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**International covenant on civil and political rights**

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HUMAN RIGHTS COMMITTEE

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

Initial reports of States parties due in 1993

Addendum

BRAZIL 1/

[17 November 1994]

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1/ Annexes to the report are available for consultation in the files of the Secretariat.

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* Available for consultation in the files of the Secretariat.

# I. PRESENTATION

It is with great satisfaction that the Brazilian Government hereby submits to the Human Rights Committee its first report regarding the International Covenant on Civil and Political Rights, celebrated under the aegis of the United Nations in 1966.

Brazil has consistently taken an active part in elaborating international instruments on human rights. By adhering to the Covenant, it has demonstrated its conviction that the protection of basic human rights is not confined to action on the part of the State. The international protection instruments are an additional guarantee that these rights will be secured, strengthening the role of domestic institutions. Brazil views its subscription to these treaties as a commitment at both national and international level. It is a commitment to ensure effective protection against the violation of basic human rights, the very idea of which is repugnant to the temperament, conscience and moral values of the Brazilian people.

Indeed, the 1988 Brazilian Constitution states that one of the principles that are to rule Brazil's international relations and conduct is the prevalence of human rights (art. 4, item II). It likewise declares that the Brazilian State is founded on individual dignity (art. 1, item III) and also determines that the rights and guarantees expressed therein do not exclude others resulting from the regime and principles it adopts, nor do they exclude those contained in international treaties to which Brazil is a party (art. 5, para. 2, 1988 Federal Constitution). Besides, section 1 of article 5 rules that "norms determining fundamental rights and guarantees are immediately applicable".

On account of the aforementioned second paragraph of article 5, the rights and guarantees contained in international treaties on international protection of human rights, to which Brazil is a party, are to be added to the list of rights already enshrined in the Constitution. The peculiar nature and specificity of treaties on international protection of human rights are thus sanctioned by the Brazilian Constitution. Where international treaties generally are concerned, an act with the force of law has been required in order to grant the provisions they institute an obligatory status in the domestic arena. The rights guaranteed in treaties for protecting human rights to which Brazil is a party, however, then become part of a series of rights that can be directly and immediately demanded in terms of domestic legal ordering.

The completion of the present report thus acquires special significance in the context of the protection of human rights in Brazil. It is undoubtedly the most wide-ranging set of information collated in the country to describe the domestic situation of human rights and the current status of attachment to international instruments.

The slight delay in fulfilment of this international obligation can be explained, on the one hand, by the pioneering nature of the report and, on the other, by the sheer size of such a task in a country like Brazil. The

pioneering nature of this initiative is all the more evident if one considers that Brazil adhered to the Covenants in 1992. Indeed, it was only then that the Brazilian Government began to devote itself to preparing the present document. The complexity of the task is dictated by the need to obtain detailed information concerning all the States in a federation with the physical dimensions and human diversity that exist in Brazil.

Despite all the difficulties encountered in elaborating the present report, the final product has accomplished the targets the Brazilian Government set itself in consonance with its international commitments. It provides a frank, transparent, thorough description of the virtues and vicissitudes of the national predicament regarding human rights. It is thus an important initiative within the scope of the Brazilian nation's broad-sweeping determination progressively to adopt the protection of human rights as a modus vivendi, a daily exercise capable of translating the aspirations that mould international legal texts into practical action.

(Signed) CELSO LUIZ NUNES AMORIM
(Minister for External Relations)

## II. INTERNATIONAL INSTRUMENTS TO WHICH BRAZIL IS A PARTY

Brazil ranks among the countries that traditionally support the international regulation and defence of human rights, being party to a number of specific conventions and consistently supporting international declarations adopted under the aegis of the United Nations in this sphere. Below is a list of all the international instruments on the protection of human rights to which Brazil has adhered, in addition to the declarations it has subscribed.

Among Brazil's most recent initiatives in terms of subscribing international instruments, the following deserve special mention:

(a) Promulgation of Decree No. 98,602 of 19 December 1989, concerning removal of the geographic reservation on the 1951 Convention relating to the Status of Refugees, which confined applicability of the Convention to refugees of European origin;

(b) At the regional level, accession to the American Convention on Human Rights in September 1992.

Treaties to which Brazil is a party

1. Special Protocol Concerning Statelessness

Signed at The Hague in 1930
Brazilian accession on 19 September 1931
Promulgated by Decree No. 21,798 of 6 September 1932
Published in the Official Gazette on 17 March 1993

2. International Agreement regarding Travel Documents for Refugees (London, 1946)

Signed in London on 15 October 1946
Became effective in Brazil on 4 August 1952
Ratified by Brazil on 6 May 1952
Approved by Legislative Decree No. 21 of 22 July 1949
Promulgated by Decree No. 38,018 of 7 October 1955
Published in the Official Gazette on 12 October 1955

3. Constitution of the International Refugee Organization

Adopted in New York on 15 December 1946
Subscribed by Brazil on 1 July 1947
Became internationally effective on 20 August 1948

4. International Convention for the Suppression of the Traffic in Women of Full Age (Geneva, 1933), amended by the Protocol signed at Lake Success on 12 November 1947; and the International Convention on the Suppression of the Traffic in Women and Children (Geneva, 1921) amended by the Lake Success Protocol and subscribed in 1947.

Protocols ratified on 6 April 1950
Promulgated by Decree No. 37,176 of 15 April 1955
Published in the Official Gazette on 22 April 1955, rectified on 27 April 1955

5. Convention on the Prevention and Punishment of the Crime of Genocide

Signed in Paris on 9 December 1948
Approved by Legislative Decree No. 2 of 11 April 1951
Ratified by Brazil on 4 September 1951
Promulgated by Decree No. 30,822 of 6 May 1952
Published in the Official Gazette on 9 May 1952

6. Inter-American Convention on the Granting of Civil Rights to Women

Signed in Bogota on 2 May 1948
Approved by Legislative Decree No. 74 of 19 December 1951
Ratified by Brazil on 29 January 1952
Came into force in Brazil on 21 March 1950
Promulgated by Decree No. 31,643 of 23 October 1952
Published in the Official Gazette on 31 October 1952

7. Inter-American Convention on the Granting of Political Rights to Women

Signed in Bogota on 2 May 1948
Approved by Legislative Decree No. 39 of 20 September 1949
Ratified by Brazil on 15 February 1950
Came into force in Brazil on 21 March 1950
Promulgated by Decree No. 28,011 of 19 April 1950
Published in the Official Gazette on 21 April 1950

8. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, plus Final Protocol

Signed in New York on 21 March 1950
Approved by Legislative Decree No. 6 of 11 June 1958
Ratified by Brazil on 12 September 1958
Promulgated by Decree No. 46,981 of 8 October 1959
Published in the Official Gazette on 13 October 1959

9. Convention relating to the Status of Refugees

Signed in Geneva on 28 July 1951
Approved by Legislative Decree No. 11 of 7 July 1970
Ratified by Brazil on 13 August 1963
Came into force in Brazil on 15 February 1961
Promulgated by Decree No. 50,215 of 28 January 1961
Published in the Official Gazette on 30 January 1961

10. Convention on the Political Rights of Women

Signed in New York on 31 March 1953
Approved by Legislative Decree No. 123 of 30 November 1955
Ratified by Brazil on 13 August 1963
Came into force in Brazil on 11 November 1964
Promulgated by Decree No. 52,476 of 12 September 1963
Published in the Official Gazette on 17 September 1963

11. Slavery Convention

Signed in New York on 7 December 1953
Approved by Legislative Decree No. 66 of 14 July 1965
Brazilian accession: 6 January 1966
Came into force in Brazil on 6 January 1966
Promulgated by Decree No. 58,563 of 1 June 1966

12. Convention relating to the Status of Stateless persons

Signed in New York on 28 September 1954
Signed by Brazil on 28 September 1954
Became internationally effective on 6 June 1960

13. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery

Signed in Geneva on 7 September 1956
Approved by Legislative Decree No. 66 of 14 July 1965
Brazilian accession: 6 January 1966
Came into force in Brazil on 6 January 1966
Promulgated by Decree No. 58,563 of 1 June 1966
Published in the Official Gazette on 3 June 1966, rectified on 10 June 1966

14. International Convention on the Elimination of All Forms of Racial Discrimination

Signed in New York on 7 March 1966
Approved by Legislative Decree No. 23 of 21 June 1967
Ratified by Brazil on 27 March 1968
Came into force in Brazil on 4 January 1969
Promulgated by Decree No. 65,810 of 8 December 1969
Published in the Official Gazette on 10 December 1969

15. International Covenant on Economic, Social and Cultural Rights

Signed in New York on 19 December 1966
Approved by Legislative Decree No. 226 of 12 December 1991
Brazilian accession: 16 January 1992
Came into force in Brazil on 24 April 1992
Promulgated by Decree No. 591 of 6 July 1992

16. International Covenant on Civil and Political Rights

Signed in New York on 19 December 1966
Approved by Legislative Decree No. 226 of 12 December 1991
Ratified by Brazil on 24 January 1992
Came into force in Brazil on 24 April 1992
Promulgated by Decree No. 592 of 6 July 1992

17. Protocol relating to the Status of Refugees

Signed in New York on 31 January 1967
Approved by Legislative Decree No. 93 of 30 November 1971
Brazilian accession: 7 March 1972
Came into force in Brazil on 7 April 1972
Promulgated by Decree No. 70,946 of 7 August 1972
Published in the Official Gazette on 8 August 1972

18. American Convention on Human Rights

Signed in San José da Costa Rica on 22 November 1969
Approved by Legislative Decree No. 27 of 26 May 1992
Brazilian accession: 25 September 1992
Came into force in Brazil on 26 May 1992
Promulgated by Decree No. 678 of 6 November 1992

19. Convention on the Elimination of All Forms of Discrimination against Women

Signed in New York on 18 December 1979
Approved by Legislative Decree No. 93 of 14 November 1983
Ratified by Brazil on 1 February 1984 - with reservations
Promulgated by Decree No. 89,406 of 20 March 1984

20. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Signed in New York on 10 December 1984
Approved by Legislative Decree No. 04 of 23 May 1989
Ratified by Brazil on 28 September 1989
Came into force in Brazil on 28 October 1989
Promulgated by Decree No. 40 of 15 February 1993

21. Inter-American Convention to Prevent and Punish Torture

Signed at Cartagena de la Indias on 9 December 1985
Approved by Legislative Decree No. 05 of 31 May 1989
Ratified by Brazil on 20 July 1989
Came into force in Brazil on 21 August 1989
Promulgated by Decree No. 98,386 of 9 November 1985

22. Convention on the Rights of the Child

Signed in New York on 26 November 1989
Approved by Legislative Decree No. 28 of 24 September 1990
Ratified by Brazil on 24 September 1990
Came into force in Brazil on 23 October 1990
Promulgated by Decree No. 99,710 of 21 November 1990

## III. MESSAGE FROM THE PRESIDENT OF THE REPUBLIC ADDRESSED TO THE NATIONAL CONGRESS

According to the Brazilian Constitution, it is the exclusive prerogative of the President of the Republic to celebrate treaties, conventions and international acts. Ratification, though, is subject to examination by the National Congress (art. 84 [VIII]). It is thus the duty of the President of the Republic to submit to Congress proposals for the ratification of international treaties since Congress has exclusive competence to "decide conclusively on international treaties, agreements or acts which result in charges or commitments to the national patrimony" (art. 49 [I]).

Following approval by the National Congress, the President of the Republic issues a decree ordering the treaty to be implemented. The texts below are, respectively, the President of the Republic's Message to the National Congress concerning accession to the International Covenant on Civil and Political Rights - accompanied by a statement of motives - and the Decree ordering it to be implemented "in its entirety":

Honourable Members of the National Congress,

Pursuant to the provisions of article 44, item I (in the present Constitution: art. 49, item I) of the Federal Constitution, it is my Honourable duty to submit to your honours' highest consideration, accompanied by a Statement of Motives by the Minister of State for External Relations, the texts of the International Covenant on Civil and

Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of them approved (together with the Optional Protocol concerning the latter) at the thirty-first session (1966) of the General Assembly of the United Nations.

As far as the scope and importance of these United Nations International Covenants on Human Rights are concerned, it can be claimed that, alongside the Universal Declaration of Human Rights, they are the most important international legal instruments in the field of human rights. More than 80 States, heirs to different forms of civilization and possessing different systems of legal, social and economic organization, are parties to these Covenants.

Brazil is not a State party to either Covenant both of which became effective in 1976. I none the less believed that there are a number of reasons why Brazil should now adhere to these international legal instruments:

(a) Brazil took an active part in elaborating the International Covenants on Human Rights;

(b) Brazil voted in favour of resolution 2200 A (XXXI) at the General Assembly of the United Nations, by which the said instruments were adopted and made open to subscription;

(c) More that 80 States with different systems of legal, social and economic organizations are parties to both Covenants, a fact that, in itself, demonstrates the degree to which they are universal;

(d) Our accession to these international instruments will be a highly significant outward token of the internal changes under way in Brazil through which the country is endeavouring to reorganize its social, economic and political framework and so inaugurate a new phase in its history;

(e) Brazil’s subscription to the Covenants would have an excellent repercussion in both the external and internal spheres besides sealing a commitment or additional guarantee of effective protection for human rights in the country;

(f) Signing treaties in the field of human rights or adhering to them - an eminently ethical and humanitarian stance - is true to Brazil’s juridical and diplomatic tradition. Indeed, our country is a party to numerous treaties designed to protect human rights, such as: the Convention relating to the Status of Refugees; the International Convention on the Elimination of All Forms of Racial Discrimination; and the Convention on the Elimination of All Forms of Discrimination against Women. I have, moreover, recently sought to further this juridical and diplomatic tradition by signing in New York, on behalf of Brazil, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(g) By signing these Covenants, Brazil would be keeping abreast of the evolution in contemporary international law, which increasingly acknowledges the legitimacy of international cooperation and concern regarding human rights issues.

It should be stressed that, by becoming parties to such international legal instruments, where international protection of human rights is concerned, States voluntarily contract obligations without relinquishing their sovereignty. Conflicts and injustice occur in any society, and this naturally applies to Brazil, a developing country grappling with glaring inequalities. Brazil's accession to these Covenants, which contain mechanisms for international supervision of the implementation of their provisions, should entail a natural willingness to countenance discussion in appropriate forums of possible allegations concerning failure to comply with these provisions.

Brasilia, 28 November 1985

(Signed) José Sarney
President of the Republic

Decree No. 592, 6 July 1992

The President of the Republic, in the exercise of the prerogative conferred upon him by article 84, item VIII of the Constitution, and

Considering that the International Covenant on Civil and Political Rights was adopted by the thirty-first session of the United Nations General Assembly on 16 December 1966;

Considering that the National Congress approved the text of the said international instrument by means of Legislative Decree No. 226 of 12 December 1991;

Considering that the Letter of Accession to the International Covenant on Civil and Political Rights was deposited on 24 January 1992;

Considering that the Covenant promulgated herein came into force in Brazil on 24 April 1992, pursuant to the terms of article 49, paragraph 2 of the said instrument;

HEREBY DECREES:

Article 1. The International Covenant on Civil and Political Rights, a copy of which is appended to the present Decree, is to be implemented and complied with in its entirety.

Article 2. The present Decree shall be effective as from the date of its publication.

Brasilia, 6 July 1992

Fernando Collor - President of the Republic
Celso Lafer - Minister of External Relations

## IV. INFORMATION REGARDING ARTICLES 1 TO 27 OF THE COVENANT

### Introduction

1. In the present report, commentary on all the articles of the Covenant follows the same basic scheme. In each case, wherever possible, it will begin with a presentation of the section of the Constitution dealing with the particular issue. This is to be followed by commentary on statutory law and, finally, on the international treaties Brazil has ratified.

2. Appraisal of the legislative element is to be followed by a discussion of the factors and difficulties encountered in securing the rights and guarantees established by the provision, focusing on government actions designed to overcome such hindrances.

3. Constitutional norms are valid throughout the country, which facilitates the task of adapting Brazilian legislation covering the rights secured to additional guarantees set out in the International Covenant on Civil and Political Rights. None the less, as Brazil is a Federative Republic in which the States have considerable legislative, judicial and administrative autonomy, it is harder to keep tabs on State norms and to be informed of the difficulties and solutions encountered within each unit of the Federation when it comes to the matter of applying the law.

4. Access to data, information and administrative programmes is, of course, unequal. The examples and problems quoted are predominantly concentrated in the States that have the highest profiles throughout the country. The States of São Paulo and Rio de Janeiro which account for the majority of Brazil's population and national output are also those in which the most serious problems with regard to the protection of human rights are concentrated. A good deal of the information contained in the report thus originates in these two States. This should be taken into due account to avoid disseminating a distorted idea of the state of human rights across the country.

5. It should likewise be observed that in a Federative Republic like Brazil the Federal Government is forbidden to interfere in internal matters concerning the States. Investigating and punishing violations of human rights is the preserve of State administrations. This holds true even if one of the circumstances admitted by the Constitution when it comes to intervening in the States is precisely the need to ensure observance of human rights.

6. The Federal Government's ability to take action regarding violations is often diminished. It is only empowered to intervene in extremely critical cases in which the States' internal funds are insufficient to control the situation. At federal level, none the less, there are specific agencies attached to the Ministry of Justice designed to handle the defence of human rights. These include the Council for the Defence of Human Rights (CDDPH), the National Children's and Adolescents' Rights Council (CONANDA), the National Women's Rights Council (CNDM), the National Indian Foundation (FUNAI), and the Citizens Affairs Department (DEASC).

7. The CDDPH was created by Law No. 4,319 of 16 March 1964. Its mandate is to promote human rights by means of action which is preventive, corrective and reparatory, and sanctions conduct and situations that characterized violations of those rights.

8. CONANDA was founded on 12 October 1991 by Law No. 8,242 and was officially installed in December 1992. Its aim is to set out general norms for national policy on the rights of children and adolescents. There are equivalent councils at State and municipal levels, as well as Guardianship Councils whose job it is to ensure that the rights of children and adolescents are secured. To date, 21 States Councils, 1,426 Municipal Councils and 322 Guardianship Councils have been set up.

9. The CNDM was instituted by Law No. 7,353 in August 1985, its internal regulations being approved in September 1991. The purpose of the Council is to promote nationwide policies aimed at eradicating discrimination against women and providing them with freedom and equal rights, as well as full-fledged participation in the country's political, economic, social and cultural activities.

10. FUNAI was created by Law No. 5,371 of 19 December 1967, while the Statute on Indians was passed on 19 December 1973. The Statute regulates the juridical status of Indians and indigenous communities with a view to preserving their culture and gradually integrating them into Brazilian society. FUNAI's role is to guarantee enforcement of the Statute on Indians, reconciling the protection of indigenous communities with development programmes.

11. DEASC was instituted by Decree No. 99,244 of 10 May 1990. Its aim is to promote and defend citizen's rights by liaising with institutions that are representative of the community on matters concerning citizens' rights and by undertaking studies and taking up unsettled issues regarding the defence of public freedom.

12. The Minister of Justice sent a dispatch to the Federal Police Secretary in September 1993 containing instructions for the Federal Police Department to set up a nucleus for assessing, reporting on and intervening in the investigation of crimes attempting against human rights. This nucleus, none the less, will refrain from interfering in investigations carried out by State police forces.

## Article 1

### Paragraph 1

13. Brazil is an independent, sovereign nation. It is the prerogative of the people, in whom constitutional power resides, to set down the fundamental juridical rules that govern life in Brazilian society. Accordingly, Brazilian society has freely established its political statute, which endeavours to promote the country's economic, social and cultural development.

14. The economic order is founded on free enterprise and the recognition of the value of human labour to secure a decent life for all citizens (art. 170 and below in the 1988 Brazilian Constitution).

15. The social order is based on the primacy of labour, its aim being to foster the well-being of all Brazilians and of foreigners resident in the country. Health and education are declared to be a right of all, it being the State's duty to provide them. Culture is to receive protection from the State, which is duty bound to foster and value expressions of Brazilian culture.

16. The right of peoples to self-determination is a precept of the foremost importance in the Brazilian Constitution. Indeed, it underpins Brazil's actions in international relations (art. 4, III of the Federal Constitution). The Constitution states that Brazil should base its relations with the international community on the principles of independence of nations, primacy of human rights, equality among States and non-intervention.

17. The defence of peace and the peaceful settlement of conflicts are likewise enshrined in the Brazilian Constitution as guiding principles in Brazil's foreign affairs.

18. The Brazilian Constitution elects popular sovereignty, citizenship and political pluralism as its bedrock principles. Brazilian citizens exercise their sovereignty through their elected representatives or directly be means of plebiscites, referenda or legislative initiatives by non-members of Congress. There is universal suffrage and direct, secret balloting, in which all votes are equal.

19. Plebiscites are held for the population of Brazil's States and municipalities to decide on the incorporation, subdivision, dismembering and creation of new municipal districts and States (Constitution, art. 18). The Constitution provides the States with guarantees against undue intervention on the part of the Federal Government, while also protecting municipal administrations against interference by State authorities.

20. The Constitution prohibits Federal Government intervention in the States, except in those circumstances stipulated therein, including non-observance on the part of States of the constitutional principle of human rights (art. 34, VII, b, c, f).

Paragraph 2

21. Brazilians and foreigners are ensured the right to property. This right should be exercised with due regard for its social function. There are thus provisions for the State to expropriate private property upon payment of fair monetary compensation, so long as there is a genuine public need or social interest at stake.

22. Mineral resources, including those in the subsoil, hydroelectric energy potential and territorial waters are considered federal property, as are the natural resources on the continental shelf, the lands of indigenous communities, vacant land required for security purposes and nationwide communication, among others.

23. The State has a monopoly on the exploration of petroleum and natural gas, as well as on the refining of oil, whether it has been extracted in Brazil or imported (Federal Constitution, art. 177). Similarly, there is a State monopoly on prospection, mining, enrichment, reprocessing, industrialization and trading of minerals, nuclear minerals and their by-products.

24. In the international sphere, the Brazilian Constitution espouses cooperation among peoples for the progress of mankind, which is to be attained by pursuing mutual interest and abiding by the rules of international law (Federal Constitution, art. 4, IX).

25. Brazil's economic activity is mainly founded upon private enterprise and free competition, individual rights to private property being respected and all citizens being entitled to freely exercise any legal economic activity. The Brazilian State plays a major role both as a regulatory force and as a producer in strategic sectors of the economy.

Paragraph 3

26. Brazil was formerly a Portuguese crown colony. Since its independence in 1822 it has possessed no colonies nor administered any territory besides its own. Brazil's international relations have always been governed by the principles of non-intervention and self-determination of peoples.

## Article 2

Paragraph 1

27. The notion that all are equal in the eyes of the law is a basic constitutional precept enshrined in article 5. It is prohibited to discriminate against others on grounds of nationality, race, colour, sex, language, religion, opinion, wealth, birth or any other such circumstance. The promotion of the common good is the raison d'être of the Federative Republic of Brazil, all forms of prejudice being forbidden (Federal Constitution, art. 3, IV).

28. The Brazilian Constitution and Civil Law do not distinguish between Brazilians and foreign nationals residing in the country with regard to the acquisition and enjoyment of rights (Civil Code, art. 3). The one exception is the occupation of the following positions or offices, which are the preserve of Brazilian-born citizens: President and Vice-President of the Republic; Chairman of the Chamber of Deputies; Chairman of the Federal Senate; Justices of the Federal Supreme Court; diplomats; and officers of the armed forces.

Paragraphs 2 and 3 (a)

29. The legal system of Brazil contains provisions for a set of legal instruments designed to remedy and correct illegal practices, abuse of power or any form of threat to individual and collective rights.

30. The main "constitutional remedies" guaranteed by the Constitution are as follows:

Habeas corpus, designed to defend the freedom to come and go;

Writ of mandamus (individual and collective) to be used against all other illegal acts or abuses of power to which a habeas corpus would not apply;

Writ of injunction, covering omissions in legislation that prevent the exercise of constitutional rights;

Habeas data for obtaining information on a person from public authorities;

Class action, designed to deal with cases of administrative improbity;

Public civil action, for defending the environment or historical, artistic and cultural heritage.

31. There is also the right to petition, by which any individual may instigate public authorities, in addition to the different criminal and civil procedural instruments provided by common legislation.

32. The Constitution clearly determines that the law may not exempt the judiciary from examining instances of breach in or threat to rights. It also stipulates that there shall be no courts or tribunals of exception. Furthermore, civil legislation states that for every right there is a corresponding judicial action to secure it (Civil Code, art. 75).

33. The Constitution protects judicial decisions against which all due appeals have been lodged and turned down (Federal Constitution, art. 5, XXVI). Disregard or contempt of judicial decisions on the part of government authorities entails criminal liability. Acquired rights and perfect juridical acts are also ascribed constitutional guarantees. Acts consummated in accordance with the law in force at the time of their committal are deemed to be perfect juridical acts. Acquired rights, meanwhile, are those which an individual may exercise in his own right or which another may exercise in his stead, such as those which begin and cease to be exercised on pre-determined dates, or a pre-established condition which may not be altered at the discretion of another.

34. Legislation currently in force in Brazil incorporates all the rights enshrined in the Covenant. Although they are not expressly mentioned, the Constitution rules that the rights and guarantees expressed in article 5, LXXVII, second paragraph, should not exclude others deriving from the international treaties to which Brazil is a signatory.

35. The International Covenant on Civil and Political Rights, like all other legal instruments Brazil has ratified, has been translated into Portuguese and published in the Official Gazette, which is distributed throughout the country. The text has also appeared in a number of official academic publications as well as pamphlets of limited circulation. Universities are an important milieu for divulging the contents of Covenants both through their regular courses and by means of debates, seminars and round-table discussions of the issue.

## Article 3

36. The Brazilian Constitution establishes the equality of rights and duties between men and women (Federal Constitution, art. 5, I).

37. Men and women have the same right to citizenship; both are entitled, on an equal footing, to act as voters, to be elected, to occupy positions in public administration and to serve on a jury.

38. The Constitution paves the way for equality of opportunity between men and women by protecting women in the labour market by means of collective incentives, or by granting them earlier retirement, pursuant to article 202 and respective items of the Federal Constitution.

39. In the family, both women and men can represent the matrimonial society. In this particular respect the 1988 Constitution has corrected distortions arising out of a number of disperse provisions in ordinary legislation, especially in the Civil Code. Although they have not actually been expressly revoked, they have subsequently lost their effectiveness in the juridical sphere.

40. Brazil is a signatory of a number of international instruments dealing with discrimination against women. These include: the Covenant on Economic, Social and Cultural Rights, the Convention on Women's Political Rights, besides the Convention on the Elimination of All Forms of Discrimination against Women. Brazil became a signatory to the latter in 1979 and it was ratified in 1984. The Brazilian Government declared a number of reservations about paragraphs running counter to provisions contained in the Civil Code. In May 1993 the Executive Branch submitted a proposal to Congress for withdrawal of these reservations which had become unconstitutional and anachronistic in the wake of the promulgation of the 1988 Constitution.

41. The 1988 Constitution has greatly advanced the juridical status of Brazilian women. These gains have been incorporated into and enhanced by the State constitutions elaborated in 1989 and by the 1990 Municipal Organic Laws.

42. New legislation has acknowledged equality between men and women and administrative reforms have been undertaken to give this equality concrete expression. Even so, Brazilian women, who represent a little over half the country's population (50.1 per cent in 1990) still find it difficult to participate to the full in all aspects of the country's economic and political life. Progressive legislative reform has helped diminish discrimination against women. Nevertheless, there has been some difficulty in translating these juridical innovations into routine practices.

Women's political participation

43. In Brazil's entire political history only seven women have occupied ministerial positions, the first of them in 1982. At State level, no woman has yet been elected governor. At local level, by way of contrast, 107 women have been elected mayor in 4,425 municipalities, including some of the largest, up and down the country since 1990.

44. Women are still severely under-represented in Congress. From 1934 to 1990 a mere 82 women were elected to the Chamber of Deputies - a meagre 1.6 per cent of the 5,142 representatives elected in this span of over 50 years. In the Senate the proportion dwindles to 0.3 per cent. It should be said, though, that the number of female representatives rose sharply from the 1982 to the 1986 legislature, leaping from 7 to 26. The proportion rose further to 6 per cent in the 1991-1994 legislature and there are currently 28 female deputies and 3 Senators in the Legislative Branch.

45. The presence of women in Brazil's superior courts is still very limited. In 1990, just 1 of the 93 justices was a woman (in the Superior Labour Court). It is, however, interesting to note that the participation of women in other echelons of the Judiciary is on the increase at both federal and State level. This is mainly due to the fact that judges now enter the career by means of non-discriminatory public selection examinations, which suggests a solid tendency to reverse the present predicament.

46. In sum, women still play a smaller role than men in Brazil's public life, especially in the top ranks of the civil service and in the upper echelons of the three branches of Government at both federal and State levels. There are, none the less, clear indications that their participation is on the rise.

The participation of women in the labour market and in trades unions

47. In the last 20 years, major changes have come about with regard to the participation of women in the labour market. Growth of the economically active female population has been one of the highest in Latin America. When the economy was experiencing rapid expansion, the number of working women doubled from 7 million in 1970 to 14 million in 1980. Growth was less marked in the 1980s and by 1990 the number of women active on the labour market had reached 25 million, comprising 35 per cent of the Brazilian workforce.

48. Despite these constitutional guarantees of equality of rights and duties between men and women and in spite of advances in the sphere of social and labour rights regarding the need to protect the labour market for women (Federal Constitution, art. 7, XX), gender discrimination still persists in the labour market. Women continue to occupy positions lower down the ladder of the professional hierarchy. They are more likely to become unemployed and earn salaries worth 54 per cent of those paid their male counterparts, on average. It should be pointed out that this difference in earnings is not a reflection of differences in the level of education or qualification between men and women. Rather, it is due to the fact that they are ranked lower down the salary scale and to continuing pay discrimination for jobs at the same level.

49. One of the main accomplishments of the cause for women's rights during the Constituent Assembly in 1988 was obtaining a guaranteed 120-day paid maternity leave for wage-earning mothers in addition to a guarantee against dismissal during pregnancy. This measure is not yet being implemented to the full in some regions of the country on account of the precariousness of local unions and inspection departments.

50. Trade union activity is still male dominated. This is partly due to cultural factors and partly the result of the obstacles that underprivileged groups have to overcome to make their voice heard.

51. There is still relatively scant presence of women in national union bodies (including both those representing the employers and those representing the workers). When assessing the relatively small percentage of women on trades union directorates, one should bear in mind that 74.4 per cent of the working population affiliated to unions are men whereas only 25.6 per cent are women.

Education

52. The average length of schooling for the population as a whole was 3.9 years in 1990. By examining category by category one can detect a slight advantage of men (4.0) over women (3.8). In the medium and long terms, however, there is a tendency for men and women to draw even on the score of schooling. Indeed, women actually participate more now at almost all levels of the education system.

53. A number of careers requiring a university degree continue to be male dominated while others remain predominantly female. This can be observed in the choice of higher education courses: women are the overwhelming majority in Education Science and in the Humanities, whereas they have relatively limited presence in Engineering and Agricultural Technology courses. On the other hand, women have begun to occupy a similar number of places to men in courses like Law, Physics and Computing over the last 10 years.

54. With regard to teaching staff, women are the majority at the base of the education pyramid and begin to be outnumbered by men the higher one rises on the scale to higher education. In 1980, women represented almost all the teaching staff at pre-school (98 per cent) and primary (85 per cent) levels, half in secondary school (53 per cent) and a minority in higher education (30 per cent).

Violence against women

55. Violence against women generally occurs within the family unit. According to statistics, in 1988, 70 per cent of cases involving violence against women occurred in the home, the aggressor being a relation or acquaintance, whereas only 18 per cent of cases involving violence against men took place in the home environment.

56. Since the seventies, the issue of violence against women has been one of the main rallying banners of the Women's Movement. The Movement succeeded

in incorporating into the text of the 1988 Federal Constitution express recognition that it is the duty of the State to control violence committed within the framework of families (art. 226, para. 8).

57. One positive development concerning the protection of women's rights is suppression of the concept of "legitimate defence of [one's] honour". Jurisprudence based on this notion - which formerly facilitated the acquittal of men accused of crimes of passion - was overruled by a Federal Supreme Court ruling in March 1992.

58. From May to October 1992, a Parliamentary Inquiry Commission was investigating violence against women.

59. Another important measure was the setting up of Specialized Police Stations for Women Victims of Violence (DEAM). The first such police station was set up in São Paulo in 1985 and by the end of 1992 there were 141 of them throughout the country. Besides providing the usual police services, the Specialized Police Stations also offer psychological and social care for victims and, in some cases, shelter for women who have been raped. The stations are entirely manned by policewomen.

Other actions to benefit women

60. The major accomplishments of the Women's Movement, which has succeeded in putting the gender issue on the agenda at all levels of Government and incorporating it into public policies, should be underscored. An "Open Letter from Women to Members of the Constituent Assembly" setting out their demands was drawn up as part of a campaign launched to incorporate women's rights into the new Constitution. Most of them were actually enshrined in the 1988 Constitution - a substantial improvement in the female condition.

61. Another major innovation was the creation of the first State Councils for the Female Condition as from 1982. This was followed in 1985 by the National Women's Rights Council. They have both played an important role among women's groups in drafting new laws and instituting practices and policies. In 1991 there were 11 State Councils and 38 Municipal Councils for the Female Condition. In addition to establishing nationwide liaison, the Councils concentrate on gender issues in the fields of health, education, legislation, labour and security policy.

## Article 4

62. Measures restricting rights can be decreed during either a state of defence or a state of siege. Such states can be decreed as exceptional measures but are limited in both time and space and governed by strict constitutional limits (Federal Constitution, art. 136 onwards).

63. A state of defence can be decreed to maintain or promptly restore public order or social peace in restricted, predetermined areas whenever they be threatened by serious, imminent institutional instability or in the event of large-scale natural disasters. The President of the Republic may institute a state of defence after hearing the Council of the Republic and the National

Defence Council. The presidential decree establishing the state of defence must be submitted to the National Congress within 24 hours, Congress having 10 days to debate and vote on it. If rejected, the state of defence shall cease forthwith. The decree (accompanied by its legal justification) must fix the duration of the measure, which may not exceed 30 days but may be extended once only for an equal length of time, should the motives leading to the issuing of the decree persist. It must likewise state the area in which it is to be imposed. The document is to contain a list of the coercive measures to be employed for the duration. These may include restrictions on the right of assembly and to secrecy of correspondence, telegraphic and telephone communications. During the state of defence, the executor may issue a warrant for arrest in the case of crimes against the State. This measure must immediately be communicated to the competent judicial authority and is to be accompanied by a declaration of the physical state of the arrested person. No one may be held in custody for more than 10 days, except by express judicial determination (Federal Constitution, art. 136, para. 3).

64. The state of siege may be declared in direr circumstances, such as a declaration of war or a response to armed foreign aggression. The state of siege can also be decreed should the measures implemented during the state of defence prove ineffective, or in cases of grave domestic commotion affecting the entire nation. In such circumstances the President of the Republic may seek authorization form Congress to decree a state of siege, after consultations with the National Defence Council and the Council of the Republic (Federal Constitution, art. 137). The decree instituting the state of siege must state its duration and stipulate the norms required for implementing it, besides determining which constitutional guarantees are to be suspended. The President of the Republic shall appoint an executor of the measures to be implemented and declare which areas are to come under its effect.

65. During a state of siege decreed on grounds of domestic commotion or the ineffectiveness of a state of defence, only the following limitations of rights may be imposed: obligation to remain in a determined place; detainment in a place not designed for ordinary offenders and convicts; restriction of the inviolability of correspondence, secrecy of communications and freedom of information; suspension of freedom of assembly; search and seizure in people’s homes; intervention in public corporations and requisitioning of property (Federal Constitution, art. 139). It should be stressed that this list of measures is exhaustive and not merely exemplification.

66. In the event of a state of siege decreed as a result of international armed conflict, individual rights are further guaranteed by the rules of humanitarian law inscribed in such instruments as the 1949 Geneva Convention and its Additional Protocols (1977), all of which have been ratified by Brazil.

67. Both the state of defence and the state of siege should be monitored by Congress, which is to appoint a Commission consisting of five of its members to oversee implementation of the measures introduced. In the event of non-international armed conflict these guarantees are likewise secured, as defined in Protocol II.

68. When the exceptional measures described herein have ceased, the President of the Republic shall report to Congress on the actions undertaken while they were in force. Should illegal acts have been committed, the executors or agents of the measures shall be held responsible according to the terms of the law.

69. Brazil's 1988 Constitution does not define such measures designed to defend the state of democracy as being arbitrary since the limits imposed upon them are described in detail by the text of the Constitution. Furthermore, the measures introduced in such circumstances must be submitted to the political control of Congress and the legal control of the Judiciary. Indeed, judicial control is to be exercised both during the period in which the emergency measures are in force and after they have ceased by holding those responsible for implementing them legally responsible for abuses committed.

70. On no occasion since promulgation of the 1988 Constitution have these measures for defending the State and democratic institutions been implemented.

## Article 5

71. The International Covenant on Civil and Political Rights is entirely in keeping with Brazilian legislation. Brazilian jurisprudence determines that fundamental rights are always interpreted so as to extend rather than restrict their scope. In this context, the norm is to benefit the individual wherever possible. This is a broad principle of interpretation which applies not only to rights expressly protected by the Covenant but also to any right inscribed in international treaties of which Brazil is a signatory (art. 5, para. 2).

## Article 6

### The right to life

72. The caption of article 5 in the Brazilian Constitution guarantees the inviolability of the right to life. This fundamental right is likewise secured by ordinary legislation. The Brazilian Criminal Code prescribes severe punishment for crimes against life. Murder is punishable with up to 30 years of imprisonment (Criminal Code, art. 121 and Sole Para.). Involuntary manslaughter, meanwhile, is punished with sentences of up to four years. Other criminal offences punished as crimes against life include: infanticide (killing of a child by its mother while she is still under the effects of the puerperal state), inducement to suicide, and abortion. The latter only ceases to be deemed a crime when performed to end pregnancy resulting of rape or when the life of the mother is put at risk by the pregnancy.

73. Members of the civil police forces - empowered to act as judicial police - shall be punished for committing crimes against life according to the terms of ordinary criminal legislation (described above) while also being liable to prosecution under the terms of the Law of Abuse of Authority. Military police forces, on the other hand, are State corporations entrusted with preventive, ostensive policing. Military policemen are thus subject to

prosecution under military penal legislation and are to be tried by military tribunals when they commit offences while on duty or while using weapons issued by their corporation. It should be pointed out that the military police in Brazil are not part of the regular armed forces. The sentences passed on military policemen are similar to those imposed by ordinary criminal legislation.

74. Pursuant to article 129, VII of the Brazilian Constitution, the Public Prosecution Service and the Judiciary are responsible for exercising external control over the State's civil security apparatus. This task is performed by the judicial police magistrate's department. This control by the Judiciary also ensues from the legal principle that no threat to or impairing of rights may be refused appreciation by the Judiciary. Internal control is the responsibility of the civil police magistrate's department.

75. In the case of the military police forces, external control is exercised by the Public Prosecution Service and the military tribunals in the States, where they exist. In States where no military tribunal exists, control is in the hands of the regular Judiciary, which judges cases on the basis of military penal legislation.

Death penalty

76. The Brazilian Constitution prohibits application of the death penalty (art. 5, XLVII, a), except in the case of declared war under the terms of the military penal code (art. 56). Furthermore, the Constitution expressly forbids countenancing any amendment designed to abolish individual rights and guarantees. This means that the death penalty cannot be incorporated into the Brazilian legal system by extension, even through constitutional reform (Federal Constitution, art. 60, para. 4).

77. The right to life is also guaranteed by the American Convention on Human Rights ("Pact of San José") which the Brazilian Government ratified in September 1992. Article 4, subsection 3 of the Convention forbids States that have abolished the death penalty to restore it. Internally as stated above, this treaty has status of national law.

78. In the case of military crimes committed in the context of declared war, the death penalty is executed by firing squad (art. 56, a, of the Military Penal Code). After transiting in rem judicatam, the final sentence condemning the convict to death is communicated to the President of the Republic and cannot be executed until seven days have elapsed from the date of communication, unless the sentence is imposed in the war operations zone, in which case it can be executed immediately in the interest of military order and discipline.

79. The present Constitution also makes allowance for the pardoning and commutation of all sentences (including the death penalty in wartime). Such clemency can only be granted by the President of the Republic (Federal Constitution, art. 84). The last time the death penalty was imposed in Brazil was in 1855 when the country was still under imperial rule.

Genocide

80. Brazil ratified the 1948 Convention for the Prevention and Punishment of the Crime of Genocide on 15 April 1952.

81. Brazilian legislation treats the crime of genocide in articles 1, 2 and 3 of Law No. 2,889/56 and in Law No. 8,072/90, which deals with heinous crimes. From this instrument onwards, genocide is defined as a heinous crime and, as such, is not subject to bail pardon or amnesty. The crime of genocide is likewise treated in article 208 of the Military Penal Code and is punished with sentences ranging from 15 to 30 years' imprisonment.

82. The crime of genocide is typified as an act to kill members of a national, ethnic or religious group, the aim being to destroy it outright or in part. Members of specific groups of this kind are also protected against crimes similar to genocide, that is, crimes whose purpose is similar to that of genocide. Thus, the sole paragraph of article 208 punishes with 4 to 15 years' imprisonment those who: inflict serious harm on members of the group; submit the group to physical or moral living conditions capable of leading to the elimination of all or some of its members; force the group to disperse; impose measures designed to prevent births within the group; or use coercion to transfer children from the group to another.

83. Should the agents of the crime be Brazilian or permanently resident in Brazil, even when the crime was committed abroad, they shall be subject to Brazilian legislation (Criminal Code, art. 7, d).

Missing persons

84. In the 1970s, under military rule, there were cases in which political dissidents were kidnapped and assassinated by members of the security services. In the wake of the return to democracy there have been demands for investigations to be carried out to identify the missing persons and those responsible for their disappearance. To this end, the Ministry of Justice has been liaising with the military ministries within the framework of a government commission established to review the matter. It should, however, be pointed out that the 1979 Amnesty Law, which allowed thousands of political exiles to return to Brazil, grants general amnesty, both for political dissidents and for security agents responsible for violating human rights. No cases of people missing for political reasons in Brazil have been reported since the mid-seventies.

Peaceful settlement of conflicts and nuclear arms limitation

85. The peaceful settlement of domestic and international conflicts is ranked in the preamble of the Constitution among the supreme values to be upheld by the Federative Republic of Brazil which governs its international relations by the principles of self-determination of peoples, non-intervention, equality among States, defence of peace, and peaceful settlement of conflicts, among others (Federal Constitution, art. 4).

86. The State is entrusted with the task of exploring nuclear installations and services in the country. It also has a monopoly of prospection, mining,

enrichment and reprocessing, industrialization and trading with regard to nuclear minerals and their by-products. The principles and conditions for the utilization of nuclear energy prescribed by the Constitution include the provision that nuclear activity be confined to pacific purposes and require approval by the Brazilian Congress (Federal Constitution, art. 21, XXIII, a).

87. In order to ensure effective control over such nuclear activities for pacific purposes, Brazil has signed an agreement with Argentina and the International Atomic Energy Agency (IAEA), authorizing pertinent inspections, and has ratified the amendments to the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco), which became fully effective in Brazil.

Steps taken to increase life expectancy and reduce mortality among the population

88. A positive development in defence of the life of Brazilian children is the success achieved by the Federal Government and particularly by a number of States in reducing infant mortality, though the general level is still high.

89. The endeavours of the State of Ceará, located in one of the poorest regions of the country (two thirds of the State's population live below the poverty line), deserve special mention. Between 1986 and 1989, infant mortality was reduced by 32 per cent. This merely serves to prove that there are ways and means of improving child health at relatively low cost. This accomplishment earned the State government a prize from UNICEF in 1993.

Measures taken to combat crime

90. Throughout the 1980s violent urban crime was seen to spread alarmingly in Brazil's big cities. This growth was accompanied by a change in the routines and habits associated with criminal action. Not only did the overall level of crime rise but also crime became more organized, taking on an almost businesslike mode of operation, drug trafficking being a case in point. This entailed a sharp rise in the number of murder cases, many of them connected with disputes between rival drug-trafficking gangs. This rise in crime has had a serious effect on the law enforcement offices. The more overworked they have become, the more their ability to prevent and fight crime has diminished.

91. Violence committed by police officers, especially when death ensues, has merited special attention from the Government. Policing in the States is intrusted to the civil and military police forces. The civil police also acts as the judicial police in carrying out criminal investigations, while the miliary police are responsible for prevention of crime and policing the streets.

92. The problem of the large number of deaths resulting from confrontation involving the military police forces in the States persists. The main victims have been suspects, children and adolescents at risk and prison inmates. At the same time, however, one must recognize the large number of deaths in the ranks of the police forces themselves. Many deaths have likewise resulted from confrontation with drug-trafficking gangs, which are often better equipped, armed and funded than the police squads detailed to combating drug

trafficking. Unfortunately, however, more detailed information about deaths of civilians killed in confrontation with the miliary police nationwide is not available.

93. Excesses attributed to State police forces have warranted special attention from the Federal Government and have prompted a number of actions on the part of State authorities.

94. A series of measures were introduced in the State of São Paulo leading to a significant drop in the number of deaths: 175 deaths in the first eight months of 1993. This corresponds to an average of less than one police killing per day, much lower than the four homicides/day recorded in 1992. The measures introduced include:

(a) The holding of police inquests to investigate crimes attributed to police officers: a total of 4,365 inquests were carried out in 1990 alone and 318 military policemen were dismissed and expelled from the corporation in the same year;

(b) The introduction of citizenship courses, taught in collaboration with Amnesty International since 1992, in police academy syllabuses. Amnesty International is also helping to promote exchanges between Brazilian and foreign police forces to provide them with first-hand knowledge of diverse experience in the field of human rights;

(c) Replacement of the person in charge of the Sao Paulo Public Security Secretariat, the post being occupied by a professor of constitutional law, renowned for championing utmost respect for the law.

Similar courses are being organized in other States with collaboration from universities and human rights organizations. The Rio de Janeiro Security Secretariat, for instance, runs a joint programme with the Rio de Janeiro State University (UERJ) designed to improve training of civil and military police officers in the field of human rights.

95. The dire predicament of the Brazilian penitentiary system has given rise to rebellions and open conflict between prison inmates and police authorities. Two particularly serious episodes that took place in the State of São Paulo should be mentioned in this connection. The first occurred in the jail attached to the 42nd Police District in São Paulo in 1989. In all, 18 inmates died as a result of injuries inflicted following an attempted jailbreak. The second episode took place at the Carandiru State Penitentiary in October 1992. An attempt by the Sao Paulo military police to quell a rebellion at the prison led to 111 inmates being killed and another 35 seriously injured.

96. In the wake of this occurrence, the State government held a meeting with Brazilian and international human rights organizations, which were given free access to the scene of the incident as well as to survivors. Several official investigations were carried out to clarify the case. An investigation by the Ministry of Justice Human Rights Council concluded that the military police were to be held responsible. The São Paulo State public prosecutors subsequently determined that 120 military policemen, including the commanders

of the operation, should be indicted. Officers on duty on the day of the incident were removed from command posts and a court martial has, to date, heard 25 officers against whom charges have been brought.

97. Prison inmates have also been killed in other States in Brazil. In 1992, 12 inmates died during a rebellion at the São João de Meriti prison in Rio de Janeiro. They were killed in a shoot-out with the police after taking two guards hostage. One of the guards also died in this incident. One year earlier, 24 prisoners at the Ary Franco maximum security prison in Rio de Janeiro were burnt to death during a rebellion after prison staff threw an incendiary device into their closed cell. In February 1992, seven inmates died in confrontation with the Riot Police Battalion at the Anibal Bruno central prison in Recife (Pernambuco State) during an operation by the military police to regain control of the prison. It had been overrun by prisoners who had killed a hostage.

98. In all these cases, the Brazilian Government and NGOs active in the field of human rights are pressuring State governments to inquire into the authorship of these acts and punish those responsible.

99. Children and adolescents living in a state of risk (roaming the streets, involved in delinquency, exposed to critical situations in their family environment, etc.) are a particularly vulnerable group. Many of these children survive by providing services or through petty theft, or else are used by organized drug-trafficking gangs. These children and adolescents frequently become the victims of death squads. It is suspected that these squads are hired by small shopkeepers who feel threatened by their presence on the streets. There is evidence that police officers and former policemen are involved in these death squads. A survey carried out in 1991 revealed that 8,000 (27 per cent) of the 31,000 policemen in the State of Rio de Janeiro had at some point been invited to take part in the squads.

100. According to data collected in the State of Rio de Janeiro, the number of victims among children and adolescents rose steadily to a peak in 1989. From then until 1991 (the last year for which data is available) a slight decrease was recorded.

101. The Rio de Janeiro State government reported that 298 children had been killed in the State by the month of June 1993. The final report for the State Assembly Parliamentary Inquiry Commission on the Extermination of Children identifies 15 death squads operating in the municipal districts of Duque de Caxias, Niterói and Barra Mansa. A letter from the Executive Director of UNICEF to the State Public Security Secretary acknowledges the State government's endeavours to dismantle these death squads and the subsequent reduction in the number of deaths in 1991.

102. In the State of Pernambuco a total of 460 homicides of children under 18 years of age were committed between January 1986 and July 1991. Only 118 people went on trial for these crimes. In the first half of 1991 alone, 99 children and adolescents were murdered. Information supplied to the Pernambuco State Legislative Assembly's Parliamentary Inquiry Commission indicate that 30 death squads are in operation in the State.

103. A report published in Belem reveals that between January 1990 and July 1992 as many as 523 cases of violence against children and adolescents were recorded in the State of Pará. Of these, 287 resulted in death.

104. The following government actions have been undertaken:

(a) At federal level:

(i) In January 1991, the Ministry of Justice appointed a working party to tackle the problem of homicides among street children and put forward recommendations on the matter;

(ii) The Director General of the Federal Police, on the other hand, held meetings with the civil and military police forces to discuss implementation of the Statute on Children and Adolescents;

(iii) In May 1991, the Brazilian Centre for Children and Adolescents (CBIA) - whose goal it is to improve children's living conditions - held a Conference in the Federal Capital attended by all Brazil's State governors. On 20 May, the governors signed an agreement committing themselves to promote the welfare of children and adolescents and, within a given period of time, reduce the violence that victimizes them. In addition to other measures, the Federal Government has considered raising the legal penalty for those convicted of enticement, since many of the children and adolescents killed had been lured into crime by gangs that use them for drug trafficking and other offences;

(iv) In October 1991, the Federal Government announced the creation of the Federal Children and Adolescents Rights Council;

(b) At state level:

(i) In 1993 the Government of the State of Rio de Janeiro published an important research on the subject of the killing of children and adolescents in the State. The report, entitled "Murder of minors in the State of Rio de Janeiro - from 1991 to July 1993" was drawn up by NGOs. One of the findings of this research is that the typical targets (hit with increasing regularity) are 17-year-old youths from poor neighbourhoods. Their ethnic identity is indifferent and they are not necessarily "street kids". They die mainly because they are specially vulnerable to the circuit of violence directly or indirectly dictated by the dynamics of drug trafficking;

(ii) A special telephone line has been installed in the State of Rio de Janeiro to receive anonymous tips about the activities of death squads and help further special criminal investigations. State government representatives claim this initiative has curbed the killings performed by such squads. The Centre receiving the calls recorded 1,741 cases involving illegal activities in 1991 (death squads, drug trafficking, robbery), 1,310 cases in 1992 and 1,206 in 1993. In all, 131 people were arrested for participating in death squads, 55 per cent of them were police officers;

(iii) A letter from the Executive Director of UNICEF to the State Public Security Secretary acknowledges the State government's endeavours to dismantle these death squads and the subsequent reduction in the number of deaths in 1991. Again, on 21 December 1993, during an interview in Washington concerning the publication of a report on the plight of children throughout the world, the Executive Director of UNICEF praised the progress made in Brazil with regard to the treatment dispensed to children and adolescents. When questioned about violence against street children in Brazil, he declared that attacks on them were rapidly diminishing. Indeed, he said, in the last three or four years there has been more good news for children than in the previous 50 years.

105. Deaths of peasants and rural union leaders are largely provoked by land disputes in regions where there is a great concentration of large-scale properties. According to the Land Pastorate Commission, a body attached to the Catholic Church, a total of 1,681 people have been murdered in the countryside from January 1964 to January 1992. The situation is most critical in the States of Pará, Paraná, Maranhão and Mato Grosso do Sul where there are large contingents of landless peasants and a high concentration of large-scale estates.

106. Large land-owners often threaten union activists in rural areas. The threats are often put into action, government authorities being unable to guarantee the safety of those threatened. The most well known of such cases is that of Chico Mendes, an ecologist and union leader who was assassinated on 22 December 1988 in the State of Acre. The case was investigated and brought to trial in two years and, although the culprits were at the time condemned to 19 years' imprisonment, they have since escaped from prison.

107. The Federal Government has taken the following actions:

(a) An inquest was conducted under the auspices of the Council for the Defence of Human Rights, proceedings commencing on 26 March 1991 (resolution No. 1, of 26 March 1991). The aim was to obtain better knowledge of the causes of violence in rural areas and to help preserve human rights. The Inquiry Commission pinpointed those regions of the country where violence was fiercest and recounted the most alarming cases of rural violence in the country. The information contained in written documents and personal statements and recorded in audio and video, brought together by the Commission, represents the biggest collection of material available on the issue. It thus serves as the basis for elaborating a human rights policy for the country. About 220 cases of violence in the countryside are currently being monitored and brought to the attention of the appropriate authority. This work involves non-governmental organizations which help by putting forward suggestions for settling problems in rural areas. The data collected by the Commission shows that the number of assassinations in 1991 was lower than that in 1990;

(b) In response to the worsening of violence in rural areas and in view of the need to take steps to curb it, the Federal Public Prosecution Service was set up as a forum in which problems relating to rural violence can be discussed and proposals and solutions analysed. Representatives of public

departments and organizations of civil society were summoned to this forum in an endeavour to engage organized civil society in the issue of rural violence. The idea was that they should serve as a source of information and as an interlocutor for discussing proposals and developing policies for curbing violence;

(c) The Attorney-General's Office has played a vital role in a number of areas of conflict defending the human rights of populations that have been victims of rural violence, setting up inquests to investigate the circumstances, travelling to make in situ inquiries, and liaising with other authorities to make the necessary arrangements for ascertaining the facts;

(d) The Council for the Defence of Human Rights, attached to the Ministry of Justice, was created in 1964 and takes the following action upon being informed of cases of rural violence: ordering inquiries to be made, hearing statements, examining witnesses and requesting information and documents;

(e) In 1991, the Brazilian Congress set up a Parliamentary Inquiry Commission to investigate cases of violence provoked by land disputes;

(f) In November 1993, Congress set up another Parliamentary Inquiry Commission to investigate assassinations in rural areas performed by professional hired gunmen to further the investigation into crimes against life in the centre-west and northern regions of Brazil.

## Article 7

108. The Brazilian Constitution prohibits the practice of torture by stipulating in article 5, III, that "no person shall be submitted to torture or any form of inhuman or degrading treatment". It likewise forbids sentencing for life, hard labour, banishment or any form of cruel punishment. The text of the Constitution also defines torture as a crime admitting no bail, offenders not being entitled to apply for pardon or amnesty.

109. To date, the Brazilian Congress has not passed a law on torture but a number of bills on the issue currently being examined. For the time being this offence is punished as serious bodily injury (Criminal Code, art. 129) and maltreatment (Criminal Code, art. 136), sentences ranging from 2 months to 12 years depending on the injury inflicted on the victim. There is also provision in Brazilian legislation for punishing authorities who, through abuse of power, attempt against an individual's physical safety (Law No. 4,898/65, art. 3, I). In the context of the existing dialogue between civil society and the Government referred to in the introduction to the present report, the Executive Branch has elaborated a draft bill describing and stipulating punishment for the crime of torture. This bill is now at committee stage in Congress.

110. The Brazilian Constitution guarantees suspects the right to remain silent during interrogation and classifies as inadmissible in court proceedings all evidence, obtained by illegal means. Those resorting to illegal means to obtain confessions or information shall be liable to the sanctions described above.

111. The Statute on Children and Adolescents (Law No. 8,069 of 13 July 1990), designed to ensure protection for the rights of children and adolescents, provides for the punishment of torture inflicted on children by those under whose custody, care or authority they are kept, establishing sentences ranging from 1 to 30 years' imprisonment.

112. Law No. 7,960 of 29 December 1989 regulates the instrument of temporary imprisonment for the purpose of controlling the incidence of torture. It requires that the detainee be submitted to medical examination before and after the period of detention, which may not exceed five days and can only be enforced upon express orders from the judge.

113. In making provisions regarding the rights of prisoners, the penal execution law (No. 7,210 of 1984) requires authorities to ensure respect for the physical and moral integrity of prisoners. Disciplinary action may only be applied if it is legally and regularly expressed. Confinement in unlit cells and collective punishment are expressly forbidden (art. 45, caption and sole paragraph). The law entitles prisoners to have a personal, reserved interview with an attorney or doctor of his personal choice (arts. 41 and 42 of Law No. 7,210/84).

114. People undergoing mental treatment in closed establishments are brought under the custody of the Justice Department. It should be stressed that no form of cruel or degrading treatment shall be countenanced with regard to those confined in psychiatric hospitals or similar institutions.

115. Brazil ratified the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 28 September 1989.

Factors and difficulties

116. Torture of suspects under arrest at police stations continues to be a source of concern in Brazil despite recent legal advances. Torture continues to be employed on occasions to extract information or forced confessions, as well as to blackmail or punish detainees.

117. It is estimated that less than 10 per cent of all cases of maltreatment at the hands of the police actually come to light. This is usually because the victims, of humble origin, are unaware of their rights and fear reprisals. None the less, NGOs themselves acknowledge that the number of deaths on police premises and the incidence of torture have been on the decline in recent years.

Government action

118. Cases of torture have mostly occurred when suspects are temporarily detained while investigations and the search for evidence are being carried out in order to obtain an arrest warrant. So as to avoid the problem of illegal arrest - in strictly legal terms, the police should only be able to arrest people in flagrante delicto or subsequent to the issuing of an arrest warrant - a law has been created authorizing police authorities to detain suspects on a temporary basis (maximum five days) under the strict supervision of a judge.

119. In the State of São Paulo, cases of torture are investigated by the Civil Police Magistrate's Department - an internal police disciplinary body. The Judicial Police Magistrate orders a medical examination when the suspect is first detained and may demand that the detainee be brought to this office for inspection as a precaution. Those arrested in flagrante delicto must be brought before the Magistrate in 24 hours. The Magistrate works in liaison with a group of public prosecutors investigating complaints and initiating proceedings in cases where there is solid evidence for prosecution.

120. The Government of the State of São Paulo has installed a special "S.O.S. Children" telephone line which can be used to denounce violence. From January 1991 to July 1992 a total of 9,608 calls were made to denounce various kinds of violence committed against children and adolescents in the State. The "S.O.S Children" recorded 21 cases of torture of minors from June to September 1992.

121. At the end of 1991, the Governor of the State of Rio de Janeiro signed a decree creating a special body within the civil Police (DETAA) to handle cases in which torture or abuse of authority are denounced.

122. Differently from in São Paulo, cases of torture in Rio de Janeiro are not investigated by the Judiciary but by the civil Police Magistrate's Office in collaboration with the Human Rights and Collective Interests Department, attached to the State Attorney-General's Office. This body investigates accusations and complaints from the general public and submits them to the Public Prosecution Service. The director of the Human Right's Department at the State Attorney-General's Office receives roughly 30 accusations of torture per month, though some turn out to be unfounded.

123. In the State of Ceará, the Governor recently dismissed the Public Security Secretary and suspended several members of the Civil Police accused of torturing suspects.

124. In the sphere of the Legislative Branch of government several Parliamentary Inquiry Commissions have been set up in recent years (both in the National Congress and in State Legislative Assemblies) to investigate maltreatment of children and adolescents.

125. Finally, a measure which has been highly effective in diminishing the number of cases of torture is the institution of a compulsory medical examination to assess the health of prisoners before and after they are detained.

## Article 8

126. One of the individual rights and guarantees enshrined in the text of the Brazilian Constitution is the inviolability of the right to freedom of Brazilians and foreign nationals residing in the country (art. 5, caption), the practice of slavery being expressly forbidden in Brazil.

127. Reducing a person to a condition analogous to that of a slave is a criminal offence listed under article 149 of the Brazilian Criminal Code. The perpetrator of such a crime is liable to prison sentence ranging from

two to eight years. Those depriving others of their liberty by means of kidnapping and private incarceration shall be punished in like manner.

128. The Constitution prohibits hard labour, even in the case of internees (Federal Constitution, art. 5, XLVIII). Those serving prison sentences are liable to be engaged in work but this labour is understood to be a social obligation and a means of attaining human dignity. It is always to be paid and its purpose is both productive and educational. The work is performed collectively within the walls of the prison, though external labour is also admitted in some cases. The organization and methods of such labour should have due concern for hygiene and safety. Women serving sentences in special establishments or in an appropriate sector of a prison or jail are also subject to engage in internal labour, work outside the prison walls being admitted in some case.

129. For an analysis of the predicament of children and adolescents on this count, see comments on article 24 below.

130. Military service is compulsory in Brazil. However, alternative forms of service may be ascribed to those alleging imperatives or religious faith or philosophical or political conviction to exempt themselves from activities of an essentially military nature. Women and clergy are exempted from military service in peacetime, though they may be subject to other obligations imposed upon them by virtue of the Law.

131. Brazil signed the Convention on Slavery in New York on 7 December 1953, the Convention being ratified by legislative decree No. 66 of 14 July 1965. Furthermore, on 6 January 1966 Brazil ratified the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, signed at Geneva in 1956.

Forced labour

132. Instances of forced labour are sometimes denounced in a number of States in Brazil, especially in sectors of the rural economy and in mining activities. Most of the cases of forced labour recorded in Brazil are cases of farm hands working as bondmen or to pay off debts.

133. Cases of forced labour in Brazil have been identified mainly on large rural properties located at a great distance from big urban centres as well as in a number of mills, workshops and private firms. In the case of large rural estates, farm hands are lured by the promise of good wages but are then obliged to pay high prices for their board and lodging. When they run up debts to the owners of the farms, they are prevented from abandoning the job by force.

134. Forced labour has been detected in the States of Alagoas, Bahia, Espírito Santo, Minas Gerais, Mato Grosso, Mato Grosso do Sul, Pará, Paraná, Rio de Janeiro, Rio Grande do Sul and São Paulo.

135. Statistics indicate an upsurge in such practices in recent years: in 1989 surveys indicated that 597 people were engaged in forced labour in the

country as a whole; by 1990 the figure had increased to 1,559. In 1991, the number of victims rose to 4,883 and in 1992 there were 16,442 proven cases of forced labour. The State where the largest number of cases was recorded was Mato Grosso, followed by Rio Grande do Sul and Pará.

136. There has been growing involvement of the trade union movement and religious institutions in communities where such practices are rife, especially since the promulgation of the 1988 Constitution, which has provided greater guarantees and highlighted the exercise of citizens' rights in Brazil. This has led to cases of slave labour being denounced with greater frequency.

137. At the same time, the intensification of economic difficulties has made it easier to allure workers and subject them to forced labour, especially in rural areas. The growth of unemployment and the rising number of non-contract workers are circumstances that favour the practice of such crimes, despite the existence of programmes for assisting unemployed workers. An increasing number of cases of juvenile and chid workers subjected to similar working conditions has also been detected as a result of deteriorating family incomes.

138. In 1991 and 1992, 34 cases of forced labour were denounced to Brazil's labour inspection authorities. These cases were investigated, often with support from local police authorities. As a result, 288 tax assessment notices involving 7,234 labourers were issued. These actions led to 212 individuals being charged with crimes against the organization of labour (Criminal Code, arts. 197 to 207). In at least two cases, offenders were arrested in flagrante delicto, the arrests being confirmed by judicial authorities.

139. The Brazilian Government is devoting considerable attention to cases of forced or slave labour, which are handled by the Ministry of Labour, the Ministry of Justice and the Labour Public Prosecution Service, among others. One should not, however, underestimate the difficulties involved in providing coverage for the entire country in view of its size and the difficulty of access in many regions. In 1993, the Ministry of Labour and the Labour Inspection Secretariat (SEFIT) carried out 59 inspection visits throughout Brazil following up allegations of forced or slave labour.

Forced prostitution

140. There have been reports of hundreds of cases of girls being kept in a state of servitude in remote gold prospection sites in the Amazon. The girls are lured into captivity by promises of well-paid jobs in bars and restaurants, and are later coerced through beating and threats, often with the connivance of the local police, into prostitution in order to survive. On being informed of cases of forced labour and prostitution under coercion, the Federal Police descended on the town of Cuiú-Cuiú in the State of Amazonas and freed 22 girls, arresting 10 panderers.

141. As a result of these cases, an official document was elaborated confirming the existence of girls being coerced into prostitution in Brazil. The Federal Police Department has prepared a detailed report containing information about the torture and murder of slave girls in the north of

the country. In November 1992, the police freed 92 adolescents (12- to 18-year-olds) and 30 girls (under 12 years of age) from brothels in mining areas in the State of Rondônia.

142. The Brazilian Congress set up a Parliamentary Inquiry Commission to follow up denunciation of cases in which young girls had been coerced into prostitution.

Government action regarding forced labour

143. The Investigation Commission examining rural violence under the aegis of the Council for the Defence of Human Rights has devoted special attention to the problem of forced or slave labour, which is also being investigated by the Federal Public Prosecution Service, the Federal Police and the Ministry of Labour. The Commission consists of representatives of the Brazilian Bar Association (OAB), the Catholic Church's Land Pastorate Commission, the National Farmers Confederation (CNA), the Ministry of Labour and the Federal Public Prosecution Service, under the chairmanship of the latter. Its members jointly analyse cases denounced and propose emergency and long-term action to curb non-contract labour which comes close to outright slavery.

144. The Council for the Defence of Human Rights follows up all cases brought before it involving alleged forced labour. The National Labour Inspection Department (DENAFIT) has been carrying out inspections through the Regional Labour Bureaux in places where repeated irregularities have been denounced.

145. Aware of the gravity of this state of affairs and of the limitations that prevent the country's labour inspection authorities from acting effectively in isolation, the Brazilian Government is considering implementing a Programme for Eradicating Forced Labour and the Allurement of Labourers. This programme is to coordinate actions carried out by different government agencies and improve the mechanisms employed. The aim is to make up for the lack of coordinated action among the government agencies involved with this issue. One probable concrete result of such a programme will be the identification of instruments for penalizing offending establishments. These could include cancelling the classification of property as rural businesses and even putting properties up for expropriation. The 1993 Agrarian Reform Law, for instance, makes allowance for property where slave labour is found to exist to be confiscated and expropriated for the settlement of landless labourers' families.

146. At the same time, the Brazilian Government's highest labour inspection authorities are developing a specific, emergency "Fiscal Action Plan" for regions with the highest incidence of cases of forced labour, allurement of labourers and exploitation of juvenile labour, so as to ascribe priority to actions aimed at thwarting crimes against the organization of labour.

147. At the end of May 1993 the Ministry of Labour created the National Labour Council, which has a specific department for handling cases of forced or slave labour. ILO technicians act as advisers to the Council. The Ministry of Labour has created a data bank containing information on all the cases denounced, their respective inspection reports and information on subsequent

fiscal action. There is a permanent Labour Committee at the Chamber of Deputies which liaises with the Ministry of Labour concerning submitted cases denounced by the Regional Labour Offices.

Article 9

148. All the rights contained in this article of the Covenant are fully protected by constitutional norms in Brazil. Arrest may only occur in flagrante delicto or on written orders containing a justification from the appropriate judicial authority (an arrest warrant). No one may be deprived of their personal freedom or property in the absence of due legal procedure, accused persons being entitled to contest the charges and to present ample defence with the use of all pertinent means and resources. The accused shall only be considered guilty when an unappealable judicial decision to convict him or her has been reached. According to the Brazilian legal system, no crime can be deemed to have been committed without the prior existence of a law defining it and no punishment can be imposed without prior legal sanction. Laws can only be made retroactive to benefit the defendant.

149. The Criminal Code punishes those ordering or performing illegal arrests with sentences ranging from one month to one year (Criminal Code, art. 350). Ordering or performing illegal arrests is likewise considered abuse of authority. Those failing to inform the judge immediately upon the arrest of any individual are likewise deemed to be committing a crime (Law No. 4,898/65, art. 4).

150. The Statute on Children and Adolescents establishes punishment for those responsible for arresting minors if the judge and the arrested person's family or a person appointed by him or her are not informed of the fact (art. 231). The punishment for non-compliance with the State ranges from six months' to two years' imprisonment.

151. Title XI of the Criminal Procedure Law deals with arrest and parole. An individual may be deprived of his freedom in cases of flagrante delicto, pursuant to article 302 of the said Code. Arrest may also be performed on written orders containing a justification from the appropriate judicial authority. The use of force shall only be permitted should the detainee resist arrest or attempt to escape. The judge ordering the arrest must issue a warrant, a copy of which is to be handed to the person arrested, containing all the legal details of the circumstances of the arrest. This document is required for confining the detainee. In the absence of an arrest warrant no person may be held under arrest (art. 288).

152. Temporary imprisonment may be decreed in order to safeguard public order or to facilitate the collecting of evidence when there is sufficient proof of the existence of the crime and enough evidence to indict the culprit. This is thus an exceptional measure.

153. Application for habeas corpus, guaranteed by the Federal Constitution and regulated by the Penal Procedure Code (art. 647 onwards), ensures that illegal coercion is immediately remedied by the Judiciary (art. 660). When the

release of a prisoner is ordered in cases of abuse of authority by coercion, a copy of the docket shall be submitted to the Public Prosecution Service for action determining responsibility to be brought.

154. Book III of the Code of Criminal Procedure deals with procedural nullity and appeals in general. Procedural nullity may ensue from incompetence, suspension or bribery of the judge, on account of illegitimacy of the parties involved or in the absence of certain formulae or terms prescribed by the law. Appeals are voluntary, except those lodged de officio by the judge. Appeals are normally addressed to appeals courts.

Extension of period of imprisonment

155. Many internees have remained in jail even when they have served out their sentences. This is due to the overcrowding of prisons, combined with the congestion of the judicial system. In many cases this delays the issuing of the release order, a document required to release any internee from prison.

Government actions

156. In February 1993, the Ministry of Justice presented the State Justice Secretaries with the "Concerted Penal Execution Programme". It provides for the distribution of 517 apprenticeship grants to law students throughout the country, the aim being to promote urgent examination of the procedural status of prisoners in the penitentiary system, the vast majority of whom (approximately 98 per cent) are unable to hire a lawyer.

## Article 10

157. The Brazilian Constitution guarantees respect for the physical and moral integrity of prisoners (Federal Constitution, art. 5, item XLIX). It determines that sentences be served in distinct penal establishments according to the nature of the crime committed, the age and sex of the person serving the sentence. Conditions are provided for women internees to remain with their children during the breast-feeding stage.

158. The Criminal Code determines that those inflicting maltreatment on convicts (art. 136) shall be punished with sentences of up to 12 years' imprisonment, should death ensue.

159. The penal execution law currently in force (Law No. 7,210/84) ensures prisoners full rights, irrespective of racial, social, religious or political distinctions.

160. It is the duty of the State to assist prisoners with a view to preventing crime and preparing them for their return to society. This assistance should be extended to prisoners who have already been released. Convicts are classified according to their backgrounds and personality so as to individualize penal execution, respect for their physical and moral integrity being secured by the law (art. 40).

161. Article 41 of the penal execution law lists the rights of prisoners which include: food and clothing, work and pay, visits, interview with an attorney,

protection against all forms of sensationalism, etc. It also specifies disciplinary offences and the respective penalties for the same, including isolation in a cell apart or in other appropriate premises in establishments with shared cells. Prisoners may be isolated for periods not exceeding 30 days and their isolation must always be communicated to the executive judge. Execution cells may not measure less than six square metres, salubrious conditions being required.

162. Women convicts shall serve sentence in separate prisons which must possess sectors for pregnant internees and women in labour as well as a crèche for the care of unassisted children whose mothers are serving sentences.

Minors

163. The Federal Constitution gives special attention to children and adolescents, declaring that it is a duty not only of the family and society at large but also of the State to guarantee their basic rights, according to the terms of article 227. It adds that people under the age of 18 are considered criminally incapable and are thus subject to special legislation (art. 228). Thus Law No. 8,069 of 1990 which makes provisions regarding the Statute on Children and Adolescents.

164. The arrest of any adolescent shall immediately be communicated to the appropriate judge, to the offender's family or a person named by him or her, the possibility of immediate release being examined. Adolescents may only remain under arrest for investigation of the offence they have been charged with in the case of serious criminal offences or those that generate major social repercussions and providing it is to guarantee their personal security or for the maintenance of public order. In this case, they are to be submitted to the Public Prosecution Service together with the criminal report and they shall remain in provisional custody for a period not exceeding 45 days during which proceedings must be concluded. Before judicial proceedings for investigating the offence commence, the representative of the Public Prosecution Service may grant remission of action. Once proceedings have begun, the judge may likewise grant remission, which shall imply suspension or abatement of action.

165. Brazil's prison population has expanded faster than the number of places available in the penitentiary system. Statistics on prisons for the year 1992 show that there were 124,000 convicts serving sentence in the country's prisons which had been designed to accommodate only 51,638 internees. In 1993, the number of prisoners rose to 126,152, of whom 88,784 were convicts and 37,368 were prisoners held in custody. As the number of places in Brazil's prisons remained unaltered, the national average of prisoners/place rose from 2.40 to 2.44 in 1993.

166. Brazil possesses 25 State prisons plus 1 in the Federal District. There are 297 penal establishments in the country, including penitentiaries, detention centres and public jails. The general national average is 82 prisoners for every 100,000 inhabitants, a figure which increases substantially in big cities like São Paulo (168 prisoners per 100,000 inhabitants). In terms of gender, at national level, 97 per cent are of the male sex, women accounting for the remaining 3 per cent.

167. The precarious predicament of Brazil's prisons has given rise to constant escape attempts and rebellions. In the entire country there are an average of three rebellions and two jailbreaks every day.

168. The main problems facing the Brazilian penitentiary system include:

(a) Overcrowding;

(b) Prisons accommodating both those serving open prison sentences and those under confinement, besides arrested persons held in custody, who should be confined in public jails;

(c) Predominance of shared cells, in detriment to the right to isolation for nocturnal rest. Where individual cells do exist, they often fail to comply with minimum legal requirements: a six square metre area, salubrious environment, bed, toilet and sink;

(d) Impossibility of engaging in paid labour for the majority of prison inmates;

(e) Prisons located a long way from urban centres, thus restricting visiting;

(f) Precarious medical and dental care, besides a lack of activities designed to help the prisoner to reintegrate in society.

Overcrowding

169. In the country as a whole there is a shortfall of 74,533 places in the penitentiary system, while approximately 48 per cent of those in prison are irregularly serving sentences in public jails. The lack of space for accommodating prisoners often leads to convicts not being placed behind bars: at national level about 345,000 arrest warrants are not complied with on account of the lack of appropriate premises for imprisoning them. The total number of places in the prison system remained steady at approximately 30,000 at the end of the 1980s. The majority, however, are in shared cells (41.44 per cent) with shared toilets (18.3 per cent).

170. In the State of São Paulo alone in 1991 about 119,000 arrest warrants were issued but failed to be accomplished. In 1993 the number has risen to 152,009 warrants. The State's prisons, detention centres and police precinct cells were already overcrowded in 1991, accommodating over 40,000 prisoners and detainees. In 1993, the prison population had expanded to about 51,000, of whom about 29,000 were serving sentences in prisons while 22,000 (many of them already convicted) were being held in public jails.

Lack of medical, dental and educational services

171. Medical and dental services in most Brazilian prisons are deficient. It is estimated, for instance, that by the end of the century 40,000 internees in the São Paulo penitentiary system will be contaminated by AIDS.

172. Prisoners are not provided with adequate conditions for engaging in work that will help them resume a normal social life on being released back into society. There is a dire lack of reintegration programmes and the rate of reincidence throughout the country verges on 85 per cent.

Non-separation of prisoners by category

173. Cramped space makes it virtually impossible to separate different categories of prisoners properly. First-time offenders are being accommodated in the same wings or even cells as recidivists, those serving short sentences live alongside criminals who have committed serious offences, those awaiting trial are crammed in with convicts.

Remand centres for children and adolescents

174. Despite Brazil's advanced legislation regarding children and adolescents, the conditions in which juvenile offenders are maintained are unsatisfactory. In 1991 there were two major rebellions in remand centres for juvenile offenders in the State of São Paulo, triggered by alleged beatings and maltreatment. The second rebellion, in October 1991, was provoked by the beating of one of the internees. The inmates at the remand centre - the "FEBEM quadrilateral", the biggest in the State of São Paulo - set the buildings on fire. By the time the rebellion had been brought under control, the premises had been completely destroyed and one of the minors had died.

Government actions

175. The Ministry of Justice has been concerned to improve Brazil's criminal legislation, reserving prison sentences for convicts who are clearly a threat to society. For others, lighter sentences combined with fines and community services, temporary forfeiture of rights and limitations on weekends often prove more effective. These alternative forms of punishment are already present in article 43 of the Criminal Code.

176. There are currently 32 penal establishments under construction in Brazil. To reduce overcrowding to tolerable levels it is estimated that another 130 prisons would need to be built. As is the case in other domains, shortage of funds is what is preventing improvement of conditions in the penitentiary system. It costs approximately 15 million dollars (30,000 dollars per inmate) to build a prison to house 500 internees. It costs the State about three and a half times the minimum wage to maintain a prisoner.

177. The Penitentiary Affairs Department (DEPEN) was allocated a budget of 1,863,650 dollars in 1992, equivalent to 4.8 per cent of the sum it had requested from the Treasury. For the 1993 financial year, DEPEN's budget has risen to 52 million dollars. To complete the building of the penal establishments already under construction, however, it is calculated that 136 million dollars would be required.

178. A Legal Assistance Manual for Prisoners and Probationers is now being elaborated. The aim is to provide those with the keenest interest in the matter easy access to information about the rights they possess.

179. Another important initiative is the creation of the National Penitentiary Fund (FUNPEN), a draft bill for which is currently being examined by Congress. The aim of FUNPEN is to solve the problem of the chronic lack of funds for the Brazilian penitentiary system. It is to be maintained with funds raised by federal lotteries, legal costs, the privatization of State-owned companies and loans and donations from international organizations.

180. Ministry of Justice ruling 125 of 19 April 1993 set up a working party to draft a bill creating the National Penitentiary School and a career for penitentiary staff. Today there is only 1 penitentiary officer for every 11 prisoners in Brazil, a much lower ratio than that recommended by the United Nations (one officer for every three internees). The Ministry of Justice is also encouraging the establishment of community councils in all regions of the country, the purpose of which is to facilitate the procedures demanded by criminal justice through liaison with state governments.

181. A Parliamentary Inquiry Commission was set up in June 1991 to assess and investigate Brazil's penitentiary system, especially with regard to overcrowding and allegations of violence against prisoners.

182. At state level, it should be mentioned that the São Paulo State Public Security Secretariat is to build 11 big prisons (Cadeiões) over the coming year. They are to be built in Osasco, São Bernardo do Campo, Santo André, Praia Grande, São Jose dos Campos and on the banks of the River Pinheiros.

## Article 11

183. Brazil's Constitution does not allow for civil arrest on account of debt, exception being made for those responsible for paying alimony and for unfaithful trustees (Federal Constitution, art. 5, item LXVII). In such cases, civil arrest is a coercive measure designed to compel the debtor to fulfil a civil obligation. It is entirely distinct from criminal arrest bringing legal pressure to bear on the offender to honour his debt which, when paid up, suspends the arrest.

## Article 12

184. The Brazilian Constitution accepts the provisions of article 12 of the Covenant in stating that: "locomotion within Brazilian territory in peacetime is unrestricted, and any person may enter, remain in or depart from it in possession of his property". Citizens are entitled to fix residence wherever they choose, without having to request authorization. This right extends not only to natural-born and naturalized Brazilians but also to foreign nationals.

185. Law No. 4,898/65 regards attempts against the freedom of movement guaranteed by the Constitution (Federal Constitution, art. 3) as abuse of authority.

186. Movement within the country is entirely unrestrained except when it comes to Indian reserves. Government authorization is required for access to such areas. This measure is designed to protect Indians against forced acculturation. Brazilians are free to enter and depart from Brazilian territory at any moment.

Article 13

187. According to the Brazilian Constitution, all are equal in the eyes of the law, Brazilians and foreigners being entitled to the same rights (Federal Constitution, art. 5, caption).

188. Law No. 6,815 defines the legal status of foreign nationals in Brazil. This law states that foreigners require visas to enter the country. None the less, visa requirements can be waived, providing the arrangement is reciprocal and stipulated by international agreement. Visas are individual but may be granted by extension to legal dependants. Those entering Brazilian territory without due authorization are liable to deportation. Foreigners intending to settle in Brazil are issued permanent visas.

189. Brazilian immigration policy states that immigration shall serve the purpose of obtaining specialized labour for a number of sectors of the national economy, the aim being to increase productivity, assimilate new technology and raise funds for specific sectors.

190. Brazilian law admits requests for political asylum. Extradition of foreigners, on the other hand, may occur when the Government requesting extradition bases its justification on conventions, treaties or reciprocity. However, no extradition may be granted without order from the Federal Supreme Court. The Constitution also stipulates that foreigners shall not be extradited if they have committed crimes of a political nature.

191. Foreigners granted permanent residence in Brazil may not exercise political activities (Statute on Foreigners, art. 106).

Article 14

192. The Brazilian Constitution confers on all equality in the eyes of the law regardless of any kind of distinction, the Judiciary being competent to examine any violation of or threat to rights.

193. The Judicial Branch is an independent, autonomous power as are the Executive and Legislative Branches. The constitution of arbitration tribunals is forbidden and no person may be tried or convicted by any power other than the Judicial Branch, nor shall they be deprived of their freedom or forfeit their property without observance of due legal procedure.

194. Those accused of committing crimes shall be entitled to ample procedural defence. The defendant shall only be deemed guilty when sentenced by a decision that has transited in rem judicatam.

195. Arrested people are guaranteed rights, including the right to remain silent. The law also entitles them to family assistance and compulsory legal defence by a lawyer. The State is to provide free legal assistance for those who can prove lack of financial resources.

196. Judicial hearings and procedural acts are generally open to the public and are held at the seat of courts on specified days and hours. The public

nature of procedural acts may only be restricted to protect privacy or when social interest is at stake. In this case, proceedings may be held behind closed doors.

197. Appeals can be lodged at a higher level regarding any judicial decision and only after the decision has been re-examined can a final decision be proffered (Code of Penal Procedure).

198. Prisoners convicted on account of judicial error or held in custody beyond the full length of their final sentence may seek compensation from the State. Those standing trial who do not speak the national language shall be ensured the presence of an interpreter, appointed by the judge, at their interrogation, without cost to the parties involved (Code of Penal Procedure, art. 195).

199. Convicts on probation receive protection from the State in addition to guidance and support for resuming their lives in freedom upon release. They may, if necessary, be granted lodging and food until they obtain work (Penal Execution Law No. 7,210 of 1984, arts. 25 and 26).

200. Juries are acknowledged to be competent to judge crimes against life committed with malice aforethought, full defence, secret balloting and the sovereignty of jury verdicts being ensured.

Justice for children and adolescents

201. The Statute on Children and Adolescents considers minors who have not yet turned 12 years old to be children and those between 12 and 18 years of age to be adolescents. This is an important distinction because, although both possess the same basic rights, when they commit offences, children are subject to protective measures (art. 101) whereas adolescents are subjected to socio-educational treatment (art. 112) which may even imply being deprived of freedom.

202. The Brazilian Constitution has determined criminal responsibility (full legal capacity) as beginning at the age of 18. The aim of inscribing this penal norm in the Constitution was to protect the precept against reviews which might seek to lower the age limit.

203. The Statute describes offences as being conduct defined as a crime or penal contravention (art. 103) but performed by a person who is not responsible. This means that a misdemeanour does not constitute a crime or contravention, although it may be defined as such in the Criminal Code, but rather an offence, on account of the perpetrator’s age.

204. The Federal Constitution secures the right to special protection, translated by the following procedural guarantees, among others, set out in the Statute on Children and Adolescents (art. 111), reflecting precepts contained in international conventions, especially the Beijing Rules:

(a) Full, formal knowledge of the attribution of an offence by means of a summons or some other equivalent;

(b) Equality in procedural relations, meaning that they can confront victims and witnesses and produce the proof required for their defence;

(c) Technical defence by a barrister;

(d) Free, full legal assistance for those of insufficient means, according to the terms of the law;

(e) The right to be heard in person by the competent legal authority;

(f) The right to request the presence of their parents or those legally responsible for them at any point in the proceedings.

205. The competent authority may apply the following socio-educational measures to adolescents (Statute, art. 112):

(a) Warning;

(b) Obligation to redress damage;

(c) Community service;

(d) Conditional release;

(e) Partial release;

(f) Confinement in an educational establishment;

(g) Any of the protection measures provided for in article 101.

The first three measures clearly indicate the precedence of the educational as opposed to the punitive or repressive approach. Conditional release provides the best conditions for social integration since it presupposes basic monitoring by qualified personnel (technical or otherwise) as well as interaction with the community. Partial release is a transition phase and confinement or depriving of freedom shall only be applied should there be no other more appropriate measure to hand.

206. In any event, the measures imposed on adolescents shall take into account their capacity for accomplishing them. Moreover, they shall be proportional in severity to the circumstances and gravity of the offence.

207. Confinement is a measure for depriving young offenders of their freedom. It is subject to the principles of brevity, exceptional occurrence and respect for the offender's peculiar status as a developing individual (Federal Constitution, arts. 227 and 3, item 5; Statute on Children and Adolescents, art. 121). No adolescent may be deprived of his freedom except in cases of arrest in flagrante delicto or with a duly justified arrest warrant (art. 106). The decision shall be grounded in and based on sufficient

evidence of commission and material involvement, the imperious need for such action being demonstrated within the framework of due legal procedure (arts. 108, sole paragraph, and 110).

208. Confinement may only be applied:

(a) Should the offence have been committed with the use of serious threat or by inflicting violence on the victim;

(b) Should committal of the crime constitute repetition of other serious offences;

(c) In cases of reiterated, wanton non-compliance with measures imposed on previous occasions.

209. The difficulties facing the Judiciary largely stem from insufficient allocation of funds. There are currently 5,164 judges in Brazil to serve a population of approximately 150 million inhabitants. In the State of Pernambuco there is one judge for every 40,228 individuals; in Maranhão, one for every 39,383; in Bahia, one for every 38,774; and in São Paulo, one for every 27,774 citizens.

Distribution of court of law judges (selected States)

| States | Judges (absolute figures) |
|---|---|
| São Paulo | 1 520 |
| Rio Grande do Sul | 387 |
| Paraná | 318 |
| Pernambuco | 308 |
| Goiás | 170 |

Source: Judiciary Branch National Data Bank, August 1992.

210. A survey carried out in 1993 by the Social and Political Studies Institute (IDESP) by interviewing 570 judges throughout Brazil shows that, in the opinion of members of the Judiciary, the factors hindering efficient operation of the system are, in order of importance, lack of material resources (85.6 per cent), excess of formalities in judicial proceedings (82.3 per cent), insufficient number of judges (81.1 per cent) and court divisions (76.3 per cent), outdated legislation (67.4 per cent), and the great number of lawsuits (66.5 per cent).

211. The military justice system in São Paulo has just four judges to handle a backlog of 14,000 proceedings filed against military policemen in the State (1992 statistics). The excessive number of cases compounded by the short supply of judges seems to be the most serious obstacle to efficient operation of military justice in São Paulo. Every year, as the table below demonstrates, the number of cases tried diminishes and the number of cases filed increases:

| Year | Cases tried | Cases filed | Ratio |
|---|---|---|---|
| 1989 | 1 183 | 4 467 | 0.26 |
| 1990 | 1 135 | 5 266 | 0.22 |
| 1991 | 980 | 7 125 | 0.14 |

Source: Military Justice Tribunal, São Paulo State.

212. The sluggish pace of trials frequently leads to lighter sentences lapsing. In 1991, 396 cases came under statute of limitations, benefiting almost 2,000 military policemen charged with assault and inflicting serious bodily harm. Approximately 60 per cent of the cases filed in military courts are of this kind. The short sentences involved rapidly come under statute of limitations.

213. According to statistics collected by the Military Tribunal in the period from 1987 to 1991, a total of 952 cases lapsed before coming to trial, the number rising in the last year.

| 1987 | 1988 | 1989 | 1990 | 1991 | TOTAL |
|---|---|---|---|---|---|
| 82 | 63 | 244 | 172 | 391 | 952 |

Source: Military Justice Tribunal, São Paulo State.

214. The São Paulo State Legislative Assembly is examining a proposal for installing two more military courtrooms, reinforcing the existing ones and restructuring the court records department so as to speed up the pace of proceedings in the military justice system. A bill proposing that civil offences committed by military personnel cease to be tried by military tribunals is on its way through the National Congress. The aim is to relieve the workload of military tribunals and to avoid cases lapsing due to slow proceedings, leaving offenders unpunished.

215. There are 300,000 lawyers in activity in Brazil. More than one third of them (110,000) are concentrated in the State of São Paulo, handling 3.1 million cases. There are 1,258 members of the Public Prosecution Service in the State of São Paulo, 172 of them acting in second tier courts and 1,086 in lower courts. In the States of Rio de Janeiro and Minas Gerais there are about 500 members of the Service. There are 590 federal prosecutors and 200 posts waiting to be filled.

## Article 15

216. The Federal Constitution and the Brazilian Criminal Code determine that "no crime shall exist without the prior existence of a law defining it" and "no punishment shall exist without prior legal commination" (Federal Constitution, art. 5, item XXXIX; Criminal Code, art. 1).

217. Pursuant to the Constitution, no criminal law may be applied retroactively unless it be to benefit the defendant. Thus, if a fact is

considered a crime by the law in force at the time the act was committed and ceased to be so as a result of a subsequent law, the latter shall retroactively benefit the defendant. If both laws incriminate the act but the latter stipulates a less severe punishment, the law which is most favourable to the defendant shall apply. This precept takes precedence over definitive judicial rulings, the civil effects of conviction being preserved.

Article 16

218. The Federal Constitution secures the right to a nationality (as determined by art. 12). In analysing nationality claims, Brazil adopts the jus solis criterion, with a few exceptions. Nationality is thus conferred on those born on Brazilian territory, even if their parents be foreign nationals, providing they are not in the service of their country, in which case jus sanguinis shall apply.

219. Another exception to jus solis is the case of those born abroad to Brazilian parents, providing they are in the service of Brazil. The same applies to those who are born abroad to Brazilian parents not in the service of Brazil, providing they are registered in the appropriate department; or those who come to reside in Brazil before attaining full legal age and, having reached that age, may opt at any time for Brazilian nationality.

220. Foreign nationals may become naturalized Brazilians. Nationals from Portuguese-speaking countries are required only to live in Brazil for one year without interruption and to be of good moral conduct. The Executive Branch has the exclusive power to grant nationality, providing the person applying for it has fulfilled the following conditions: possessing civil capacity according to the terms of Brazilian law, being continuously resident in Brazil for at least four years, knowing how to read and write in Portuguese, possessing the material means to support himself, and not having been convicted of a criminal offence, among others.

221. In the eyes of Brazilian law, civil capacity for natural persons begins with birth, the rights of unborn children being protected from the moment of conception. The birth is to be registered in a civil registry office, the same applying to marriage and death. Thus, under Brazilian law, all individuals are subject to the law, capable of rights and obligations in the civil order.

222. Brazilian law makes provisions regarding the capacity to perform the acts of civil life:

(a) The following are absolutely incapable of performing the acts of civil life on their own behalf:

(i) Individuals under 16 years of age;

(ii) Deaf mutes who have been unable to express themselves;

(iii) Individuals declared to be missing by judicial act;

(b) The following are incapable of performing certain acts or of acting in a suitable manner to perform them:

(i) Individuals over 16 and under 21 years of age;

(ii) Prodigals;

(c) All people shall cease to be minors on completing 21 years of age and shall become legally capable of performing all the acts of civil life. A person's status as a minor shall also cease in the following cases:

(i) With permission from the father or, should he be dead, from the mother and by court ruling, upon consultation with the tutor or guardian if the minor is already 18 years old;

(ii) Upon marriage;

(iii) Upon exercising effective public employment;

(iv) By obtaining a higher education degree;

(v) By setting up a civil or commercial establishment with one's own capital.

Natural persons shall cease to exist upon death.

Article 17

223. The Constitution considers people's privacy, personal life, honour and image to be inviolable. It guarantees them the right to compensation when such rights are violated, the right to reply, proportional to the offence, being secured. Those interested are entitled to have access to information about themselves, contained in registers or data banks maintained by government departments or public organizations and shall be empowered to rectify it by resorting to a constitutional remedy termed habeas data (art. 5, para. LXXII).

224. Secrecy of correspondence and telegraphic and telephone communications is likewise deemed to be inviolable. Wire-tapping of telephone calls requires judicial authorization and shall only be permitted for the purposes of criminal investigation or for the preparation of penal proceedings.

225. The home is considered the inviolable refuge of the individual. No one may enter it without the consent of the occupant, exception being made for arrest in flagrante delicto or in the event of disaster to render assistance or by judicial decree exclusively during daylight hours.

226. Illegal attempts on an individual's honour or reputation are punishable under the terms of Brazilian criminal law, which sets penalties for libel, slander and defamation (arts. 138, 139 and 140 of the Criminal Code). The Criminal Code likewise punishes those violating another's home (art. 150).

227. Those broadcasting telegraphic communications addressed to third parties without due authorization on the radio or other means of communication shall also be liable to criminal sanctions (Criminal Code, art. 151, para. 1, item II).

228. Since the end of the military regime there have been no recorded cases of homes being invaded for political motives, though cases of homes being invaded in the search for suspects do still occur.

229. Tapping and recording telephone calls is unconstitutional and such recordings shall not be admitted as proof in criminal proceedings unless they have been authorized by a judicial authority and comply with circumstances permitted by law. There have been no recorded cases of systematic violation of mail in Brazil.

## Article 18

230. The Constitution states that people are free to express their thoughts (art. 5, para. IV). Freedom of conscience and creed is inviolable and there are no official links between the State and churches. The latter are free to practise their own services and rituals, places of worship being ensured protection.

231. No person may be deprived of his or her rights on account of their religious, philosophical or political convictions. Exception is made for those who, for the reasons listed above, seek to exempt themselves from legal obligations imposed on all alike and refuse to comply with alternative forms of service.

232. Religious education is optional, as is enrolment in religious teaching establishments. In Brazil, public teaching establishments exist alongside private ones, both lay and religious. The principle of pluralism of ideas and pedagogical conceptions prevails.

233. Law No. 4,898/65 defines any attempt on another's freedom of conscience or beliefs as abuse of authority, the same applying to the free exercise of religions ritual. The Criminal Code punishes abuse of religious ritual and the prevention of disturbance of acts connected with them (Criminal Code, art. 208). It should be mentioned that the Penal Execution Law grants prisoners the right to religious assistance, which is also guaranteed by civil and military organizations.

234. Parents are responsible for enroling their children in the regular school network. Children and adolescents are free to engage in creative activities, sports, leisure and are guaranteed access to sources of culture (Statute on Children and Adolescents, arts. 22 to 25).

235. The Brazilian State is secular and does not officially favour the practice of any religion. Though the majority of the population is Roman Catholic, spiritualist and Protestant religions are gaining large numbers of adepts. None the less, no cases of religious conflict between these

religions have been recorded. All churches and denominations are free to establish places of worship and religious education, though the Government controls access of missionaries to indigenous areas so as to avoid forced acculturation. Religious organizations in Brazil are exempt from income tax.

## Article 19

236. The Brazilian Constitution guarantees freedom of expression in all its aspects, be they artistic or scientific or related to communication. Under the terms of the Constitution, censorship is prohibited and professional secrecy is secured. Journalistic information is fully protected. Nevertheless, the production and broadcasting of radio and television networks must respect ethical and social values dear to individuals and the family.

237. Prisoners are entitled to maintain contact with the outside world by means of written correspondence, reading and other sources of information (television, etc.) providing they are not offensive to good morals (Penal Execution Law - Law No. 7,210/84, art. 41, item XV). Prisoners are likewise entitled to exercise intellectual, artistic and sporting activities (item VI of art. 41 referred to above).

238. The right to express one's opinions is protected by the Constitution and exercised to the full in Brazil. Political issues and controversial subjects are routinely discussed by the media. Means of communication are mostly owned by private enterprises though the Government controls the licences for radio and television stations to broadcast, ratified by the National Congress.

239. Censorship of means of communication was abolished by the 1988 Constitution. Prior viewing and examination of films, plays, radio and television programmes by appropriate government bodies is designed merely to classify them as being suitable for a particular age range. This, however, cannot be viewed as being censorship.

240. Ownership of means of communication is highly dispersed. In 1988 there were 2,033 radio broadcasting companies and 183 television broadcasting companies. In the same year, 5,139 different periodicals were in circulation and 1,175 books were published.

## Article 20

241. The Brazilian Constitution forthrightly declares the need to seek peace among nations. It repudiates resorting to arms and upholds peaceful settlement of conflicts (Federal Constitution, art. 4, I). It thus forbids propaganda encouraging war, punishing those venturing to indulge in it. Brazil's Electoral Code reaffirms this stance, stating that propaganda to encourage war will not be tolerated, the same going for attempts to promote attacks on people and property (art. 243).

242. The Criminal Code lists crimes against public peace, punishing those who deliver apologies for criminal offences or publicly incite people to engage in crime.

243. Law No. 4,417 of 27 August 1962, which institutes the Brazilian Telecommunications Code, considers the exercise of broadcasting freedom to promote campaigns discriminating against class, colour, race or religion to be an abuse of broadcasting freedom (art. 53).

244. According to the Press Law (Law No. 5,250 of 9 February 1967) one is free to express one's thoughts but should not act abusively in doing so. Propaganda for war, subversion of the political and social order, and racial or class prejudices are thus not to be tolerated (art. 14).

245. Law No. 6,620 of 17 December 1979 defines crimes against national security and considers it a crime to incite people to hatred or racial discrimination (art. 36, VI).

246. Directly and openly inciting people to commit genocide (destruction of any national, ethnic, racial or religious group, as such) or similar practices are prohibited by Law No. 2,889 of 1956). Article 3 defines and punishes the crime of encouraging genocide, the sentence being increased when committed by the press, by a governor or by a civil servant.

247. Law No. 7,716 of 5 June 1989 and Law No. 8,081 of 21 September 1990 prohibiting incitement or discrimination based on nationality, race or religion consider it a crime to practise, induce or incite people by means of mass communication or through publication of any sort.

## Article 21

248. The right of assembly is guaranteed by the Brazilian Constitution, provided it is exercised in a peaceful manner. Private meetings held on private premises are thus protected by article 5, item XI, of the Constitution.

249. Meetings open to the general public held in buildings or outdoors do not require prior authorization but must be for pacific purposes and not involve the use of weapons, the only requirement being that the organizers inform police authorities in advance to avoid clashing with another meeting that may already have been planned for the same time and venue (Federal Constitution, art. 5, XVI).

250. In exceptional circumstances the right of assembly may be restricted. This may occur, for instance, when a "state of defence" or a "state of siege" has been decreed pursuant to the terms of the Constitution in order to protect the State and democratic institutions. The exceptional circumstances have been commented on above in the section on article 4 of the Covenant.

251. The right to peaceful assembly is legally guaranteed and widely exercised in Brazil. It is common for political parties, union leaders and organized civil society to call on the population to gather in the streets or hold peaceful assemblies to express their positions. On no such occasions has any incident been recorded in recent times.

Article 22

252. The right of association for lawful purposes is fully provided for. No State authorization is required for creating associations and the Government is forbidden to interfere in their organization and activities. Associations can only be disbanded by a court ruling. On the other hand, nobody shall be obliged to join or remain a member of an association.

253. Trade unions can be freely organized in Brazil. They can be founded without government authorization but should be registered in the appropriate government department. Political parties may be freely created and must be organized on a national basis. They may not, however, receive funds from foreign organizations or Governments nor be subordinate to them. Their statutes must be registered at the Electoral Court.

254. The right to strike is legally recognized and freely exercised (Federal Constitution, art. 9). The 1989 Strike Law stipulates which essential services must remain operational during strikes and requires that workers notify their employers of standstills or the downing of tools 48 hours in advance. Failing to guarantee the maintenance of essential services or continuing to strike following a court ruling to return to work shall be considered abuse of the right to strike. The 1989 Strike Law outlaws the contracting of new workers to replace striking workers so long as the strike has not been declared abusive.

255. The Constitution prohibits the dismissal of union members who have registered as candidates for union leadership or representation for the duration of their mandate and for one year after it has terminated, providing grave failings are not committed (Federal Constitution, art. 8, VIII). In companies with over 200 employees, the workers may elect a representative for direct contacts between the union and the workforce.

256. Associations must respect national sovereignty, the democratic regime, party pluralism and basis human rights. The Criminal Code established punishment for attempts against freedom of association (art. 199) classifying such acts as abuse of authority (Law No. 4,898/65, art. 3).

257. Brazilian labour legislation guarantees all workers, except regular members of the armed forces and the police, the right to union representation. The trade union system in Brazil is still unitary and hierarchical and is funded by a compulsory union levy deducted at source from payroll, equivalent to one day’s pay. Legislation based on the "single union" concept prohibits the existence of more than one union for each professional category in a given geographical area.

258. Despite these restrictions, the Brazilian union movement operates in an unhampered fashion. In practice, unions and union federations can be created to compete with those that are officially registered. Thus, although Brazilian legislation does not provide for the existence of union confederations, there are currently three major trade union congresses in Brazil: Central Única dos Trabalhadores (CUT), Confederação Geral dos

Trabalhadores (CGT) and Força Sindical. These confederations are free to become affiliated to international bodies. By 1992 all three were affiliates of the International Confederation Of Free Trade Unions (ICFTU). Approximately 20 per cent of the Brazilian workforce is organized in unions.

259. In 1989 there were 9,833 different trade unions in Brazil, 5,354 for the urban workforce and 4,479 representing rural labourers. In that year there were 7,437,251 union members in Brazil.

Unions and urban and rural membership by category - 1989

| Union category | Unions | Membership a/ |
|---|---|---|
| Urban | 5 354 | 5 221 538 |
| Employers | 1 532 | 207 154 |
| Autonomous agents | 277 | 167 154 |
| Employees | 3 108 | 4 589 593 |
| Liberal professions | 359 | 235 856 |
| Autonomous workers | 78 | 21 417 |
| Rural | 4 479 | 2 215 713 |
| Employers | 1 627 | 348 380 |
| Workers | 2 852 | 1 867 333 |
| TOTAL | 9 833 | 7 437 251 |

Source: Brazilian Geography and Statistics Institute, Research Directorate, Statistics and Social Indicators Department, Union Survey.

a/ Excluding undeclared membership.

260. Several groups of workers went on strike in 1992 and 1993 and the labour courts acknowledged the legitimacy of their claims in a number of cases.

## Article 23

261. The Brazilian Constitution recognizes the family as the basis of society and considers that it merits special attention on the part of the State. Marriage is the usual form by which a family is constituted but the law also extends protection to stable unions between man and woman as family units, the same treatment being afforded to unions formed by either parent and his or her descendants.

262. No distinction is made between men and women with regard to conjugal rights and duties. The right to divorce is secured by legislation, family planning being exercised at the couple’s discretion.

263. The Criminal Code treats crimes against the family under title VII. It condemns bigamy and punishes bigamists with prison sentences ranging from two to six years (Criminal Code, art. 235). The Criminal Code establishes rules governing the marriage ceremony (art. 194) and describes the legal effects of marriage (art. 229).

## Article 24

264. It is the duty of the family, society at large and the State to ensure that children's basic human rights are respected. To this end, the State shall develop programmes to defend children and adolescents with absolute priority. The Constitution makes provisions in this respect in article 227 onwards, outlawing any discriminatory designations of filiation.

265. Children are guaranteed all the basic human rights afforded by the Constitution besides the specific rights set down in the Statute on Children and Adolescents. These rights include the right to registration, to nationality and to a name.

266. The Constitution prohibits work for children under the age of 14, except for the purposes of education. Minors are forbidden to work at night, to perform dangerous tasks, be employed in insalubrious or immoral activities. Juvenile workers must attend school and have the express permission of their parents to work.

267. The Criminal Code punishes those denying the state of filiation and those who confide minors to the custody of a person of ill repute. Material and intellectual abandonment are likewise punishable (Criminal Code, arts. 244 and 246).

### General predicament of Brazilian children and adolescents

268. Despite all the legal advances achieved, the Brazilian Government has difficulty guaranteeing children's basic rights. The present socio-economic environment hampers effective securing of the rights of children and adolescents.

269. The demographic profile of the Brazilian population, with a high concentration of children and adolescents, is in itself a challenge to socio-economic development, placing strong demands on the expansion of the job market, housing, sanitation, schools, health system, leisure, social assistance and protection.

270. Statistical data on the 1981-1988 period show a persistently high proportion of families living below the so-called poverty line. In 1988, 30.6 per cent of children and adolescents in the 0-17 year age bracket belonged to families with monthly per capita incomes of up to one quarter of a minimum wage. In the same year, 54 per cent of children in this age range were living in families with a monthly per capita income of up to one half a minimum wage.

271. Unequal income distribution is more glaring in the north-east of Brazil. Absolute poverty in this region affects 56.6 per cent of children and

adolescents (0-17 year age range). For the sake of comparison, in the south-east this figure drops to 17.4 per cent. Black and coloured children belong to poorer families than white children.

272. The Constitution established a minimum age of 14 years for engaging in employment, exception being made for apprentices. Despite legal restrictions, however, official statistics reveal that 17.2 per cent of children aged 10 to 14 years work. This figure is higher among adolescents aged 15 to 17 (50.2 per cent). Most of these juvenile workers are deprived of labour and social security rights. Only 10.7 per cent of children in the economically active population have a registered work contract in the 10-14 year age range. This figure rises to 32.6 per cent among 15 to 17 year olds. It should be stressed that very few juvenile workers (3.9 per cent of the total) are engaged in the formal sector of the labour market. This suggests that the vast majority work in the informal sector, for which precious few official statistics are available.

273. Brazil now possesses a modern legal instrument for protecting the rights of children and adolescents: the Statute on Children and Adolescents, instituted by Federal Law No. 8,069 of 13 July 1990, which complies with the most advanced international precepts in this field. Its purpose is to afford children and adolescents full protection, guarantee their human rights and facilitate their access to the means and resources required for their physical, mental, moral, spiritual and social development in an environment of freedom and decency.

Government actions

274. At the end of 1992, the Brazilian Government and ILO launched a project designed to remove children from the Brazilian labour market. In 1993, the Ministry of Social Welfare launched the "Mother City" programme. It aims to provide underprivileged children in Brazil's major cities with shelter, food, medical assistance and professional training courses. This programme was introduced in Salvador and Rio de Janeiro. At the same time, two new projects have been introduced by the Federal Government to attenuate the plight of underprivileged children. The "Juvenile Work Allowance" project run by the Brazilian Assistance Legion, employing adolescents between the ages of 14 and 17, whose families earn up to twice the minimum wage, in post offices in the city of São Paulo and in the interior of the State. These adolescents receive medical, dental and psychological treatment. The second project is related to the elaboration of a new policy for tackling the problem of minors in big cities. Implemented by the Brazilian Centre for Children and Adolescents (CBIA), the first stage of this project consists of mapping out the three main problems regarding minors: extermination by death squads, prostitution, and juvenile offenders.

275. The Brazilian Congress set up a Parliamentary Inquiry Commission on 27 May 1993 to determine responsibility for child and juvenile prostitution.

276. The Brazilian Ministry of Justice was represented at the Meeting of Specialists on International Traffic in Minors held in Mexico in October 1993.

A draft proposal for an Inter-American Convention on International Traffic in Minors regulating civil and criminal aspects of the traffic was drawn up at the meeting.

277. Brazil signed the Convention for Protection of Children and Cooperation in respect of Intercountry Adoption in May 1993 together with another 64 nations convening at The Hague. Given the urgency of combating international traffic in children, the President of the Republic has submitted the text of this Convention to Congress for ratification.

278. The Government and civil society are actively engaged in a social movement to defend the interests of children and adolescents. Participation occurs on two levels: the first is institutional, involving the Rights Councils and Guardianship Councils, for example; the second involves autonomous forums in civil society such as the Permanent Forum of Non-Governmental Organizations in Defence of Children's and Adolescents' Rights ("Forum DCA") and the Covenant for Childhood, among others.

279. At institutional level, the following initiatives deserve special mention.

280. Rights Councils are public institutions with parity composition, composed of representatives of the Executive Branch and elected representatives of organized civil society, which are empowered to deliberate on the formulation of policies and to supervise action at all levels.

281. In October 1991, the Brazilian Government created the National Children's and Adolescents' Rights Council (CONANDA), officially instituted by Decree No. 8,242, comprising an equal number of representatives of the Executive Branch and of NGOs. CONANDA is entrusted with the task of establishing general norms for elaborating national policy on children's and adolescents' rights, supervising execution of this policy and ensuring it is implemented. It is also responsible for supporting the State and Municipal Children's and Adolescents' Rights Councils, as well as government departments at all levels and NGOs, the aim being to bring the principles inscribed in the Statute to fruition. CONANDA also assesses State and municipal policies and the actions of the respective Councils, monitors institutional reordering of public and private schemes for the care of children and adolescents, besides promoting educational campaigns on children's and adolescents' rights, and managing the National Fund for Children and Adolescents. CONANDA, officially inaugurated on 16 December 1992 and installed on 18 March 1993, has already elaborated and approved its internal regulations. It is chaired by the Minister of Justice, the Deputy Chairman being a representative of an NGO. The Brazilian Centre for Children and Adolescents (CBIA) acts as Executive Secretary.

282. There are Municipal Children's and Adolescents' Rights Councils operating in 951 of Brazil's 4,569 municipal districts. Another 771 Councils are currently being installed and 936 Councils are at the planning stage. In the near future there will be 2,598 Municipal Councils in operation in Brazil.

283. Guardianship Councils are permanent, autonomous, non-jurisdictional bodies. They do not possess judicial powers for judging conflicts of

interest. Their basic role is to ensure fulfilment of the rights and duties of children and adolescents set down in the Statute on Children and Adolescents. Each municipal district is to have a Guardianship Council consisting of five councillors selected by the local community. There are currently 212 Guardianship Councils in operation in Brazil. Another 135 are being set up and 205 are at the planning stage. Installation of the Guardianship Councils has been slow as they are created at a later stage than the Rights Councils and require the participation and liaison of social forces at municipal level to attain a degree of maturity.

284. In 1987, the Government of the State of São Paulo created the Minors Secretariat (since renamed the Children, Family and Social Welfare Secretariat) to define, coordinate and develop public policies and State action regarding children and adolescents, especially in low-income sectors. The secretariat has 14 child-care programmes operating throughout the State of São Paulo. In 1989, they served 155,000 children and adolescents.

285. The "Open House" programme serves as an umbrella for a number of other programmes carried out by "Street Educators". It is a focal point for the State's policies on children and adolescents. The Open House programme is responsible for accomplishing the Secretariat's general objectives: radically altering the assistance-oriented approach prevalent in the care traditionally provided for children and adolescents; affording implementation of the specific rights and duties of citizens in the 0 to 18 age bracket through its programmes and actions; proposing an integral, integrated care policy for children and adolescents between 0 and 18 years of age and for the children of workers earning less than twice the minimum wage.

286. The Open House programme caters for children and adolescents living on the streets who use the house for social interaction and to help themselves struggle for survival. The programme aims to provide the children and adolescents with access to resources available in the community, giving them an opportunity to exercise their specific rights: access to education, leisure, medical assistance, housing, basic personal documents, protection, security, physical, emotional and psychological well-being, as well as professional training for those over 14 years old.

287. The Open Houses are backed up by the Lodging Home, the Child Revival Home, S.O.S. Children, the Mooca Gang Club and the Shelter Home. When return to the family environment is not possible, adolescents aged 14 to 17 are referred to the Lodging Home. The Child Revival Home treats addicted children and adolescents. S.O.S. Children is a telephone service through which the general public can consult specialists and report problems involving children and adolescents. The Shelter Home cares for and shelters child victims of physical violence awaiting appropriate action. Another activity connected with the Open House programme is the Professional Initiation Programme introduced in State-owned companies, offering 1,800 places, renewable every six months.

## Article 25

288. Under the terms of the Constitution, Brazil is a democratic State of law (art. 1) organized as a Federative Republic made up of municipalities,

member States and the Federal District. These administrative units are constitutionally autonomous, the Union being entrusted with preserving the nation's sovereignty.

289. The regime is democratic and founded on the principle that all power emanates from the people, who exercise it indirectly through elected representatives or directly by means of plebiscites, referenda or legislative initiatives by non-members of Congress. The State is ruled by the principles of sovereignty, citizenship and political pluralism.

290. Registration of voters and voting itself are compulsory for those aged 18 or more though voting is optional for the illiterate, for citizens over the age of 70 and those aged over 16 and under 18 years of age.

291. Foreigners may not register as voters nor can Brazilians engaged in military service (denominated conscripts as they are not professional members of the armed forces but citizens doing a temporary duty established by the Constitution).

292. For citizens to stand for election, they must fulfil certain conditions in line with universal trends today. General requirements for eligibility include: being a registered voter, having an electoral domicile and being affiliated to a political party. Independent candidates are thus barred from elections.

293. Candidates seeking election to the offices of President of the Republic and Vice-President must be at least 35 years old; the same age limit applies for candidates to the Federal Senate; candidates for the office of governor and deputy governor in the States and the Federal District must be at least 30 years old; the minimum age limit for federal deputy, State deputy, mayor, deputy mayor and justice of the peace is 21 years of age. Those who cannot register as voters and illiterate citizens are ineligible. Incumbent Presidents, State governors, governors of the Federal District and mayors may not seek re-election. This prohibition is extended to those who have succeeded or substituted for them in the six months prior to the holding of elections.

294. The heads of the Executive Branch are not, however, barred from running for offices other than those they occupy providing they stand down, resigning their mandate at least six months before the elections are held.

295. In order to avoid unlawful or undue advantage being derived, spouses and blood relations to the second remove or those related by adoption to the President of the Republic, governors of States, territories and the Federal District, mayors or those who may have replaced them in the six months prior to the elections, unless they already hold mandates by proportional election and are seeking re-election, are ineligible in the jurisdictional territory of the holder of the office (Federal Constitution, art. 14).

296. Military officers are, as a rule, eligible on the same terms as any other citizen. If they have served more than 10 years in the armed forces and are elected, they shall be transferred to the reserve.

297. Under the terms of the Constitution, no citizen may stand for election except by means of the party system. No one may seek election to a political post without being affiliated to a political party. Party organization is unrestricted. It must, however, observe democratic principles, party pluralism, basic human rights and national sovereignty.

298. Political parties have corporate status under the terms of civil law, their statutes being registered in the electoral courts. They shall be organized on a national basis, must submit their accounts to the electoral courts and are forbidden to receive funds from foreign organizations or Governments or to be in any way subordinate to them.

299. Electoral legislation forbids parties to employ paramilitary organizations, ensures them access to the party fund and free access to the mass media. It obliges parties to register their statutes in the Superior Electoral Court and ensures them autonomy to determine their structure, organization and form of operation, recommending that they stipulate norms of conduct in their statutes regarding party loyalty and discipline. It should be noted that obstacles relating to party coalitions and punitive measures regarding cases of disloyalty contained in previous legislation have since been suppressed. These are now to be decided upon by the parties themselves.

300. With a view to restricting abuse of economic power in election campaigns, current legislation has sought to provide parties with equal access to radio and television, proportional to their representation in Congress.

301. It should also be stated that, given the peculiar circumstances of the period of transition to democracy, legislation has not yet set any minimum voting threshold for creating new political parties, almost all of which are granted provisional registration by the Superior Electoral Court in this phase.

302. The electoral courts are entrusted with the task of organizing the division of the country into electoral constituencies, administering electoral registration and taking the necessary steps for holding elections at the appointed time in the manner determined by law, fixing the dates for elections when they are not already stipulated by the Constitution, examining allegations of ineligibility and non-compatibility, granting habeas corpus and writs of mandamus concerning matters pertinent to elections, counting votes and announcing the results of elections, judging electoral crimes and ordinary crimes associated with them, decreeing the forfeiture of legislative mandates in cases stipulated by the federal and State constitutions. Other attributions of the electoral courts include registering and cancelling the registration of political parties, issuing diplomas to those elected, and receiving complaints relating to legal obligations imposed on political parties concerning their accounting and determination of the origin of their funds.

303. Article 121 of the Constitution delegates to supplementary legislation definition of the organization and competence of electoral courts, judges and electoral boards. Articles 14 (para. 10) and 16 of the 1988 Constitution also deserve special mention. The first states that the electoral courts may impugn mandates up to 15 days after issuing of diplomas upon proof of abuse

of economic power, corruption or fraud in the course of the elections. The second determines that laws altering the electoral process shall only come into force one year after promulgation so as to imbue the electoral process with a degree of stability and predictability.

304. According to article 12 of the Electoral Code, Brazilian electoral justice is comprised of the following bodies: the Superior Electoral Court; one regional electoral court in each State, territory and in the Federal District; electoral boards; electoral judges.

305. Suffrage is direct and universal, voting being compulsory by secret ballot, pursuant to article 82 of the Electoral Code. Election to the offices of President of the Republic, State governor, mayor and senator shall observe the majority ("first past the post") principle. The principle of proportional representation applies to elections to federal, State and municipal legislative offices.

306. The following measures ensure the secrecy of the ballot (Electoral Code, art. 103):

(a) Use of official ballot papers in all elections;

(b) Isolation of the voter in a protected booth at the moment of registering his vote on the ballot paper;

(c) Verification of the authenticity of the official ballot paper by the polling board;

(d) Use of ballot-boxes that ensure the inviolability of the suffrage and are sufficiently large to avoid the ballot papers being stacked in the order in which they were placed therein.

307. To make the principle of proportional representation operational, an electoral quotient is determined by dividing the number of valid votes cast by the number of places to be filled in each constituency (Electoral Code, art. 106). A party quotient is then attributed to each party by dividing the number of valid votes cast for each party or party coalition by the electoral quotient. This party quotient determines how many candidates may be elected for each party, those receiving the most nominal votes being elected. Remaining places not filled by application of the party quotient will be distributed by applying a highest average vote formula.

308. To guarantee voting free of coercion, armed force should be kept at a distance of 100 metres from the polling station and only be allowed to approach and enter the station on express orders from the chairman of the polling board. Moreover, up to 5 days before and 48 hours after end of polling no authority may arrest or detain voters, except in cases of flagrante delicto or to serve a condemnatory sentence for an unbailable crime or in cases of disrespect of safe conduct.

309. Voters resident abroad may vote in elections for President and Vice-President, and Brazilian embassies, consulate-generals or other Brazilian government offices abroad should be organized to serve as polling stations.

310. The Electoral Code (art. 337) imposes sentences of up to six months on foreigners participating in party activities, including campaign rallies and propaganda events on private premises or in places open to the public.

311. Public administration is guided by the principles of lawfulness, impersonal conduct, morality and publicity.

312. All Brazilians may compete on equal terms to occupy public offices, be they civil or military. Admission to the civil service shall be by public examination and assessment of qualifications. Commissioned posts are exempted and occupants of such posts may be appointed and dismissed at will.

313. Civil servants are entitled to organize in free unions. The civil service possesses a separate legal statute (Regime Jurídico Único) which established compulsory retirement at the age of 70 on pay proportional to length of service.

314. A remarkable feature of recent Brazilian history is the continuity of elections and the good faith which has marked the organization of them, even under military rule. It can likewise be said that the 1988 Constitution has eliminated all residues of mechanisms restricting or excluding the right to vote. Almost 84 million voters were registered for the last presidential elections in 1989, which makes Brazil one of the biggest democracies in the world in terms of the extent of participation.

315. The creation of the Electoral Justice system in Brazil in 1932 was a landmark in Brazil's electoral history. Since its creation, electoral fraud has been confined to a few sporadic, residual incidents. None the less, modifications to the electoral system continue to be debated and introduced to improve the way it operates. Thus, in 1993 a system legalizing individual and corporate campaign contributions was passed and introduced to prevent unequal competition and corruption.

## Article 26

316. The principle that all Brazilians and foreigners are equal in the eyes of the law is enshrined in the Federal Constitution. All citizens, without any form of discrimination, are equally entitled to the protection afforded by the law. This principle of equality prevents legislators from establishing privileges through subsequent legislation and also prevents public administrators from discriminating in their dealings with the public or with the civil service, especially in terms of admitting or promoting civil servants.

317. The Constitution has not confined itself to stating the principle of equal status in the eyes of the law, but has set down principles that seek to achieve material equality. One of the basic objectives of the Federative Republic of Brazil, for instance, is to eradicate poverty and social marginalization and reduce social and regional inequalities (Federal Constitution, art. 3, III).

318. Racism is considered to be a crime punishable with imprisonment. According to the terms of the Constitution, racism is a non-bailable crime,

not subject to statute of limitation. Law No. 7,716/89 describes crimes resulting from racial or colour prejudice. Law No. 8,081/90, meanwhile, established the crimes and respective sentences for discriminatory acts or those resulting from prejudice with regard to race, colour, religion, ethnic origin or nationality committed by means of communication or any kind of publication.

319. The Constitution prohibits different rates of pay for urban and rural labour, proscribing discrimination on admitting employees with regard to sex, colour, age or marital status.

320. Brazil repudiates all acts of racism perpetrated by any nation in the world (Federal Constitution, art. 4, item VIII).

321. On 27 March 1968 Brazil ratified the International Convention on the Elimination of All Forms of Racial Discrimination, which became effective in Brazil on 4 January 1969.

322. Stringent laws have not so far proved sufficient to inhibit all the manifestations of discrimination that can still be observed in society. This is especially true with regard to Negroes, who are at a disadvantage as a social group from the point of view of schooling, employment and pay.

Government actions

323. In view of strong mobilization by human rights organizations and those representing minorities, the Government of the State of São Paulo took the initiative of creating a specialized police department for combating racist crimes. The São Paulo State Justice and Citizenship Secretariat, in liaison with the Education Secretariat, is organizing a programme entitled "Education for Citizenship" focusing on problems of discrimination. Positive actions carried out by the Government of the State of São Paulo include the following.

324. At the suggestion of Amnesty International and Brazilian human rights organizations, civil and military police academies have already incorporated the theme of citizenship into their syllabuses.

325. A "Manual of Citizenship", of which 5,000 copies have been published, summarizes all the rights guaranteed by the Constitution, reminding readers that racism is now a crime and no longer a mere misdemeanour as it was in the 1950s when the first version of the Afonso Arinos law was introduced.

326. A subject focusing on the issue of racism is to be introduced in the São Paulo State education network in which 6 million children and adolescents are enrolled.

## Article 27

327. One chapter of the Brazilian Constitution is devoted to acknowledging the social organization of Brazilian Indians, attributing the task of demarcating lands traditionally occupied by indigenous communities and affording them protection by the federal Government. Duly demarcated indigenous lands are inalienable and rights attaching to them are not subject to statute of

limitation (art. 231, para. 4). Besides this separate chapter, there are in all 11 other provisions relating to the interests and rights of Indian populations contained in the text of the Brazilian Constitution.

328. Indigenous and Afro-Brazilian cultural manifestations, as well as those of other ethnic groups that have made a relevant contribution to Brazilian civilization, are to receive protection from the State.

329. Article 208 of the present Military Penal Code defines genocide, and punishes perpetrators of this crime with sentences ranging from 15 to 30 years' imprisonment. For similar cases punishment shall be 15 to 30 years of imprisonment (Military Penal Code, art. 208, sole paragraph).

330. It is estimated that Brazil's Indian population numbers no more than 250,000, consisting of 150 different ethnic groups. From the 1980s onwards, the Indian population has begun to grow again, reversing a historical trend suggesting it was headed for extinction.

331. Indian lands, which are rich in wood, animals and minerals, come under constant pressure from prospectors, lumberjacks, trespassers and traders, and their reserves are frequently invaded. Large-scale engineering works worsen conflicts between indigenous and other populations and spread diseases. In the struggle for the resources in Indian lands, deaths on both sides are not infrequent. Disputes between Indians and prospectors are most problematic in the Yanomami territories, in Serra Pelada, on the upper River Negro and in the State of Rondônia. The Attorney-General's Office reports that since 1975 more than 1,000 Yanomami Indians have been killed, while the Union of Prospectors' Unions and Associations in Legal Amazonia (USAGAL) estimates that 460 prospectors have been killed in the area since 1987.

332. The National Indian Foundation's Isolated Indigenous Communities Department reckons that there may be as many as 75 groups of Indians in Brazil that have no contact with Brazilian society. These groups are particularly vulnerable when it comes to violations of human rights as they have difficulty bringing their complaints to the attention of federal authorities responsible for land issues or other guarantees.

333. Although the Constitution determined that all indigenous lands should be demarcated by 5 October 1993, lack of funds made it impossible to meet that deadline. One should, however, bear in mind that there are 519 Indian territories in Brazil which together occupy 10.53 per cent of Brazilian territory, and that they are generally located in isolated areas to which access is difficult. In the Amazon region alone, Indians occupy by right an area measuring 741,000 square kilometres, which could contain Austria, Belgium, Germany and Great Britain together. All Yanomami territory - 9.6 million hectares, or roughly three times the size of Belgium - had already been demarcated in 1992. Not all tribes have had such luck, however. Half of all Indian territories have yet to be demarcated. Of the 80 Indian lands in Rondônia, Acre and the southern part of Amazonas, 22 have been demarcated, 32 have been mapped out and 25 await confirmation.

334. The commencement of demarcation activities and the consequent expulsion of prospectors and other people working illegally on the reserves have

aggravated violence in conflicts. Mining equipment and clandestine landing strips are destroyed by police authorities, generating discontent among prospectors and aggressive sentiments towards local Indian populations.

335. It is expected that the wholesale expulsion of prospectors, lumberjacks and other workers illegally employed on Indian reserves will make thousands of people unemployed in the regions affected by demarcation. It is estimated that there are 400,000 prospectors in the State of Amazonas alone. Thus, besides the resources required for guaranteeing the rights of Indian populations, funds will have to be made available to tackle the problem of displaced workers.

336. There is internal resistance to demarcation on the part of sectors favourable to reduction or relocating of Indian reserves both for economic reasons and on account of considerations regarding the defence of national sovereignty in a frontier region. In some States, like Pará, Indian reserves occupy as much as 21.73 per cent of the total surface area. The Indian reserve in Roraima occupies 25 per cent of all the land in the State. Representatives of these regions in Congress seek to alter rights granted to Indians by the 1988 Constitution.

337. In the end, it is the lack of resources for inspecting indigenous areas, problems regarding the Judiciary and the state of poverty of much of Brazil's population are the main causes of encroachment on areas rich in resources that have been set aside for indigenous populations. Regulating mineral exploration in Indian territories may perhaps help to settle some of the conflicts involving Indians and other workers in the region.

Government actions

338. The Brazilian Government and especially the Attorney-General's Office have sought to take action to defend Indian rights to the best of their ability. However, the Attorney-General's Office and the National Indian Foundation (FUNAI) lack the funds they require, and resources are likewise lacking to complete the demarcation ordered by the Constitution on schedule.

339. The National Health Foundation, with help from the World Health Organization and the World Bank, has been carrying out periodic health examinations in the indigenous populations of the Amazon Basin, Roraima and Mato Grosso. A team of 110 people is directly involved in this Indian health project. Even today, malaria is the main cause of death among the Yanomamis, infecting as many as 20 per cent of them.

340. In an endeavour to improve the security of all the indigenous populations in the Amazon region, the Brazilian Government created the Ministry of the Environment and Legal Amazonia and ordered the immediate installation of a Special Federal Police Station at Surucucu, located in the Yanomami reserve.

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