cases of malaria caused by the *Plasmodium falciparum* protozoan parasite (which accounts for 80% of lethal cases) and mortality owing to malaria have significantly declined in the Legal Amazon region (comprising areas in the seven northern states and the states of Maranhão and Mato Grosso). Parasitic incidence dropped from 33.1 to 20.4 cases per 1,000 inhabitants, and cases of malaria caused by *Plasmodium falciparum* dropped from 44.6% to 22.4%, while the mortality rate fell from 5.2 to 0.4.

423. Between 2002 and 2003, the number of new cases stabilized at a high level (about 80,000 new cases a year), as did the cases of tuberculosis, with little variation from year to year (Annexes, Table 41). As regards deaths notified to the Ministry of Health's Mortality

Information System-SIM in 2003, 37.3% were of whites, 36.7% of mulattos, 14.5% of blacks, 0.7% of yellow, and 0.8% of indigenous people, while there was no information regarding color/race about the remaining cases. The risk of death from tuberculosis was 1.4 times higher for mulattos as compared with whites, and 3.3 times higher for blacks also as compared with whites.

424. Hansen's disease showed a decline between 2004 and 2005. According to the methodology recommended by the World Health Organization-WHO, Brazil had 1.71 cases under treatment per 10,000 inhabitants in December 2005. Despite the decline, the rate of incidence still exceeds 1 case per 10,000 inhabitants, which is the target for eliminating the disease as a public health problem.

425. The last two decades saw the emergence of the AIDS epidemic, a health problem of great magnitude, which accounted for one fourth of deaths owing to infectious and parasitic diseases in Brazil in 2002. Between 1980 and the mid-2004, 360,000 new AIDS cases were notified. Incidence rates climbed until 1998 to about 20 cases per 1,000 inhabitants. Despite a stabilization trend nationwide, AIDS cases have increased more sharply among populations living in low socioeconomic conditions, whose majority is black, and among women. The mortality rate, though, had a sharp decline since the mid-1990s, having stabilized at 6 deaths per 100,000 inhabitants, thanks to the introduction of universal access to retroviral treatment provided under the Unified Health Service. In addition, between 1993 and 2003 the rate of survival of AIDS patients increased.

A. Measures adopted for the progressive implementation of the right to health

426. The Federal Constitution establishes that *health is the right of all persons and the duty of the State and shall be guaranteed by means of social and economic policies aimed at reducing the risk of illness and other hazards and at universal, equal access to actions and services for the promotion, protection, and recovery of health* (Art. 196). The Constitution allows the private sector to participate, in a supplementary or complementary manner, in the provision of health care. The right to health, a fundamental right that is inseparable from the right to life and to which all are entitled, is guaranteed in Brazil by the Unified Health System, which rests on the basic principles of universality, equality, and integrality.

427. Under the universality principle, health care is guaranteed to all, regardless of color, race, religion, occupational status, or income. All citizens are equal before the Unified Health System and are entitled to receiving care according to their needs. It is thus of utmost importance to recognize that the different life conditions of the various population segments entail specific health problems, as well as risks and/or greater or less exposure to certain diseases, accidents, and violence. These differentiated needs must be taken into account in the formulation and implementation of equality-based public policies. The provision of integral care has two focuses: (1) a holistic, not a partial view of the individual, and guaranteed access to the different levels of care (basic, medium, and high complexity), from the most simple to the most complex, thus ensuring vertical integrality; and (2) promotion, prevention, and recovery of health - horizontal integrality - through the integration of health care provision with other initiatives that affect people's health.

428. As has been shown, a comprehensive view of the right to health is reflected in a significant reduction of mortality owing to preventable causes in the general population, and of child mortality in particular. Health Vigilance has made major progress in recent years owing particularly to the decentralization of epidemiological and disease control initiatives. This decentralization was regulated by Administrative Order No. 1399/99, updated in 2004 by Administrative Order No. 1172, which provided for the rationality and effectiveness of initiatives, made possible stable funding through direct transfers from the National Fund to the State and Municipal Funds. The Health Vigilance Financing Ceiling was innovative, ensuring financing stability by establishing differentiated per capita amounts for each state, taking into account epidemiological conditions. Between 1997 and 1999, outlays in this area totaled R\$292 million; in 2006, the amount rose to R\$737 million.

429. After decentralization, epidemiology received greater attention from health services. Between 2000 and 2005, for instance, the National Public Health Laboratory System was reinforced by the establishment of 12 Level-3 Biosecurity Laboratories and the construction of 12 laboratories in border areas to provide rapid response to emergencies. In 2005, additional funding was approved for the Public Health Central Laboratories to enable them to play their role as managers of the state laboratories network. Mention should also be made of (1) the wider coverage in the vaccination campaign aimed at the elderly and the maintenance of the levels of children and adult immunization; (2) the mobilization for controlling dengue, whose incidence has declined nationwide since the introduction of the National Dengue Control Program in 2002, particularly as regards grave cases of the disease; and stabilization of the annual number of new cases; (3) wider coverage of services for identifying vertical transmission of HIV and congenital syphilis; (4) initiatives aimed at the permanent reinforcement of the fight against tuberculosis and Hansen's disease; (5) incentives to the decentralization of the services for the diagnostic and treatment of these diseases, with a view to widening the access to and implementation of supervised treatment.

430. In the field of international cooperation, the continuity of the US\$600-million *Vigisus Project* under an agreement between the Brazilian Government and the World Bank has been ensured. The project's implementation is in three phases, each one budgeted at US\$200 million. In phase one, known as *Vigisus I*, implemented between 1999 and 2004, resources were channeled to the structuring of the National Health Vigilance System. During the *Vigisus II* phase, currently under implementation, the Health Vigilance Secretariat is working in four target areas: (1) epidemiological vigilance and transmissible diseases control; (2) environmental vigilance in the area of health; (3) analysis of the health situation and vigilance of nontransmissible diseases and illnesses; and (4) strengthening of institutional capabilities for training in health vigilance management in the states and municipalities.

431. With respect to prevention initiatives, attention should be called to the success of the National Immunization Program, which promotes systematic vaccination and has as its main objective to contribute to the control, elimination, and/or eradication of immunopreventable diseases in susceptible populations. The coverage of vaccination campaigns have exceeded the annual targets, varying from 72.5 percent in 2000 to 84 percent in 2005, in the case of flu vaccination of the population aged 60 or older. In 1980, the Polio vaccination coverage exceeded the 95-percent target for children under five. The vaccination budget was increased from R\$263 million in 1999 to R\$592 million in 2005, which allowed the vaccination of approximately 60 million people with all types of vaccine in all the target age brackets. Data on

the Immunization Program since 1980 show that over 90 percent of Brazilian children are vaccinated each year for measles, diphtheria, tetanus, pertussis, polio, and hepatitis B, and receive BCG vaccine against serious forms of tuberculosis (Annexes, Table 42). In 2006, the National Immunization Program increased the range of vaccination by introducing the oral vaccine against human rotavirus nationwide for children aged six to 24 weeks—a significant progress in controlling serious diarrheic diseases caused by the rotavirus. It should also be noted that the National Immunization Program provides specific care to indigenous populations and to the more vulnerable population segments (Annexes, Table 47).

432. Aware that the right to health requires a comprehensive approach in order to ensure adequate sanitary conditions, the Brazilian Government implements 12 initiatives grouped under four major Interministerial Sanitation Programs: Urban Environmental Sanitation, Rural Sanitation, Urban Solid Waste, and Sustainable Urban Sewerage. In addition, the federal Government implements initiatives that provide training in sanitation management, in partnership with other federative units, through universities, non-governmental organizations, and sanitation research institutions. Based on the equality principle, the Brazilian State seeks to rationalize sanitation outlays by including objective socioeconomic indicators in the beneficiary selection process and by defining legal and administrative requirements to ensure the completion of unfinished facilities and the technical complementariness of the components financed.

433. As regards access to water, the Brazilian State promotes significant investment in water supply and sewage systems in all regions, particularly in needier areas, by improving conditions of physical access to water and avoiding possible contamination sources (Annexes, Tables 44 and 45). In this connection, R\$14 million have been spent on the implementation of the *National Program for Vigilance of the Quality of Water for Human Consumption-VIGIAGUA*. In order to reduce exposure of the population to harmful substances, initiatives aimed at identifying populations exposed to soil contamination were intensified in 2005; in 2006, these initiatives were included in the *Agreed, Integrated Health Vigilance Programming* under the Unified Health System. Between 2003 and 2006, a total R\$7.5 million was spent on the identification and mapping of 689 areas with contaminated soil and of populations at risk nationwide.

434. Another initiative included in the Pluriannual Plan worthy of notice is the *Health Education for Sanitation Project*, whose purpose is to extend technical and financial support to state and municipal managers, representatives of civil society organizations of public interest, and non-governmental organizations for the preparation, execution, monitoring, and supervision of projects, programs, and educational activities of a permanent nature aimed at promoting health and at preventing and controlling serious problems caused by the lack of adequate sanitation.

435. Also worthy of mention is the work of the *National Sanitary Vigilance Agency-ANVISA*. Its purpose is to promote and protect the population's health through sanitary control of the production and marketing of products and services subject to sanitary vigilance, including the related facilities, processes, inputs, and technologies, and to ensure access to these components. The Agency has expanded its area of work and has competence for dealing with issues such as price regulation and market control, and for monitoring publicity and advertisement, as well as for prior approval of applications for patenting of pharmaceutical products and processes. It also extends its control activity to ports, airports, and border crossings and interacts, with the cooperation of the Ministry of Foreign Affairs, with foreign institutions to handle international issues related to sanitary surveillance. Some of the major ANVISA initiatives aimed at

improving all facets of environmental and industrial hygiene include (1) the *National Program for Monitoring Food Sanitary Quality*; (2) Regulation of Good Manufacturing Practices-BPF; (3) Training of Sanitary Inspectors and Inspectors of the BPF-Regulated Sector; and (4) Implementation of National Sanitary Inspection Programs in establishments identified as susceptible to greater risk.

436. Progress in primary health care in Brazil has been due to the *Family Health Strategy* and to the *Community Health Agents Program*, which bring integral, constant health practices and initiatives closer to the families, thereby improving life quality in rural communities and in city outskirts. In 2000, a total 1,753 municipalities were covered by the Family Health Strategy; in 2005, their number rose to 4,986. This increase expanded coverage from 17.4% of the population (28,581,244 people) to 44.4% (78,617,562 people). Between 2000 and 2005, the number of municipalities that had Community Health Agents-ACS rose from 4,345 to 5,242, while the total number of ACS climbed from 134,273 to 208,104, which made possible the expansion of coverage from 70,099,999 (42.8%) to 103,520,586 (58.4%). The implementation of this strategy has reduced regional disparities with respect to access to health (Annexes, Tables 50 and 51) as well as the disparities associated with the physical difficulty in gaining access to health establishments, goods, and services.

437. A significant advance in the implementation of the Family Health Strategy was the inclusion of dental care in 2004. The oral health policy comprises a series of initiatives aimed at all age brackets. Prior to the introduction of the *Smiley Brazil Program* on March 17, 2004, only 3.3 percent of dental care provided under the Unified Health System referred to specialized treatments. This program comprises initiatives aimed at promotion, prevention, and restoration to ensure Brazilians' oral health, which is essential to the population's overall health and quality of life.

438. By the end of 2006, the *Smiley Brazil Program* will have been allocated more than R\$1.3 billion. In 2003, about R\$90 million were spent on oral health incentives under the *Family Health Program* (PSF), R\$40 million more than in the preceding year. Also in 2004, the Federal Government Accounting Office pointed to an unprecedented 45% increase in the number of people treated. In 2005, outlays exceeded R\$400 million. Under the Family Health Strategy, new 8,341 Oral Health Teams-ESBs were set up between December 2002 and December 2005, raising the number of ESBs to 12,602 (a 195% increase) active in 3,896 municipalities. During this period, ESB coverage was extended to more than 33 million additional people, bringing the grand total to more than 59 million. To fund this increase in the number of ESBs, federal incentives were adjusted by about 65%.

439. To address non-transmissible chronic diseases and their social and financial costs, in 2001 the Brazilian State introduced the *Basic Care Program for Arterial Hypertension and Diabetes*. The program's purpose is to enhance prevention, diagnosis, treatment, and control of arterial hypertension and *diabetes mellitus* by bringing patients under the Health Services Basic Network and the priority Family Health Strategy. Care provided under the basic network is being reorganized so as to prevent the provision of care only by spontaneous request and on an intermittent basis.

440. With respect to transmissible diseases, attention should be called to the *National Sexually Transmissible Diseases and AIDS Program-DST/AIDS*. Internationally known for being universal, free, across-the board, and free of prejudice based on race, color, or religion, this program currently assists 166,500 HIV patients, who receive antiretroviral treatment. Antiretroviral treatment has improved the quality of life and raised life expectancy, reducing opportunist infections and restoring immune defenses. A result of this health policy has been the significant reduction in mortality and in the number of hospital admissions owing to opportunist infections. It is estimated that approximately 190,000 admissions have been prevented, which meant savings of about R\$570 million.

441. To improve quality and widen access to the National Program of Sexually Transmissible Diseases and AIDS, initiatives have been intensified with respect to promotion and prevention, incorporation of more vulnerable groups into the care networks, and to access to means for ensuring safer practices. The Brazilian State ensures free, universal access to antiretroviral treatment under the Unified Health Service (SUS). Several organs of the Judiciary Branch, including the Federal Supreme Court⁵⁴ have recognized the Government's duty to supply HIV/AIDS patients with medication.

⁵⁴ EXTRAORDINARY APPEAL RE AgR 27186 Second Team. Summary: PATIENT WITH HIV/AIDS - PERSON DEVOID OF FINANCIAL RESOURCES - RIGHT TO LIFE AND HEALTH - FREE SUPPLY OF MEDICINE - CONSTITUTIONAL DUTY OF THE STATE (CF, ARTS. 5, CAPUT, AND 296) - PRECEDENTS (STF) - COUNTERAPPEAL DENIED - THE RIGHT TO HEALTH REPRESENTS A CONSTITUTIONAL CONSEQUENCE INSEPARABLE FROM THE RIGHT TO LIFE - The subjective public right to health is an inalienable legal prerogative assured to people in general by the Constitution of the Republic itself (art. 196). It means a legal prerogative protected by the Constitution, and the State must watch over its integrity in a responsible way, for it is incumbent upon it the formulation and implementation of suitable social and economic policies aimed at ensuring, for all citizens, including those who have HIV virus, universal an equal access to pharmaceutical and medical-hospital help. The right to health, besides being a fundamental right guaranteed to all persons, is a constitutional consequence inseparable from the right to life. The State, whatever the institutional sphere of its action within the Brazilian federal organization, cannot be seen as indifferent to the health problems of the population, under penalty of incurring , even by a reprehensible omission, in serious unconstitutional behavior. The interpretation of the programmatic order cannot be changed into in inconsequential constitutional promise. The programmatic nature of the norm contained in article 196 of the Political Charter - whose addressees are all the political entities that make up, in the institutional level, the federative organization of the Brazilian State, cannot be converted into an inconsequential constitutional promise, lest the State, belying every fair expectations placed in it by the society, substitutes in an illegitimate way, the fulfillment of its unshirkable duty, for an irresponsible gesture of governmental infidelity toward the provisions of the Fundamental Law of the State. Free distribution of medicine to needy people. The judicial recognition of the legal validity of programs of free distribution of medicine to needy people, including those who have the HIV/AIDS virus, renders effective fundamental provisions of the Constitution of the Republic

442. Currently, the Ministry of Health makes available 16 antiretroviral drugs in 35 pharmaceutical forms for the treatment of all persons living with HIV/AIDS, who totaled 158,000 by June 2004. Another initiative is wider access to the diagnosis of HIV and other STDs. Mention should also be made of the establishment and operation of a laboratories network, the incentive to the national production of lab tests, and the expansion of the chain of services offering tests.

443. In 2005, the National DST/AIDS Program, in partnership with the Special Secretariat on Racial Equality Promotion Policies-SEPPIR, launched a strategic plan to introduce the racial perspective into initiatives aimed at researching, preventing, and combating this epidemic. The program focuses the areas of information (dissemination of information and knowledge, epidemiologic vigilance, research, communication, and education) and access (including practices related to promotion and health education of the black population about care routines and facilitation of the black population's access to all SUS services). Many of the initiatives implemented by the Ministry of Health for achieving these objectives are recent and the analysis of specific results will have to wait till the end of 2006.

444. As regards infectious and parasitic diseases that remain a public health problem, the decentralization and sustained financing of endemics control, addressed in the previous report, still guide the Brazilian State's action, permitting greater integration with other basic care initiatives, such as the Community Health Agents, the Family Health Teams, and the services network under the Unified Health Service.

445. With respect to malaria, the Ministry of Health, in partnership with the state and municipal health departments, introduced in July 2000 the *Plan for Intensification of Malaria Control Initiatives in the Legal Amazon*. The objective was to reduce morbid-mortality owing to malaria by 50 percent by end-2001, prevent the outbreak of localized epidemics, and reduce their gravity and thus the number of deaths and hospital admissions. The plan's main strategy was based on early diagnostic and immediate treatment of malaria cases; on selective interventions aimed at vector control; on prompt epidemics detection; and greater involvement of the municipalities in the implementation of control measures. In 2003, the plan was renamed *National Malaria Control Plan* but retained the same lineaments and was allocated more resources. To guarantee early diagnostic of malaria cases, the diagnostic network was expanded between 1999 and 2004, from 1,180 to 2,860 laboratories - a 143-percent increase. The Unified Health Service provides all the drugs needed for the treatment of malaria cases.

446. Tuberculosis is a priority for the Brazilian State. Since 2004, reinforcement of the supervised treatment strategy has been the main instrument for achieving the international goal of detecting 70 percent of tuberculosis cases and achieving cure in 85 percent of the cases.

(arts. 5, caput, and 196), and the realization of its scope represents a gesture of respect and solidarity of consideration for the health and the life of persons, especially those who possess nothing, except the awareness of their own humanity and their essential dignity. Precedents of the STF.

Diagnostic and treatment of tuberculosis are free in Brazil. Since 2000, the number of health units capable of providing supervised treatment gradually increased to 21% of health units in 2003. Health units equipped to provide supervised treatment have a better record of new cases cured and fewer dropout cases.

447. In March 2004, the *National Hansen's Disease Elimination Program* was overhauled and assigned management priority by the Ministry of Health. The new strategy rests on three fundamental premises: improvement of information, based on current, valid, and reliable data on the different regions; expansion of the Unified Health Service's capacity to diagnose cases at the disease's early stage and to treat them; and reduction of the disease's social burden, by decreasing the number of cases of physical incapacity and providing adequate treatment of already existing incapacities. Coverage of services by health units that provide diagnostic and treatment of Hansen's disease grew 41.06 percent in 2005, as compared with 2004. Other initiatives and their results include the following: higher rate of cures, which rose from 67.26 percent in 2004 to 69.24 percent in 2005; decline in the rate of new cases detected among minors under 15, from 0.79 cases/10,000 in 2004 to 0.60 cases/10,000 in 2005; transfer of funds for restructuring 15 old hospital-colonies (out of 33); and accreditation of an additional National Reference Center by the Ministry of Health.

448. In 2004, in view of the need to ensure that the required treatment is not interrupted owing to lack of financial resources for medication, 330,000 patients were granted guaranteed access to exceptional drugs, usually of high cost and prolonged use, provided under the Unified Health Service. As regards strategic drugs - drugs used for treating endemic diseases, such as tuberculosis, Hansen's disease, malaria, and AIDS, and other drugs used in the treatment of hypertension and diabetes, as well as blood products for treating hemophilia - 87 million patients that applied to the Unified Health Service were assisted. The *Popular Pharmacy Program* has been expanded to ensure that hypertension and diabetes medication is available in more than 1,200 commercial pharmacies and drugstores and sold at a discount of up to 90 percent. It estimated that 11.5 million people are directly benefited by this program.

449. Mention should be made of the *Emergency Mobil Service (SAMU/192)*. This Program, under the Unified Health Service, provides emergency assistance to the population. Through SAMU/192 the Government is reducing the number of deaths, the length of hospital stay, and the sequels associated with lack of prompt care. This service operates 24 hours a day with professional health teams, including doctors, nurses, nursing aides, and first aid paramedics who attend to emergency traumatism, clinical, pediatric, surgical, gynaeco-obstetrics, and mental health cases. Introduced in September 2003 by the federal Government, SAMU operates in 647 municipalities, serving thousands of people every day.

450. In 2004, the Ministry of Health introduced the *National Policy on Women's Integral Health Care*. The implementation of strategies for reducing maternal mortality was helped by the introduction of *National Policies on Obstetrical Care and on Sexual and Reproductive Rights*, as well as the *National Covenant on Reducing Maternal and Neonatal Mortality*. This Covenant is considered a model of social mobilization and dialogue for the promotion of the UN Millennium Development Goals, as it involves the three levels of government - federal, state, and municipal - which has resulted in the establishment of a wide range of partnerships with civil society organizations.

451. A total of R\$31.7 million have been earmarked for intensifying the initiatives aimed at improving the care of women and the newborn. Two national and 18 state seminars were held on Human, Scientifically-based Obstetric and Neonatal Care aimed at professionals of 257 maternities. With a view to humanize delivery and birth care, funds were channeled to the training of community women that assist parturient women in ten states; 34 specialized courses on obstetric nursing were offered; a technical manual was published on *Humane Treatment of Miscarriage*; a *National Campaign to Reduce Unnecessary Cesarean Sections* was waged; and professionals of major maternities are receiving training. In addition, a *Being Born Project* has been implemented in 1,142 maternities to ensure fast HIV and VDRL testing of parturient women that have not been tested prior to childbirth or during prenatal care, as well as the prophylactic treatment of newborns. To improve prenatal care and overcome the problem of discontinuity in the follow-up between pregnancy and delivery, an additional 1,068 municipalities joined the *Humane Prenatal and Childbirth Care Program*, bringing the total to 5,068 municipalities and the total of registered pregnant women to 501,157, of which 117,682 completed all the scheduled procedures. A law has been passed, ensuring a woman's right to have someone of her choice to do the follow-up prior to, during, and after delivery. The legislation also makes compulsory the notification of cases of violence against women.

452. The Brazilian State has also invested in the training of women in the communities for assisting home births in nine states and 155 traditional midwives in the states of Acre, Amazonas, Amapá, Pará, Maranhão, Alagoas, Paraíba, Goiás, and Minas Gerais. To ensure the quality of home birth care, training of traditional midwives and health professionals was offered in the Special Indigenous Health Districts in seven states. Training was also offered to 45 *quilombola* midwives in the Kalunga Community, state of Goiás, who joined the ranks of 904 midwives trained in previous years.

453. Undernotification of maternal deaths, which hinders an accurate knowledge of the problem in the country, is being addressed by *Committees on Maternal Mortality*. These Committees study maternal deaths to propose measures for improving the quality of obstetric care and preventing new cases, as well as improving the recording of occurrences. In 2005, the Ministry of Health signed seven agreements with the northern states on epidemiological vigilance of maternal death, and revised the Manual of the Committees on Maternal Mortality. Between 2002 and 2005, 31 regional committees, 361 municipal committees, and 56 hospital committees were established.

454. To reduce maternal mortality indicators, a Tripartite Commission consisting of the federal Government, civil society, and the National Congress and coordinated by the *Special Secretariat on Women's Policies* was set up for reviewing the punitive legislation on the voluntary interruption of pregnancy. An issue of utmost importance addressed at the First National Conference on Women's Policies, the revision of the punitive legislation was the object of extensive consultation during the municipal and state conferences that were attended by more than 2,000 women, as well as of deliberations by the national conference. An outcome of the *Tripartite Commission for Revising the Punitive Legislation on the Voluntary Interruption of Pregnancy* was a bill submitted to the National Congress, aimed at ensuring the right to the voluntary interruption of pregnancy, guaranteeing the Unified Health System's coverage for the procedure, and determining the provision of the same coverage by the private health plans.

455. The work of scientific societies and of class and feminist associations has been of great importance for the formulation and monitoring of policies and initiatives implemented by the Ministry of Health. In this connection, mention should be made of the project implemented by the National Feminist Network for Sexual and Reproductive Rights with the Ministry of Health's support for training women leaders in all Brazilian states to participate in the entities that exercise social control over the Unified Health System.

456. The National Policy on Sexual and Reproductive Rights has helped disseminate contraceptive methods in more than 3,884 municipalities. Today, 5,232 cities provide contraceptives through the Unified Health System. The last procurement of contraceptives amounted to R\$27 million. With this expansion in contraceptive distribution, Brazil is close to achieving the target set by the National Policy on Sexual and Reproductive Rights: the progressive increase in the supply of reversible (non-surgical) contraceptive methods from 30 percent to 100 percent of the public network demand. In 2004, 38,276 sterilizations through Fallopian tubes blocking and 14,021 vasectomies were performed in the Brazilian public health network.

457. This legislation is an integral part of the ensemble of actions of women care, aiming at global and integrated attention to health. For the exercise of the right to family planning, all scientifically accepted methods and techniques of conception and contraception not harmful to the life and health of persons shall be offered, taking into account the freedom of choice. Family planning is guided by preventive and educational action and by guaranteed egalitarian access to information, means, methods and techniques available for the regulation of fertility. This being said, the Brazilian State acknowledges its duty to promote, through the Unified Health System (SUS) and in association with the competent levels of the educational system, informative, educational, technical and scientific conditions and resources to ensure the free exercise of family planning.

458. On the other hand, there has been significant progress in raising the number of beds in Intensive Care Units: in 2005, the Ministry of Health added 2,879 new beds, thereby overshooting the target for reducing the bed deficit in this area. Ninety-four mobile emergency care units have also been added, which are equipped for assisting pregnant and parturient women as well.

459. To meet the needs of indigenous women, an intersectoral working group has been set up, with the participation of Indian women leaders, for implementing the provision of integral health care to Indian women, which is also contemplated under the National Policy on Indigenous Populations.

460. In 2004, a *Black Population Technical Health Committee* was established for formulating the National Black Population Health Policy. The objective is to reduce the marked differences in the health area between white and black populations, and includes specific initiatives targeting women. One of the measures implemented was the 50% increase in the amount of incentives allocated to the Family Health Strategy for assisting remnants of *quilombola* communities. In November 2005, there were about 70 government initiatives under implementation in this area, from awareness campaigns and training of health personnel to direct actions to reduce the occurrence of diseases that affect mostly blacks, such as sickle-cell anemia.

461. The high incidence of sickle-cell anemia in the black population and the attendant high mortality rate and cruel symptoms has led the Ministry of Health to introduce, under the Unified Health Service, a *National Program for Integral Care of Patients with Sickle-cell Anemia and Other Forms of Hemoglobinopathy*. This program stresses the importance of prenatal care and the care of newborns with sickle-cell anemia. It also provides guidance to individuals that present the sickle-cell trait and disseminates knowledge about the disease. One of the prescribed interdisciplinary initiatives is the testing of the population at risk to detect the disease. Answer to the question about race/color posed by all health services is of great importance for the detection and treatment of sickle-cell patients.

462. The Brazilian State also allocates resources for the qualification of health professionals to work with adolescents and young persons, who make up 25 percent of the overall population. Measures targeted at this group are being adopted for reducing morbid-mortality owing to external causes, encouraging juvenile participation in health policies, and ensuring the sexual and reproductive health of both sexes, including through access to contraceptive methods. As young people are beginning their sexual lives increasingly earlier, the Brazilian State recognizes these young persons' right and need to lead a sexual life that is positive, healthy, and safe. Accordingly, a Program on Health and Prevention in Schools was introduced in 2004 to provide preventive education and to orient young people, teachers, parents, and communities, with a view to reducing the rate of infection of young people in the 13-24 age bracket with HIV and other sexually transmissible diseases. In addition to disseminating sexual and reproductive health concepts among students, the program is aimed at widening the debate about issues related to human rights, gender, discrimination and prejudice, pregnancy, violence, and drugs, as well as providing ongoing training of teachers and health professionals.

463. As regards the prevention of diseases in the elderly, the main initiative is the vaccination of the elderly against the flu and pneumococci, whose coverage exceeds the 70-percent target. In 2005, total coverage was 85 percent and no state failed to achieve the minimum target established. With respect to care, 11,872,442 home consultations were held for the population aged 60 or older.⁵⁵ It is also important to call attention to the access of the elderly to highly complex treatments. In 2003, 49 percent of cardiologic surgeries and 43 percent of oncological surgeries were performed on elderly patients, which indicates that the care provided was proportionate to the prevalence of these types of diseases.

464. In order to promote the right to health of the prison population, the National Health Plan for the Penitentiary System was adopted in 2003. It stemmed from the coordination between the Ministry of Justice and the Ministry of Health. The objective of actions and services under this Plan is to promote integral health for the prison population and contribute to the control and/or reduction of its most frequent health hazards. For this purpose, teams of doctors, nurses, dentists, social workers, psychologists, nurse helpers and dental clinic helpers will act in conformity with the peculiarities of the National Penitentiary System.

⁵⁵ Ministry of Health, Database, 2006.

465. The Unified Health System's mental health policy seeks to replace the model based on the patient's commitment to a hospital with a mental health model grounded on a territorial and community base. Law 10216/2001, which provides for the protection and the rights of persons with mental disorders, and the Third National Conference on Mental Health, held in 2001, gave impetus to the Psychiatric Reform introduced in the 1980s. In this connection, the following guidelines and programs deserve mentioning: (1) ongoing deinstitutionalization, with gradual reduction in the number of psychiatric beds, and incentives for the qualification of smaller hospitals; (2) expansion of the extrahospital network through the allocation of specific funding - Psychosocial Care Centers (CAPS), Residential Therapeutic Services, day clinics, incorporation of mental health initiatives into basic care, reference hospital services for the care of persons with disorders related to the consumption of alcohol and other drugs, and psychiatric beds in general hospitals; and (3) programs aimed at the deinstitutionalization of patients institutionalized for a long time, such as the *De Volta para Casa* [Going back Home] program, backed by a psychosocial rehabilitation grant to beneficiaries (Annexes, Table 52).

466. To summarize, today there are 848 Psychosocial Care Centers scattered throughout the states, 434 therapeutic homes, 2,240 beneficiaries under the *Going Home* program, an average reduction of 2,500-3,000 beds a year, and 223 income-generating programs for mental health patients.

467. As regards guaranteeing the rights of patients with mental disorders, there are specific initiatives, such as the issuing of Administrative Order GM No. 2391/02 that provided for the notification of involuntary institutionalization to the Public Defender's Office and to the local health authority, and established a multidisciplinary commission to review and monitor institutionalization against the patient's will. In addition, 2004 saw the establishment of the *National Forum on Mental Health of Children and Adolescents*, with the participation of the Government, civil society, agents of the law, and the child and adolescent public defender's office. The Forum seeks to follow the guidelines of the Statute of the Child and the Adolescent in ensuring the implementation of the Infant-Juvenile Mental Health Policy. Moreover, since 2002 the Ministry of Health has urged the National Congress to revise the current legislation centered on the criminalization of drug use in favor of a new, more comprehensive legislation capable of promoting the rights of persons with disorders related to the use of illicit substances. An interministerial working group has also been set up to draft proposals for a revision of the legislation in order to allow the deinstitutionalization of persons with mental disorders who have committed crimes, so that they may receive care under the Unified Health System.

468. With respect to the use of illicit substances, a serious public health problem in the country, a *National Program for Community Care of Users of Alcohol and other Drugs* was introduced in 2002, whose strategy is to widen access to treatment (*Psychosocial Care Centers-Caps-AD*) and *Reference Hospital Services on Alcohol and other Drugs*, ensure a dynamic, integrated view of the problem, promote rights, and adopt an approach conducive to reducing damages. In 2005, Administrative Order GM1028/05 was issued to regulate measures aimed at reducing public health damages. On the international front, the Brazilian Government has, since 2003, advocated the inclusion of the damage reduction strategy in United Nations official documents pertaining to this issue.

469. In view of the need for further discussion on the human right to mental health of persons with psychic disorders, the Ministry of Health and the Special Secretariat for Human Rights have integrated human rights and mental health public policies and sought the crucial participation of organized civil society as they issued an Interministerial Administrative Order in celebration of the international anti-institutionalization day (May 18), which set up a working group on the establishment of a *Brazilian Nucleus on Human Rights and Mental Health*. This collegiate body, whose membership would consist of Government and civil society representatives on a parity basis, will have the following tasks: (1) to coordinate human rights and mental health through the creation and improvement of effective mechanisms aimed at the protection and promotion of the rights of persons with mental disorders, including children and adolescents; of persons with disorders related to the abuse of alcohol and other drugs; and of persons involved in situations of violence; (2) to generate quality information, studies, and research on the interface between human rights and mental health, to contribute to the effective protection and promotion of rights; (3) to develop mechanisms for monitoring institutions dealing with persons with mental disorders; and (4) to establish mechanisms for hearing and acting on demands from persons with mental disorders and from civil society organizations.

470. Lastly, it is important to point out the international recognition accorded the Brazilian psychiatric reform by the Pan-American Health Organization-PAHO and the World Health Organization-WHO on the occasion of the event marking the fifteenth anniversary of the Caracas Declaration, held in Brasilia in November 2005.

Article 13

471. Data from the 2001-2004 National Household Sample Survey show that the Brazilian population's average schooling rate is timidly rising (6.8 years in 2004 as compared with 6.4 years in 2001). The pace of this increase is influenced to a large extent by the still persistently high rate of repeaters and failers. Despite the nearly universal access to education by children between 7 to 14 years old, 43 percent of them do not manage to finish the eighth grade of basic education at the proper age, which helps keep down the population's average schooling rate.

472. A look at the average number of years of schooling of the different age brackets (Annexes, Table 48) shows that only young people aged 18-24, with 8.6 years of education, have an average slightly higher than the average of completion of fundamental education. Although the schooling level of the population over 40 rose in 2001-2004, it is still below the country's average (5.5 years as compared with 6.8 years of schooling). Among the states there are also pronounced differences (Annexes, Fig. 32). In the Federal District, the population has already reached an average schooling of 8.8 years, whereas in most northeastern states the average is still less than 6 years. This disparity exists also between residents of metropolitan areas, who in 2004 had already reached the average of 8 years of schooling, and residents of rural areas, whose average schooling was 4 years, which corresponds only to the first stage of fundamental education (Annexes, Table 49).

473. Another important indicator for assessing the implementation of the right to education in Brazil refers to illiteracy. In the nineties, or more precisely, between 1992 and 1998, the illiteracy rate declined an average of one percentage point per year. As of 1999, the pace of this decline slowed down, so that the rate of 11 percent remained practically unchanged in 2003 and 2004.

474. The illiteracy problem in Brazil still affected about 14.6 million people, or 11.2% of the population in 2004, while in the rural area it affected 26.2 percent of the population aged 15 or older, a percentage five times higher than in metropolitan areas. Rural illiteracy rates vary from state to state and are highest in the Northeast, which has also the highest overall illiteracy rate - three times higher than the South's (Annexes, Table 50). There is still great inequality between whites and blacks in respect of education. The illiteracy rate among blacks (16.0 percent) is more than twice the rate among whites (7.1 percent). A look at the different population groups corroborates a historical trend: illiteracy among young people is considerably less in the 15-24 age bracket (3.0 percent), as compared with 19.3 percent among people over 40 (Annexes, Table 51). These differences by age brackets could be associated, for instance, with the expansion of the provision of education in recent decades, which made possible the marked reduction of illiteracy among young people.

475. This expansion is related to the fact that fundamental education is compulsory. The 2004 National Household Sample Survey showed that 93.9 percent of the population aged 7 to 14 years attended fundamental school, an increase of 12.4% as compared to 1992 (Annexes, Table 52). It should be pointed out that this indicator has been equalized between rural and urban areas. While in 1992 only 66.5% of rural children aged 7 to 14 years were enrolled in fundamental school, that figure had risen to 91.8% by 2004. The universalization of access to fundamental education has practically erased the disparities among regions as well as those pertaining to race and gender (Annexes, Table 53).

476. The percentage of children up to age 6 covered by pre-school education is rising but is still relatively low. In 2004, only 13.7% of children up to 3 years of age attended nurseries. Between 2001 and 2004, there was an increase of 3.1 percentage points. In addition, only 8.5% of children up to 3 years of age from families with a per capita income of half the minimum salary attended nurseries in 2004, or one quarter the rate observed among families with a per capita income of more than three times the minimum salary (Annexes, Table 60). In 2004, the percentage of children aged 4-6 years from poor families (per capita income of up to half a minimum salary) that attended school was 63.1%.

477. There was a slight reduction in the percentage of young people aged 15-17 attending school (from 82.4% in 2003 to 82.2% in 2004). In addition, only 45.1% of those 82.2% attending secondary school were enrolled in a grade appropriate to their age (Annexes, Table 55). However, an increase of 2 percentage points in this schooling rate (it was 43.1% in 2003) should be pointed out, as it reflects a declining trend in the age-grade distortion, pointing to a greater possibility that the younger people will attend secondary school at the appropriate age.

478. Among regions there are significant differences in the percentage of young people attending secondary school in terms of race or gender; a significant schooling difference also occurs between men and women in the 15-17 age bracket, a difference not so significant in relation to students aged up to 14 years (Annexes, Table 56). In the 15-17 age bracket,

50 percent of female adolescents attend secondary school, as compared with only 40.1 percent of male adolescents. The difference is still more marked between young people in rural areas and those in urban areas: in the rural area, only 50 percent of adolescents have access to secondary education. A lower percentage of blacks attend secondary schools (34.3 percent) as compared with white adolescents 56.5 percent). The situation of young people in this age bracket in the Northeast point to a significant school lag, as only 27.9 percent of them attend secondary school, a much lower rate than the national average. The discrepancy between age and school grade is very marked. Although 82.2 percent of adolescents attended school in 2004, only 45 percent were enrolled in secondary schools. This tendency was noticeable in all the Brazilian regions, particularly in the Northeast, where only 28 percent of young people in this age bracket were enrolled in secondary schools.

479. School Census data (Inep/MEC/2005) show that the offer of indigenous education increased 17.5 percent in the last two years. In 2003, approximately 139,000 indigenous students were enrolled in basic education, whereas in 2005 their number was estimated at 165,000. Currently, there are 2,324 indigenous schools; 618 of these were new schools recorded by the School Census since the 2003 school year. The higher number of schools has meant 43,000 new students, 2,400 new teachers, and at least 3,000 new salaried Indians in the school system on indigenous lands.

480. A look at the young people aged 18-24 in the appropriate age to attend higher education schools show that only 10.8 percent of them reached this level. In addition, the percentage of young people in this age bracket who attended school, which had remained stable at 34 percent between 1999-2003, fell to 32.4 percent in 2004 (Annexes, Table 55). A possible explanation for this reduction is the number of students that drop out of secondary school, which totaled 15 percent (the highest percentage since 1996), as the percentage of the students in this age bracket attending higher education institutions remained unchanged between 2003 and 2004.

481. There are marked differences in the access of young people aged 18-24 to higher education in terms of region, home location, race/color, and gender (Annexes, Table 57). The greatest difference is related to home location. Attendance of higher education institutions among rural young people is eight times lower than among young people who live in metropolitan areas. The differences between blacks and whites in this regard are also quite marked, although the difference in terms of home location is smaller. It should be pointed out, though, that this difference between blacks and whites is narrowing. Regional differences are somewhat similar to the racial differences observed, except that indicators of regional differences, which are high, are rising. Although significant, the gender inequality (favorable to women) was the least marked of all four types of inequalities contemplated.

482. It is important to note that, except for higher education, all the other education levels show a predominance of the public sector, in terms of both enrollment and number of schools. In the 2001-2004 period, the private sector's share of the total number of educational establishments varied from 32 percent to 30 percent (nursery and pre-school education); from 10 percent to 12 percent (fundamental education); from 31 percent to 30 percent (secondary education); and from 69 percent to 72 percent (higher education).

483. With respect to teachers, the 2004 School Census showed that Brazil has currently about 2.5 million teaching positions in basic education. It is possible to observe that in certain regions, particularly in rural areas, some of these teaching positions are occupied by people lacking the qualification required by law. The 2004 Census also shows that about 3 percent of pre-school teachers have never finished secondary education and that 9 percent of those that have done so do not meet the requirements for teaching, just as 17 percent of those that have finished higher education do not meet the teaching requirements either.

A. Measures adopted for the progressive realization of the right to education

484. The Brazilian educational system is governed by the 1988 Federal Constitution and Constitutional Amendment 14/1996, and by the *Law on Guidelines and Bases of National Education-LDB*. In regulating the constitutional principles, the LDB establishes the concept of basic education as consisting of pre-school education (for children up to 6 years of age), fundamental education (for children in the 6-14 age bracket); and secondary education (for adolescents in the 15-17 age bracket). This concept also includes the progressive extension of the obligatory and free character to the latter educational level. The Constitution also defines the competence and responsibilities of each federative unit in providing the different levels and modalities of education, and determines that it is incumbent on the states to organize, on a cooperative basis, their respective educational systems. It is incumbent on the municipalities to engage themselves on a priority basis in providing pre-school and fundamental education, whereas it is incumbent on the states to ensure the provision of fundamental education and, on a priority basis, secondary education. It is incumbent on the federal Government to organize the higher education system and to provide technical and financial support to the other federative entities.

485. Historically, some of the major obstacles to the universalization of access to and the improvement of basic education in the country have been the marked regional socioeconomic differences, associated with the states and municipalities' different capacity to fund education. In 1996, to address this problem, the Brazilian State established a *Fund for Maintenance and Development of Fundamental Education and Valorization of the Teaching Profession-FUNDEF*. The Fund's immediate objectives are to guarantee a minimum outlay per student and a teacher's salary threshold with a view to promoting the universalization, maintenance, and qualitative enhancement of public fundamental education. The establishment of FUNDEF made possible significant progress in fundamental education, particularly in respect of universalization of access. However, this financing mechanism has not yet been extended to pre-school and secondary education.⁵⁶

⁵⁶ In a decision of November 22 2005, the Federal Supreme Court reiterated the understanding expressed in the Reasoning of Non-compliance with a Fundamental Precept (ADPF) no. 45 that I is incumbent upon the Judicial Branch to avoid non-compliance with social rights. RE-AgR 4107-15/SP São Paulo. AG REG in the extraordinary appeal. Rapporteur Minister Celso de Mello. Judgement: 22/11/2205. Judging Organ: Second Team. Publication: DJ 03-02-2006. PP 00076 EMENT VOL 0221908 PP-01529. Plaintiff: Santo André Municipality. Attorney: João Guilherme Souza de Assis. Defendant: Office of the Public Attorney of the State of São Paulo. SUMMARY: EXTRAORDINARY APPEAL - CHILD UP

486. With a view to widen the population's access to these educational levels, so as to meet the economic accessibility requirement as provided in Art. 14 of the International Covenant on Economic, Social, and Cultural Rights, a constitutional amendment is now being proposed for the establishment of a *Fund for the Maintenance and Development of Basic Education and Valorization of Education Professionals-FUNDEB*. The new funding system will cover education of young people and adults that did not have the opportunity of access to fundamental and secondary education at the proper age, as well special education.

487. To enhance the performance of the fundamental education public systems in the North, Northeast, and Center-West, in partnership with the Municipal and State Departments of Education, and thus improve these region's educational indicators, a *Fundescola* has been established, whose strategies are to promote the adaptation of participating schools and finance the construction of new facilities; and to promote the training of teams of the education departments and schools involved in the execution of the project aimed at guaranteeing the implementation of initiatives to improve schools and the ongoing training of teaching professionals. *Fundescola* is financed by government resources and World Bank loans.

TO 6 YEARS OF AGE - CARE IN CARE CENTER AND PRE-SCHOOL - CHILD EDUCATION - RIGHT ASSURED BY THE CONSTITUTIONAL TEXT (CF ART. 208, iv) - GLOBAL SCOPE OF THE CONSTITUTIONAL RIGHT TO EDUCATION - JURIDICAL DUTY WHOSE EXECUTION IS INCUMBENT ON THE STATE , NOTABLY THE MUNICIPALITY - (CF ART. 211 § 2). APPEAL DENIED - Child education is an inalienable constitutional prerogative given to children and ensures, with a view to their integral development and as a first stage of the basic educational process, attention in care centers and access to pre-school (CF art. 208 IV). Such juridical prerogative, consequently, imposes upon the State, because of the high social significance of children education, the constitutional obligation to create objective conditions that make possible, in a concrete way, for the benefit of "children between zero and six years of age" (CF art. 208 IV) effective access and attention in care centers and pre-school units, under penalty of serious governmental omission, capable of unjustly frustrating, because of inertia, the integral fulfillment, by the public Power, of an obligation imposed on it by the very text of the Federal Constitution . Child education, being a fundamental right of every child, is not subject to discretionary evaluation from the Administration nor is it subordinated to reasons of mere governmental pragmatism. Municipalities, which are the primary actors in fundamental and child education, (CF, art. 211, § 2) cannot shirk the constitutional mandate, legally mandatory, thrust upon them by art. 208 IV of the Fundamental Law of the Republic. And which represents a limiting factor of the political-administrative discretion of the municipal agencies, whose options, with regard to the care for children in care centers (CF art. 29, IV), cannot be carried out in a way that hinders, on grounds of mere convenience judgement, the efficacy of this basic social right. While the prerogative of formulating and executing of public policies dwell primarily in the Legislative and Executive Branches, it is nevertheless possible for the Judiciary Branch to determine, albeit on an exceptional basis, chiefly I the instances of public policies defined by the Constitution itself, that they be implemented by the delinquent organs of the State, whose omission, because it means non-compliance with the political-legal tasks mandatory upon them, is capable of hindering the effectiveness and the integrity of the social and cultural rights enshrined in the Constitution. The issue is relevant to the doctrine of "reservation of the possible".

Currently it assists 384 municipalities in 19 states in the North, Northeast, and Center-West, covering 8,000 state and municipal public schools. This initiative involves resources totaling US\$1.3 billion.

488. To encourage public schools students to stay in school, the Ministry of Education implements complementary initiatives, such as distribution of textbooks and financial aid for school meals and the practice of sports.

489. A *National Textbook Program-PNLD* was introduced to supply textbooks, other books, and dictionaries to students in the eight grades of fundamental education in the federal, state, and municipal public school systems and in the Federal District. The program distributed more than 110 million books free of charge to fundamental education students in 2005. Also in 2005, a *National Secondary Education Textbook Program-PNLEM* was introduced, first in the North and the Northeast, with the distribution of 2.7 million books in that year. It is important to stress the government efforts to improve the criteria for selecting textbooks to be distributed nationwide under these programs. To be approved and recommended, it is not enough that textbooks avoid stereotypes and negative content - they must foster mutual understanding between genders and among ethnic, religious, and racial groups, and nations.

490. The purpose of the *National School Meals Program* (PNAE) is to meet the nutritional needs of students in public schools while they are at school. The world's largest school meals program, PNAE assists 36.4 million children, thereby contributing to better school performance and to the creation of healthy eating habits, as well as encouraging students to stay in school. The amount per student/day provided for students enrolled in pre-school and fundamental schools of the public school system (philanthropic schools are included) was readjusted in 20% in 2005, from R\$0.15 to R\$0.18. Since 2002, readjustments have totaled 38%. The per capita amount provided for populations in indigenous and *quilombola* areas is differentiated: R\$0.22 for students in public and philanthropic nurseries, pre-schools, and fundamental schools, while the per capita amount for students enrolled in indigenous schools and schools located in *quilombola* communities is R\$0.44.

491. The *Segundo Tempo* [second round] Program implemented by the Ministry of Sports provides the opportunity for students in fundamental and secondary schools to practice sports, particularly in socially vulnerable areas. Introduced in mid-2003, this program assists children and adolescents during a second school shift, providing them, in addition to sport practices, with free food and learning reinforcement. It has the following purposes: to provide opportunities for the practice of sports; to develop motor capabilities and skills; to qualify the human resources involved; to help reduce the students' exposure to social risks; and to establish, in cooperation with the federal Government, indicators for the monitoring and evaluation of educational sport activities in the country. It is estimated that more than one million children of 800 municipalities have benefited from this program.

492. In addition to the initiatives pointed out, the Brazilian State extends financial assistance to needy families through income transfer. Since October 2003, the Government brought under the *Family Grant Program*⁵⁷ all federal programs of direct cash grants to beneficiaries. Benefit

⁵⁷ See information provided in the discussion of Article 11.

payments are subject to the families' compliance with certain commitments related to education: the enrollment of their children aged 6 to 15 years in school and guaranteed school attendance of at least 85 percent of classes each month. The purpose of these conditions is to help the families to come out of the vulnerability situation in which they find themselves.

493. The Brazilian Government has endeavored, in coordination with social movements, to provide for the needs of certain social groups. Among such actions, mention must be made to the education of young people and adults, education for rural populations, universal and specific policies to promote diversity in education and stimulus to the relationship school-community.

494. The *Brasil Alfabetizado* [Literate Brazil] and *Educação de Jovens e Adultos* [Education of Young People and Adults] programs were introduced in 2003. In cooperation with the state and municipal educational systems, higher education institutions, and non-governmental organizations, they implement initiatives aimed at bringing young people and adults under literacy programs and at ensuring that they will continue studying. The program uses different methodologies, so as to take into account community lore and experiences, and gives priority to supporting, with funds automatically allocated by the Ministry of Education, the literacy activities carried out by the states and municipalities that adhere to the program. Under this strategy, the program's coverage was expanded from 2,088 municipalities in 2004 to 4,175 in 2005. Since their introduction, the programs have helped 5.5 million young people and adults; 2.6 million of them were taught to read and write by 54 non-governmental organizations.

495. When the education of young people and adults was once again included on the agenda of the educational policy, a further step was taken toward reducing social inequalities. The success of the *Brasil Alfabetizado* program should not be measured only by the number of people who learned to read and write but above all by the number of them who went on furthering their formal or informal education (reading circles, cultural groups, etc.) and by the higher schooling indicators, all of which reflected in their social inclusion, as they were prepared to enter the labor market, and for the exercise of citizenship.

496. The Brazilian State has endeavored to establish an educational policy for the rural population. The *Programa Apoio à Educação do Campo* [Program in Support of Education in the Country] adopts methodologies that valorize local lore and are adapted to specific needs, and seeks to improve the quality of education in the country at all school levels. In 2005, 12 agreements were signed, under which 2,377 schools were benefited and 338 technicians and 10,690 teachers received training. Also in 2005, support was extended for the construction and expansion of 81 rural schools, including through the procurement of equipment for 49 municipalities. Through municipal agricultural schools and Federal Technological Education Centers-Cefets located near agrarian reform settlements, the Ministry of Education is expanding the number of new schools in the rural area.

497. Since 2004, the federal Government has reformulated the initiatives aimed at redressing the educational inequalities that affect blacks, Indians, and students with special educational needs. Accordingly, in 2004, the Ministry of Education set up a *Secretariat on Continuing Education, Literacy, and Diversity-SECAD*, and entrusted it with the issues of "human rights and education", including their relation to diversity, which encompasses gender, race, ethnic origin, and sexual orientation. It is incumbent on this Secretariat to formulate and implement affirmative action public policies aimed at granting indigenous and black persons access to the entire

educational system, and at helping them to succeed and to stay in school. In June 2005, the Brazilian State allocated R\$2.5 million to public higher education institutions that have projects for the implementation of the law that requires the teaching of African history in fundamental and secondary schools.

498. With respect to indigenous populations, *the Law on Guidelines and Bases of National Education-LDB* guaranteed "... integrated educational and research programs to provide bilingual and intercultural school education ..." with the consent of the indigenous communities, as well as the provision, in addition to the curriculum, of teaching materials and programs specific to the different communities. Another achievement in the endeavor to meet the indigenous people's specific needs is the training of indigenous teachers, who then can play a decisive role in their communities. This policy, based on the recognition of difference as a value, runs counter to the homogenizing efforts of the past.

499. In the area of fundamental education, the *Programa Identidade Étnica e Patrimônio Cultural dos Povos Indígenas* [Indigenous Peoples' Ethnic Identity and Cultural Heritage Program] has funded educational projects implemented by the State Departments of Education and *indigenist* non-governmental organizations in support of indigenous fundamental school education, of the production and distribution of teaching materials, and of the training of teachers for indigenous schools. Currently, there are 16 courses for the training of indigenous secondary school teachers and three higher education programs that will graduate 200 indigenous teachers from the whole country this year, who are being qualified in three knowledge areas: social sciences; natural and mathematical sciences; and languages, literature, and arts.

500. Currently, it is in the area of higher education that the greatest progress is observed with respect to the implementation of initiatives that seek to democratize access for groups historically excluded from the educational system, as it is at this level that the problem is more evident. To this end, the federal Government has adopted a series of measures for the resumption of the growth of public higher education. Since 2003, it has systematically allocated resources for maintaining federal higher education institutions, overhauling the teaching contingent, and establishing a career plan for technical and administrative personnel. Ten federal universities are being established and 41 campuses are being consolidated to encourage the production of knowledge and improving quality of life in the various regions. Together with regional economic needs, the extension of the educational system into the hinterland has been one of the guiding principles of expansion, which benefits social groups traditionally excluded from universities, particularly persons of African descent, indigenous peoples, and persons with disabilities. In this way, the Brazilian State seeks to valorize higher education institutions nationwide, thereby complying with the material accessibility and availability requirements.

501. The *University for All Program-PROUNI*, introduced in 2004, makes possible the access of thousands of low-income young people to higher education. It is aimed at students that have graduated from secondary public schools or at those that have studied in private secondary schools on a full scholarship, from families with a per capita income of up to three times the minimum salary. The program grants full or partial scholarships for graduate school or for further specific studies in private higher education institutions, which, as a counterpart, are exempted from certain taxes. Although it is aimed at any needy student, the program also reserves quotas for persons with disabilities and for persons who declare to be black or Indian.

The quotas are proportionate to the number of persons with disabilities, blacks, and Indians in each federated unit, as indicated by the most recent census taken by the Brazilian Geography and Statistics Institute-IBGE.

502. For its first screening, PROUNI received the adhesion of 1,142 private higher education institutions and granted 71,905 full scholarships and 40,370 50-percent partial scholarships - a total of 112,275 scholarships-distributed throughout the entire country. For the first 2006 semester, the breakdown of the 90,538 scholarship recipients by race was as follows: 43,385 whites; 30,957 mulattoes; 14,080 blacks; 1,942 yellow; and 174 indigenous persons.

503. Committed to the democratization of access, a major bill is under consideration by the National Congress, establishing a Special Quota System at federal higher education institutions for graduates from public schools, particularly for blacks and Indians. Quotas must be proportionate to the local black and indigenous populations, as verified by IBGE data. Independently from the bill, several public universities are adopting the quota system. In addition, guidelines are being put together to ensure that recipients will stay on, such as the tying of scholarships to research and further study programs for beneficiaries.

504. Mention should be made of other initiatives, such as the programs geared to *Affirmative Actions for Blacks at Public Higher Education Institutions* (Uniafro) and *Opportunities and Right to the University* (*Incluir*). The former's purpose is to assist Afro-Brazilian Studies Centers at public universities in developing educational programs and projects to promote racial equality. The program *Incluir* allows persons with disabilities to enter federal educational institutions after passing an appropriate entrance exam, and guarantees the assistance of *Libra* interpreters (*Libra* is the Brazilian sign language), structural adaptation of academic spaces, and the acquisition of supportive equipment to ensure the equality of opportunities.

505. Another inclusive educational initiative worthy of mention is the Brazilian State's attention to special education in all stages and at all levels of education. The purpose is to assist students with special educational needs, by promoting their access to the regular educational system, training teachers and managers, ensuring architectonic and pedagogical accessibility, as well as providing specialized education. In 2003, a program titled *Inclusive Education: the Right to Diversity* was introduced and is now being implemented in all the states and the Federal District, covering 86% of Brazilian municipalities.

506. Educational systems must guarantee enrollment to students with special educational needs in regular classes of the regular educational system and see that they receive attention in appropriately equipped classrooms or specialized centers. To this end, the Brazilian State has implemented initiatives in different areas (1) ongoing training of teachers for inclusive education; (2) distribution of equipment for specialized attention in schools; (3) distribution of specific teaching and pedagogical materials;(4)adaptation of school facilities to ensure physical accessibility; (5) support for the implementation of specialized educational attention; (6) training of managers and educators; and (7) reinforcement of vocational training to qualify students with special needs for entering the labor market, etc. Between 1999 and 2005, the number of students with special educational needs in the education system climbed from 337,326 to 640,317. Of these, 41 per cent consisted of students with special educational needs who were attending regular schools and classes of the regular educational system in 2005. The number of schools in

which students with special educational needs were enrolled also jumped from 6,557 in 1998 to 42,765 in 2005. Public school's share of students with special educational needs also grew to 60 percent of the total.

507. Also worth mentioning is a working group set up by the Ministry of Education and the Ministry of Justice to discuss strategies for raising the schooling level of inmates, beginning with an assessment of existing data, projects, and legislation on the subject. Close cooperation between the two Ministries led to the signing of a Protocol of Intent in 2005, ratifying their commitment for working together and effectively in the formulation of *National Guidelines for Education in the Penitentiary System*.

508. As regards the fostering of relations between school and community, the Brazilian State is carrying out initiatives for implementing comprehensive policies to help improve basic education's organization and management and to strengthen the mechanisms for the participation of local communities and local schools in this process. The *Strengthening School Councils Program* seeks to promote the discussion of the importance of creating room for the participation of teachers, employees, parents, students, principals, and the community in the administrative and pedagogical management of educational institutions, thereby instilling greater transparency into the work of the federative units.

509. Quality education requires qualified teachers. In this connection, guidelines were established in 2005 for the *National System of Ongoing Training of Teachers*, guaranteeing access to continued training; the development of sciences and technologies applied to education; and promotion of teaching staff criteria to valorize the teacher's role (Annexes, Box 32).

Article 14

510. As the data presented under the preceding article show, Brazil not only provides compulsory fundamental education free of charge but also adopts measures to encourage all to enroll at this level and to stay in school.

Article 15

511. For the Brazilian State, culture has an anthropological and a sociological dimension. On the one hand, culture refers to ways of living, lore, and quotidian chores; on the other, it refers to the way practices and technologies are institutionalized. Culture is thus not restricted to traditional arts (fine arts and literature); it encompasses society's living conditions and lifestyles, and its forms of participation, expression, and creativity in the social context. This premise is associated with a political project in which different social experiences may be valued, developed, and set as available alternatives to the knowledge and appreciation of social groups and segments. Accordingly, the overview that follows provides information on the access to cultural goods and practices.

512. According to the 2001 Municipal Information Survey, Brazilian large cities have practically all the cultural assets whereas in smaller cities cultural assets are fewer, except for those that are provided under specific federal policies implemented in recent years, as mentioned in the first Brazilian Report to the Committee - as is the case of libraries and bands. The lack of cultural assets in the municipalities is coupled with the lack of inclination to patronize them

should they exist. This may be associated with both a formal education uninterested in the arts and a total lack of knowledge about the possible uses of such assets (a lack of knowledge that is aggravated by the very lack of these assets).

513. A survey carried out by the research on municipal information by IBGE in 2001 shows that amongst the traditional assets - which can be enjoyed outside home-, those which have a more marked presence in the municipalities are libraries (79%) and musical bands (44%). There are theaters and museums in 20% of municipalities, and cinemas and orchestras in less than 10%. Small towns are poor in cultural assets, while medium-size and large cities offer more possibilities, although the percentage of assets per inhabitant points to supply problems nationwide.

514. Assets associated with domestic consumption are more common than public assets. In 2001, 49% of Brazilian cities had video rental shops, 49% had record shops, 43% had bookstores, and 23% had Internet service providers. In comparison, 90% of the population had TVs in the home, 60.4% had fixed telephone, and 88.4% had radios (Annexes, Table 65). As regards restricted information systems, access is still limited: only 10 percent of the population had access to personal computers and only 10% were connected to the Internet.

515. The coordination of the different government levels as proposed by the *National Cultural System-SNC* raises the question of the role of assets such as libraries, bookstores, theaters, cultural centers, cinemas, and archives as organizers of cultural events. Cultural functions are not a federal Government monopoly; they are shared by the other levels of government. Cultural assets are to a large extent assumed and maintained by municipalities, while the federal and state governments take care of training human resources, provide technical support, and encourage and standardize certain services (such as libraries and files) without shouldering the same responsibility as the municipalities.

516. Table 65 (Annexes) shows the existence of these assets in urban life, that is, in small, medium, and large cities; these cultural assets represent means through which social groups occupying and interacting with public spaces express their memories, meanings and practices.

517. Various studies show that schooling is an important condition for having access to and the proper inclination for making use of certain cultural goods and assets, but social inclusion pose different challenges to individuals because of their capabilities. Thus, the social segment most inclined to the consumption of cultural goods (books, DVDs, CDs) or to cultural practices (going to the theater, visiting museums, using libraries, attending orchestral concerts) is the one with more than eleven years of schooling, although there may be some “enjoyers” of culture at other literacy and schooling levels. Even listening to the radio and using the Internet require reading skills and the willingness to do so, which also depends on the schooling level.

518. Thus, access to higher education institutions places individuals closer to an ideal position as consumers of art and culture. Indeed, it can be observed that in cities where these cultural assets exist there are other cultural institutions that foster the inclination for cultural consumption and practices. Other assets, such as video rental shops, bookstores, and record shops are commercial outlets for mass-produced, inexpensive items and thus presumably accessible to the general population.

519. In addition to the inequalities among municipalities with respect to the existence of cultural assets, there are also socioeconomic differences in the consumption of certain cultural assets (books, DVDs, CDs) as well as differences in the exercise of cultural practices (going to the theater, visiting museums, attending orchestral concerts, etc.).

520. According to 2003 IPEA data on cultural assets, the higher the literacy level (levels 1 to 3), the larger the number of practitioners and frequenters of traditional cultural assets (shows, movies, museums, theater, libraries). Anyway, only a small social group patronizes the various cultural offerings, except for television and radios, true national preferences, as tools that provide access to information and leisure.

521. Table 66 (Annexes) provides summary information on schooling level, literacy, social condition, and cultural practices. Basically, it shows that the higher the literacy level, the greater the number of practitioners and frequenters of elite cultural assets and that this is also related to income level (social class).⁵⁸ It should be noted that the rate of television watching is 81% (occasional television viewers total 97%). That notwithstanding, there are marked average differences between those that are better or less endowed with cultural and economic capital. Among those at the illiterate level, 58% percent watch television, while in classes D and E this figure rises to 75%, to 86% at level 3, and to 85% in classes A and B. But with respect to occasional television watchers and radio listeners, differences disappear, which points to the universalization of these cultural practices as well as to different forms of using leisure time.

522. With respect to other practices, it can be seen that they form part of the cultural universe of those with a higher schooling level and higher income. Of this group, 45% and 50% never go to fairs, exhibits, and shows but only 28% and 35% in level 3 of literacy say that they never do so. In classes A and B, 25% and 31% say that they do not go to fairs, exhibits, and shows. The following items refer to elite cultural practices. Of the total, 59% never rent films at video rental shops, as compared with 95 percent among illiterates that never do. As the literacy level rises, so rises the percentage of those that rent films (only 34% percent in level 3 and 22% in classes A and B never rent films). Only a minority frequents cinemas, museums, theaters, and libraries. Of the total, 68% do not go to the cinema, 78% do not visit museums, 83% never go to the theater, and 69% have never taken out a book from a library. The averages rise somewhat as the literacy and income level also rises. Thus, in addition to the intentional habit of patronizing cultural activities, other variables influence the conditions for the practice of this habit, all of them related to the socioeconomic level, the social milieu, and the existence of institutions and spaces for the enjoyment and exercise of these practices.

⁵⁸ Illiteracy is followed by level 1 of literacy-ability to locate explicit information in short texts, whose form helps recognition of the requested content; level 2-ability to locate information in medium-length texts, even if the information does not occur literally in the same form as the question; level 3-ability to read long texts, locate more than one information item, interconnect parts of the text, compare texts, draw inferences, and summarize. RIBEIRO, V.M. (Org.), *Letramento no Brasil*, Ed. Ação Educativa, Ed. Global e Instituto Paulo Montenegro, SP, 2003.

523. Currently, the federal Government provides 37% of the funding for culture, taking into account budgetary allocations and resources stemming from government incentives. Municipalities contribute 36% and states contribute 25%, while private enterprises account for approximately 2%, excluding cultural industries. In 2001, cultural jobs in the labor market accounted for 5.8% of the total.

A. Measures adopted for the progressive implementation of the right to culture

524. Articles 215 and 216 of the 1988 Federal Constitution provide that the Brazilian State shall ensure to all persons “the full exercise of their cultural rights and their access to the sources of national culture, and shall support and encourage the appreciation and dissemination of cultural manifestations”. The *National Cultural Plan* provided for under Art. 215 of the Federal Constitution (Constitutional Amendment No. 48) has the purpose of defending and valorizing the Brazilian cultural heritage; producing, promoting, and disseminating cultural goods; training qualified personnel for managing the many cultural manifestations; democratizing access to cultural assets; and valorizing ethnic and regional diversity. It is incumbent on the federative units to legislate on and protect the cultural heritage and to provide the means of access to culture. Mention should be made of the need to protect the popular, indigenous, and Afro-Brazilian cultural manifestations.

525. The Brazilian State assigns a strategic role to culture in the development and valorization of cultural diversity. Development has a local face and its characteristics are determined by each region’s peculiar cultural patterns. This is why the Brazilian Government consistently endeavors to establish a cultural policy that is geographically comprehensive, as well as participative, decentralized, and accessible to all. This policy includes the various legislative actions that seek to emphasize constitutional provisions, by creating instruments to link public resources and political coordination.

526. There is, for instance, a proposal for a constitutional amendment for establishing a *Public Financing System*, aimed at earmarking resources derived from the federative units’ tax revenues (Draft Constitutional Amendment 310/04). Another proposed constitutional amendment seeks to encourage the integration of public and private cultural institutions on a cooperative, across-the-board, open, decentralized, and participative basis into a *National Cultural System* (Draft Constitutional Amendment 416/05). Under this proposed amendment, the *National Cultural System* would encompass the Ministry of Culture, the *National Cultural Council*, cultural systems of the federative units, the public and private cultural institutions, and the complementary subsystems (museums, libraries, archives, cultural information, and instruments for fostering and promoting culture). The guiding policy should be coordinated with the policies for other sectors, such as education, sports, tourism, the environment, communications, human rights, etc.

527. Once the constitutional provisions had been regulated and after a wide-ranging social mobilization leading to the consolidation of the *Museums Department* (DEMU/IPHAN, Decree No. 5040/2004), a *Brazilian Museum System* was established by Decree No. 5264/2004. The *National Museum Policy*, formulated in consultation with the museum experts’ community,

adopted dynamic, flexible institutional management instruments. Numerous events, workshops, and forums were held and museum modernization edicts were issued for the selection of 73 projects in 24 states. In addition, efforts were made to restore and revitalize national museums. In 2001-2002, an average of R\$15.7 million were spent and in 2003-2005 expenditures rose to R\$18.6 million, an 18% increase.

528. The Museums Department was born of the need for an institutional redesign for addressing museum issues. In addition to federal museums, the federal program now encompasses all other museums - public, private, or mixed - and bears a new name: *Memory and Citizenship Museum Program*. Its objective is the revitalization of museums and the encouragement of other memory preservation institutions, as well as providing the population with access to cultural production. It has various components, such as equipment procurement, reformulation of exhibits, conception of museological and museographic projects, improvement of utilities systems (electricity and water), climatization, etc., all of which in accordance with the National Museum Policy. The institutional reorganization paved the way for the formulation of a comprehensive public policy capable of linking the museum system to state, municipal, and federal spaces, as well as establishing international connections.

529. One of the Brazilian State's initiatives aimed at valorizing the historical urban assets, is the *Monumenta Program*, whose objectives were described in the first Report, which provides the basis for the programming of 83 municipalities that contain 101 *National Urban Sites* that are considered historical, artistic, or architectonic heritage. The *Monumenta Program* has contributed to the achievement of the government program goals, while fostering economic activities in the cities involved, through the training of specialized labor, the creation of jobs, and income generation. Under the program, municipalities may receive assistance for implementing self-support programs involving their local community.

530. The purpose of the *Brazil-Cultural Heritage Program*, implemented by the National Historical and Artistic Heritage Institute-IPHAN) (see description of its functions in the first Report), is the preservation and revitalization of Brazil's material and immaterial heritage. During the period covered by this report, 28 inventory projects, 18 immaterial assets registration processes, and four safeguarding projects were completed. An *Immaterial Assets Office* was set up under the *Cultural Assets Consultative Council*. In addition, work on the restoration of historic buildings was done in at least 37 municipalities, in addition to the provision of tourist signs, and emergency work on registered buildings.

531. To reduce the general problems associated with the formation of the reading habit, its consequences for and impact on social and economic performance, Brazil introduced the *Open Book Program* (also described in the first Report). This program set up 400 libraries in 2005, providing them with a selection of books, furniture, and data-processing equipment, thereby raising to 88 percent the number of municipalities that have a library (4,918). In addition, it maintained the services provided to the public by the National Library, the Brasilia Demonstration Library, the Euclides da Cunha Library, and the Reading House (an estimated 400,000 users received attention under this program). It also provided technical assistance, trained professionals, awarded prizes and scholarships, and published works.

532. The *Brazil: Sound and Image Program*'s objectives are related to a better balanced development of the links in the cinema and audiovisual economic chain, and to the valorization of diversity in production, including aesthetic and narrative experimentation. In the former case, the emphasis is sustainability; in the latter, the emphasis is on the legitimacy and importance of experimental production and on the promotion of works that do not cater to market tastes. The program was conceived for addressing the problem of distribution, which allows no room for Brazilian production; the people in charge of the program bet on the cinema and audiovisual segment as part of the national productive chain with a potential for self-sustainability. But the more successful initiatives are those related to specific partnerships, such as the *Program in Support of Television Audiovisual Exports* (in partnership) and the *DocTV* and the *Brazils Revealed* (in partnership with non-governmental agents). Institutional incentive to production also remains important.

533. The *Culture, Education, and Citizenship: Living Culture Program* helps to fill the lack of instruments and incentives for the production and circulation of local cultural expressions, and to address the communities' isolation in respect of new technologies and instruments for artistic-cultural production and education available in other places. So far, the main results of federal initiatives in this connection are the 442 *Cultural Posts* set up under agreements in various regions. This program is assigned high ministerial priority, as shown by increased funding (from R\$4 million in 2004 to R\$49.4 million in 2005, which means that this program accounted for more than 40 percent of the Ministry of Culture's budgetary allocations last year). In addition to covering the various Brazilian regions, the *Cultural Points* reach the most diverse social groups - young people, women, Indians, rural communities and members of the landless movement, Afro-Brazilian communities, and riverine and rainforest populations. They encompass different forms of expressions: religious manifestations, such as *candomblé*, the theater, dance, audiovisual production, music, circus, popular culture (puppet shows, games, crafts, hip-hop, *capoeira*, arts, *maracatu*, *congado*, *folia-de-reis*, *bumba-meu-boi*, etc.). The Culture Points organize cultural events and practices (cineclubs, multimedia shows, alternative markets, entrepreneurship centers, museums, libraries, radio stations, cultural centers, and cultural spaces, preservation of historical heritage, memory preservation centers, and digital culture centers, etc.).

534. A *National Seminar on Popular Culture Public Policies* was held in early 2005, culminating discussions and workshops held in the course of 2004. In view of the cultural industry and its tendency to symbolic homogenization, the Brazilian State sees in the formulation of public policies aimed at promoting popular cultures an alternative for promoting pluralism, respect for diversity, and recognition of the multiplicity of experiences and of the possibilities for cultural development. The *Cultural Identity and Diversity Program* pursues these objectives. The implementation of diversity valorization initiatives also implies ensuring the intersectoral, coordinated character of government agencies' actions aimed at preserving the living conditions that give rise to cultural manifestations. Some of the federal Government agencies that directly or indirectly deal with immaterial assets and with initiatives geared to the valorization of diversity should be mentioned: the *National Folklore and Popular Culture Center*-(CNFCP/IPHAN); the Ministry of Culture's *Cultural Identity and Diversity Secretariat*; the *National Indian Foundation* (FUNAI/MJ) and the *Special Secretariat on Racial Equality Promotion Policies*(SEPPPIR), which implement, respectively, initiatives in indigenous and *quilombola* communities; and the Ministry of Education, which has a major role in the valorization of the diversity of cultural manifestations. With the backing of these structures,

various projects were implemented in 2004 for promoting exchanges among the different regions and various cultural groups. Some of these projects were as follows: (1) *Support for the GLBTT Pride Parade*; (2) *Mapping of Brazilian Cultural Diversity* through studies and the devising of instruments for recognizing cultural diversity, including an instrument for recognition and communication of producers connected to popular cultural expressions; and (3) *Debates of Cultural Diversity*. In addition, a *Land Cultural Network Program* was introduced in partnership with the Ministry of Agrarian Development, the Ministry of the Environment, and the Landless Workers Movement-MST, based on the artistic production of cultural entities and agents in areas related to Agrarian Reform and Family Farming.

535. The *Arts Inventiveness Program* seeks to increase the production and dissemination of and access to cultural assets and services in the area of arts and performances (music, theater and visual arts, circus, etc.). It is implemented by the *National Arts Foundation* (Funarte) and is active in the training and retraining of cultural technicians, producers, and agents. It is also responsible for holding and fostering festivals, encounters, and exhibits of various art forms and in 2005 it held 22 of such events; for the *Contemporary Brazilian Music Biennial*; and for performances at Funarte's hall. With the backing of municipalities and states and the cooperation of Petrobrás, it implemented the *Pixinguinha Project* (promoting the presentation of approximately 160 shows in 53 cities), in addition to distributing instruments to bands and lighting kits to small and medium-size theaters.

536. With respect to Afro-Brazilian culture, the Brazilian State has endeavored to implement initiatives aimed at the development of communities with an Afro-Brazilian tradition, including the *quilombola* communities and the *terreiros*, so as to ensure their ethnic development in accordance with their historical, religious, and cultural needs. The objective is to promote and preserve these communities and the Afro-Brazilian heritage. In addition, this program seeks to support and promote thematic Afro-Brazilian cultural projects with a view to increasing the production and dissemination of Afro-Brazilian culture and project it both domestically and internationally.

B. Right to enjoyment of scientific progress

537. Under the Federal Constitution, scientific, artistic, and technological creations form part of the Brazilian cultural assets and the State is responsible for promoting scientific development, research, and technological training (Federal Constitution, Arts. 216 and 218). Accordingly, basic scientific research should be a State priority, with a view to the people's welfare and scientific progress.

538. In the wake of the right to the enjoyment of scientific progress and its applications, in conformity with the International Covenant on Economic, Social, and Cultural Rights, the obligation to provide the means of access to culture, education, and science is equally incumbent on the federal Government, the states, the Federal District, and the municipalities. At the federal level, the Ministry of Science and Technology-MCT has a salient role in the conservation, development, and dissemination of science.

539. It is incumbent on the Brazilian State, through all its federative units, to respect the freedom that is essential to scientific research and creative work. Compliance with the Convention's provisions may be ensured through supervision of the private sector and the promotion of research.

540. The Federal Constitution does not assign to the Government the monopoly of technological research and creation. It establishes that the Government may support and encourage enterprises that make appropriate investments in this area. The domestic market must be encouraged so as to ensure the feasibility of the country's technological autonomy (Federal Constitution, Art. 219).

541. On the other hand, the Government can provide funding for research and incentives to researchers. At the federal level, the *National Council on Scientific and Technological Development* (CNPq) under the Ministry of Science and Technology, and the *Coordinating Office for the Improvement of Higher-Level Personnel* (CAPES) have invested on the training of thousands of researchers nationwide. As shown in Table 67 (Annexes), the number of scholarships granted to post-graduate students has risen. That governmental initiative has been crucial in raising the number of MSc's and PhD's trained at home and abroad (Annexes, Table 68).

542. Thanks to the State's funding of research, Brazil has increased its share of worldwide scientific production. Between 1981 and 2002, Brazil's share of scientific production has trebled, as shown in Table 65 (Annexes), which was sufficient to rank Brazil as 17th in the world (Annexes, Table 66). Moreover, in absolute figures, the number of articles published by Brazilians between 1997 and 2002 places Brazil in the 7th position in the world (Annexes, Table 67), which points to the fast growth of the national scientific output.

543. The Federal Constitution allows the states and the Federal District to allocate part of their budgetary receipts to a research institution. In this connection, mention should be made of the research-backing foundations in the major Brazilian states, which are public entities devoted to fomenting teaching and scientific and technological research.

544. In respect of the development and dissemination of science, as a follow-up to the initiatives mentioned in the first Brazilian Report to the Committee, the Ministry of Science and Technology set up a *Department for the Popularization and Dissemination of Science and Technology-DEPDI* in July 2003. DEPDI's objectives are to widen the access of a larger segment of the population to scientific and technological knowledge, to contribute to improved scientific training at all educational levels, and to encourage the use of science and technology in initiatives aimed at social inclusion and the reduction of inequalities. It is important that every Brazilian citizen have the right to acquire basic knowledge of science and of how it functions, to help him understand his environment, to increase his opportunities on the labor market, and to encourage him to engage in political action. Scientific and technological dissemination through instruments such as science centers and museums, public events, the media and university extension programs. contributes to society's general scientific and technological qualification. The priority areas adopted by DEPDI for the popularization of science and technology (2004-2006) include support for the establishment and maintenance of science centers and museums and traveling scientific exhibits. Also included are initiatives aimed at ensuring a more specific presentation of science and technology by the media, and particularly by newspapers, radio, and television. Another priority has been the improvement of

science teaching in schools through support to the production of didactic materials, science fairs, science Olympic competitions, and particularly the Public School Mathematics Olympics, in which 10.5 million students participated in 2005.

545. As regards the democratization of science, some initiatives deserve mentioning. One has to do with the establishment of *Technological Vocational Centers*, which are teaching and vocational training units aimed at widening the access to scientific and technological knowledge. These Centers provide technological training to the population and are thus basic vocational training units, which also provide specialized services, in conformity with the regional character of each center. This program has supported various units since its introduction in 2003. In the first three years, nearly R\$58 million were spent to support the implementation of 150 *Technological Vocational Centers* in several states.

546. In addition, a 2004 presidential decree established the National Science and Technology week as a mechanism of mobilization on behalf of science and technology, approximation between the population and research institutions, and dissemination of science, aimed particularly at school-age children and young people. In its first year, the October 18-24 week comprised 2,000 activities nationwide, involving every state and approximately 260 municipalities. In its second year, the number jumped to 6,700 activities held in 332 municipalities and involved the participation of 850 educational and research institutions.

547. Art. 218, paragraph 2 of the Federal Constitution establishes that technological research shall be aimed at solving Brazil's problems and at developing the national and regional productive systems. It was precisely with this intent that the Ministry of Science and Technology established a *Social Technology Network-RTS* in 2005, to disseminate and apply, on a large scale, technologies conducive to the sustainable development of the Semiarid and Legal Amazon regions and of the outlying areas of large cities and metropolitan areas. The RTS work involves the dissemination of technologies developed by institutions that form part of the network with funding from maintaining entities. As a collective organization for the democratization of technological solutions conducive to social inclusion, RTS invested R\$14 million in 2005-2006 on job- and income-generating projects in needy municipalities. RTS consists of government representatives, universities, private sector entities, and about 300 civil society entities. For its first years, RTS adopted as its priority (1) the application of resources in undertakings such as waste recycling and crafts; (2) support of systems of production associated with water collection (organic vegetable gardening, productive backyards, caprine livestock, etc.); (3) incentive to collective initiatives, such as cashew nut processing, native fruit production, meliponiculture; and (4) cultivation of medicinal plants, and agroextractivist processes (açai, andiroba, and babassu palms, etc.).

548. Among these technologies, it is worth mentioning the one used in cashew nut miniplants in the Northeast, which allows a 50-percent increase in the production of whole nuts. On the average, work in these plants earn the producer families an additional monthly income of R\$450. The energy projects based on renewable sources - biomass and solar and eolian sources - in the states of Alagoas, Pernambuco, Ceará, and Bahia deserve emphasizing, as they have helped several communities to lift themselves up out of poverty and to increase their family income from less than one minimum salary to about three times the minimum salary.

549. Taking into account the across-the-board character of scientific progress, one can notice the Government's efforts aimed at technological progress.

550. The Ministry of Communications's *Governo Eletrônico Serviço de Atendimento ao Cidadão* (GESAC) [Electronic Government-Citizen Attention Service] provides permanent access to the Internet in areas where commercial service is not feasible or which lack the requisite infrastructure. The program was introduced in 2002 and currently serves 3,200 communities. It stresses the use of free software and provides technical support through the 0800 telephone number and social agents that assist the communities in preparing their projects, provide training to multiplier agents, and do preventive maintenance, among other tasks.

551. It is incumbent upon the Unified Health Service to foster scientific and technological development in its specific area (Federal Constitution, Art. 200, V). To ensure access to all technological advances, in 2003 the Ministry of Health established a *Science, Technology, and Strategic Inputs Secretariat*, whose main tasks are as follows: (1) to formulate, implement, and evaluate the *National Policy on Science and Technology* in the area of health; (2) to coordinate Ministry of Health initiatives with those of governmental and non-governmental organizations, with a view to ensuring scientific and technological progress in the area of health; (3) to formulate, implement, and evaluate the *National Policies on Pharmaceutical and Drugs Assistance*, including blood products, vaccines, immunological drugs, and other related inputs; (4) to devise methods and mechanisms for assessing the economic and sanitary feasibility of undertakings in the area of health; (5) to formulate, promote, carry out, and evaluate studies and projects; and (6) to participate in the formulation and implementation of initiatives aimed at regulating the market to improve the National Health Policy.

552. Among other measures adopted for widening the access to drugs and other inputs are: (1) establishment of the *Drug Market Regulatory Chamber* (CMED), which regulates the market and establishes price setting and adjustment criteria, in addition to the establishment of an ombudsman office to receive consumer complaints of undue price adjustments; (2) a draft bill submitted to the National Congress on the establishment of a blood products plant, to make the country self-sufficient in this respect; (3) establishment of the *Brazilian Contraceptive Plant* in Xapuri, AC to supply the STD/AIDS Program; (4) participation in the *Negotiating Group on Antiretroviral Drugs-GIP* and in patenting discussions; (5) incentive to the modernization of official Brazilian laboratories, to the expansion of their productive capacity, and to the rationalization of public production; (6) coordination of the *Access, Government Procurement, and Social Inclusion Group at the Forum on Competitiveness in the Pharmaceutical Productive Chain*; and (7) establishment of *PROFARMA*, a special credit line for medicine production, incentive to research and to the reorganization, acquisition, and merge of enterprises so as to reduce the commercial deficit of the productive chain and increase the production and quality of medicinal drugs.

553. In addition to the credit line extended to private sector enterprises, the *Oswaldo Cruz Foundation* (FIOCRUZ) has rendered a major contribution to research, information, and communication in the areas of health, and product quality control, as well as to the

manufacturing of vaccines, drugs, reagents, and diagnostics kits.⁵⁹ Worth mentioning is FIOCRUZ's Far-Manguinhos Laboratory, a reference in drug research, technology, and production in the country,⁶⁰ which produces the main antiretroviral drugs, drugs against hypertension and diabetes, antiparasitic drugs, antibiotics, and other products essential to the Unified Health System. Its target is the production of 10 billion pharmaceutical units by 2008. Drugs production is accompanied by an investment of R\$182 million to expand the production capacity of all official laboratories.

554. The Federal Constitution requires that the Brazilian agricultural policy include incentives to research and technology (Art. 187, III CF). The *Brazilian Agricultural and Livestock Research Enterprise-EMBRAPA*, under the Ministry of Agriculture, Livestock, and Supply-MAPA, carries out research nationwide, adapting crops to the different biomes. Since its establishment in 1973, grain output (rice, beans, maize, wheat, coffee, etc.) has quadrupled. This resulted in higher production and productivity in bovine, swine, caprine, ovine, and poultry livestock. The supply of milk, hides, meat products, cheeses and eggs followed the same pattern, as did the supply of vegetables, fruit, flowers, fibers, and forest essences. EMBRAPA has proven that investment on research yields benefits to society, by making possible the production of a greater variety of less expensive, higher-quality foodstuffs and fibers.⁶¹

555. Moreover, to ensure the effective realization of the right to an ecologically balanced environment, the Federal Constitution lays on the Government the responsibility for preserving the country's genetic assets and supervising genetic material research and handling (Art. 225, paragraph 1, II). The Biosecurity Law (Law 11.105/2005) sets up an important normative framework in connection with genetic assets: it establishes security norms and mechanisms for the supervision of activities that involve genetically modified organisms (GMOs) and their byproducts; (2) it establishes the National Biosecurity Council and revamps the National Biosecurity Technical Commission; and (3) it provides for a National Biosecurity Policy.

⁵⁹ <http://www.fiocruz.br/cgi/cgilua.exe/sys/start.htm?sid=3>, accessed on June 28, 2006.

⁶⁰ <http://www.friocruz.br/historico.htm>, accessed on June 28, 2006.

⁶¹ http://www.embrapa.br/a_embrapa/unidades_centrais/acs/eventos/Embrapa33anos/ides_html/mostra_documento, accessed on June 28, 2006. Embrapa's main products and services include the following: (1) Brazil in Relief: this service provides accurate altimetry data of the entire territory, including previously inaccessible geographical accidents; (2) Agrotempo: Agrometeorological Monitoring provides users, via Internet, with weather and agrometeorological information on several municipalities and states. In addition to current climatic conditions, the system provides the National Agrometeorology, Ministry of Agriculture, Livestock, and Supply with basic information used in agricultural zoning; and (3) the *Prosa Rural* [Rural Chat] radio program broadcast to young people and family farmers in the Semiarid Region, in the Jequitinhonha Valley, and in the North and the Center-West, using plain, accessible language, about issues related to the development of agribusiness, with emphasis on Embrapa research.

556. As regards genetically modified organisms, it is incumbent on the *National Biosecurity Technical Commission-CNTBio* to supervise and approve research on and production of transgenics appropriate for human consumption. In compliance with the requirement of information in consumer relations, it is incumbent on the Ministry of Justice to verify product labeling. In addition to information on genetically modified organisms on the ingredients list, labels must have a standard Ministry of Justice logo (a “T” inside a yellow triangle).

557. In issuing its opinion on the release of genetically modified products and their byproducts for human or animal consumption, CTNBio evaluates their safeness so as to minimize any risks to consumers’ health. Studies are carried out by experts in various areas, with special attention to food safety. By June 2006, only two genetically modified products had been studied and approved for human consumption: soybean resistant to glyphosate and BT cotton resistant to insects.
