



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

Seventeenth periodic reports of States parties due in 2002

Addendum

BRAZIL*

[27 June 2003]

* This document contains the fourteenth, fifteenth, sixteenth and seventeenth periodic reports of Brazil, due on 4 January 1996, 1998, 2000 and 2002 respectively, submitted in one document. For the tenth, eleventh, twelfth and thirteenth periodic reports (submitted in one document) of Brazil and the summary records of the meetings at which the Committee considered those reports, see document CERD/C/263/Add.10 and CERD/C/SR.1157, 1158, 1159.

The information submitted by Brazil in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in the basic document (HRI/CORE/1/Add.53).

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

Abbreviations

BNDES	National Bank for Economic and Social Development
BPC	Continuously Provided Benefits
CIMI	Indigenous Missionary Council
CODEFAT	Deliberating Council of the Workers' Assistance Fund
CONARE	National Committee for Refugees
FAT	Workers' Assistance Fund
FUNAI	National Indian Foundation
FUNASA	National Health Foundations
GDP	Gross domestic product
GRADI	Group for the Repression and Analysis of Crimes of Intolerance
GTEDEO	Working Group on the Elimination of Discrimination in Employment and Occupations
GTI	Interministerial Working Group for the Recognition of the Black Population
HDI	Human Development Index
IBAMA	Brazilian Institute of the Environment and Renewable Natural Resources
IBGE	Brazilian Geographic and Statistical Institute
ILO	International Labour Organization
INCRA	National Settlement and Agrarian Reform Institute
INSPIR	Inter-American Trade Union Institute for Racial Equality
IPEA	Institute for Applied Economic Research
MDA	Ministry of Economic Development
NGOs	Non-governmental organizations
OAS	Organization of American States
OSCIP	Public Interest Civil Society Organization
PEQ	State Qualification Plans
PLANFOR	National Professional Education Plan
PNAD	National Sampling Survey of Households (IBGE)
PNDH	National Human Rights Programme (1996)
PNDH II	new National Human Rights Programme (2002)
PROGER	Employment and Income Generation Programme
PRONAF	National Programme for Strengthening Family Agriculture
RMV	Lifetime Monthly Incomes
TSE	Supreme Election Court
UNEMAT	State University of Mato Grosso
UNDP	United Nations Development Programme

Introduction

1. This report does not deal with detailed data on the Brazilian population or territory, the country's political structure or the standards and guidelines governing human rights in general. However, that information is in the process of being updated and will be forwarded to the Office of the High Commissioner for Human Rights, as an attachment to the core document (HRI/CORE/1/Add.53) submitted in September 1994.
2. A relevant feature of Brazilian nationality is its remarkable ethnic and cultural malleability, the result of the confluence of its various formative templates. The construction of our nationality created the conditions for individuals to learn from differences and pluralism, in the midst of the fusion of a wide array of peoples into a single nation with its own identity and Amerindian, European, African and Asian roots.
3. Nevertheless, the construction of a multicultural and multi-ethnic society did not make Brazil immune to the afflictions of racism and racial intolerance.
4. For many decades, the myth of a nationality characterized by the harmonious and perfect fusion of three races, responsible for the construction of a "racial democracy" in the country, was propagated. Over a long period of time, the Brazilian State and society, acting on behalf of this myth, revealed themselves incapable of implementing effective mechanisms to incorporate Afro-descendants, indigenous individuals, and members of other discriminated groups into the larger society.
5. The consequences of this process are reflected in this report and are evidence not only of the existence of racism in Brazil but of its cumulative effects in producing economic and social inequality. The statistics presented in this document point to the fact that racial features and origin have been of considerable importance in shaping social and economic inequalities in Brazil.
6. In response to this unequal setting, the Brazilian State has attempted to adapt to the legal framework established to combat racism and discrimination, in accordance with the provisions set forth in the International Convention on the Elimination of All Forms of Racial Discrimination.
7. The 1988 Federal Constitution elevated racism from a misdemeanour to a felony, making it a non-bailable and imprescriptible offence and subjecting the accused to confinement. In the realm of legislation, the evolution in the manner with which the issue has been approached is noteworthy, beginning with the first provisions prescribing penalties for the crime of racism in 1951 (Law 1390) to the provisions set out in Law 7716 of 1989, with the corresponding amendments introduced by Law 9459 of 1997.
8. To this legal foundation, which in many respects might be considered an improvement, we must add the ever-expanding discussion in Brazil on racism and the ways in which it should be combated. The conclusion that emerges from this reflection is that so-called universal public policies are important, although imperfect, instruments for ensuring the rights of socially and

economically unequal individuals and groups. Universalistic policies reveal themselves to be insufficient to correct a historical setting based upon inequality between whites and blacks in Brazil.

9. The Brazilian State is determined to avoid having existing inequalities become more acute. It aims to promote actions intended to assure that the formal equality among individuals, already a feature of the constitutional system and ordinary laws, is expanded and that its application effectively favour the safeguarding, promotion, and protection of discriminated-against and disadvantaged groups.

10. In recent history, we can point to the following important stages in the effort to raise awareness in society and the Government on the issue of racism: the creation in 1995 of the Interministerial Group for the Promotion of the Black Population; a review of the content of textbooks, in order to prevent the transmission of stereotypes and to introduce the subject of diversity into school curricula; the establishment, within the scope of the Institute for Applied Economic Research (IPEA), of research on the evolution and the impact of racism on social indicators in Brazil; the initiation of a programme by the Government of Brazil to issue permanent property titles for the lands occupied by the remaining runaway slave communities (*quilombos*); the inclusion of the issue of racism as a government priority, as reflected by the National Human Rights Plan and the National Affirmative Action Programme.

11. The preparatory stage for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance represented an extremely important step with respect to the manner in which the issue was treated and addressed in Brazil. Studies prepared by IPEA as additions to Brazil's preparation for the Conference revealed that, in spite of the evolution of social indicators over the last decade, the gap between whites and blacks had not been reduced. According to IPEA, of those Brazilians statistically falling within the category of extreme poverty, 69 per cent are black. At the heart of the racial character of Brazilian poverty lies inequality. Those studies confirmed the negative impact that the victimization caused by racism has had on a significant portion of the population, over and above the efforts to overcome racial inequality and the full development of Brazil's economic potential.

12. The preparatory steps for the Durban Conference provided a wide scope for discussion within society and the Government, offering the country a unique opportunity to debate and reflect on the dimensions of the racial problem and the various forms of discrimination existing in our society. The Brazilian State played an active role throughout the whole preparatory stage for and during the Conference.

13. A national committee presided by then-State Secretary for Human Rights, Mr. Gilberto Sabóia, was established, which included the participation of important representatives of civil society and segments that have been historically subjected to racism and discrimination. A partnership was then established between Government and civil society (black, indigenous, women's, gay and lesbian, and religious freedom defence entities, among others) which resulted in the formulation, by consensus, of a series of proposals for public policies aimed at effectively overcoming racism in our society. The proposals were presented and advocated by the Brazilian delegation in Durban, and contributed toward the refinement of

the final documents adopted at the Conference (Durban Declaration and Programme of Action). Brazil was represented at the Conference by an official and unofficial delegation of more than 200 persons.

14. In Brazil's opinion, the Durban Declaration and Programme of Action represent a solid foundation for the definition of national and international policies aimed at combating racism, racial discrimination, xenophobia and related intolerance.

15. In accord with the main features of those documents, Brazil has sought to implement concrete measures. On 4 October 2001, that is, less than a month after the conclusion of the World Conference, the National Council for Combating Discrimination was created, a body operating on a permanent basis, whose composition is divided equally between the Government and civil society (11 members of the Government and 11 representatives of civil society).

16. The Council falls under the Ministry of Justice, and its principal aim is to propose and implement national policies for combating discrimination. The Council is also the embodiment of the provision set forth in article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, designated by the Government to receive complaints concerning violations of the rights contemplated therein. Brazil made the voluntary declaration provided for in the article, recognizing the Committee on the Elimination of Racial Discrimination's authority to receive and analyse complaints involving violations of those rights. In recognizing the Committee's authority, the Government responds to a legitimate demand of various segments within Brazilian society, fulfils the recommendation set forth in article 75 of the Durban Programme of Action, and reinforces the country's commitment to the safeguarding and promotion of human rights in general and with the struggle against discrimination and racism in particular.

17. Another measure adopted by the Government of Brazil involved the implementation of a National Affirmative Action Programme intended to actively promote the principles of diversity and pluralism in the filling of posts in the federal public administration and the contracting of services by government agencies. The objective is to achieve, on the basis of this programme, the consolidation of percentage-based participation goals among all segments, Afro-descendants, women and the disabled. The policy, therefore, is an inclusive one that favours diversity and the representation of the different social and racial groups in the exercise of functions that are relevant to the Brazilian State and society. The programme redefines and expands upon the concept of equality set forth in the Brazilian Constitution by accommodating it to the social and political changes that have taken place, and, above all, by better adjusting to the new dimensions of rights and citizenship that characterize democratic societies.

18. The Brazilian State believes that in implementing the National Affirmative Action Programme, it has taken new steps to put an end to the public sector's inertia in the face of the racial situation in Brazil. The main objective is to create the conditions that allow all Brazilians to benefit from the equal opportunity guarantees set forth in the Brazilian Constitution, without discrimination of any kind.

19. Other measures adopted by the federal Government as a result of the internal discussion about the racial issue and the principles enshrined in the Durban Programme of Action include:

(a) The institution on 13 May 2002 of the new National Human Rights Programme (PNDH II). Launched six years after its first incarnation, the programme is composed of a series of actions intended to overcome, inter alia, racist and exclusionary practices against discriminated segments of society and to promote equality and the full integration of Afro-descendants, gays and lesbians, women, the elderly, children, adolescents, indigenous individuals, the disabled and foreigners. The agenda of the public policies defined by PNDH II, a product of intense dialogue between government bodies and civil society entities, includes 518 actions in the area of civil, political, economic, social, and cultural rights that seek to assure Brazilians better living conditions and the full respect for their fundamental rights;

(b) The creation of affirmative action programmes in the State Secretariat for Human Rights, the Ministries of Justice and Agricultural Development, and the Rio Branco Institute, Brazil's Foreign Service Academy. The programme of the Ministry of Agricultural Development establishes that a minimum of 20 per cent of the executive posts in the Ministry and in the National Settlement and Agrarian Reform Institute (INCRA) must be filled by Afro-descendants by the end of 2002. Beginning in 2003, the minimum percentage of Afro-descendant participation must rise to 30 per cent. In addition, 30 per cent of the Agricultural Development Ministry's budget earmarked toward agrarian reform programmes must be channelled to predominantly black rural communities. For its part, the Affirmative Action Programme launched by the Ministry of Justice and the State Secretariat for Human Rights establishes that, by the end of 2002, Afro-descendant participation targets will be required in the filling of executive and advisory posts, as well as for the contracting of outsource services (Afro-descendants, 20 per cent; women, 20 per cent; the disabled, 5 per cent). With regard to the Rio Branco Institute's affirmative action programme, it consists in awarding scholarships in diplomatic studies to Afro-descendants, so they can prepare for the entrance exam required for admission to a diplomatic career. The programme also considers gender. Through the Rio Branco Institute programme, Itamaraty seeks to expand its recruiting base for the exam, thereby reinforcing its tradition of excellence. There is also the expectation that one of the outcomes of the programme will be to contribute toward making our diplomatic corps more representative of the various segments that comprise Brazilian society. The programme was continued in 2003;

(c) The appointment of a black professor and an indigenous Brazilian to the National Education Council;

(d) The implementation of the Labour Ministry's National Worker Qualification Plan, directed primarily at the black population.

20. The measures referred to above have made Brazil one of the first countries to fulfil the specific recommendations emerging from the World Conference in South Africa, while transforming the struggle against racism, racial discrimination, xenophobia and intolerance into an official State policy. The Government of Brazil considers it a matter of fundamental importance that the directives and goals defined in Durban be treated as a priority by the international institutions and communities. It also considers it to be equally important to reiterate the commitments assumed in Durban.

21. For its part, a significant portion of the Brazilian population has shown growing awareness concerning the important aspects of the racial issue. The most recent preliminary census data for the year 2000, published in the first half of 2002 by the Brazilian Geographic and Statistical Institute (IBGE), points to an increase in the number of Brazilians who identify themselves as black. A comparison between the census results of 1991 and 2000 reveals that throughout the country the percentage of individuals that classified themselves as black grew (from 5 per cent in 1991 to 6.2 per cent in 2000), while the number who classified themselves as mestizo decreased (from 42.6 per cent in 1991 to 39.1 per cent in 2000), which could indicate a change in the standards Brazilians use to identify and classify themselves.

22. The Government of Brazil is fully open to dialogue with the members of the Committee on the Elimination of Racial Discrimination, for it considers the body to be a powerful tool in reinforcing and building an integrated agenda in the fight against racism, discrimination in all its forms and related intolerance.

23. In adopting measures on the domestic front, the Government of Brazil has sought not only to respond adequately to the concerns expressed by the Committee (CERD/C/304/Add.11), but also to ensure the continuity of the recommendations set out in the document. This report was prepared in that spirit and is intended to ensure that the dialogue with the Committee continues.

24. In Brazil's view, the Committee offers the synergy sought by the State and society for purposes of overcoming the unacceptable distortions produced by racism and discrimination in all its forms.

I. GENERAL

A. Protection of human rights at national level

25. Even at the risk of repeating some of the points already raised before the Committee in the 1996 report (CERD/C/263/Add.10, consolidating the tenth, eleventh, twelfth and thirteenth periodic reports) with regard to the legal structure underlying the safeguarding, promotion and protection of the rights encompassed in the International Convention on the Elimination of All Forms of Racial Discrimination, the Government of Brazil decided to address those aspects more broadly and in greater depth. The intention is to respond to the observation made by the Committee in paragraph 2, A, of the conclusions and recommendations (CERD/C/304/Add.11) issued on 27 September 1996.

26. The Committee indicated its satisfaction with "the frankness of [Brazil's] report and the explanations provided by the delegation". However, the Committee indicated that it "regrets that the report submitted contains little specific information on the implementation of the Convention in practice", and took note of the Brazilian State's willingness to "provide [the Committee] with fuller information on the measures taken to give effect to the Convention".

27. With respect to Brazil's insertion into the universal and regional systems for the safeguarding, promotion and protection of human rights, it is worth noting that the Government of Brazil recognizes the legitimacy, not only of the international concern with human rights, but also of maintaining a dialogue with non-governmental organizations.

28. In the view of the Brazilian State, the international instruments for protecting human rights take on twofold importance: they consolidate the minimum international parameters concerning the protection of human dignity, and they ensure the presence of an international body for the protection of human rights, when national institutions fail to carry out or neglect their duties.

29. In accordance with that view, Brazil has adopted important measures on behalf of the ratification of international instruments aimed at protecting human rights. Among the international human rights treaties ratified by Brazil, the following should be noted:

- (a) The Convention on the Elimination of All Forms of Discrimination against Women, on 1 February 1984;
- (b) The Inter-American Convention to Prevent and Punish Torture, on 20 July 1989;
- (c) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 28 September 1989;
- (d) The Convention on the Rights of the Child, on 24 September 1990;
- (e) The International Covenant on Civil and Political Rights, on 24 January 1992;
- (f) The International Covenant on Economic, Social and Cultural Rights, on 24 January 1992;
- (g) The American Convention on Human Rights (“the pact of San José”), on 25 September 1992;
- (h) The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belém do Pará”), on 27 November 1995;
- (i) The Protocol to the American Convention on Human Rights to Abolish the Death Penalty, on 13 August 1996;
- (j) The Additional Protocol for the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”), on 21 August 1996;
- (k) The Rome Statute of the International Criminal Court, on 21 June 2002; and
- (l) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 28 July 2002.

30. The following section presents an analysis of the normative sphere and legal decisions tied to the provisions aimed at assuring equality and combating racial discrimination. In this analysis, the effort will be to indicate, whenever possible, the existing link between the Brazilian normative setting and the rights contemplated in the Convention on the Elimination of All Forms of Racial Discrimination.

B. The federal Constitution, federal legislation, and State constitutions

31. The 1988 Brazilian Constitution represented a legal milestone in the democratic transition and the institutionalization of human rights in Brazil. The 1988 text gives extraordinary emphasis to rights and guarantees, establishing itself as the most advanced, encompassing, and detailed document on the issue in the country's constitutional history.

32. In article 1, section III, of the 1988 Constitution, the value of human dignity is established as the nucleus that informs the ordering of Brazil's legal system, as the criterion and parameter underlying the value which guides our understanding of the constitution introduced in 1988. Human dignity and the fundamental rights and guarantees are imbued with special expansive powers that project themselves throughout the constitutional sphere and serve as the interpretative criterion for all the norms linked to the nation's legal order.

33. In this context, the 1988 Constitution introduces extremely significant innovations on the international relations front, under the terms of article 4, sections I to X. If, on the one hand, those constitutional provisions reproduce the old concerns of the Empire with respect to national independence and non-intervention, as well as the republican ideals of defending the peace, the 1988 Constitution is innovative in that it asserts an internationalist orientation never before seen in Brazilian constitutional history. That internationalist orientation translates into the principles of the prevalence of human rights, the self-determination of peoples, the repudiation of terrorism and racism, and cooperation among peoples for the benefit of humankind, as set forth in sections II, III, VIII, and IX of article 4 of the Constitution.

34. In breaking with the systematic approach of previous constitutions, the 1988 Constitution consecrates, for the first time, the primacy of the respect for human rights, as a paradigm to be defended by the international order. This principle invokes the opening of the domestic legal order to the international system for the protection of human rights. If for the Brazilian State the prevalence of human rights is a principle that should govern Brazil in the international realm, then it accepts the idea, consequently, that human rights constitute a legitimate issue of concern and interest for the international community. Human rights, in this conception, emerge as a global issue in the 1988 Constitution.

35. The 1988 Constitution also establishes for the first time, at the end of the extensive Declaration of Rights therein prescribed (art. 5, sects. I to LXXXVII), that the rights and guarantees expressed in the Constitution "do not exclude others arising from the regime and the principles adopted by it or the international treaties to which the Federative Republic of Brazil is a party" (art. 5, para. 2). The 1988 Constitution is innovative, then, in that it includes, among the constitutionally protected rights, the rights enumerated in the international treaties to which Brazil is a signatory. In incorporating this provision, the Constitution assigns a special and distinct hierarchy to international rights, regardless of their hierarchical position in the constitutional framework.

36. The 1988 Constitution also establishes the principle of the immediate applicability of the norms that define fundamental rights and guarantees, under the terms of article 5, paragraph 1, of the Constitution.

37. With regard to the principle of equality, the 1988 Constitution establishes, in the heading of article 5, that all individuals are equal before the law, without distinctions of any kind. The right to equality and the prohibition against discrimination is reinforced throughout the same constitutional provision. Sections XLI and XLII of article 5 determine that the “law shall punish any discrimination attempted against fundamental rights and liberties”, adding that “the practice of racism constitutes a non-bailable and imprescriptible offense which is subject to a prison term, under the terms of the law”. In the area of social rights, the Constitution prohibits differences in salaries, the exercise of functions, and the criteria for admission based on gender, age, colour or civil status (art. 7, sect. XXX).

38. The quest for Brazilian legislation to prohibit discriminatory practices was thus consecrated. Nonetheless, if the fight against discrimination constitutes an emergency measure in the implementation of equal rights, it is, by itself, insufficient. The 1988 Constitution includes an understanding that it is necessary to combine the prohibition against discrimination with compensatory policies that accelerate the process toward achieving equal rights. To ensure equality, it is not enough to prohibit discrimination through suppressive legislation. Promotional strategies capable of stimulating the incorporation of socially vulnerable groups are essential.

39. In this sense, article 7, section XX, of the 1988 Constitution, which deals with safeguarding the job market for women by means of specific incentives, as well as article 37, VII, which establishes that the law shall set aside a percentage of public posts and positions for individuals with disabilities deserve mention. To this should be added the “quotas law”, as it is known, of 1995 (Law No. 9100/95), which requires that at least 20 per cent of the candidate vacancies for municipal elections be set aside for women. We should also add to this the National Human Rights Programme, which specifically alludes to compensatory policies that set out, as a goal, the development of affirmative actions aimed at benefiting socially vulnerable groups.

40. As emphasized in the introduction to this report, on 13 May 2002 the Government of Brazil decided to launch a national affirmative action plan intended to actively promote the principles of diversity and pluralism in the filling of posts in the federal public administration and in the contracting of outsource services by the Government. One of the objectives of the programme is to achieve percentage-based goals relative to the participation of Afro-descendants, women and individuals with disabilities in those posts.

41. In regard to indigenous populations, it is worth noting that the 1988 Constitution includes a chapter that specifically addresses the rights conferred on indigenous peoples. The constitutional text recognizes indigenous peoples’ social organization, customs, languages, beliefs and traditions, as well as their original rights to the lands they have historically occupied. The union has the duty to demarcate indigenous lands, protect them, and ensure the respect for all the property thereon (article 231 of the Constitution). Indigenous lands are inalienable and unavailable, and their rights to them imprescriptible.

42. With respect to federal legislation, we should first observe that Law No. 7716/89 was adopted, in order to fulfil article 5, section XLII, of the 1988 Constitution, which prescribes that the practice of racism is a “non-bailable and imprescriptible crime, subject to a prison term, under the terms of the law”.

43. Until the advent of the 1988 Constitution, racism was considered a misdemeanour, that is, a crime having less offensive potential, which was punished by means of imprisonment (up to one year) and a fine, in accordance with Law No. 1390/51.

44. It was the Federal Constitution of 1988 that elevated racism from misdemeanour to a felony - a crime that, due to its gravity, is non-bailable and imprescriptible, and subject to a prison term, under the terms of the law. The applicable legislation in this area is Law No. 7716, of 5 January 1989, which defines the crimes arising from prejudice on the basis of race or colour. While Law No. 1390/51 included provisions for imprisonment, with a maximum term of one year, and/or a fine, Law No. 7716/89 establishes a prison term of at least one year and at most five years.

45. Another law of notable significance is Law No. 9459, of 13 May 1997, which establishes punishment for the crimes arising from discrimination or prejudice on the basis of race, colour, ethnicity, religion or nationality. Law No. 9459/97 modified Law No. 7716 of 1989 by expanding its focus, which had originally been limited to combating acts arising from prejudice based on race or colour. As mentioned above, Law No. 9459/97 also includes punishment for crimes arising from discrimination or prejudice based on ethnicity, religion or nationality.

46. Because of their importance, Law No. 9459/97 and Law No. 7716/89 will be the subject of extensive analysis throughout this report, the full texts of which are annexed to this report.*

47. As regards the State constitutions of the federation, it is important to point out that the Brazilian State has maintained a federative character since the proclamation of the Republic in 1889. The 1988 Constitution reintroduces the federative pact by establishing in article 1 that the Federative Republic of Brazil is made up by an indissoluble union of States, municipalities, and the Federal District. Article 18 of the Constitution affirms that the political-administrative organization of the Federative Republic of Brazil includes the Union, the States, the Federal District, and the municipalities, all of which are autonomous under the terms of the Constitution. For its part, article 60, paragraph 4, includes, as one of its binding clauses, the federative character of the State, and forbids the possibility of any amendment to the Constitution that would have the effect of abolishing the clause.

48. In light of the federative structure of Brazil, the States retain the autonomy, as well as the self-organizational capacity, to formulate their own State constitutions, provided the principles of the federal Constitution are observed. The 26 member States of the Brazilian federation and the Federal District have played an important role in combating racial discrimination, often reinforcing the precepts of the federal Constitution, on other occasions expanding the reach of constitutional provisions within the respective State's sphere. In refining the legal mechanisms for combating discrimination, the State constitutions have emerged as an important additional instrument for the protection of equal rights and the effort against racial discrimination.

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

49. A review and examination of the State constitutional texts reveals the concern with eradicating racial discrimination through:

(a) The determination that no individual shall be subject to discrimination, harmed or granted special privilege because of race, colour, sex, civil status, type of employment, birth, age, religion, sexual orientation, political or philosophical convictions, physical or mental disability, or any other particularity or condition (State constitutions of Mato Grosso (art. 10, III), Rio de Janeiro (art. 9), Rio Grande do Norte (art. 6) and Santa Catarina (art. 4, IV));

(b) The establishment of administrative, economic, and financial sanctions that are to be imposed on anyone who engages in any type of discrimination, notwithstanding any corresponding criminal sanctions (the State constitutions of Espírito Santo (art. 3), Rio de Janeiro (art. 9) and Santa Catarina (art. 4, IV));

(c) The prohibition of discrimination in education, ensuring (i) the right of permanent access to schools by any individual, for which purpose distinctions based on birth, race, social class are forbidden; (ii) the elimination of content in textbooks that makes any discriminatory allusions to blacks, women and indigenous persons, so as to assure that learning is conducted without prejudice of any nature; and (iii) the introduction in the history curricula of material on the cultural and ethnic formation of Brazil (the State constitutions of Acre (arts. 190, I and II; 199, VI; 201, para. 2; 210), Alagoas (arts. 198, IX and XII, and 253), Amapá (art. 280, I and II), Goiás (art. 156, VII), Maranhão (art. 262), Mato Grosso do Sul (art. 189), Pará (art. 273, I), Paraná (art. 178, I), Rio de Janeiro (art. 303), Rondônia (art. 191, III), São Paulo (art. 237, VIII), and the Organic Law of the Federal District (art. 276, IV)); (iv) inclusion in school and university curricula of content on the struggle of women, blacks, and indigenous peoples throughout human and Brazilian history (the Organic Law of the Federal District (art. 235, para. 3)); (v) serving the sociocultural, economic, or other specific peculiarities of the community and stimulating linguistic pluralism in the schools, to the extent it serves a significant demand of different interested groups or ethnic backgrounds (State constitutions of Rio Grande do Sul (art. 209, heading, and para. 2)); (vi) the inclusion of disciplines in the State school system and civil service and military preparation and training courses that recognize the participation of blacks in the historical formation of Brazilian society (the State constitution of Bahia (art. 288));

(d) The prohibition of competitive-bidding procedures and cultural and athletic exchanges with countries that maintain official policies of racial discrimination (the State constitution of Bahia (art. 287));

(e) The protection and promotion of cultural expressions by popular, indigenous, Afro-Brazilian, and other groups that participated in the formation of Brazilian society and humanity (State constitutions of Espírito Santo (art. 181, III), Goiás (art. 163, para. 2), Mato Grosso (art. 251, VI), Mato Grosso do Sul (art. 202, VI), Pará (art. 286, para. 1, b), Paraíba (art. 214, para. 1), Pernambuco (arts. 197 and 199), Rio de Janeiro (art. 319), Rio Grande do Norte (art. 220), and the Organic Law of the Federal District (art. 246, para. 2));

(f) The adoption of compensatory measures, in order to overcome actual inequalities, through the establishment of preferences for discriminated persons that ensure their inclusion in the employment market, education, health care and all other social rights (State constitution of Pará (art. 336));

(g) The requirement that at least one black person be included in any State-sponsored advertisement having more than two persons which is broadcast to the public (State constitution of Bahia (art. 289));

(h) The presence within the organizational structure of the Public Ministry of socially discriminated groups (State constitution of Ceará (art. 133, III));

(i) The issuance of titles conferring permanent property rights on the remaining runaway slave communities (*quilombos*) that still occupy their lands (State constitutions of Goiás (Transitional Constitutional Provisions Act, art. 16), Maranhão (art. 229), Pará (General Constitutional Provisions, art 332)) as well as the official registration, as historical landmarks, of the *quilombo* sites occupied by the former runaway slave communities, the *sambaquis*, the areas delimited by the architecture of indigenous homes, and areas of intrinsic relevance to the cultural history of Brazil - State constitution of Pará (art. 186, para. 2);

(j) The duplication of the federal Constitutional precepts that establish: (i) the promotion of the common well-being, without discrimination or prejudice, as a fundamental objective of the State, as a result of which the creation of distinctions or preferences among Brazilians is forbidden (State constitutions of Alagoas (art. 2), Amazonas (art. 19, III), Minas Gerais (art. 5), Piauí (art. 3), and Rio Grande do Sul (art. 1)); (ii) the immediate applicability of all the individuals and collective rights and guarantees set forth in the federal Constitution, as well as those contained in the international treaties to which Brazil is a party (State constitutions of Mato Grosso (art. 10, III) and Santa Catarina (art. 4)); (iii) the prohibition of differences in the salaries paid for the exercise of functions and in admission criteria, on the basis of sex, age, colour, or civil status (State constitutions of Goiás (art. 95, XVIII), Maranhão (art. 21, para. 3, XVI), Pará (art. 31, XVII), Paraná (art. 34, XVI), Rio de Janeiro (art. 9, para. 3), Rio Grande do Sul (art. 29, XVI), Santa Catarina (art. 27, XVIII), and Sergipe (art. 29, XV)).

Finally, we should highlight that the States of Minas Gerais, Pernambuco, Rio Grande do Sul, Santa Catarina, and São Paulo adopted State human rights programmes, which consecrate goals aimed at reinforcing the value of equality, pluralism, and tolerance in conjunction with the effort against all forms of discrimination.

II. COMPLIANCE WITH ARTICLES 2-7 OF THE CONVENTION

Article 2

50. The 1988 Brazilian Constitution represented a legal milestone in the democratic transition and the institutionalization of human rights in Brazil. It consecrates the value of human dignity as the foundation of the democratic State ruled by law.

51. Under the terms of article 3, sections I and IV, of the Constitution, the construction of a free, just, and unified society, as well as the promotion of the common well-being, without prejudice based on origin, race, sex, colour, age, or any other forms of discrimination, constitute fundamental objectives of the Federative Republic of Brazil.

52. In the international relations arena, the Federative Republic of Brazil must ensure adherence to the principles relative to the prevalence of human rights and the repudiation of terrorism and racism (art. 4, sects. II and VIII).

53. It is on the basis of these values, high fundamental principles of the 1988 federal Constitution, that the rights and guarantees set forth in article 5 of the Constitution should be interpreted.

54. In presenting an extensive list of rights and guarantees in sections I to LXXVII, article 5, beginning in its heading, establishes the principle of formal equality, affirming that all are equal before the law, without distinctions of any nature.

55. The right to equality and the prohibition of discrimination are values reinforced in section XLI of article 5, which prescribes that “the law shall punish any discrimination attempted against the fundamental rights and guarantees”. To this must be added section XLII of the same article that “the practice of racism constitutes a non-bailable and imprescriptible crime, subject to a prison term, under the terms of the law”. Article 5, section XLII, of the 1988 Constitution was regulated by the passage of Law No. 7716 of 5 January 1989, which specifies the crimes arising from prejudice based on race or colour.

56. Until the promulgation of the 1988 Constitution, racism was considered a misdemeanour, that is, a crime having less offensive potential, punishable by means of imprisonment (up to one year) and a fine, in accordance with Law No. 1390/51. It was the Federal Constitution of 1988 that elevated racism from misdemeanour to felony - a crime that, due to its gravity, is non-bailable and imprescriptible, and subject to a prison term, under the terms of the law. While Law No. 1390/51 included provisions for imprisonment, with a maximum term of one year, and/or a fine, Law No. 7716/89 establishes a prison term of one to five years.

57. In specifying the crimes arising from prejudice based on race or colour, Law No. 7716/89 limited itself fundamentally to criminalizing practices that obstruct or prevent access to services, jobs, posts, public or private establishments for reasons of race or colour. It also considers acts that involve practising, inducing, or inciting racial or colour-based discrimination or prejudice a crime, which is subject to a more severe sentence if the act is committed through social communication media or publications of any type (article 20, paragraph 2, of Law 7716/89).

58. Despite the fact that Law No. 7716/89, in criminalizing acts arising from prejudice based on race or colour, represented a clear step forward, one of the major criticisms of the text centred on the fact that it did not include, within the definition of those acts considered criminal, crimes involving defamation of a discriminatory nature. In not addressing, within Law No. 7716/89, defamatory acts founded in racial discrimination (name-calling, denigrating acts, verbal abuse), these were ultimately legally classified, not as racism, but as defamation in the generic sense (e.g. insult, libel). However, while racism is punishable by a prison term of one to five years, libel is punishable by a prison term of six months. In addition, defamatory crimes are only

prosecuted by means of private criminal actions (whose statutes of limitation expire in six months), while crimes of racism are prosecuted by means of public criminal actions. As to prescription, while racism is imprescriptible, crimes of defamation are prescribable within a short period of time (two years in the case of libel or slander).

59. In order to fill the gap created by Law No. 7716/89 and expand its focus and reach, Law No. 9459, of 13 May 1997, was passed. Law No. 9459 establishes the penalties for crimes arising from discrimination and prejudice based on race, colour, ethnicity, religion, and nationality. The law modifies, therefore, Law No. 7716/89, to the extent that it expands its focus, which had originally been limited to combating acts arising from prejudice based on race or colour. As mentioned above, Law No. 9459/97 also includes penalties for crimes arising from discrimination or prejudice based on ethnicity, religion, or nationality. In addition to this advance, a paragraph was added to article 140 of Law No. 9459/97 of the Penal Code which typifies the crime of libel. According to the law, if the libel consists in using elements pertinent to race, colour, ethnicity, religion, or origin, the punishment shall be a prison term of one to three years and a fine. In this way, the law attempts to draw a distinction between generic libel and that founded in discrimination (based on race, colour, ethnicity, religion, or origin), conferring a more severe legal treatment on the latter. In this way, Law No. 9459/97 not only seeks to fill the gap created by Law No. 7716/89, with respect to defamatory crimes, but also carries the effort forward in setting forth the punishment for crimes arising from discrimination or prejudice based on ethnicity, religion or origin.

60. In addition to Law No. 7716/89 and Law No. 9459/97, other legislative measures adopted nationwide to combat racial discrimination also deserve mention. Included among these are:

- (a) Law No. 2889/56, which specifies and punishes the crime of genocide;
- (b) Law No. 4117/62 which, in instituting the Brazilian Telecommunications Code, forbids the use of communication media to promote discriminatory campaigns based on class, colour, race, or religion;
- (c) Law No. 5250/67, which regulates freedom of thought and information, and forbids the dissemination, by any means, of racial prejudice;
- (d) Law No. 6620/78, which specifies the crimes against national security, punishing the incitement of hate or racial discrimination;
- (e) Law No. 7210/84, which institutes the Criminal Execution Law, prohibiting distinctions of a racial, social, religious, or political nature in the application of the penal execution law;
- (f) Law No. 8072/90, which specifies heinous crimes, including genocide;
- (g) Law No. 8078/90, which sets forth provisions for the protection of consumers, prohibiting all publicity that is either deceitful, discriminatory, or which incites violence.

(h) Law No. 8081/90, which establishes the crimes and applicable sentences for acts of discrimination or prejudice based on race, colour, religion, ethnicity, or by means of any type of publicity;

(i) Law No. 8069/90, which sets forth provisions on the Child and Adolescent Statute proscribing any form of discrimination against children or adolescents;

(j) Law No. 9029/95, which prohibits discriminatory practices for purposes of admission to or maintenance of legal employment;

(k) Law No. 9455/97, which, in defining and punishing the crime of torture, establishes as a crime of torture the coercion of an employed person with violence or a serious threat, thereby causing that person physical or mental suffering based on racial or religious discrimination.

61. In addition to this, we should cite the draft law currently being considered in the National Congress that sets out provisions on civil actions intended to require the fulfilment or non-fulfilment of obligations in order to preserve the honour and dignity of racial, ethnic, and religious groups.

62. To these legislative measures must be added the National Human Rights Programme, approved by Decree No. 1904, of 13 May 1996. The National Human Rights Programme constitutes a landmark instrument that confers the status of national public policy on human rights. The National Human Rights Programme will be the subject of special attention in this consolidated report.

63. Also on 13 May 2002, the President of the Republic, authorized by the National Congress, signed the optional declaration set forth in article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, recognizing the authority of the Committee for the Elimination of Racial Discrimination to receive and analyse complaints concerning the violation of human rights covered in the Convention held in Brazil.

64. It is through this broad normative setting, which encompasses the federal Constitution, ordinary legislation, and the State constitutions, that the Brazilian State seeks to implement, by means of legislative measures, the obligations contracted as a consequence of article II, paragraphs (a) to (e), of the Convention.

Article 3

65. Article 4, section VII, of the 1988 Brazilian Constitution establishes that the Brazilian State is guided, in its international relations, by the principle of the repudiation of terrorism and racism, as a consequence of which it condemns the apartheid system in existence in South Africa until the beginning of the 1990s. During the apartheid period in this State, Brazil, in conformity with Security Council resolution 566 (1985), prohibited, through Decree No. 91524 of 9 August 1985, any cultural, artistic or athletic exchanges, as well as the sale of oil or arms, to South Africa.

66. The State constitution of Bahia also expressly prohibits cultural or athletic exchanges of its official delegations with countries that maintain official policies of racial discrimination, in

addition to forbidding participation, even if indirect, of companies headquartered in such countries in any competitive bidding procedure involving the direct or indirect public administration (art. 287, sects. I and II). For its part, the State constitution of Amazonas classifies as relevant the transmission, generation and broadcast of educational/cultural programmes or campaigns that stimulate the repudiation of racism, prejudice, discrimination, and dependence (art. 224, sect. V).

67. Although, in the contemporary order, international norms aimed at combating racial segregation and apartheid have been implemented in various States, the emergence of new manifestations of racism, such as neo-Nazism, xenophobia, and ethnic violence are evident.

Article 4

68. The Brazilian legal system prohibits the dissemination of discriminatory ideas in a broad number of specific laws, such as those that govern freedom of the press and communication, as well as those relating to the protection of consumers against abusive advertising.

69. Law No. 2889, of 1956, which defines and punishes the crime of genocide, punishes those who would incite, directly and publicly, an individual to commit any form of this crime, with a special provision mandating a punitive increase of one-third in the sentence when the incitement is committed through the press (art. 3, para. 2) or by a governing official or civil servant (art. 4).

70. The Brazilian Communications Code (Law No. 4117, of 1962), for its part, considers the promotion of discriminatory campaigns on the basis of class, colour, race, or religion, during the exercise of the freedom of radio and TV broadcasting, an abusive act (art. 53 (e)).

71. The Law of the Press (Law No. 5250/67) considers propaganda in favour of war, the incitement of subversion against the political or social order, or racial or class prejudice, in the exercise of the freedom of expression of thought and information, an abusive act, punishable by one to four years of imprisonment, under the terms of article 14.

72. Law No. 7716/89, which defines the crimes arising from prejudice based on race or colour, with the corresponding text added by Law No. 9459, of 13 May 1997, legally typifies the following conduct:

- The practice, inducement, or incitement of discrimination or prejudice based on race, colour, ethnicity, religion, or nationality - punishable by one to three years of imprisonment and a fine (art. 20, heading);
- The production, marketing, distribution, or dissemination of symbols, emblems, ornaments, badges, propaganda that use the swastika or Greek cross for purposes of advocating Nazism - punishable by two to five years of imprisonment and a fine (art. 20, para. 1);
- If any of the crimes set forth in the heading is committed through the use of the available social communication mediums or publications of any type - punishable by two to five years of imprisonment and a fine (art. 20, para. 2).

73. There are also provisions in Brazilian jurisprudence that limit the dissemination of discriminatory ideas in the realm of consumer relations. Law No. 8078/90, which establishes the Consumer Protection Code, defines abusive publicity as that which is of a discriminatory nature in any way, incites violence, exploits fear or superstitions, takes advantage of the poor judgment or inexperience of children, disrespects environmental values, or is capable of inducing the consumer into engaging in behaviour that is harmful or dangerous to his/her health or safety (article 37, paragraph 2, of the Consumer Protection Code).

74. The Consumer Protection Code introduces three types of sanctions for the advertiser and, in the case of negligence or fraud, the agency and the medium responsible for producing and broadcasting this type of publicity: (a) sanctions of a civil nature - compensation, to which the advertiser must respond objectively and the agency or medium subjectively; (b) sanctions of an administrative nature - counter-publicity, which shall be determined when the provider incurs in the practice of abusive publicity, always produced at such provider's expense, and disseminated in the same form and to the same extent and, preferably, through the same medium, at the same location, in the same space, and at the same time, in a manner capable of undoing the damage caused by the abusive publicity (art. 60, para. 1); (c) of a criminal nature - sentence of three months to one year confinement and a fine for anyone who produces or promotes publicity that such person recognizes or should recognize to be abusive (art. 67) and six months to two years confinement for anyone who produces or promotes publicity that such person recognizes or should recognize as capable of inducing the consumer into behaviour which is harmful or dangerous to his/her health or safety (art. 68).

75. The federal Constitution assures broad freedom of association, provided it is channelled toward legal ends (art. 5, XVII). Therefore, organizations having racist objectives, such as neo-Nazi groups, among whose objectives is racial segregation, are, as already mentioned in the comments on article 2, forbidden by Brazilian jurisprudence.

76. It is also worth mentioning political parties. The Constitution assures these, as it does with any type of association, the freedom to establish themselves, merge, incorporate, or extinguish themselves, provided their ends are legal. Article 17 of the federal Constitution mandates that the political parties must safeguard the nation's sovereignty, the democratic regime, the multiparty system, and the fundamental rights of human beings.

77. Brazilian jurisprudence assigns the greatest gravity to cases involving the incitement of racial discrimination by public officials. Law No. 9455, of 7 April 1997, which defines the crime of torture, establishes that coercing an employed person with violence or a serious threat, thereby causing that person physical or mental suffering, on the basis of racial or religious discrimination, constitutes a form of this crime (art. 1, I, (c)) and sets forth special provisions for increasing the sentence (by one-sixth to one-third) when the crime is committed by a public official (art. 1, para. 4, I). Law No. 7716/89, for its part, sets out in articles 16 through 18 a specific effect for the public official found guilty of incurring in one of the crimes defined in the law: loss of public post or position (which effect must be pronounced through a well-founded finding at the time of sentencing, given that the application of such effect is not automatic).

78. The only law that expressly prohibits inciting or encouraging the discrimination to which article 4 (c) of this Convention refers is Law No. 2889, of 1 October 1956. Article 4 of that law

contains special provisions for increasing the sentence by one-third when, as in the cases of articles 1, 2, and 3, the crime is committed by a governing official or civil servant; article 3 defines the crime of direct and public incitement of genocide.

79. In spite of the vast body of national legislation condemning all propaganda and organizations that use as their inspiration ideas or theories based on the concept of racial superiority, neo-Nazi groups that discriminate against Jews, blacks, North-easterners, and gays and lesbians have emerged in the Brazilian State. Among the actions undertaken by these groups are the distribution of pamphlets, signs, and “fanzines” bearing their messages. These groups use Internet sites as a medium of communication. The computer network has become the safest way for the neo-Nazi movement to share its prejudices with groups of individuals.

80. Article 20, paragraph 3, section II, of Law No. 7716/89, with the corresponding text added by Law No. 9459/97, gives the judiciary the option of terminating radio or television transmissions when the crime of practising, inducing, or inciting discrimination or prejudice based on race, colour, ethnicity, religion or nationality is committed by means of the available social communication mediums or publications of any kind. These laws, however, contain no provisions for crimes committed on the Internet. In any event, based on the general preventive powers described in articles 798 and 799, both part of the Code of Civil Procedure, as well as article 3 of the Code of Criminal Procedure (which allows for a broad interpretation, analogous application, and the use of general principles of law), the judicial branch may determine the interdiction of sites containing discriminatory content.

81. Those responsible for racist sites do not always hide behind the anonymity provided by the network. At times, they appear in the open, for they are interested in recruiting followers and collaborators for their campaigns. Those groups use the following strategies to make criminal prosecutions more difficult: (a) they create sites located outside the Brazilian territory, principally in the United States and Canada, where there is legal tolerance for this kind of expression; (b) they present racist material on sites located within the Brazilian territory in the English language; (c) they produce inoffensive sites located in Brazil with links to Portuguese- and Spanish-language sites abroad, such that some seek to mask the racist content on the site by presenting it as a study forum or discussion group.

82. The neo-Nazi groups also commit the crime of threatening people. As an example of this conduct is the *Frente Anti-Caus* (sic) group, whose site the Civil Police of São Paulo and two of its indicted members already identified in 1999. This page, which included anti-gay discussions and anti-Semitic teachings, has already been banned. The group sent a letter by mail to the editorial staff of newspapers and to police stations in the centre of São Paulo. In the text, the authors regretted the arrest of the two members mentioned above, challenged the police to identify them, and threatened to carry out bombings in March 2000. There are still other groups that continuously send anonymous letters to human rights communities and entities, threatening blacks, Jews, North-easterners and gays.

83. In addition to the distribution of pamphlets, the creation of Internet sites and the act of threatening people, these groups also practise what is known as ethnic violence. This behaviour manifests itself in the form of fights between gangs that come across each other on the street, arguments in bars and nightclubs, murders, assault and battery, and rape.

84. Racist manifestations in the country are not, therefore, isolated acts, but rather part of a growing and organized movement. It manifests itself by producing and placing signs, publishing and distributing fanzines, mailing anonymous letters containing threats, placing telephone calls prior to attacks, producing and selling explosives, observing special dates, such as Hitler's birthday and those of his collaborators and events from World War II, and also by evidence gathered by the federal police that these groups receive financial support from abroad.

85. SOS Racism (*SOS Racismo*), a service organized by the Legislative Assembly of São Paulo to receive complaints of racial discrimination, discovered four racist Internet sites in 1998. One of these belongs to a certain National-Socialist Union for São Paulo which directs attacks against the North-eastern community. Led by a 27-year-old language and literature student at the University of São Paulo, André Schmodt Amaral Gurgel, the organization runs the Campaign for the Expulsion of North-easterners from São Paulo. In November 1999, the São Paulo judiciary sentenced the student to two years of community service for his responsibility in the dissemination of racist messages against North-eastern migrants on the Internet. Another organization that was identified was the National Front for Order and Progress which also maintains an Internet site with racist messages. In August 1998, organizations for the defence of human rights requested that the Public Ministry and the Special Racial Crimes Unit of São Paulo take appropriate measures to verify the activities of those organizations (*O Estado de S. Paulo*, 15, 25, 27 and 28 August 1998).

86. In November 1999, the civil police of São Paulo identified the individual responsible for the website "Jews in Brazil" - a 16-year-old resident of Belo Horizonte. The Internet page disseminated racist messages directed at Jews and asked that "nationalists" take part in a campaign against Jews, whom the Internet page designated "enemies of Brazil". An investigation was launched.¹

87. In February 2000, 18 members belonging to a group known as the "ABC Skinheads" (*Carecas do ABC*) were arrested and accused of beating to death Edson Nêris da Silva, a 35-year-old dog-trainer, in a square in São Paulo, in the early morning hours of 6 February. Edson and a friend were accosted while they strolled through the square. Edson was beaten and killed purportedly because of his homosexuality. The crime resulted in the arrest, indictment, trial, and conviction by a popular jury of the responsible parties. As a consequence of the case, in March 2000 the São Paulo police department set up a group known as the Group for the Repression and Analysis of Crimes of Intolerance (*GRADI*), whose main responsibilities consisted in identifying and analysing the individuals and groups that commit crimes related to racism or sexual or religious prejudice.

88. In April 2000, the Supreme Court convicted Siegfried Ellwanger, owner of Revisão, a publishing company in Porto Alegre, in Rio Grande do Sul, to two years' confinement for racism, after publishing various titles inciting people to take racist actions against Jews. The owner of the publisher had been the subject of a criminal prosecution since 1989. In November 1997 books preaching Nazism were seized, by determination of the presiding judge of the 26th Criminal Court of Rio de Janeiro, from the publishing company, Irradiação Editorial, following their exhibition at the 8th Book Biennial.

89. Finally, in 1999, the 13th Tribunal of the Public Treasury of the State of São Paulo provided the legal basis for a public civil action proposed by the State of São Paulo when it determined the immediate removal of outdoor advertisements considered racist for casting a black person in the role of the “criminal” in a campaign against gun control.

Article 5

90. The federal Constitution confers equal rights before the law on all persons, without distinction of any kind, charging the judicial branch with the duty to assess harm or threats against the implementation of any right (art. 5, sect. XXXV).

91. The judicial branch is independent and autonomous, as are the legislative and executive branches. The formation of special tribunals is forbidden (art. 5, XXXVII), such that no person may be prosecuted or convicted by any body other than the judicial branch, nor may such person be denied his freedom or property without due process of law (art. 5, LIV).

92. The accused is guaranteed a full legal defence, an adversary system and all other pertinent legal recourse (art. 5, LV), such that the defendant shall only be considered guilty following a final, unappealable decision (transit in *rem judicatam*) (art. 5, LVII).

93. The rights of the individual in custody are guaranteed, among them the right to remain silent, the right to assistance from family members, and the mandatory right to counsel (art. 5, LXIII). The State has the duty to provide full legal assistance free of charge to those who can show that they do not have the means to pay for legal counsel (art. 5, LXXIV).

94. All legal hearings and procedural acts are, in general, public and take place in the pertinent tribunal or court on pre-established days and times. The publicity of procedural acts may only be restricted when the protection of privacy or the interests of society so require (art. 5, LX).

95. All judicial decisions are subject to a higher stage of appeal, and only after the decision has been reviewed may a final decision be proffered (article 58 and following of the Code of Criminal Procedures). This procedure is based on the principle of the double degree of jurisdiction. Although not explicitly set forth in the federal Constitution, it is the product of the constitutional system itself, which establishes the authority of the courts to judge the causes of action submitted to them on the basis of “the degree of appeal.”

96. In cases in which the accused does not speak the language, an interpreter shall be appointed by the presiding judge for purposes of questioning, for which the parties involved shall not have to bear the associated costs (article 193 of the Code of Criminal Procedures). The comments on article 6 of this Convention describe in greater detail the other rights and guarantees contained in Brazilian legislation which ensure equal treatment before the courts.

97. The heading of article 5 of the federal Constitution guarantees Brazilians and resident aliens the inviolability of their right to life and personal safety and prohibits, in section XLVII of the same article, the death penalty, except in the case of a declared war. It also specifically assures inmates respect for their physical and moral well-being (sect. XLIX of art. 5).

98. In Title I of its special part (chaps. I and II respectively), the Criminal Code orders the crimes against life and bodily harm. There are eight articles (121 to 129) that address crimes of murder; the inducement, instigation or assistance of suicide; infanticide; abortion and bodily harm.

99. In addition to the traditional protections of individuals from physical violence, the Brazilian legal system punishes violence practised against ethnic, racial, and religious communities. Law No. 2889, of 1 October 1956, which defines and punishes the crime of genocide, penalizes those who, in an effort to destroy, wholly or in part, a national ethnic, racial, or religious group, for example, kill members of that group; cause serious harm to the physical or mental integrity of members of the group; intentionally submit the group to living conditions capable of bringing about its total or partial physical destruction; adopt measures intended to prevent births within the nucleus of the group; or carry out the forced transfer of children from one group to another. The sentence shall be increased when the crime is committed by a governing official or civil servant (art. 4). Article 6 of Law No. 2898/56 establishes that crimes therein defined shall not be considered political crimes subject to extradition.

100. Additionally, with respect to genocide, article 208 of the Military Criminal Code defines the act of “killing members of a national, ethnic, religious group, or those belonging to a specific race, for purposes of the total or partial destruction of such group”, a crime punishable by 15 to 30 years confinement for those participating in such crime.

101. The Brazilian legal system considers the crime of genocide a heinous crime, the principal consequences of which are: the impossibility of amnesty, mercy and pardon, bail and parole (article 2 of Law No. 8072/90) and mandatory completion of the full sentence in confinement (paragraph 1 of article 2 above).

102. One of the bases of the Brazilian democratic State is popular sovereignty, exercised by universal suffrage and direct and secret voting, with equal weight for all, as well as plebiscites, referendums, and popular initiatives.

103. The federal Constitution mandates electoral registration and voting for persons over the age of 18 and optional electoral registration and voting for the illiterate, those over 70 years of age, and those over the age of 16 but under the age of 18 (art. 14, para. 1, I and II). Foreigners are prohibited from registering to vote, as are Brazilians during compulsory military service, otherwise referred to as conscripts.

104. The possibility of becoming a candidate for elected office is contingent on observing certain constitutional requirements, such as: the individual must have Brazilian nationality, fully exercise his political rights, be a registered voter, have his residence in the pertinent voting district, and be affiliated to a political party.

105. Another condition for eligibility consists in meeting the minimum age requirements: 35 years for President and Vice-President of the Republic and senator; 30 years for governor and vice-governor of a State and the Federal District; 21 years for a federal deputy, State or district deputy, mayor, deputy mayor, and justice of the peace, and 18 years for a city council member. Unregistered and illiterate persons may not be candidates to elected office.

106. According to Constitutional Amendment No. 16, of 4 June 1997, re-election to a single consecutive term is permitted for the President of the Republic, the State governors, including of the Federal District, mayors, and those who succeed or replace such elected officials during their term of office.

107. The public administration is governed by the principles of lawfulness, impersonality, morality, publicity, and efficiency (article 37, heading, of the federal Constitution). All Brazilians may, under equal conditions, hold public office whether civilian or military, with the rule for admission to the civil service consisting of a public exam and the presentation of professional and academic credentials, except in the case of commissioned offices, the appointments to which and discharges from which may be made freely (art. 37, sects. I and II).

108. Article 5, XV, of the federal Constitution enables any person, in times of peace, free movement throughout the national territory, into which such person may enter, remain, or leave with his/her property and assets, under the terms of the law. This constitutional norm has limited force, to the extent that the ordinary law may establish restrictions with respect to the entry, exit, or internal circulation of persons and property and assets. That same constitutional provision is delimited in articles 136 and following of the Magna Carta, which refer to states of siege and defence. Upon the declaration of war or in response to foreign armed aggression, a state of siege may be decreed, including the restrictive measures established in article 139 of the federal Constitution, such as the obligation to remain in specific locations (sect. I of art. 139).

109. The right to establish a permanent residence without authorization is guaranteed, not only to native and naturalized Brazilians, but to foreigners as well. Law No. 4898/65 considers actions against the freedom of movement set forth in the federal Constitution an abuse of authority (art. 3, line a).

110. There are no restrictions on the freedom to circulate within the Brazilian territory, except in regard to indigenous reservations. Access to these areas is subject to Government authorization. The measure's aim is to protect indigenous peoples against the phenomenon of forced acculturation. Brazilians are free to enter and leave the national territory at any time.

111. In accordance with the federal Constitution, all persons are equal before the law, and Brazilians and foreigners are guaranteed the same rights (art. 5, heading).

112. The union has the duty to pass legislation concerning emigration and immigration, the entry, exit, or expulsion of foreigners. The Constitution makes clear that no foreigner who has committed a crime of a political nature or of expression shall be subject to extradition. The extradition of foreigners in other cases depends upon a request by the country of origin and shall be approved only following a review by the Supreme Court.

113. Law No. 6815/80 establishes the legal status of foreigners in Brazil, as well as the violations to which they are subject. A visa represents the necessary document for admission of foreigners into the country, although this requirement may be waived, provided the reciprocity of such an act is stipulated by international agreement. A visa is issued to individuals and may be extended to dependants. Those who enter into Brazilian territory without authorization are subject to deportation. The foreigner who intends to reside permanently in the country will be issued a permanent visa.

114. Brazilian immigration policy determines that the objective of immigration into the country is to provide the various sectors of the national economy with skilled labour, for purposes of increasing the productivity, technological assimilation, and financial reserves of specific sectors.

115. The Brazilian Constitution permits political asylum, under the terms of article 4, X. The 1996 National Human Rights Programme, among other measures relative to foreigners, refugees, and Brazilian migrants, provided short-term safe harbour, on approval of the draft bill establishing the statute on refugees, which entered into force on 22 July 1997 with the passage of Law No. 9474. The law prohibits terrorists, drug traffickers, war criminals or the authors of heinous crimes from requesting political asylum in Brazil. The 1996 National Human Rights Programme also formed the National Committee for Refugees (CONARE), composed of representatives of five ministries, the federal police and the non-governmental organization responsible for assisting and protecting refugees. The law determines that even in cases in which asylum is denied, the Brazilian Government may not, if there is an imminent threat to life, transfer the foreigner to his country of birth or permanent residence, except in those instances already cited involving heinous crimes, war crimes, drug trafficking, and terrorism. Some of the more noteworthy rights assured foreigners include the acquisition of a special identity card, an employment booklet and a travel document.

116. In its concern for illegal and clandestine foreigners, the federal Government announced a package of measures on 7 September 1998, including an offer of amnesty, for purposes of allowing these foreigners to legalize their status within the national territory through a re-registration drive, which was held through 7 December 1998.

117. It is important to emphasize that the National Congress is considering draft bill No. 1813/91, which defines the legal status of foreigners in Brazil and provides for other measures intended to legalize the status of immigrants living in degrading circumstances in the country, including as slave labourers.

118. The federal Constitution guarantees the right to nationality, for which purpose Brazil adopts the criteria of *jus solis*, with certain exceptions. In this way, nationality is extended to those born within the Brazilian territory, even if their parents are foreigners, provided such parents are not in Brazil representing their country of origin in an official capacity, in which case *jus sanguinis* is applied.

119. Constitutional amendment revision No. 3, of 7 June 1994, modified article 12 of the federal Constitution. According to the determination therein set out, the following cases are exceptions to the rule of *jus solis*: those born abroad, both of whose parents are Brazilians, provided they are representing Brazil in an official capacity; those born abroad, both of whose parents are Brazilian, provided they return to reside in the Federative Republic of Brazil and opt, at any time, to become Brazilian nationals.

120. Foreigners may be naturalized. Those from Portuguese-speaking countries need only reside in the country for 12 consecutive months and show good moral standing. Foreigners of all other nationalities must reside more than 15 years consecutively in the Federative Republic of Brazil without any criminal convictions.

121. An exception is made for Portuguese nationals who reside permanently in the country. In these cases, if there is reciprocity in favour of Brazilians, the rights intrinsic to Brazilians shall be extended, except in the specific cases set forth in the Constitution (para. 1 of art. 12).

122. The same constitutional amendment revision establishes two cases in which another nationality may be obtained without loss of Brazilian nationality: when international law recognizes the original nationality; and when naturalization is required of a Brazilian residing in a foreign State, by force of such State's norms, as a condition for remaining in its territory or for the exercise of civil rights (sect. II, para. 4, of art. 12).

123. Because it represents the foundation of society, the family enjoys special protection by the State (article 226, heading, federal Constitution). Marriage is a civil arrangement, the execution of which is free of charge (paragraph 1 of article 226 above). Yet, it is not only marriage that receives special protection from the State. A stable union, in the form of a family unit, between a man and a woman, is also recognized, for purposes of receiving State protection (para. 3 of art. 226), wherein the family unit is understood to consist of any community made up of parents and their descendants (para. 4 of art. 226).

124. The rights and duties associated with a conjugal partnership are exercised equally by the man and woman, with the couple having the freedom to decide on all aspects connected to family planning (paras. 5 and 7 of art. 226). The right to dissolve the conjugal partnership and the marriage is set forth in paragraph 6 of article 226 of the federal Constitution and in Law No. 6515, of 26 December 1977.

125. The freedom to choose a spouse or partner is also protected within the scope of criminal legislation. Article 14 of Law No. 7716/89 mandates a sentence of two to four years of confinement for anyone who prevents or obstructs, by any means, marriage or family or social cohabitation due to prejudice based on race, ethnicity, colour, religion, or nationality.

126. Article 5, XXII, of the federal Constitution sets forth the right to property as an individual one. However, this right can no longer be considered individual, nor as an institution governed by private law, for section XXIII of the same article establishes that property shall serve a social function. The constitutional text reinforces the requirement that the social function of property be fulfilled, to the extent that it authorizes, for example, the expropriation of urban and rural property that does not serve a social function.

127. Urban property serves a social function when it fulfils the requirements of city ordinances expressly set out in the city's master plan, which constitutes the basic policy instrument for urban development and planning. The failure to fulfil a property's social function may result in its mandatory division or development, imposed by law on any undeveloped or unused urban property or soil, or its expropriation, compensated by means of public debt bonds (art. 182, para. 4, federal Constitution).

128. The social function of rural property is fulfilled when it adheres to the following requirements simultaneously: the rational and appropriate use thereof; the adequate use of natural resources available thereon and the preservation of the environment; compliance with the provisions that regulate labour relations; land use that promotes the well-being of the owners and labourers (article 186 of the federal Constitution). When it is in the social interest, the union has

the duty to expropriate, for the purposes of agrarian reform, rural land that does not fulfil its social function, by means of prior and fair compensation in the form of agrarian debt bonds. It should be noted that small and medium-sized rural property may not be expropriated, provided the owner does not hold other property (article 185 of the federal Constitution).

129. The only existing restriction in the legal system with regard to the acquisition of property by a social group has to do with newspaper and radio and television broadcasting companies. Only native Brazilians or citizens naturalized for more than 10 years may own these companies (article 222, heading, of the federal Constitution).

130. Paragraph 1 of article 10 of the Law of Introduction to the Brazilian Civil Code, with the corresponding text added by Law No. 9047/95, determines that succession to the estate of foreigners located in the country shall be regulated by Brazilian law for the benefit of the Brazilian spouse or children, or those representing them, provided the individual law of the deceased is not more favourable to them. This modification brought the provision into conformance with section XXXI of article 5 of the federal Constitution.

131. Freedom of thought is a general principle, while the freedom of conscience and religion represent specific types thereunder. The federal Constitution ensures the free exercise of religious faiths and, consequently, assures protection of the places of worship at which the corresponding rites are practised (art. 5, VI).

132. Article 3 (d) of Law No. 4898/65 considers restrictions on the full exercise of religious beliefs and cults an abuse of authority. For its part, article 208 of the Criminal Code specifies conduct that injures the right of religious cults, impedes or disturbs an act related thereto, which crimes are punishable by one-month to one-year confinement or a fine, with a one-third increase in the sentence in cases in which violence is employed, notwithstanding the applicable sentence for violent acts.

133. The Brazilian Constitution also establishes that no one shall be denied any rights because of religious beliefs or philosophical or political convictions, except when such rights are invoked to avoid the legal responsibilities imposed on all and to refuse to fulfil alternative considerations, as set forth in Law No. 8239, of 4 October 1991.

134. Alternative service means the exercise of activities of an administrative, social, philanthropic, or somehow productive nature, in lieu of the performance of essentially military activities. These activities shall be carried out in military organizations engaged in such activities, in bodies responsible for training reserves of the armed forces, or in bodies that fall under the purview of the civilian ministries, when agreements have been concluded between such ministries and the defence ministries, provided there is reciprocal interest in making use of the qualifications of the individual in question.

135. Upon conclusion of the period established for performing the activities, a certificate of alternative service having the same legal force of the reservist certificate shall be presented, in lieu of compulsory military service. In the event the individual refuses or fails to complete the alternative service for personal reasons, the certificate shall not be issued for a period of two years from the end of the time established for the service. This situation may be brought into conformance through fulfilment of the stated obligations.

136. The expression of thought is free, although the Constitution forbids “anonymous expression” (art. 5, IV). Freedom of intellectual, artistic, scientific, and communication-related expression is guaranteed, including freedom from censorship or licenses (articles 5, IX, and 220, heading, of the federal Constitution). The constitutional text forbids all forms of political, ideological, or artistic censorship (para. 2 of art. 220). The Constitution only establishes as federal law the normative instruments necessary: (a) to regulate public entertainment and shows, for which purpose the Government shall have the duty to provide information regarding their nature, the age brackets for which they are not recommended, and the places and times that are unsuitable for their exhibition; (b) to establish the legal means to ensure individuals and families have the ability to protect themselves from radio and television programmes or schedules that are contrary to the principles establishing the preference for programming having educational, artistic, cultural, and informative ends; (c) to promote national and regional culture and foster independent productions intended for the dissemination thereof; (d) to institute regional differentiation in cultural, artistic, and journalistic productions, on the basis of percentages established in the law and respect for the ethical and social values of individuals and the family.

137. There is full freedom of association, provided its ends are legal and that it is not of a paramilitary nature (article 5, XVIII, of the federal Constitution). The formation of associations does not require authorization, and State interference in their functioning is forbidden. The dissolution of associations or the mandatory suspension of their activities may only be determined by judicial decision, for which, in the former case, a final unappealable decision is required (transit in *rem judicatam*) (article 5, XIX, of the federal Constitution).

138. Arbitrary interference in the exercise of the right of freedom of association may result in the following sanctions:

- Of a criminal nature, insofar as such an act constitutes the crime of abuse of authority (article 3, f, of Law No. 4898/65);
- Of a political-administrative nature, by which the act is defined as a crime of responsibility, in accordance with Law No. 1079/50, if the agent is the President of the Republic, a minister of State, a minister of the Supreme Court, the Attorney-General of the Republic, a State governor, or a secretary of State (art. 4, III);
or
- Of a civil nature, thereby granting the injured parties the right to compensation for material and moral damages.

139. Article 6 of the federal Constitution proclaims, in accordance with the corresponding text provided by constitutional amendment No. 26, the following social rights: to education, health, employment, housing, leisure, security, social security, protection for mothers and infants, and social assistance for the disadvantaged.

140. With respect to employment, article 7 of the federal Constitution specifies the rights of urban and rural labourers. Most noteworthy within this list are:

- The guarantee that employment shall be protected against arbitrary dismissal or dismissal without just cause, in which case severance pay shall be determined, among other rights;
- Unemployment insurance, in the event of involuntary unemployment;
- A nationally unified minimum wage, established by law, capable of satisfying, on the basis of the programme set out in article 7, section IV, the basic daily needs of workers and their families with respect to housing, food, education, health, leisure, clothing, hygiene, transportation, and social security, which is to be adjusted periodically for purposes of maintaining its purchasing power, with the provision that it may not be used as an index for any purpose;
- Prohibition of differences related to wages, the performance of duties, and hiring criteria by reason of sex, age, colour, or marital status (art. 7, XXX);
- Prohibition of any discrimination with respect to the wages and hiring criteria of disabled workers (art. 7, XXXI);
- Prohibition against distinctions between manual, technical and intellectual work, or among the respective professionals (art. 7, XXXII);
- Equal rights between workers with permanent employment and seasonal workers (art. 7, XXXIV), with domestic servants ensured some of these rights, such as a minimum wage, the prohibition on wage cuts, a year-end one-salary bonus, paid weekly leave, annual paid vacation, maternity leave, paternity leave, advance notice of dismissal, retirement pension, and incorporation into the social security system (stand-alone paragraph of article 7).

141. In the sphere of legislation, Law No. 7716/89 sets forth the crimes resulting from race or colour prejudice, which are punishable by two to five years' confinement. Under the terms of the law, it is a crime to prevent or hinder access by a duly qualified person to any post in the direct or indirect administration, as well as public service concessionaires (art. 3) and, additionally, to prevent or hinder a person from obtaining employment in private enterprise (art. 4). The law also classifies conduct that has the effect of preventing or hindering access to service in any branch of the armed forces as a crime, punishable by two to four years' confinement (art. 13).

142. Law No. 9029, of 13 April 1995, likewise protects employment by prohibiting the adoption of any discriminatory and restrictive practice with regard to access to employment, or the maintenance of such practices, by reason of sex, origin, race, colour, civil status, family situation, or age, except in cases involving the protection of minors prescribed in section XXXIII of article 7 of the federal Constitution. Among other provisions, the law determines that terminating the employment relationship by reason of a discriminatory act affords the affected worker the right to be rehired and to receive full compensation for the time of such workers' removal, through payment of all remuneration due, with interest and applicable corrections for inflation.

143. Laws No. 7716/89 and No. 9029/95 represent an important advance for the Brazilian legal framework, given that the previous legislation in force, Law No. 5473/68, provided for a simple prison term for anyone who directly or indirectly created a discriminatory environment among Brazilians with respect to the offering of employment positions subject to a selection process either in private enterprise or the civil service.

144. The freedom to organize trade unions represents a specific type of freedom of association, meaning that the Government may not interfere or intervene in trade unions (article 8, I, of the federal Constitution), whose only obligation is to register with the competent body. As with article 5, XX, of the federal Constitution, article 8, V, establishes that no one shall be obliged to become or remain a member of a trade union.

145. The federal Constitution prohibits the creation of more than one trade union to represent the same economic or professional class within the same territorial unit, which unit shall be defined by the interested workers or employers and may not be smaller than the area of a municipality (art. 8, II).

146. Trade unions have the legal capacity to defend the collective or individual rights of the professional class they represent on legal and administrative matters (article 8, III, of the federal Constitution). It must be noted that trade unions have the obligation to participate in collective bargaining negotiations (article 8, VI, of the federal Constitution).

147. To guarantee the freedom of the trade unions, unionized employees may not be dismissed from their employment from the time they register as candidates for union leadership or administration posts and, if elected, even as substitutes, for one year following the end of their term, provided they do not commit serious infractions (article 8, VIII, of the federal Constitution). The election of these representatives is ensured for companies with more than 200 employees, so as to promote a direct channel of communication with management (article 11 of the federal Constitution).

148. The right of civil servants to unfettered union organization must also be noted (article 37, VI, of the federal Constitution).

149. Section IX of article 23 of the federal Constitution establishes that the union, States, Federal District and municipalities have equal legal authority to promote programmes for housing construction, improving housing conditions and basic sanitation. Constitutional Amendment No. 26, of 14 February 2000, includes the right to housing on its list of the social rights set forth in article 6 of the federal Constitution.

150. A constitutional means for guaranteeing the well-being of the residents of municipalities consists in acquiring urban areas by prescription (*usucapio*). The person who holds an urban area of up to 250 square metres for five consecutive years, without opposition, and who uses such area to house himself or his family, and does not own any other urban or rural property, shall benefit from this instrument by acquiring ownership over such area (art. 183). In the realm of agricultural policy, the Constitution provides for the acquisition of rural areas by prescription (*usucapio*) as well. A person who does not own rural or urban property and holds, as his own, an area of land of not more than 50 hectares for five consecutive years, without opposition, in a

rural zone, while making such land productive through the efforts of his or his family's labour and residing thereon, shall benefit from this instrument by acquiring ownership of the land (art. 191).

151. Social security encompasses an integrated set of actions promoted by public authorities and by society at large, the purpose of which is to guarantee rights concerning health, social security, and assistance (article 194 of the federal Constitution). The system shall be directly and indirectly financed by society at large, under the terms of the law, with resources from the budgets of the union, States, the Federal District and municipalities, as well as social contributions (art. 195).

152. The Government has the legal authority to organize the social security system, for which purpose it must comply with the following objectives (article 194, stand-alone paragraph):

- Universal coverage and care;
- The provision of uniform, equivalent benefits and services to both urban and rural populations;
- Selectivity and distributiveness in the provision of benefits and services;
- The prohibition of reductions in the value of the benefits;
- Equitable participation in costing;
- Diversity of the financing base;
- Democratic, decentralized management through a quadripartite arrangement involving the participation of workers, businessmen, retirees, and the Government in the bodies.

153. The right to health includes universal, egalitarian access to the actions and services directed towards promotion, protection, and recovery of health (article 196 of the federal Constitution).

154. The social security system, which is financed through contributions and is mandatory, shall provide coverage in the event of illness, disability, death, and old age; maternity protection, especially for pregnant women; protection for workers who are involuntarily unemployed; maintenance allowances and aid for the dependants of low-income workers; and income and pensions for the spouses, companions, or dependants of workers, male and female alike (article 210 of the federal Constitution).

155. Social assistance shall be provided to any person requiring such assistance, regardless of such person's contribution to the social security system, the objectives of which shall be the protection of the family, maternity, childhood, adolescence, and old age; assistance to needy children and adolescents; the promotion of the integration into the labour market; the recovery and rehabilitation of the disabled and their integration into community life; a guaranteed monthly benefit equivalent to one minimum wage to the disabled and the elderly who can show that they do not have the means to support themselves and that their families do not have the means to support them either, as set forth in the law (article 203 of the federal Constitution).

156. Among the rights enumerated in article 6 of the Constitution, one of the more noteworthy is education. It is a universal right and constitutes a duty of the State and family, which is to be promoted and encouraged with the collaboration of society as a whole, the aim being to enable individuals to develop to the fullest of their potential, to prepare them for the exercise of their citizenship, and to qualify them for work (article 205 of the federal Constitution).

157. The principles underlying education are: (a) equal conditions of access to and continuation in school; (b) the freedom to learn, teach, research, and express thoughts, art and knowledge; (c) the pluralism of academic ideas and concepts and the coexistence between public and private teaching institutions; (d) free public education in official schools; (e) the acknowledgement of the value of teaching professionals who shall be guaranteed, in accordance with the law, career plans as public school teachers, including a minimum professional salary and admission exclusively granted by means of public entrance exams and the presentation of academic and professional credentials; (f) a democratically administered public education system, as prescribed by law; (g) guaranteed quality standards.

158. The duty of the State in education shall be carried out by ensuring: (a) mandatory and free primary education, including the assurance that it be offered free of charge to all those who did not have access to it at the appropriate age; (b) progressively universalized secondary school education free of charge; (c) specialized schooling for the disabled, preferably within the regular school system; (d) service in day-care centres and pre-schools for children from the ages of 0 to 6 years; (e) access to the highest levels of education, research, and artistic creation, on the basis of each individual's abilities; (f) the offering of regular night courses suitable to the student's conditions; (g) assistance to elementary school students by means of supplementary programmes that provide school material, transportation, meals, and health assistance.

159. The federal Constitution stipulates the minimum percentage of revenues derived from taxes, included those stemming from transfers, that each federal unit is to apply toward education. The union must apply 18 per cent annually, while the States, the Federal District, and the municipalities must apply 25 per cent of such revenues. It must be noted that the portion of collected tax revenues transferred by the union to the States, the Federal District and the municipalities, or by the States to the respective municipalities, is not considered, for purposes of the calculation referred to above, revenue of the State. Note that disregard for the application of the minimum required percentages of revenue arising from State taxes in the maintenance and development of the educational system may provide cause and opportunity for federal intervention in the States, under the terms of article 34 of the federal Constitution.

160. Full exercise of cultural rights as well as access to sources of Brazilian culture are to be ensured by the State, which is also entrusted with the task of supporting and encouraging the appreciation and dissemination of cultural manifestations (article 215, heading, of the federal Constitution), as well as popular, indigenous and Afro-Brazilian cultural expressions and of other groups that have made a relevant contribution to Brazilian culture (art. 215, para. 1).

161. Respect for participation in cultural activities is assured through the establishment of minimum content in primary schools, so as to ensure respect for national and regional cultural and artistic values (article 210, heading, of the federal Constitution).

162. In advancing the dignity of the human beings as one of its basic principles (article 1, III, of the Federal Constitution), in promoting the well-being of all persons, without prejudice for

origin, race, sex, colour, age, or any other types of discrimination, as one of its fundamental objectives (art. 3, IV), in basing the nation's international relations on the principle of the repudiation of racism (art. 4, VIII), and, lastly, in establishing the practice of racism to be a non-bailable and imprescriptible crime (art. 5, XLII), the Brazilian State cannot permit discriminatory practices in the access to public places and services.

163. The law in force throughout the country prior to the issuance of Law No. 7716, of 5 January 1989, was the Afonso Arinos Law (Law No. 1390, of 3 July 1951), which made refusal on the part of public or private establishments to serve, attend or receive any person on account of his race or colour a criminal offence. It also stipulated as a criminal offence, punishable by simple imprisonment (a private form of confinement which is the most lenient on the scale of penalties), the creation of any obstacle to the obtainment of employment in public or private companies based on racial motives.

164. With the enactment of Law No. 7716/89, this conduct was elevated to the category of a felony, punishable by reclusion (a private form of confinement which is the most severe on the scale of penalties). Articles 5 and 7, to 12 of the law typify the actions mentioned above, most of which are punishable by three years' reclusion, with the sole exception of article 7, which typifies conduct that prevents access or denies lodging in hotels, boarding houses, inns or any similar establishment, and is punishable by three to five years' reclusion.

165. The legislation adopted by the States with regard to this issue also bears mention. As an example, there are six state laws that prohibit discrimination in the access to social elevators or other locations, such as bars, restaurants, hotels, and other public places, punishable by an administrative fine and the placement of a notice prohibiting discrimination with respect to access to social elevators and buildings. In regard to this point, the following should be noted: (a) Alagoas State Law No. 4528, of 8 July 1996, which subjects persons who practise discrimination in the use of elevators to a fine which may be increased by 100 per cent in the event of a repeat offence; (b) Espírito Santo State Law No. 5260, of 3 September 1996, which prohibits any type of discrimination in the access to elevators all public or private commercial, industrial, or multifamily or mixed residential buildings in the State by reason of race, sex, colour, origin, social status, age, disability or diseases that are not transmittable by casual social contact; (c) municipal Law No. 1568, of 10 July 1996 of João Pessoa, the capital of Paraíba, which prescribes a fine in the amount of 50 UFIRs (approximately US\$ 30) and, in the event of a repeat offence, the revocation of the operating licence for any commercial and service establishment that practises racial discrimination; (d) municipal Law No. 5857, of 9 January 1987, of the city of Porto Alegre, capital of Rio Grande do Sul, which stipulates the revocation of an operating licence following a judicial decision that shows discrimination on the part of a commercial establishment, club, and entertainment house and a fine, to be doubled in the event of a repeat offence, for residential condominiums that practise discrimination by engaging in racial or colour prejudice; (e) municipal Law No. 10040, of 8 September 1986, of the city of São Paulo, capital of the State of São Paulo, which determines the revocation of operating licences for commercial establishments that practise discrimination which is incompatible with the principle of equality, following a prior administrative proceeding; and (f) municipal Law No. 11995, of 16 January 1996, of the city of São Paulo, which forbids any type of discrimination in the access to elevators in all buildings, which action is punishable by a fine subject to a 100 per cent increase in the event of a repeat offence. Finally, the State of Rio de Janeiro deserves special mention. It has offered the most comprehensive and rigorous

legislation with regard to the issue herein under review, establishing different penalties for civil servants and private individuals or entities that practise racial discrimination. For the former, article 3 of Law No. 1814, of 14 April 1991, sets out the following penalties: fine; suspension; dismissal; suspension of retirement pension or access thereto; removal from a commissioned office or remunerated function. For the latter, article 4 of that same law establishes the following penalties: fine; temporary suspension of the right to participate in competitive bidding procedures before bodies and entities tied to the direct or indirect State administration or associated foundations; declaration of an individual's or entity's unfitness to partake in competitive bidding procedures or to contract with the bodies or entities mentioned above; recommendation that activities or establishments have their operating licenses suspended or be interdicted.

Article 6

166. As mentioned above, the Brazilian Constitution provides broad protection for equal rights and against discrimination. The 1988 Constitution, among the rights it enumerates, establishes the right to legal protection, providing for free access to the judiciary. Under the terms of article 5, XXXV, of the constitutional text, the law does not exempt the judicial branch from examining cases of breach of or threat to rights.

167. Article 5, section LV, of the 1988 Constitution establishes that plaintiffs, whether in a legal or administrative proceeding, and those accused of crimes shall be ensured the right to ample defence in the trial proceedings by the adversary system and by legal remedies, through the use of the means and resources intrinsic to such system. The Brazilian State, as ordered by the Constitution, shall provide full and free legal assistance to those who show that they do not have the means to pay for their own defence.

168. The Brazilian legal framework sets out relevant legal mechanisms in order to remedy and correct cases of illegality and abuse of power. Among the constitutional guarantees, the following bear mention: (a) habeas corpus shall be granted whenever a person suffers or is in danger of suffering violence or coercion against his freedom of locomotion, on account of illegal actions or abuse of power (art. 5, sect. LXVIII); (b) a writ of mandamus (either individual or collective) shall be issued to protect a clear and perfect right not covered by habeas corpus or habeas data, whenever the party responsible for the illegal actions or abuse of power is a public official or an agent of a corporate legal entity in the exercise of government duties (art. 5, sect. LXIX and LXX); (c) habeas data shall be granted to ensure the knowledge of information related to the person of the petitioner, contained in records or databanks of government agencies or of agencies of a public character, as well as to correct data, when the petitioner does not prefer to do so through a confidential process, whether judicial or administrative (art. 5, sect. LXII); (d) a writ of injunction shall be granted whenever the absence of a regulatory provision disables the exercise of constitutional rights and liberties, as well as the prerogatives inherent to nationality, sovereignty and citizenship (art. 5, sect. LXI); (e) any citizen is considered a legitimate party to file a people's legal action with a view to nullifying an act injurious to the public property or to the property of an entity in which the State participates, to administrative morality, to the environment, and to the nation's historic and cultural heritage, and the author shall, save in the case of proven bad faith, be exempt from judicial costs and from the burdens arising from defeat; (f) a people's civil legal action for purposes of protecting collective and broad rights.

169. With respect to a people's civil legal action, note that even though this provision is not included in the chapter devoted to the fundamental rights and guarantees of the federal Constitution, it constitutes one of the most important guarantees to the constitutionally assured rights. Law No. 7347, of 24 July 1985, establishes that the procedural instrument may be used to determine responsibility, which may result in the obligation to perform or not perform a certain action, for moral and material damages caused to the environment, the consumer, property, and rights having artistic, aesthetic, historic, tourist, or pictorial value, for any other broad or collective interest, and for violations against the economic order.

170. All legal decisions must be well founded, under penalty of nullity (article 93, sect. IX, of the federal Constitution), and may be subject to review at a higher stage of appeal of the judiciary. The constitutional text assures all the right to petition the Government in defence of rights or against illegal acts or abuse of power (art. 5, XXXIV, a), as well as obtain certificates from government offices for the defence of rights and clarifications concerning situations of personal interest (art. 5, XXXIV, b).

171. With regard to the practice of racial discrimination, the Constitution, as has already been mentioned, makes racism a non-bailable and imprescriptible crime, subject to confinement. As concerns just satisfaction or compensation for damages caused to the victims of racial discrimination, article 5, X, of the Brazilian Constitution determines that the right to privacy, private life, honour, and the image of persons are inviolable, assuring such persons the right to compensation for material or moral damages resulting from the violation of these rights;

172. Brazilian jurisprudence is inconsistent and heterogeneous on the issue of racial discrimination. On the one hand, there is a legal tack that applies the precepts contained in the Constitution, conventions, and law (especially Laws Nos. 7716/89 and 9459/97), insofar as racial discrimination is punished or the payment of compensation for moral damages is required in cases of discrimination. On the other hand, there are decisions that do not punish racial discrimination on the grounds of the absence or insufficiency of evidence or even malicious fraud, which is considered a subjective element of the crime. The latter point requires that "racial hatred" be proved, a difficult task to be sure. There are also cases that the victims classify as race crimes (under the terms of Law No. 7716/89) that are then classified as slander, under the terms of Law No. 9459/97 (which added article 140 to the Criminal Code, in which the crime of slander is typified). Let us reiterate that, pursuant to Law No. 9459/97, if the slander consists in the use of elements associated with race, colour, ethnicity, religion or origin, the sentence shall be confinement for a period of one to three years and a fine.

173. Thus, the law sets out to draw a distinction between generic libel and that rooted in discrimination (by reason of race, colour, ethnicity, religion or origin), conferring on the latter a more severe legal treatment. Even if the treatment of this latter form of libel is more severe, it remains weaker than the treatment prescribed for the crimes set forth in Law No. 7716/89. In addition, the crime of libel requires a private criminal legal action, for which a period of only six months is provided to file a complaint, while the crime of racism requires a public criminal legal action. For this reason, when a particular type of conduct is reduced from racism to libel the victim is forced to file his complaint within the brief remaining period of six months, such that, at times, the crime goes unpunished.

174. In the following pages a summary of specific cases is presented, which aims to illustrate the recent positions adopted by the judiciary with respect to racial discrimination. Note that the selection of cases only attends to the qualitative criteria (and not the quantitative criteria). The objective is not to cover all the legal decisions on this issue. The cases were classified in three groups: (a) legal decisions that punish racial discrimination, under the terms of Law Nos. 7716/89 and 9459/97); (b) legal decisions that set the compensation to be paid for moral damages resulting from racial discrimination; and (c) legal decisions that do not punish racial discrimination due to insufficient evidence or the absence of libel, considered a subjective element of the crime.

Article 7

175. Article 205 of the Brazilian Constitution determines that education is a right to which all are entitled and a duty of the State and the family. According to the Brazilian Constitution, the principal aim of the educational system is to enable individuals to develop to the fullest of their potential, to prepare them for the exercise of their citizenship, and to qualify them for work.

176. The constitutional text endeavours to put into effect the State's duty in relation to education by ensuring mandatory and free primary education; progressively universalized secondary school education free of charge; specialized schooling for the disabled, preferably within the regular school system; day-care and pre-school services for children from the ages of 0 to 6 years; access to the highest levels of education, research, and artistic creation, on the basis of each individual's abilities; the offering of regular night courses suitable to the student's conditions; assistance to elementary school students by means of supplementary programmes that provide school material, transportation, meals, and health assistance.

177. The access to compulsory and free education is a subjective public right, pursuant to paragraph 1 of article 208 of the Brazilian federal Constitution. The competent authority shall be liable for the failure of the Government to provide compulsory education, or for its irregular provision.

178. Directives are established for primary education establishing minimum curricula intended to ensure a common basic education and respect for national and regional cultural and artistic values (article 210 of the Brazilian Constitution). To assure adequate resources for the development and maintenance of the educational system, article 212 of the 1988 Constitution determines that the union must apply, annually, never less than 18 per cent and the States, Federal District and municipalities, at least 25 per cent of their tax revenues, including those resulting from transfers, toward the educational system.

179. The Brazilian constitutional text includes a specific section on culture. Article 215 of the Brazilian Constitution mandates that the State shall ensure to all the full exercise of their cultural rights as well as access to the sources of national culture, while also supporting and fostering the appreciation and dissemination of cultural expressions.

180. The State must protect popular, indigenous and Afro-Brazilian cultural expressions and those of other groups that have made a relevant contribution to Brazilian culture. Pursuant to the Constitution, the law must establish incentives for the production and awareness of cultural expressions and values.

181. Pursuant to the federal Constitution, the member States seek to put into effect, in their respective regions, anti-discrimination educational policies. In regard to this effort, provisions contained in the following State constitutions deserve mention: State constitutions of Acre (arts. 198, IX, and XII, 253), Amapá (art. 280, I and II), Goiás (art. 156, VII), Maranhão (art. 262), Mato Grosso do Sul (art. 189), Pará (art. 273, I), Paraná (art. 178, I), Rio de Janeiro (art. 303), Rondônia (art. 191, III), São Paulo (art. 237, VII), and the Organic Law of the Federal District (art. 235), all of which enshrine the right of all persons to access and remain in school, with all distinctions based on origin, race, social class prohibited, while also prescribing the elimination of educational material containing all discriminatory allusions to blacks, women and indigenous persons, the purpose being to ensure that educational material is taught without prejudice of any nature. These texts also determine the incorporation of curricula on the formative cultural and ethnic history of Brazil, the most noteworthy of which are the Organic Law of the Federal District, which sets forth the inclusion in the curricula of schools and universities content on the struggle of women, blacks, and indigenous persons throughout human and Brazilian history, and the Bahia State constitution, which mandates the inclusion of disciplines in the State school system, and training and specialized courses offered to civil servants and military personnel, that highlight the participation of blacks in the historical development of Brazilian society.

182. To these should be added article 209 of the Rio Grande do Sul State constitution, which sets out respect for the promotion of a plurality of languages in the schools, to the extent it meets a significant demand among interested or ethnically diverse groups. Finally, mention should be made of the Pará State constitution (art. 336), which sets forth the adoption of remedial measures, as a means for overcoming real inequalities, by establishing a system of preferences for discriminated persons that centres on ensuring they have a participatory role in the job market, education, health care, and the exercise of their social rights.

***Quilombos* (runaway slave communities)**

183. As mentioned above, article 215 of the 1988 Constitution establishes that the State shall guarantee the full exercise of cultural rights, access to sources of national culture, and support and incentives for the appreciation and dissemination of cultural expressions. In paragraph 1 of the same article, the Constitution determines that the State “shall protect the expressions of popular, indigenous, and Afro-Brazilian cultures, as well as those of other groups participating in the national civilization process”. To this end, article 216 recognizes Brazil’s heritage to include “the assets of a material and immaterial nature, taken individually or as a whole, which bear reference to the identity, action, and memory of the various groups that form the Brazilian society”. Paragraph 5 of article 216 establishes that “all documents and sites bearing historical reminiscence to the ancient communities of runaway slaves shall be protected as national heritage”.

184. Throughout Brazil’s slave history, runaway slaves formed communities known as *quilombos*. One of the largest and most famous is the Palmares Quilombo, located between the States of Alagoas and Pernambuco, where thousands of people converged throughout the seventeenth century. Its principal leader was Zumbi. Many *quilombos* were violently destroyed by white settlers. However, many others survived this persecution and preserved unique social organizations and cultural expressions.

185. Article 68 of the Temporary Constitutional Provisions Act of the 1988 Constitution determines, pursuant to articles 215 and 216, that “final ownership shall be recognized for the remaining members of the runaway slave communities who are occupying their lands, and the State shall grant them the respective title deeds”.

186. According to the Ministry of Culture’s Palmares Cultural Foundation, in March 2000 (*Folha de São Paulo*, 12 March 2000) there were 724 remaining areas pertaining to runaway slave communities, with approximately 80,000 residents, distributed as indicated in table 1 below:

Table 1
Distribution of the remaining runaway slave communities,
based on data from the States and regions (2000)

State	Number
Acre	-
Amazonas	1
Amapá	1
Pará	36
Rondônia	2
Roraima	-
Tocantins	1
Alagoas	10
Bahia	245
Ceará	5
Maranhão	172
Paraíba	13
Pernambuco	15
Piauí	25
Rio Grande do Norte	15
Sergipe	23
North-east Region	523
Espírito Santo	15
Minas Gerais	69
Rio de Janeiro	14
São Paulo	33
South-east Region	131
Paraná	1
Rio Grande do Sul	9
Santa Catarina	4
South Region	14
Federal District	-
Goiás	7
Mato Grosso	2
Mato Grosso do Sul	6
Centre-West Region	15
Brazil	724

Source: Fundação Cultural Palmares (Folha de São Paulo, 12 March 2000).

187. These black communities started to be identified in 1995. The black community of Boa Vista, in the municipality of Oriximiná, in the northern part of the State of Pará, was the first community to receive a permanent title deed to its land in 1995. Of the 724 remaining areas of runaway slave communities, only 31 were already duly recognized and only 5 had received permanent title deed to their lands. In December 1999, the Palmares Cultural Foundation was charged with the responsibility to permanently recognize and issue title deeds to the remaining lands belonging to the runaway slave communities.

188. São Paulo is the only State in the federation that has a programme for identifying and developing those communities, which is run through a working group formed by the Government in 1997 and headquartered in the São Paulo State Land Institute Foundation (ITESP). The group enjoys broad representation in civil society and bodies connected to the issue, including State secretariats, the State Attorney-General's Office, the Council on the Defense of the Historical, Archeological, Artistic and Tourist Heritage, the Council on the Development of the Black Community of the State of São Paulo, the State Black Entities Forum, and the Subcommittee for Black Members of the Brazilian Bar Association's Human Rights Commission. According to the ITESP Foundation, in 1999 there were 23 remaining runaway slave communities in nine municipalities of the State of São Paulo, encompassing an area of 43,769 hectares (108,156 acres) and housing 725 families. Of the areas identified, only seven were officially recognized through the issuance of title deeds to the lands.

189. The Brazilian Constitution devotes an entire chapter to the indigenous peoples. The social organization, customs, beliefs, and traditions of indigenous peoples are recognized, as are their original rights to lands they have historically occupied, with the union having the legal authority and duty to demarcate, protect, and require the respect for all their property (article 231 of the federal Constitution).

190. The lands historically occupied by indigenous peoples and on which they have resided permanently are inalienable and unavailable, and their rights to them imprescriptible, under the terms of paragraph 4 of article 231.

191. The removal of indigenous groups from their lands is forbidden, except *ad referendum* of the National Congress, in cases of catastrophe or epidemic that place their respective populations at risk, or in the interest of national sovereignty, following deliberation by the National Congress, with the provision that in any of the cases above, such lands shall be returned immediately after the threat is deemed to have passed (article 231, paragraph 5, of the federal Constitution).

192. Pursuant to paragraph 6 of the Brazilian Constitution, acts aimed at occupying, dominating, and taking possession of the lands referred to in article 231, or exploiting the natural riches of the soil, rivers, and lakes therein, are null and void, and shall have no legal force, except in cases deemed by the union to be of relevant public interest, in which cases there shall be no right to compensation or legal action against the union as a result of the nullification or voiding of a right, except as regards improvements stemming from the good faith occupation of such lands, as provided for by law.

193. Article 232 of the federal Constitution establishes that indigenous peoples, their communities, and organizations have legal standing under the law to take legal action to defend their rights and interests, with the Public Ministry intervening in all the procedural acts of such actions.

194. The issue of indigenous peoples is not only addressed in chapter VIII of title VIII of the federal Constitution. Many other provisions of the constitutional text are intended to govern this matter. With regard to competence, the union has the exclusive legal authority and duty to legislate on the indigenous populations, pursuant to article 22, XIV. Disputes over the rights of indigenous peoples are to be judged by the federal courts (art. 109, XI).

195. Among the institutional functions of the Public Ministry, the duty to provide legal defence for the rights and interests of indigenous populations bears mention (article 129, V, of the federal Constitution).

196. In regard to the subconstitutional system, article 6, III, of the Brazilian Civil Code determines that indigenous peoples are relatively incapable of carrying out certain acts. However, this subconstitutional provision conflicts with article 232 of the federal Constitution referred to above, which legitimates legal actions by indigenous persons for purposes of defending their interests and rights.

197. Article 4 of the draft reform of the Civil Code currently under consideration in the National Congress establishes that the capacity of indigenous peoples shall be defined and regulated in special legislation.

198. Decree No. 3156, of 27 August 1999, sets forth provisions regarding the conditions for providing health assistance to indigenous populations within the scope of the Single Health System.

199. In June 2002, the federal Senate was in the final stages of reviewing International Labour Organization Convention No. 169 concerning indigenous and tribal peoples in independent countries. The expectation is that ratification of the Convention, recommended by the Committee on the Elimination of Racial Discrimination (CERD/C/49/Misc.9) in its considerations on the tenth report submitted by Brazil, will be forthcoming shortly. It should be noted, however, that Brazil has recognized the rights of indigenous peoples to their lands since 1966 when the Brazilian State ratified ILO Convention No. 107 - concerning indigenous and tribal populations.

200. Brazil's preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, in 2001 fostered intense national reflection on the rights of indigenous peoples and nourished more updated perceptions of the issue within civil society. The Government of Brazil has participated actively in the negotiations under way for the adoption of an International Declaration on the Rights of Indigenous Peoples and, within the scope of the Organization for American States, a similar Inter-American Declaration, which would assure the rights of indigenous peoples. Brazil has taken part in both negotiations, putting forth constructive positions in defence of indigenous

peoples. In this context, Itamaraty has sought to expand the dialogue not only with those parts of government having responsibilities in these matters but also with representatives of civil society and indigenous leaders.

Government factors, difficulties, and actions

201. According to IBGE in its National Sampling Survey of Households (PNAD), of 1996, the indigenous population stood at 251,422, or approximately 0.2 per cent of the estimated national total of 154,360,589 that year. The majority of the 200 indigenous peoples are concentrated in the north and centre-west regions of the country.

202. However, data provided by the National Indian Foundation (FUNAI), indicates the presence of 325,652 Indians. Over 50 per cent of the indigenous population of the country is located in the States of Amazonas, with 89,529 indigenous inhabitants, Mato Grosso do Sul, with 45,259 indigenous inhabitants, and Roraima, with 37,025 indigenous inhabitants.

203. Pursuant to the 1988 Brazilian Constitution, the State has the duty to safeguard the territories of the indigenous societies by identifying and demarcating them, thereby preserving their integrity and that of the indigenous populations. Indigenous lands correspond to 929,209 square kilometres (358,769 square miles) of the national territory, or 10.8 per cent of the total. According to FUNAI, there are 561 indigenous lands in Brazil, 315 of which, in an area covering 738,344 square kilometres (285,076 square miles), have been demarcated, approved, and registered. There are also 54 lands that have only been delimited, 23 that have been identified, and 169 yet to be identified. Of the total number of indigenous lands, 383 are located in Legal Amazonia (*Amazônia Legal*).

204. A joint project involving the Government of Brazil, the international community, non-governmental organizations, and indigenous organizations - known as the Integrated Project for the Protection of Indigenous Populations and Lands in Legal Amazonia - has undertaken an effort to promote and legally register 151 of the 383 indigenous lands in Legal Amazonia. According to FUNAI, thus far 39 lands have been demarcated.

205. A 1997 report by the Indigenous Missionary Council (CIMI) on violence against indigenous peoples enumerated a number of ways in which the rights of indigenous peoples were violated, both in terms of aggression against indigenous peoples themselves and their property. Indigenous persons were the victims of at least 23 cases of murder involving 26 victims; another 13 were the victims of attempted murder; 15 cases involved death threats against 2,800 individuals; 116 individuals were the victims of bodily harm; almost 400 indigenous persons were the victims of coercion, and another 170 were unlawfully expelled from their indigenous lands. In addition to these cases, numerous other acts occurred, from death due to disease, domestic violence, private incarceration, rape, torture, even enslavement.

206. With regard to the violence perpetrated against Indians, the Galdino case, of 20 April 1997, deserves special mention. Galdino Jesus dos Santos, a Pataxó Indian, was sleeping at a bus stop in the city of Brasília. Five middle-class youths poured alcohol on Galdino and set him on fire. Galdino, who had travelled to Brasília to demand that the procedures for recognizing the rights of the Pataxó to their lands be expedited, died as a result of his burns.

Although the Public Ministry accused the youths of murder, in August 1997 the presiding judge of the lower court hearing the case judged the crime to have been assault and battery followed by death.

207. In addition to the violence against indigenous peoples, acts of aggression against indigenous property also bear mention, including more than 1,700 cases in which the demarcation of indigenous lands was disputed; more than 40 cases of the illegal exploitation, theft, or robbery of wood; and dozens of other cases on indigenous lands involving illegal hunting and fishing, deforestation, unlawful extractive activities, and land invasions. According to the CIMI report, whereas in 1995 there were 1.4 cases of acts of aggression committed against indigenous property for every piece of indigenous land, by 1996 this average had risen to 3.3 per piece of indigenous land. These attacks affected 113 indigenous societies and at least 90 individuals.

208. It is also important, however, to note some of the advances made following the establishment of the National Human Rights Programme in 1996, which considered a variety of measures intended to provide full protection to indigenous populations. Among these, the following deserve mention: the integration of the activities of FUNAI and the Ministry of Health's Department of Infecto-Contagious Diseases, for purposes of developing joint programmes aimed at preventing those specific types of diseases in indigenous populations (the initial experiments were performed with the Kaiapós of Amapá); 22 per cent of the indigenous lands were addressed directly by the federal Government, of which 36 were registered, 11 approved, 56 demarcated, 13 delimited, and 4 identified (together, the 120 lands involved total 44 per cent of the indigenous territory recognized by the union); the implementation of Decree No. 1775, of 8 January 1996, and Administrative Ruling No. 14, establishing a new approach to the administrative demarcation of indigenous lands, so as to avoid that the constitutionality of areas of great importance that had been previously demarcated be questioned; and the process of clearing intruders from Yanomami lands, carried out by FUNAI, with the support of the federal police and the armed forces, who mobilized a contingent of more than 1,000 men in February 1998 and which led to the removal of miners from indigenous areas in Roraima, the seizure of machinery, and the arrest of nearly 100 people.

209. Actions stemming from the attention given to the indigenous problem can also be evidenced in a variety of legislative initiatives. Title XIV of the Draft Bill of the Criminal Code - 1998 (Crimes against the Democratic State), currently under consideration in the Brazilian Congress, devotes a chapter specifically to the issue of crimes against indigenous communities (chap. V). Five articles of the Draft Bill of the Criminal Code broadly define types of crimes that specify new instruments for protecting indigenous populations in addition to those already existing. In this respect, article 401 of the Draft Bill of the Criminal Code - 1998 addresses the invasion of indigenous lands and prescribes the following crime: "Invading, through the use of violence, seriously threatening or defrauding, or with the aid of more than two persons, demarcated indigenous lands or reserves, for purposes of dispossession (*disseisin*): Sentence - Two to five years' confinement, and a fine, in addition to the punishment corresponding to the act of violence."

210. It is also worth mentioning the provision of article 402, which classifies unlawful cultivation or research, specifying the following crime as a crime: "Cultivating or conducting research on natural resources without authorization on demarcated indigenous lands or reserves,

or storing, thereon, equipment or machinery intended for such activities: Sentence - Two to five years' confinement, and a fine. Stand-alone Paragraph - Those who exploit, by any means, the resources contained in the soil, rivers, or lakes of demarcated indigenous lands or reserves, or induce the inhabitants thereof to exploit or sell such resources, shall incur the same penalty." For its part, article 403 sets forth provisions on actions injurious to customs, determining, as actionable, "publicly ridiculing [of] Indians based on origin, language, customs, beliefs, or culture; scorning or slandering an object associated with an indigenous belief, custom, or cultural tradition; preventing or disrupting such activities; using the image of an Indian, even with his consent, as an object or for purposes of exhibition in an obscene manner: Sentence - One to nine months' detention, and a fine. Stand-alone Paragraph - The sentence shall be increased by one sixth if such act is committed using the available public communication mediums."

211. Article 404 refers to the corruption of minors, and establishes the following crime: "Inducing or instigating a member of the tribal community, or an indigenous person who is not a member of such community, to obtain or consume alcoholic beverages: Sentence - One to four years' confinement. Stand-alone Paragraph - Those who sell, grant, supply, distribute alcoholic beverages to an indigenous person who is not a member of the tribal community shall incur the same penalty." Finally, article 405 addresses increases in the sentences for the sanctions set out in the articles referred to above: "The sentences prescribed in this chapter shall be increased by one third if the agent is involved in providing, through public or private activities, assistance to the indigenous person."

212. The member States of the Federative Republic of Brazil have also endeavoured to adopt measures to augment the protections extended to indigenous populations. Some of the measures that should be highlighted include specific measures taken by the State of São Paulo, such as: guaranteeing indigenous peoples differentiated schooling (intended to preserve their customs), by means of seminars and indigenous education programmes held in the villages themselves for students in grades 1 through 4 and in State schools for students in grades 5 through 8, and for which purpose, furthermore, 59 of the teachers working in the villages were provided with appropriate training; introducing the Guarani language in four language-study centres and performance evaluations and Portuguese-language instruction for students in grades 1 through 4; promoting the dissemination of information on indigenous peoples and their rights, primarily through communication mediums and in the schools, as a means for combating the discrimination and violence practised against indigenous peoples and their cultures; and, lastly, collaborating with the federal Government in providing emergency assistance to the most vulnerable indigenous communities in the State, by means of the Indigenous People Emergency Assistance project, which provides food baskets and conducts emergency programmes in the area of health.

III. GENERAL COMMENTS ON RACISM AND DISCRIMINATION IN BRAZIL'S SOCIAL SETTING

213. All the international instruments, while setting out specific objectives in the area of human rights, share the common objective of ensuring the value of equality by imposing on the States that are parties to such instruments the duty to assure the free and full exercise of human rights without discrimination of any kind.

214. Note that in conformity with the National Human Rights Programme, the executive branch has the legal authority and duty to promote the broad dissemination of the international treaties ratified by Brazil, which has been carried out by means of publications, debates, seminars, and training courses developed by the Government in partnership with organizations representing civil society.

215. In addition to the ratification of those international treaties, it is important to mention that with the passage of Legislative Decree No. 89, of 3 December 1998, Brazil recognized the jurisdiction of the International Court of Human Rights, wherein the declaration expressly recognizing that body's jurisdiction is contained, under the terms of article 62 of the American Convention. In 2002, the Brazilian State also acceded to the system for receiving individual petitions set forth in article 14 of the Convention on the Elimination of All Forms of Racial Discrimination, and in July 2002 submitted a proposal that Brazil accept the mechanisms for receiving individual petitions contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

216. The Government of Brazil notes the following legislation currently in force that relates to the effort against racism and discrimination:

(a) Law No. 7716/89, of 5 January 1989, sets forth the crimes arising from racial and colour prejudice, prescribing racism as a non-bailable and imprescriptible crime (prior to the 1988 Constitution, racism was considered a misdemeanour);

(b) Law No. 8069, of 13 July 1990, sets out provisions on the Statute on Children and Adolescents, considered one of the most advanced pieces of legislation on the issue, insofar as it establishes full protections for children and adolescents;

(c) Law No. 9029, of 13 April 1995, prohibits requiring certificates of pregnancy or sterilization, and other discriminatory practices, for purposes of admission to or maintenance of legal employment;

(d) Law No. 9140, of 4 December 1995, recognizes the persons disappeared because of their participation, or alleged participation, in political activities between 2 September 1961 and 15 August 1979 as deceased, placing the responsibility for such deaths on the State and granting compensation to the victims' families;

(e) Law No. 9263, of 2 January 1996, regulates article 226 of the federal Constitution, which addresses family planning;

(f) Law No. 9265, of 12 February 1996, regulates section LXXVII of article 5 of the federal Constitution, which sets forth provisions on the gratuity of the acts necessary for the exercise of citizenship;

(g) Decree No. 1904, of 13 May 1996, establishes the National Human Rights Programme, which for the first time confers on human rights the status of public Government policy and contains proposals for Government actions to protect and promote civil and political rights in Brazil;

(h) Law No. 9299, of 7 August 1997, determines that the Civilian Courts shall assume from the Military Courts the responsibility for prosecuting crimes involving malicious attempts against the life of individuals committed by military police;

(i) Law No. 9455, of 7 April 1997, defines and punishes the crime of torture as a non-bailable crime not subject to pardon or amnesty, for which the instigators, perpetrators, and those capable of preventing such crime shall be liable;

(j) Law No. 9799, of 26 May 1999, introduces rules on the access of women into the job market in the Consolidated Labour Laws;

(k) Law No. 9807, of 13 July 1999, establishes standards for the organization and maintenance of special programmes to protect victims and witnesses who are the subject of threats and establishes the Federal Assistance Programme for Threatened Victims and Witnesses;

(l) Law No. 10224, of 15 May 2001, sets forth provisions on the crime of sexual harassment;

(m) Decree No. 4228, of 13 May 2002, establishes, within the scope of the Federal Public Administration, the National Affirmative Action Plan;

(n) Decree of 13 May 2002 establishes the National Human Rights Programme II, which sets out goals for the promotion of economic, social, and cultural rights.

217. A detailed analysis of the data gathered by IBGE, presented in a more general manner in the item above, which updates the information contained in the core document on Brazil, indicates that, according to the population count conducted by IBGE there were 157,079,573 inhabitants in the country in 1996. Preliminary data of the census published in the first half of 2002 (performed in 2000) reveals that currently there are almost 169,590,000 inhabitants in the country. The information contained in the 2000 census concludes that the white population constitutes the majority in the country: 53.8 per cent of those surveyed consider themselves to be white, 39 per cent mestizo, 6.2 per cent black, 0.5 per cent Asian, and 0.4 per cent indigenous.

218. As stated in the introduction to this document, in relation to the 1991 census an increase was registered in the number of persons who identify themselves as black (6.2 per cent in 2000, compared with 5 per cent in 1991) and a decrease in the proportion of mestizo (39.1 per cent in 2000, compared with 42.6 per cent in 1991). Preliminary studies indicate that these results are the product of growing awareness on the part of Brazil's black population of its racial identity. This behaviour would indicate a significant change in the standards Brazilians use to identify and classify themselves.

219. There are 26 States, a Federal District, and more than 5,500 municipalities in Brazil. The States are grouped into five major regions: the North, North-east, South-east, South, and Centre-west. According to the UNDP *Human Development Report, 2000*, in 1998 Brazil's Human Development Index (HDI) was 0.747. In 1970, Brazil registered an HDI of 0.494.

According to IPEA, in 1998 Brazil had a gross domestic product of US\$ 775 billion. Per capita income was estimated at \$4,802 for 1998. In 1997, the economically active population totalled 75,213,283.

Table 2
Percentage distribution of the Brazilian population,
by colour or race, in the major regions, 1998

	White	Black	Mestizo	Asian or indigenous
North*	29.1	2.2	68.1	0.7
North-east	29.7	5.7	64.3	0.2
South-east	64.0	7.3	27.5	1.1
South	82.9	3.0	13.5	0.6
Centre-west	46.9	3.7	48.3	1.1
Total: Brazil	54.0	5.7	39.5	0.8

Source: PNAD, 1998, Compiled Social Indicators, 1991.

* Data does not include rural populations of Rondônia, Acre, Amazonas, Roraima, Pará, and Amapá.

220. The information regarding the individual's colour was only obtained at the time IBGE performed the demographic censuses, which are conducted every 10 years, and PNAD. The 1976 PNAD recorded 135 different colours by which Brazilians identified themselves. It was as a result of that vast list that the IBGE established five basic racial categories (or colours) by which to classify its data: white, mestizo, black, Indian and Asian. Mestizos are all non-whites who are not black, Asian, or Indian. Indians did not obtain their own designation until the 1991 demographic census. Beginning in 1987, PNAD initiated the process of systematically collecting information relative to colour on the basis of a statement provided by the respondents themselves in confidential surveys. Therefore, it is the individual who defines his colour in the IBGE surveys, on the basis of the five options provided. A survey on racial prejudice conducted by the *Folha de S. Paulo* in 1995, however, found a very small percentage of respondents who automatically identified themselves as mestizos (6 per cent). The majority classified themselves as light or dark brown (43 per cent).

221. As specified above, the preliminary conclusions drawn from the initial results of the 2000 census published in mid-2002 seem to indicate a change in this behaviour. IBGE is currently considering implementing changes in the methodology it uses to classify the races that would involve combining the black, brown and mestizo categories into a single black category.

222. During the 2002 presidential campaign, "Vox Populi" began, following a request from IPEA, providing a racial breakdown of their statistical surveys in order to identify the profile of the Brazilian electorate and its voting tendencies. It was the first instance in which a public opinion institute had adopted this kind of criteria in Brazil.

223. The difficulties in classifying data on the basis of colour is not a recent one in Brazil. However, civil society organizations engaged in the fight against racial discrimination have requested that data be broken down along these lines because of the importance of assessing more precisely the different ways in which discrimination manifests itself, as well as identifying more accurately the ethnic and racial differences found within the various sectors of society.

224. Therefore, although there is no consensus among the various research organizations with respect to the criteria used in classifying the information relative to colour, it is possible to identify the different living conditions to which groups in Brazil are subject. The 1996 PNAD revealed that in the area of basic sanitation in Brazil the condition of blacks is unfavourable in comparison to whites. The data below refers to households headed by whites or blacks or mestizos.

Table 3
Distribution of access to water supply and sewage, by colour or race, in the major regions of Brazil, 1996 (in percentage)

Region	Treated water		Sewage	
	Blacks and mestizos	Whites	Blacks and mestizos	Whites
North	54.8	63.0	41.6	56.5
North-east	52.6	64.2	33.5	47.0
South-east	52.6	89.1	74.8	86.8
South	52.6	77.0	50.0	69.2
Centre-west	76.8	72.0	35.1	43.6
Total: Brazil	64.7	81.0	49.7	73.6

Source: IBGE, PNAD, 1996.

Note: excludes the rural population of Rondônia, Acre, Amazonas, Roraima, Pará, and Amapá.

225. Housing indicators are another area in which evidence of colour-based inequality in the living conditions of the Brazilian population can be found. IBGE classifies housing conditions on the basis of two basic housing indicators and an intermediate one: adequate, semi-adequate and inadequate. These indicators are comprised by the following items: construction quality (floors, walls, roof); the material used (wood, brick, tile, zinc, etc.), the available service infrastructure (sewage and sanitation installation, water, garbage, and energy) and the occupational density of the premise.

226. On the basis of these criteria, a dwelling is considered adequate when materials such as prepared wood, carpet, brickwork, tile, and concrete paving stone are used in the construction. An inadequate dwelling is one made of used wood, dirt, uncovered brick, and mud walls.

227. With regard to the availability of services, the dwelling is considered adequate when there is an energy network, trash collection and water supply provided from a general network, a bathroom in each household for the exclusive use of its residents, and a public sewage network

or a septic tank. In inadequate dwellings, a common bathroom is shared by more than one household, water is supplied from a well on or off the premises, a public faucet, or a water truck, garbage is burned, buried, dumped into rivers, or deposited in waste ground, and energy is either obtained from generators or non-existent, in which case the use of lanterns or candles is required.

228. Lastly, with respect to occupational density of the premise, dwellings with three or more residents per habitable room are considered inadequate (see IBGE, *Pesquisa sobre padrões de vida*, 1996/1997, p. 14). In a survey of living standards performed in two Brazilian regions - South-east and North-east - IBGE found the following information about households.

Table 4
Proportion of households, by level of adequacy, on the basis of the colour provided by the head of the household, period - March 1996/March 1997 (in percentage)

	White	Black/mestizo
Adequate	54	36
Semi-adequate	34	42
Inadequate	12	32

Source: Pesquisa sobre padrões de vida, 1996/1997, IBGE (1996b).

229. As the table shows, the percentage of white heads of households that have dwellings considered adequate is double that of black or mestizo heads of households. At the other extreme, inadequate housing affects a larger proportion of the households headed by a black or mestizo individual (32 per cent) than those headed by a white person (12 per cent). Even those dwellings considered semi-adequate are represented in a larger proportion by black and mestizo heads of households than white heads of households.

230. The data on infant mortality also indicates that blacks and mestizos account for a higher rate than do whites. For every group of 1,000 black or mestizo children, 62 do not live to the age of 1, while the national infant mortality rate of whites is 37 per 1,000 children. The table below presents the distribution in infant mortality rates by major Brazilian regions.

Table 5
Infant mortality rate, by colour or race, in the major regions of Brazil, 1996

Region	Blacks and mestizos	Whites
North	-	-
North-east	96.3	68.0
South-east	43.1	25.1
South	38.9	28.3
Centre-west	42.0	27.9
Total: Brazil	62.3	37.3

Source: IBGE, PNAD, 1996.

231. In 1977 infant mortality in Brazil totalled 87 per 1,000 live births, although the rate among whites was 76, while that of the black and mestizo population was 96. In 1987, improvements were recorded in the infant mortality rates by colour. The overall national rate fell to 58, with the rate among whites dropping to 43, while those of blacks and mestizos declined to 72.

232. Although infant mortality rates have steadily dropped, inequalities in the mortality levels based on colour persist. In 1996, for every 1,000 live births, 37.5 died before the age of 1. In 1998, the national infant mortality rate in Brazil stood at 36.1 according to IBGE (see *Síntese dos Indicadores Sociais*, 1999). The data (table 6 below) also indicate that in all regions of Brazil blacks and mestizos have a higher incidence of illiteracy than that found in the white population.

Table 6
Illiteracy rates of individuals 15 years and older, by race,
in the major regions of Brazil, 1997

Region	Total ^a	White	Black	Mestizo
North ^b	11.8	7.5	22.6	13.2
North-east	27.5	20.3	36.2	30.1
South-east	8.1	5.9	15.1	11.7
South	8.1	6.8	15.1	14.9
Centre-west	11.1	7.7	21.6	13.4
Total: Brazil	13.8	8.4	21.6	20.7

Source: PNAD, 1998 (IBGE, *Síntese de Indicadores Sociais*, 1999).

^a Includes people of Asian descent and indigenous populations.

^b Rural populations not included.

233. In all regions of Brazil, illiteracy among blacks is far higher than among whites. The illiteracy rate of the mestizo population is moderately lower than that of blacks, nonetheless illiteracy within this group is equally high when compared to the figures corresponding to whites.

234. At a nationwide level, illiteracy rates among the black and mestizo populations far exceeds the national average (13.8 per cent), while the rate among whites is below the average, specifically, 8.4 per cent.

235. The same general inequality is observed in the functional illiteracy rates presented in table 7 below. It should be noted that IBGE employs a methodological approach that defines functional illiteracy on the basis of the same criteria used by UNESCO, namely, "command of reading, writing, math calculations and science equivalent to a minimum of four years of schooling", formerly primary school (see *Síntese dos Indicadores Sociais*, 1999).

Table 7
**Functional illiteracy rates of individuals 15 years or older,
by race or colour, in the major regions of Brazil, 1998**

	Total ^a	White	Black	Mestizo
North ^b	30.5	23.3	47.4	32.9
North-east	47.8	38.0	57.7	51.5
South-east	23.1	19.2	35.0	30.0
South	23.2	20.8	34.5	36.9
Centre-west	27.3	21.9	37.3	31.7
Total: Brazil	30.5	22.7	41.8	40.7

Source: PNAD, 1998 (IBGE, *Síntese de Indicadores Sociais*, 1999).

^a Includes people of Asian descent and indigenous populations.

^b Rural populations not included.

236. In the case of functional illiteracy, the rate among the white population is lower than the national average, while rates among the black and mestizo populations are far higher. In all regions of Brazil, blacks and mestizos are proportionally more affected by functional illiteracy than whites.

237. Similar inequalities can be seen (table 8 below) in the average number of years of schooling for the groups surveyed. Based on the 1998 PNAD, IBGE found that blacks and mestizos in Brazil over the age of 10 complete an average of 4.4 and 4.5 years of schooling, respectively, figures which are below the national average of 5.6. Whites complete 6.5 years of schooling on average, that is, above the national average. The same situation is found in all regions of Brazil, that is, blacks and mestizos complete an average number of years of schooling below the regional average, while whites are always above those same regional averages. As the table below confirms, in no region of Brazil does the average number of years of schooling for blacks and mestizos surpass either the regional average or the national average.

Table 8
**Average number of years of schooling for individuals 10 years
and older, by race, in the major regions of Brazil, 1998**

	Total ^a	White	Black	Mestizo
North ^b	5.5	6.4	4.5	5.1
North-east	4.1	5.3	3.4	3.7
South-east	6.4	7.0	4.9	5.2
South	6.1	6.4	5.0	4.7
Centre-west	5.8	6.7	4.8	5.1
Total: Brazil	5.6	6.5	4.4	4.5

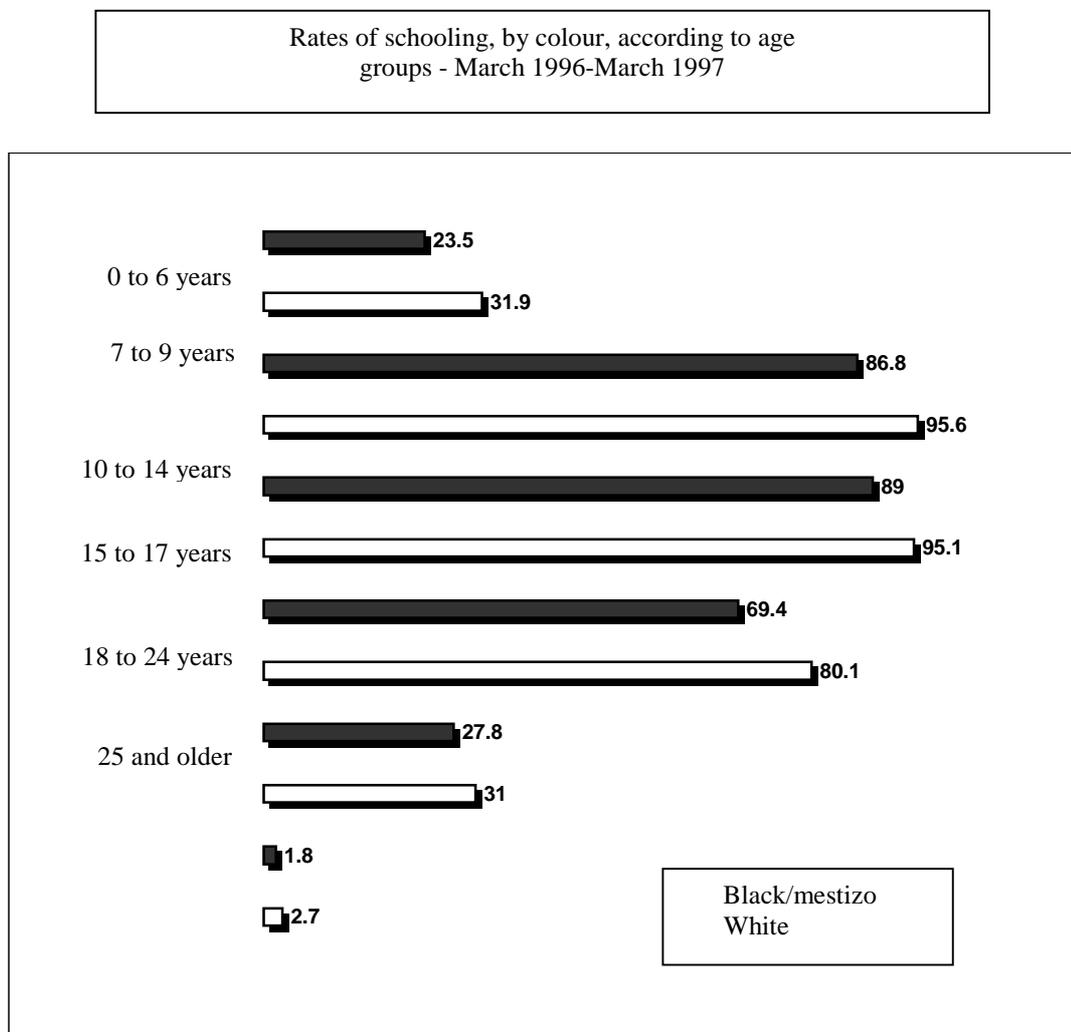
Source: PNAD, 1998 (IBGE, *Síntese de Indicadores Sociais*, 1999).

^a Includes people of Asian descent and indigenous populations.

^b The rural populations of Rondônia, Acre, Amazonas, Roraima, Pará, and Amapá not included.

238. The figure below presents the distribution in the inequality of access to schooling by age group.

Figure 1



Source: *Pesquisa sobre padrões de vida, 1996/1997*, IBGE (1996b).

239. The data presented in figure 1 above shows that, among the groups surveyed, inequalities prevail in the area of educational opportunities within every age group. The greatest disparities, however, are found among children 0 to 6 years of age and adolescents from the ages of 15 to 17.

240. A survey conducted by the Federal University Fluminense and published by the *Folha de S. Paulo* on 20 February 2000 found that the number of black and mestizo students, as classified by IBGE, who gained admission to higher education in 1998 had jumped by almost 70 per cent

between 1992 and 1998. While in 1992, 77,607 black students attended a higher education programme, that number had risen to 131,763 by 1998. Nonetheless, that same survey showed that the participation of blacks in higher education was lower than their representation in the general population. In other words, while in the 1998 PNAD the black population accounted for 5.6 per cent of the population, they made up but 2 per cent of the student population in higher education. The situation for mestizos was even more problematic, insofar as they represented 41 per cent of the population in that same year, but only 12 per cent of those in higher education.

Economic conditions and job market

241. A survey conducted by the Inter-American Trade Union Institute for Racial Equality (INSPIR) in six metropolitan areas of Brazil found that the black workforce corresponded to 41.7 per cent of the economically active population. According to the survey, this percentage approaches the black population's share of the overall population of those areas, 43.7 per cent, to be exact. The following areas were studied: São Paulo, Belo Horizonte, Porto Alegre, Recife, Salvador and the Federal District. The survey classified blacks and mestizos within the black population and whites and individuals of Asian descent within the white, or non-black, population.

Table 9

Estimates on the black population in relation to the overall population and the economically active population in metropolitan areas, 1998

Metropolitan area	Black population, in per cent	Blacks economically active, in per cent
Belo Horizonte	51.8	52.1
Federal District	63.7	64.4
Porto Alegre	11.8	11.7
Recife	64.0	63.9
Salvador	81.1	81.4
São Paulo	33.0	32.8
Total	43.7	41.7

Source: DIEESE/SEADE, INSPRI (1999:15).

242. As table 9 shows, the black population's share of the total population varies significantly from one metropolitan area to another, reaching 81.1 per cent in Salvador while representing only 11.8 per cent in Porto Alegre. The same survey also found that unemployment affects blacks more acutely than non-blacks, as table 10 below demonstrates.

Table 10**Unemployment rates, by race, metropolitan areas, 1998 (in percentage)**

Metropolitan area	Blacks	Non-blacks	Difference between the rates
São Paulo	22.7	16.1	41
Salvador	25.7	17.7	45
Recife	23.0	19.1	20
Federal District	20.5	17.5	17
Belo Horizonte	17.8	13.8	29
Porto Alegre	20.6	15.2	35

Source: DIEESE/SEADE, INSPIR (1999).

243. The difference in the unemployment rates between the two groups presented in table 9 indicates that discrimination is a component of the job market. Note, as well, the significant variation in the rates registered in the metropolitan areas, with the smallest gap found in the Federal District and the largest evidenced in Salvador.

244. A survey on living standards in the 1996-1997 period conducted by IBGE (1996b) in the north-east and south-east regions found that, among employed persons 10 years of age or older, there was a notable percentage difference between the white and black and mestizo populations with respect to their contribution to the social security system. The study underscored that the contribution to Social Security is an important indicator for assessing the working population's access to the benefits provided by the social security system, such as retirement pensions, assistance and paid leave.

245. According to the survey, 57 per cent of the employed population in those areas do not contribute, while 43 per cent contribute. This means that the majority of the working population does not contribute to the social security fund and it is made up primarily of economically active people without a work booklet and a significant contingent (85 per cent) of "self-employed" workers. Among the white population, the study found that 51.8 per cent contributed, and 48.2 per cent did not. For their part, only 32.6 per cent of blacks and mestizos contributed to the social security fund, while 67.4 per cent did not. The data indicates, therefore, that while on the whole whites are more integrated in the social security system, which allows them access to the corresponding benefits, a far higher percentage of blacks and mestizos remain outside the system.

246. An INSPIR survey gathered information on the income of workers in the six metropolitan areas. The main finding was that the incomes of black workers are systematically lower than those of non-black workers. According to the survey, this is the result of a combination of factors, which include early entry into the job market, the placement of black workers in the least dynamic sectors of the economy, the disproportionate number of blacks who are employed in unstable and low-skill positions, not to mention the difficulties black women face in the job market.

Table 11

**Average monthly income for employed workers, by race, metropolitan areas
(December 1998 reals)**

Metropolitan areas	Blacks	Non-blacks
São Paulo	512	1 005
Salvador	403	859
Recife	363	619
Federal District	765	1 122
Belo Horizonte	444	735
Porto Alegre	409	628

Source: DIEESE/SEADE, INSPIR (1999).

247. The disparity in income levels between blacks and non-blacks was also verified by other surveys and studies. A survey conducted by the *Folha de S. Paulo* found that, in 1995, 50 per cent of blacks earned the equivalent or less than two minimum salaries. The percentage of mestizos and whites who registered that same income level was 45 per cent and 40 per cent, respectively. At the top of the income scale, meanwhile, the survey found that 16 per cent of white respondents received 10 or more minimum wages, while only 6 per cent of blacks were at this income level. IBGE's 1998 household survey cross-referenced the data concerning average years of schooling of the employed population and average income levels, as shown in table 12 below.

Table 12

**Employed population, by race or colour, indicating average years of schooling
and average income in minimum wages, in the major regions of Brazil, 1998**

Region	White		Black		Mestizo	
	Average years of schooling	Income	Average years of schooling	Income	Average years of schooling	Income
North ^a	6.7	7.07	5.2	3.30	5.9	3.01
North-east	6.4	4.02	3.9	1.75	4.2	1.97
South-east	8.1	6.35	5.5	3.05	5.9	3.20
South	7.1	4.88	5.5	2.98	5.0	2.70
Centre-west	7.6	6.02	5.6	3.40	5.8	3.27
Brazil	7.5	5.60	5.1	2.71	5.1	2.61

Source: PNAD, 1998 (*Síntese de Indicadores Sociais*, 1999).

^a The rural populations of Rondônia, Acre, Amazonas, Roraima, Pará, and Amapá not included.

248. Like the findings above with respect to individuals 10 years or older, the data shows that the average years of schooling of the white employed population is greater than that of the black and mestizo populations.

249. The latter groups also receive significantly lower incomes, in minimum wages, than whites, specifically, half as much. Those with the fewest average years of instruction, in turn, receive the lowest average incomes in minimum salaries. Thus, to the extent that in all regions of Brazil blacks and mestizos receive the fewest average years of instruction, they are the most affected by low incomes in relation to whites.

250. On the basis of the information obtained from PNAD, researchers Ana Maria Oliveira and Paula Miranda Ribeiro demonstrated in 1998 the standards of inequality relative to the distribution of whites and non-whites, according to the occupational categories, in four metropolitan areas. Participation among whites was more accentuated in those occupational categories requiring more years of instruction. This became progressively inverted as one descends the list to those categories requiring fewer years of instruction or qualifications. At the same time, the participation of non-whites in those low-skill categories begins to increase. This process is equally in evidence among men as well as women, as tables 13 and 14 below confirm.

Table 13

Distribution of employed men by occupational category, based on race, metropolitan areas, 1995

Occupational category	Salvador		Recife		Belo Horizonte		São Paulo	
	Whites	Non-Whites	Whites	Non-Whites	Whites	Non-Whites	Whites	Non-Whites
University: technical	10.7	2.3	5.8	2.2	7.7	0.9	7.0	1.7
University: administrative	17.9	6.0	11.2	4.2	12.8	4.3	11.4	3.6
High School: technical	4.0	3.1	3.9	2.9	4.0	1.9	4.0	2.3
High School: administrative	10.9	7.2	11.8	6.7	10.7	8.0	11.4	9.3
High School: commercial	8.5	5.9	11.2	5.8	7.2	3.5	6.7	3.3
High School: other	2.7	3.1	3.8	3.8	2.8	2.8	1.7	2.4
Manual: industrial	17.0	32.6	19.2	34.0	28.7	43.8	29.4	43.7
Manual: commercial	9.4	8.3	10.2	10.0	7.5	8.4	8.5	7.9
Manual: transp. and commun.	5.1	9.1	7.9	8.5	8.7	10.3	9.0	8.0
Manual: services	3.6	3.8	3.1	3.2	2.4	3.2	3.9	3.6
Manual: other	7.1	18.5	11.9	18.7	7.6	12.9	6.9	14.3
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: IBGE, *Pesquisa Nacional por Amostra de DomcÍlios*, 1995. Presented in Oliveira e Ribeiro (1998).

Table 14

Distribution of employed women by occupational category, based on race, metropolitan areas, 1995

Occupational category	Salvador		Recife		Belo Horizonte		São Paulo	
	Whites	Non-Whites	Whites	Non-Whites	Whites	Non-Whites	Whites	Non-Whites
University: technical	16.7	4.3	9.5	3.2	10.1	2.3	8.7	2.5
University: administrative	8.9	2.8	6.3	2.8	7.8	2.5	6.8	1.6
High School: technical	13.9	10.3	14.2	12.1	12.2	8.5	9.6	7.8
High School: administrative	22.0	11.9	16.3	9.5	21.5	10.0	20.9	11.5
High School: commercial	6.1	5.4	8.2	6.5	5.1	2.6	5.3	2.9
Manual: industrial	5.6	7.7	9.2	8.8	9.5	10.5	12.2	18.4
Manual: commercial	10.1	15.3	13.9	14.1	10.6	12.2	12.3	9.4
Manual: services	11.9	35.3	18.0	38.1	17.8	40.2	18.7	39.3
Manual: other	2.0	6.5	3.3	4.5	4.3	10.5	4.7	6.2
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: IBGE, *Pesquisa Nacional por Amostra de Domicílios*, 1995. Presented in Oliveira e Ribeiro (1998).

251. IBGE's 1998 household survey also demonstrated that there are considerable differences in the levels of participation in the occupational structure by white, black, and mestizo persons 10 years and older. Thus, while 5.7 per cent of the employed white population occupy positions as employers, this percentage is only 1.3 per cent among blacks and 2.1 per cent among mestizos. Similarly, only 5.7 per cent of the employed white population occupy positions as domestic workers, while among blacks this percentage reaches 13.4 per cent and 8.4 per cent for mestizos. (IBGE, *Síntese dos Indicadores Sociais*, 1999, pp. 206-208). The INSPIR survey referred to above used different criteria to classify the occupations, although its overall results lead to the same conclusions.

252. In this way, on verifying the participation of blacks and non-blacks in management and planning positions, the survey found that in all the metropolitan areas studied (São Paulo, Salvador, Recife, the Federal District, Belo Horizonte, and Porto Alegre) the latter group's representation was much higher in comparison to the former. Thus, in São Paulo, for example, while 8.7 per cent of blacks occupied management and planning positions, 18 per cent of non-blacks held those same positions. Although the black population in Salvador constitutes a large portion of the overall population, as the data above indicates, only 5.9 per cent of blacks occupy management and planning positions, while 21.4 per cent of non-whites hold those positions.

253. An equally significant gap is found in the metropolitan area of Recife, where 8.9 per cent of blacks hold management and planning positions and 29.2 per cent of non-blacks (INSPIR, 1999:122). The exact reverse of this situation is found in an analysis of the most vulnerable job positions, which encompass wage-earners without work booklets, the self-employed, unpaid home workers, and domestic workers. The INSPIR survey revealed that in all the metropolitan areas studied, blacks have a higher proportional representation in those types of jobs. Thus, in Porto Alegre, for example, blacks occupy 43.3 per cent of the most vulnerable job positions. The largest gap was found in Salvador, where blacks made up 46.2 per cent of the workers in this situation (INSPIR, 1999).

IV. THE EVOLUTION OF THE TREATMENT OF THE ISSUE OF RACISM AND DISCRIMINATION IN BRAZIL

254. For a long period of time, the idea of a “racial democracy” existed in Brazil. This view was bolstered by the academic studies of scholars such as Gilberto Freyre, author of *Casa Grande e Senzala*.

255. In the 1950s, at the request of UNESCO, the sociologists Roger Bastide and Florestan Fernandes coordinated a research project on race relations in Brazil. They reached the conclusion that blacks had suffered discrimination after the abolition of slavery and that racial prejudice and discrimination against them persisted.

256. Bastide and Fernandes, however, indicated that racial discrimination in a capitalist system, into which Brazil was in the process of being incorporated, represented more an economic and social discrimination than prejudice rooted in colour. This conception, that prejudice was first and foremost class-based, and only secondarily colour-based, persisted in Brazilian society and provided the foundation for much of the academic consideration of this topic. It was only in the late 1970s that new studies advanced the argument that the situation of blacks in Brazil and the racial inequality prevalent throughout the country were the result of the racism present in Brazilian society, not merely the consequence of economic and social discrimination.

257. In conjunction with this rejection of the concept of a racial democracy, at the end of the 1970s, black movements began to play a more prominent role and to question the basis of the prevailing conception of Brazilian society. By questioning the idea of a racial democracy, it was then possible to include the discussion of the need for affirmative action policies for the benefit of blacks in the national agenda.

258. But it was only in 1996 that steps were taken at the governmental level to consider the issue of racism in Brazil and develop affirmative action policies for the benefit of blacks, thereby making, at that moment, a public acknowledgement that racial discrimination indeed existed. This acknowledgement was reasserted publicly in December 2000 during South African President Thabo Mbeki’s visit to Brazil.

259. In reaffirming again this public acknowledgement at the World Conference against Racism held in Durban, South Africa, momentum was generated for various Government initiatives, paving the way for affirmative action programmes to eliminate racial inequalities in the country. In a later section of this consolidated report, the specific issue of the affirmative-action measures taken in Brazil is addressed.

260. A brief chronology of the major initiatives in this area includes the creation, by the federal Government, in 1988 during the 100th-anniversary celebration of the abolition of slavery of the Palmares Cultural Foundation, incorporated into the Ministry of Culture.

261. In 1991, the governor of the State of Rio de Janeiro established the first Specialized Crime Unit against Racism. In 1993, São Paulo adopted the same initiative, followed by Sergipe (1995) and the Federal District (1998). The Rio de Janeiro unit was disbanded, while Sergipe's deals with cases related to children and adolescents as well as racism and Brasília's unit never entered into operation. Almost 150 complaints are filed within the São Paulo Unit every year (Santos, 1999).

262. In 1995, on the occasion of the 300th anniversary of the death of Zumbi (20 November), festivities, debates, and seminars on the racial issue in Brazil were held, particularly debates concerning the implementation of public policies, affirmative action measures, positive actions, positive discrimination, and compensatory policies. Also in 1995, in observance of the 300th anniversary of Zumbi's death, the University of São Paulo organized an array of events that included debates on the racial issue in Brazil. These events produced proposals related to the access of blacks to the nation's universities, the incorporation of Afro and black Brazilian history in the curricula of history departments, black culture dissemination courses, books aimed at primary and middle-school students, among others.

263. In August 1995, the National Meeting of City Councilmen Against Racism, sponsored by the City Council of the Municipality of Salvador, was held in Salvador, Bahia. On 20 November 1995, the "Palmares Zumbi March, against racism and for citizenship and life", organized by entities tied to the black movement, was held in Brasília, with the participation of more than 30,000 people. The march organizers were received by the President of the Republic, to whom they submitted a list of proposed actions for combating racism in the country.

264. In July 1996, the international seminar "Multiculturalism and racism: the role of affirmative action in the contemporary democratic State", organized by the Ministry of Justice, was held in Brasília, convening Brazilian and foreign researchers, in addition to national leaders. At the event, the federal Government acknowledged the existence of racial discrimination and prejudice in the country. A new position of the Government concerning the racial issue was articulated, opening the way for consistent discussion on the matter and the formulation of public policies to change the prevailing situation. It was the first time the Government had expressly acknowledged the need for adopting affirmative action policies aimed at the incorporation of the black population and other segments vulnerable to racism and discrimination.

265. On 20 November 1995, the Interministerial Working Group for the Recognition of the Black Population (GTI) was established. GTI initiated its activities on 27 February 1996 with the objective of proposing actions designed to combat racial discrimination; to develop and

promote government policies; and to stimulate public and private initiatives that recognize the value of incorporating qualified blacks in the media. The group is composed of a collegiate body of 8 representatives from civil society and 10 members of the federal Government (8 from ministries and 2 from secretariats). The group's significant achievements include the creation of the national programme against sickle-cell anaemia, a genetic disease that primarily affects the black population; the requirement that death and live-birth affidavits include the individual's colour; the requirement that all statistical studies on education and educational censuses include the race/colour of those surveyed; submission of studies and proposals aimed at granting title deeds to those occupying the remaining lands of runaway slaves, such as those issued to the Pacoval and Água Fria communities (Pará State), for purposes of fulfilling the provisions of article 68 of the Temporary Provisions Act of the Federal Constitution; the proposal for a "TV-Escola" programme intended to offer a renewed account of Brazilian history from the perspective of the contribution made by Africans to the country's social development; the reassessment of educational books distributed to primary school students throughout the country, whereby those publications containing prejudicial or discriminatory racial, colour, or gender stereotypes are excluded; and joint monitoring of the "National Parameters for Curricula", with the Ministry of Education, among others.

266. On 20 March 1996, by presidential decree, the Working Group on the Elimination of Discrimination in Employment and Occupations (GTEDEO), tied to the Labour Ministry, was established. The group includes representatives of the federal Government, trade unions and employer associations. The objective of the Working Group is to combat discrimination in employment and occupations in the areas of race, gender, age, disability, and so forth.

267. The government of Santa Catarina in 1996 approved Law No. 10064, of 9 January 1996, which set forth provisions on the sanctions applicable to entities and companies that practise racial discrimination.

268. The National Human Rights Programme was launched in 1997. Also in 1997, the São Paulo State Human Rights Programme was launched. Among the items regarding the black population, the programme contained 14 proposals involving, for example, the promotion of the access of blacks to the job market and the civil service, through the adoption of affirmative-action programmes and professional, training, and retraining programmes aimed at the black population. The programme also put forth nine specific proposals for indigenous populations, among them proposals to improve the condition of indigenous peoples in the State with respect to health, through the development of emergency actions, in cooperation with the federal Government.

269. The city government of Belo Horizonte, Minas Gerais, created, through Law No. 7535, of 18 June 1998, the Municipal Secretariat for Black Community Issues, which is entrusted with the authority and duty to plan, coordinate, and execute policies, programmes, projects and activities intended to eradicate racism and overcome socio-racial inequalities. Among the many projects developed to this end, such as the "Implementation of black community development centres", "Citizenship effort" and "Recognition of the black woman", the SOS Racism programme was created in 1999, which received 41 complaints in that year and by 14 April 2000 had already received 19 complaints of racism. According to the Municipal Secretariat for Black Community Issues, which was responsible for establishing the SOS Racism programme, of the 60 complaints filed to date, 38 per cent occurred in the workplace, 28 per cent referred to

problems in the neighbourhood, and 11 per cent involved public bodies. Thirty-five per cent of the complaints acted on by the SOS reached the courts, although to date none of the legal actions sponsored by the programme has been judged on its merits.

270. In August 1998, the Human Rights Commission of the São Paulo Legislative Assembly established SOS Racism for purposes of receiving complaints of racial discrimination by telephone. In 1998, "Generation XXI" was launched by the Ministry of Culture's Palmares Cultural Foundation and the non-governmental organization Geledés - Institute for Black Women, with financing from the BankBoston Foundation. The State government of Pernambuco in 1999 published Decree No. 21670, instituting the State Human Rights Programme.

271. In 2000, the national committee for the preparation of Brazil's participation in the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance was formed with equal representation from civil society and the Government.

272. The National Council against Discrimination was established in 2001. Also that year, affirmative-action programmes were implemented in the Ministries of Agricultural Development and Justice, the State Human Rights Secretariat, and the Foreign Ministry's Rio Branco Institute.

273. On 13 May 2002, the national affirmative-action programme was launched. In 2003, the Special Secretariat for the Promotion of Racial Equality was created.

V. BRAZIL'S PREPARATION FOR THE WORLD CONFERENCE AGAINST RACISM

274. Brazil carried out intensive preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, between 31 August and 8 September 2001.

275. Brazil actively participated in the preparatory process and in the World Conference with a numerically and qualitatively substantial delegation made up of representatives of the Government, the Congress, and the principal social segments most vulnerable to racism and discrimination.

276. With respect to the international dimension of the preparatory process for the Durban Conference, the country played a supporting role; in regard to the national dimension, Brazil's preparatory process for the Conference was led by a National Preparatory Committee (Presidential Decree of 8 September 2000), presided by Mr. Gilberto Sabóia, then Secretary of State for Human Rights, and composed of representatives of ministries and other government agencies, as well as representatives and distinguished members of the black movement, indigenous and religious groups, and non-governmental organizations involved in the issue of racism and intolerance.

277. The Committee was made up of the following members:

- Government representatives: (a) Special Advisory Staff to the Office of the President, Vilmar Evangelista Faria; (b) Ministry of Foreign Relations,

Mr. Hildebrando Tadeu Nascimento Valadares; (c) Ministry of Education, Carlos Alberto Ribeiro de Xavier; (d) Ministry of Health, Cláudio Duarte da Fonseca; (e) Ministry of Labour and Employment, Maria Helena Gomes dos Santos; (f) Ministry of Agricultural Development, Sebastião Azevedo; (g) Ministry of Planning, Budget, and Administration, Ricardo Paes de Barros; (h) State Secretariat for Social Assistance, Maria Albanita Roberta de Lima; (i) Council on the Community Solidarity Programme; (j) Institute for Applied Economic Research, IPEA, Roberto Borges Martins; (k) Institute for International Relations Research, IPRI, the Carlos Henrique Cardim Council; (l) Palmares Cultural Foundation, Carlos Moura; (m) National Indian Foundation, Glênio da Costa Alvarez;

- Representatives of civil society: (a) Rev. Antonio Olimpio de Sant’ana, World Church Council; (b) Azelene Inácio Kaigang, Joint Council on the Indigenous Peoples and Organizations of Brazil (CAPOIBE); (c) Benedita da Silva, Vice-Governor of the State of Rio de Janeiro; (d) Cláudio Nascimento, Director of Human Rights for the Brazilian Gay, Lesbian and Transvestite Association; (e) Don Gílio Felício, Auxiliary Bishop of Salvador; (f) Hélio de Souza Santos, university professor and economist; (g) Rabbi Henry Sobel, President of the São Paulo Rabbinical Israelite Congregation; (h) Ivete Alves do Sacramento, Vice-Chancellor of the State University of Bahia; (i) Ivanir dos Santos, President of the Joint Centre for Marginalized Populations (CEAP); (j) Roque de Barros Laraia, university professor and anthropologist; (k) Sebastião Alves Rodriguez Manchinery, Coordinator of the Indigenous Organizations of the Brazilian Amazon (COIAB);
- One representative of the Human Rights Commission of the Chamber of Deputies, Deputy Nelson Pellegrin;
- One representative of the Consumer, Environmental, and Minority Protection Commission of the Chamber of Deputies, Ana Catarina; and
- One representative of the Federal Public Ministry, Maria Eliane Menezes de Faria.

278. The Committee organized seminars and other activities in different regions of Brazil, in order to expand the awareness and dissemination of the discussion issues and objectives of the Conference, particularly as they related to Brazilian reality. As part of the country’s preparation for Durban, the National Preparatory Conference for the World Conference against Racism was held in Rio de Janeiro. The event, organized by civil society and coordinated by the Vice-Governor of Rio de Janeiro, Benedita da Silva, brought together other groups directly interested in the issues at the centre of the World Conference. The meeting in Rio produced a document, “The Rio de Janeiro Charter”, which served as a supplement to Brazil’s report at the World Conference against Racism in Durban.

279. During the World Conference, the Brazilian delegation acted in a firm and balanced manner, maintaining throughout an intense and continuous dialogue with the representatives of non-governmental organizations. In spite of the politicization evidenced at the World Conference, the results moulded in the Declaration and Programme of Action adopted in Durban are, in the view of the Government of Brazil, an important step in the fight against racism and all the questions related thereto.

280. We can point to the progress made in the treatment of the issues related to the rights and guarantees of Afro-descendants, indigenous peoples, and minorities in general. For the first time, the document emerging from a World Conference recognizes those and other groups as the victims of racism and discrimination and, as such, deserving of special treatment by States and the international community.

281. For Brazil, the fact that, as a result of the preparations made for the World Conference, the issue of racism and racial discrimination was permanently included in the national agenda, constituted yet another important outcome.

282. Without question, Brazil is one of the countries that has endeavoured to follow through on the decisions taken in Durban, through public policies or studies and diagnoses that serve as important instruments in the actions undertaken by the Government.

283. The National Preparatory Committee for the Durban Conference prepared a report based on intense debates promoted by the body and the active mobilization of entities linked to the black, indigenous, women's, gay and religious freedom movements.

284. The report substantiates the conclusions of the activities of Brazil's preparatory process. It is founded, on the one hand, on diagnoses which are recognized as credible by a variety of different segments within Brazilian society and, on the other hand, policy proposals supported by National Committee's deliberations, the content of which reflects in good measure those positions on which consensus between the Government of Brazil and non-governmental organizations was possible.

285. The major aspects of the National Committee's report, which served as the basis for the positions advocated by the Brazilian delegation during the World Conference in Durban are enumerated below.

Definition of concepts

286. On racism: "As with other manifestations of discrimination, among them xenophobia and chauvinism, racism is a historical phenomenon whose underlying ideological basis advocates dividing human groups hierarchically based on ethnicity. Cultural or physical differences are used to justify assigning different intellectual and moral levels to specific human groups. In Brazil, we note the theories of Dr. Raymundo Nina, officially designated as such by the Criminal Medical Institute of Bahia, a figure still revered today by the institutes of criminology and a continuing source of inspiration for contemporary criminological treatises, whose work at the end of the nineteenth century included medical studies which involved measuring cranial size and nose width as a way of explaining alleged innate tendencies that led blacks into criminality, in what amounted to a tropical adaptation of Lombroso's theories on the notion of born criminals. It is interesting to note that the eugenics employed in Europe to combat the alleged degeneration of the race and to improve the race, so as to purify it, is alluded to in the 1934 Brazilian Constitution and in Decree-Law No. 7967/1945. To this category we can add the Criminal Code of the Republic, replaced in 1941 by the current Code, which outlawed *capoeira*, one of the most popular expressions of African culture. As we can see, therefore, racism, as an ideology, has produced laws, policies, and social practices. We can infer from this that the expression 'racist act' clearly does not require that the agent have knowledge

or command of the science or rhetoric of racial theorems, much less that he have a long-standing political and ideological affiliation to or involvement in racial theories, nor that he take action motivated by racial hatred that is directed at the racial group as a whole, but merely that such 'act' reflect the basic substance of the 'ideology', an act based on racial criteria whose purpose or effect is the violation of individual or collective rights. In conclusion, we cannot overlook the fact that racism, in its narrowest ideological dimension, which is not in some way externalized, that is, it is not manifested by means of 'acts', resides within the individual's conscience, which is an inviolable individual possession, pursuant to article 5, section VI, of the Constitution of the Republic."

287. Prejudice: "Based on a summary of dictionary definitions, we can attribute the following meanings to the term prejudice: '1. A judgement or opinion formed beforehand without knowledge or examination of the facts; a preconceived idea; 2. A judgement or opinion formed without consideration of evidence that contradicts it; a bias; 3. A superstition, belief, bias; 4. Suspicion, intolerance, irrational hate of or aversion to other races, creeds, religions, etc.' As a category that falls within the realm of psychology, prejudice can be defined as an inter-group phenomenon, directed toward individuals, groups of individuals, or social institutions, implying a negative predisposition. Taken as a scientific concept, prejudice is invariably directed against someone. Prejudice operates as a clumsy form of syllogism, tending to overlook a person's individuality through the a priori assignment, to members of a particular group, of stigmatizing characteristics, by which the group, and not the individual, is defined. Thus, the basic components of prejudice presuppose a system in which physical characteristics (racial labelling, for example) are relevant in the distribution of social positions, just as such a social system presupposes the existence of agents who operate the inequalities of the system. It is worth noting that, although prejudice provides the requisite conditions, it is not a necessary condition, for discrimination, given that discrimination does not always necessarily share a cause-and-effect relationship with prejudice. Lastly, let us note that the law does not, as a rule, punish thought, so that, despite the fact that the preamble to the federal Constitution repudiates prejudice and that the provision of article 3, IV, formally prohibits prejudice, provisions themselves that constitute a semantic contradiction, prejudice, because it falls in the category of individual conscience, is not subject to criminal or even civil sanctions - at least in the democratic State ruled by law."

288. On intolerance: "Juxtaposed to intolerance is the concept of tolerance, the linguistic meaning of which is patently inadequate when applied to human interaction. Brazilian dictionaries attribute at least two meanings that are of immediate interest: '1. The tendency to accept other beliefs, practices, and feelings that differ from those of a specific individual or political or religious group; 2. Specific, permissible leeway of deviations in measurements or a variation from a standard.' Similarly, the legal definition commonly attributed to the word usually carries the same negative denotation, indicating, in the majority of cases, conformity, misfortune, acquiescence to evil, complacency, in sum, resignation in the face of bad luck. A good example is provided by the labour standards that deal with unhealthy activities and refer to the limits on tolerance for agents that cause harm to the health of individuals. In short, tolerance encompasses the basic meaning of abstaining from hostilities against something that is in principle reprehensible, which presupposes, in a clearly unacceptable fashion, the existence of a universal paradigm, whether religious, ethnic, sexual, or racial. A good illustration of intolerance of a racial/religious nature in the Brazilian case is Bahia State Law No. 3097/72, which remained in force until 1976 and which required that Afro-Brazilian religious temples be

registered with the local police department in the jurisdiction in which they were located. Note that the term tolerance, although it clearly cannot be confused with them, shares a distinct similarity with the constitutional precepts governing political pluralism (art. 1, V) and freedom of thought (art. 206, VI). On the other hand, in spite of its undeniable inadequacy as a means for defining human interaction, it must be understood that the Brazilian legal system refers to tolerance specifically to indicate the abstention of aggression toward diversity. This is the substance of article 3 of Law No. 9393/96, Law on the Directives and Basic Principles of Education: 'Education shall be provided on the basis of the following principles: IV - respect for liberty and consideration for tolerance.' In conclusion, let us state that intolerance taken as hostility toward differences is not restricted to the realm of individual conscience, in which case the agent is subject, consequently, to State-imposed sanctions."

289. On discrimination: "As opposed to prejudice, discrimination - the act that discriminates - consists in an act or conduct (by commission or omission) that violates rights on the basis of arbitrary criteria, regardless of the reasons that gave rise to such act or conduct (belief in racism, bearing of prejudice, an interest of any sort, or simple fear of reprisal, such as an individual responsible for selecting personnel who does not hire a black candidate for a specific vacancy as a result of an assumption or fear that the institution to which he belongs would not look kindly on the decision). It should be stressed that the Brazilian legal system disciplines discrimination in both its direct and indirect manifestations."

Direct discrimination

290. Article I, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination states: "In this Convention, the term 'racial discrimination' shall mean any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

291. Article 1 of ILO Convention No. 111, concerning discrimination in matters of employment and occupation states: "For the purpose of this Convention the term discrimination includes (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation."

292. Article I of the Convention against Discrimination in Education states: "For the purpose of this Convention, the term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition, or birth has the purpose or effect of nullifying or impairing equality of treatment in education and in particular: (a) of depriving any person or group of persons of access to education of any type or at any level; (b) of limiting any person or group of persons to education of an inferior standard; (c) subject to the provisions of article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; or (d) of inflicting on any person or group of persons conditions which are incompatible with the dignity of man."

Indirect discrimination

293. From direct discrimination, that whose object, or objective, is discrimination, emanates indirect discrimination, that is, whose effect, regardless of the cause, results in discrimination. Note that discrimination can be practised both by individuals and institutions - so-called institutional discrimination. For its part, the traditional view emphasizes the routine and continuous nature of discrimination. In addition, the traditional view tends to consider discrimination an open and clearly evident phenomenon, while the institutional view sees discrimination as open or concealed, visible or furtive.

294. In conclusion, taken as conduct, as an act, discrimination subjects the agent to civil, criminal, administrative and other sanctions, with the understanding that the subject of the discrimination can be either a single individual or a group.

Aggravated discrimination, the gender view

295. It is important to underscore that women are particularly vulnerable to prejudice and acts of discrimination. Consequently, the female segment of discriminated social groups would be expected to suffer more serious effects than those suffered by men at an equivalent sociocultural level. In fact, a mechanism for stigmatizing women is reproduced at the core of the group subject to discrimination, which is culturally rooted and which must be taken into consideration in the implementation of public policies to combat racism and discrimination.

The black community

296. Any assessment of the situation of Afro-Brazilians must begin with the following observations: (i) they represent nearly 45.3 per cent of the Brazilian population, or approximately 70 million people; (ii) basic inequalities between the white and black populations exist (birth rates, life expectancy, instruction, professional qualification, housing and health conditions, and access to land); (iii) there are not enough universal social policies that take into account the negative effects of racism and racial discrimination; (iv) the situation is particularly critical in the remaining runaway slave communities, whose socio-economic indicators reside below those of the black population as a whole.

297. The report lists the important measures taken by the Government in its effort against racism and discrimination, including: (i) public acknowledgment of the racial problem as an obstacle to the country's democratic consolidation and economic development; (ii) the Government of Brazil's official recognition of Zumbi dos Palmares as a National Hero; (iii) the creation of the Interministerial Working Group for the Appreciation of the Black Population (1995), under the National Human Rights Secretariat, Ministry of Justice; (iv) the establishment of specific provisions of interest to the Afro-Brazilian population in the National Human Rights Programme; (v) a review of the content of textbooks aimed at eliminating the dissemination of stereotypes and introducing the issue of diversity in school curricula nationwide; (vi) the publication of the third edition of the book *Overcoming Racism in Schools* (*Superando o Racismo nas Escolas*), with a preface by the President of the Republic; (vii) the approval by the Ministry of Education and the National Council on Education of the "national parameters for curricula", aimed at all educational levels and programmes, which includes the so-called intersecting topics and cultural pluralism; (viii) the commitment made by

the Minister of Education to guarantee the representation of the black community and indigenous peoples on the National Education Council; (ix) support for educational projects in remaining runaway slave community areas, with the introduction of graduate university activities that benefit disadvantaged communities, principally with respect to community actions designed to improve the quality of life and the integrated and sustainable local development of the remaining runaway slave communities (University Solidarity Programme and Palmares Cultural Foundation); (x) the establishment, by the Institute for Applied Economic Research, IPEA, under the Ministry of Planning, Budget and Administration, of an official research category on the impact of racism on Brazilian social indicators (access to education, health, housing, and the labour market) and the formulation of public policies intended to combat racism; (xi) the provision of article 68 of the Temporary Constitutional Provisions Act of the Federal Constitution setting out the right of the remaining runaway slave communities that still occupy their lands to recognition of their permanent ownership of those lands; (xii) initiation by the federal Government of the process of extending permanent property rights to the members of the remaining runaway slave communities; (xiii) the right enshrined in the federal Constitution to permanent property rights for the members of the remaining runaway slave communities who still occupy their lands, for which purpose the State has the duty to issue the permanent title deeds; (xiv) the establishment of the Technical Cooperation Programme between the Ministry of Labour and the International Labour Organization for purposes of the implementation of ILO Convention No. 111; (xv) the creation within the Ministry of Labour of the Working Group for the Elimination of Discrimination in Employment and Occupation (*Grupo de Trabalho para a Eliminação da Discriminação no Emprego e na Ocupação*, GTDEO); (xvi) the designation of the Afro-Brazilian population as one of the major targets of the National Worker Qualification Plan (*Plano Nacional de Qualificação do Trabalhador*, or PLANFOR); (xvii) the implementation within the Regional Labour Precincts in 24 States of the Federation of the “Brazil, Gender and Race” plan by the Ministry of Labour, establishing centres for combating discrimination and promoting equal opportunities; (xviii) the requirement that race/colour be specified in information and records of the Annual Report on Social Indicators (*Relatório Anual de Indicadores Sociais*, RAIS/CAGED) and public beneficiary application forms of the PLANFOR, both under the direction of the Ministry of Labour; (xix) the introduction of institutional mechanisms to serve and prepare demands in the interest of the Afro-Brazilian population (State and municipal councils, State secretariats and under-secretariats, police precincts that assist the victims of acts of racial discrimination); (xx) the implementation of the Sickle Cell Anemia Programme (*Programa de Anemia Falciforme*, or PAF) within the Ministry of Health. PAF provides for actions that include: prenatal diagnosis for all children born in hospitals (foot exams); the active search for persons suffering from the disease; promoting the admission of diagnosed persons into the programme; expanding access to diagnostic services and quality treatment; promoting and providing support to the sickle-cell associations; human resource training; implementing educational initiatives and introducing issues related to bioethics - testing with prior consent; the right to genetic privacy and non-discrimination; and establishing the Bioethics Commission; (xxi) the establishment of a plan for the reorganization of medical assistance in the area of arterial hypertension directed toward the black community; (xxii) the requirement that race/colour be specified on official, nationally standardized forms such as live birth and death certificates; (xxiii) increasing the participation of distinguished Afro-Brazilian figures in government public relations campaigns and implementing basic guidelines proscribing discriminatory acts in public relations and advertisement services contracted by agencies, entities, and partnerships controlled by the federal Government;

(xxiv) the production of mini-documentaries on the lives and activities of important figures in Brazilian history for broadcast on public TV stations; (xxv) the sponsoring of the Brazil-South Africa multiracial ethics, and aesthetics seminar, bringing together distinguished professionals in all media segments (print, radio, TV, photography, and cinema); (xxvi) the ratification of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and the American Convention on Human Rights and against Torture and Other Cruel, Inhumane, or Degrading Treatment and Punishment; (xxvii) inviting the Special Rapporteur on torture and other cruel inhuman or degrading treatment or punishment of the Commission on Human Rights to visit the country; (xxviii) the development of the National Victims Protection and Threatened Witnesses Programme; (xxix) the declaration of the Afro-Brazilian houses of worship Casa Banca (Salvador) and Ilê Axé Opô Afonjá (Salvador) as national heritage landmarks.

298. The Committee prepared a set of proposed actions that the Government should adopt and that require time for them to mature and be carried out. Among these are:

- Acknowledgement by the Brazilian State of its historical responsibility for slavery and the economic, social, and political marginalization of Afro-descendants;
- Acknowledgement by the Brazilian State that the enslavement of Africans and Indians, the transatlantic trade of African slaves and the economic, social, and political marginalization of their descendants constituted grave violations of the fundamental rights of human beings;
- The adoption of compensatory measures for the victims of racism, racial discrimination and related forms of intolerance by means of specific public policies designed to overcome inequality. These compensatory measures, based on the rules governing positive discrimination prescribed in the 1988 Constitution, must consider legislative and administrative measures intended to guarantee the regulation of the racial equality rights set forth in the 1988 Constitution, with special emphasis on education, employment, land titling and the establishment of agricultural and development policies for the remaining runaway slave communities;
- The implementation of the measures prescribed in the International Convention on the Elimination of All Forms of Racial Discrimination, promulgated through Decree No. 65810, of 8 December 1969; ILO Convention No. 111 concerning discrimination in employment and occupation, promulgated through Decree 62510, of 19 January 1968; and the Convention against Discrimination in Education, promulgated through Decree No. 63223, of 6 September 1968;
- The effective implementation of the National Human Rights Programme, as regards the racial issue;
- The urgent regulation of article 68 of the Temporary Constitutional Provisions Act of the Federal Constitution, which sets forth the provisions on the right of the members of the remaining runaway slave communities to recognition of their permanent ownership of those lands;

- The extension of the constitutional rights regarding the remaining slave communities;
- The registration and identification, in cooperation with the National Runaway Slave Community Coordinating Committee, of the remaining black runaway slave communities throughout Brazil;
- The removal of all squatters and intruders located on the lands of runaway slave communities that have been titled;
- The creation mechanisms containing incentives provided by government institutions for the political empowerment of women - local leadership positions - in order that they may feel prepared to meet the quota of women candidates to elected office established by law;
- Making the provision of infrastructure to the remaining runaway slave communities which assures them the necessary living conditions without forcing them to abandon their lands, thereby preventing a continued rural exodus, a priority of public municipal, State, and federal policies;
- The guaranteed implementation of primary and high school and adult literacy programmes in the black communities, ensuring support for specific courses designed to prepare black youth for admission to the nation's universities, as well as a national base salary for lay teachers;
- The creation of a department within INCRA responsible for issuing titles for the lands occupied by runaway slave communities and supporting small black farmer associations - special projects for the development of runaway slave communities;
- The creation of a social compensation fund managed by the Government and civil society to finance related policies, including in the area of education;
- The respect and promotion of the rights set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief adopted by the General Assembly on 25 November 1981 in its resolution 36/55;
- A review of government policies for purposes of assuring the efficacy of the rights prescribed in the international treaties on racism ratified by Brazil and in order to ensure observance of the special needs demanded by sex/gender discrimination;
- A review of article 61 of the Brazilian criminal code directed toward making racism, racial discrimination, xenophobia and related forms of intolerance an aggravating circumstance of any and all crimes in which such motivations are verified;
- The creation of an Afro-indigenous forum to allow the joint formulation of specific policies for social integration;

- The establishment of contacts with professional association and public relations agents to raise awareness about the need for a more prominent role by Afro-descendants in publicity campaigns that conforms to the criteria on the ethnic-racial diversity of Brazilian society;
- A proposed amendment to article 45 of the Law of Public Competitive Bidding Procedures establishing that, in cases in which all bidding procedures have been exhausted and the candidates remain tied, the criterion for breaking the tie, which currently consists in picking the winning bidder by lottery, be replaced with a one in which the bidder with the largest number of blacks, homosexuals and women throughout its hierarchy is declared the winner;
- A review of the federal Public Ministry's statute intended to extend the ministry the specific legal authority and duty to protect the rights and interests of the victims of racism, racial discrimination and related forms of intolerance;
- The adoption by the Government of a specific communication policy of appreciation for the black image;
- The maintenance of 18 years as the age of majority with respect to criminal prosecution and responsibility and the implementation of socio-educational measures set forth in the Statute on Children and Adolescents; and
- The adoption of quotas or other affirmative-action measures that promote access by blacks to the nation's public universities.

Indigenous Peoples

299. The report sets out the recent progress made in the treatment of the issue of indigenous peoples in Brazil, specifically:

- The demarcation of 420 indigenous lands, covering 87 million hectares (214,981,681 acres), or 11.55 per cent of the Brazilian territory. Between January 1995 and April 2001, 140 indigenous lands were approved;
- The establishment of partnerships with indigenous organizations and those supporting indigenous peoples to perform the physical demarcation of the indigenous lands, such as the Indigenous Lands of Rio Negro, in conjunction with the National Indian Foundation, the Rio Negro Federation of Indigenous Organizations and the Socio-Environmental Institute;
- The provision of health service to Indians in 34 indigenous districts, through the Special Indigenous Sanitation Districts linked to the National Health Foundations (FUNASA);
- The conclusion of 9 agreements with indigenous organizations and 19 with organizations supporting indigenous peoples, at an estimated value of R\$ 100 million, to provide health services in villages;

- The development of the National Reference Curriculum for Indigenous Schools, in conjunction with specialists and teachers from the Indian community;
 - The establishment, within the Ministry of Education, of the General Coordinating Committee for Indigenous Schooling;
 - The establishment of 1,666 indigenous schools with 3,041 indigenous teachers;
 - The creation of the Krahô project intended to promote the improvement of agricultural activities of low environmental impact, in order to ensure the food sustainability of the villages;
 - The accomplishment of the Tucum project for the preparation and training at the teaching-profession level of indigenous teachers for the communities of Mato Grosso (Xavante, Paresi, Apiaká, Irantxe, Nambikwara, Umotina, Rikbaktsa, Munduruku, Kayabi, Borôro, and Bakaira, among others). The project is coordinated by the State Secretariat of Education, which, in addition to FUNAI, has an agreement with the Federal University of Mato Grosso and the State municipal governments;
 - The establishment of an indigenous higher education project intended to introduce three full degree programmes in the State University of Mato Grosso (UNEMAT) to prepare 200 indigenous teachers, with the associated classes forecast to begin in July 2001 and end in 2005. This initiative has been made possible by Agreement 121/2000, of 30 June 2000, executed between the university and the Mato Grosso State Secretariat of Education and Agreement No. 11, of 15 December 2000, concluded between UNEMAT and FUNAI. The intensive educational activities will be held on UNEMAT's campus located in the city of Barra do Bugres, Mato Grosso; and
 - The Government's recognition of the term "indigenous peoples" as the appropriate designation of the indigenous populations in international forums.
300. The Committee also proposed a series of measures whose adoption it deemed important:
- The approval by the National Congress of a new Statute of the Indian and Indigenous Communities as a way of overcoming the civil incapacitation of Brazilian Indians;
 - The completion of the demarcation of indigenous lands - territorial protection and removal of illegal occupants, with the implementation of urgent measures in those areas in which conflict is imminent, such as the Macuxi territories in Roraima and those belonging to the Guarani-Kaiowá in Mato Grosso do Sul;
 - The restructuring of the National Indian Foundation, adapting it to the new public management models and according to the regional and sociocultural reality of the indigenous populations;

- The naming and appointment of indigenous representatives, based on technical qualification criteria, to the Federal Education Council, the Cultural Council, the National Environmental Council, the National Health Council, and the National Food Council;
- The approval by the federal Government and the National Congress of measures to protect indigenous knowledge, traditional ideas, and genetic heritage, including the protection of biodiversity;
- The adoption by the federal Government of programmatic measures for the sustainable development of the indigenous populations, with access to the most recent ideas concerning economic and social protection and growth, including the administration of natural and mineral resources;
- The promotion by the federal Government of censuses of the indigenous populations, including the disabled, for purposes of developing compatible public policies;
- The creation and implementation by the Ministry of Defence of a code of conduct setting out rules and guidelines with regard to the military's presence on indigenous lands, particularly with respect to indigenous women;
- The ratification and implementation of the international treaties that guarantee indigenous rights, such as ILO Convention No. 169, the draft universal declaration on the rights of indigenous peoples, and the American Declaration on the Rights of Indigenous Peoples;
- The promotion of indigenous participation, through their organizations, in the discussion and implementation of public policies for Indians at all levels of government action;
- The creation of a Permanent Forum on the Original Rights of Afro-Indigenous Peoples;
- The establishment of educational policies enabling indigenous students to remain in the nation's universities.

301. In addition to analysing the situation of the black community and indigenous populations in Brazil, the report of the National Committee addresses issues related to gypsies, sexual orientation, the disabled, migrants, and discrimination against the Jewish community.

VI. AFFIRMATIVE ACTION

302. As in other countries, the adoption of affirmative-action programmes has been the subject of a growing debate in Brazil. The country's preparation for the Durban Conference paved the way for introducing the issue into the national agenda.

303. Reprinted below is a section of the speech proffered by the Minister President of the Federal Supreme Court, the highest court in the land, as an illustration of the importance of the subject and the increasing interest in the issue on the part of the nation's highest-ranking public officials:

“The recognition [has come] that the only way to correct inequalities is to shift the bulk of the law, with the urgency warranted in the face of an unbalanced marketplace, in favour of those who are discriminated [against] subjected to unequal treatment. On the basis of this precept, the following are considered fundamental objectives of our Republic: first, to construct - pay attention to the verb - a free, just, and unified society; second, to guarantee the nation's development - once again we use a verb that leads, not simply to a static position, but to an active one: to eradicate poverty and substandard living conditions and to reduce social and regional inequalities; and, lastly, in what is of interest to us, to promote the general well-being of all, without prejudice based on origin, race, sex, colour, age, or any other form of discrimination.

“I can assert without any doubt that we have gone from a static equality, merely negative, in which discrimination was prohibited, to an effective, dynamic equality, wherein the verbs ‘construct’, ‘guarantee’, ‘eradicate’, and ‘promote’ themselves suggest a change of perspective, in that they denote ‘action’. It is not enough not to discriminate. It is necessary to enable - and in the Constitution of the Republic we find a basis for doing so - those same opportunities.

“We have turned the page on a system based simply on principle. Our position must be, above all, affirmative. It is necessary that our legislators adopt this position. [...] In the sphere of international relations, the 1988 Constitution establishes that the norms governing human rights should prevail.

“Moreover, article 4, section VII, repudiates terrorism, equating it with racism, which is a form of terrorism. Article 4 also sets forth provisions on cooperation among peoples for the progress of humanity. Here we find principles, more than principles, authorization for positive action.

“Affirmative action evidences the democratic substance of the principle of legal equality and, in this case, I will permit myself, in closing these remarks, to cite a renowned legal scholar, our own Carmen Lúcia Antunes Rocha: ‘Affirmative action is one of the instruments that makes it possible to overcome the problem of the non-citizen, he who does not participate politically and democratically, as the letter of the law guarantees, because the effective means he needs for becoming equal to others are not recognized. Citizenship does not accord with inequality. Republic does not accord with prejudice. Democracy does not accord with discrimination. Nevertheless, in Brazil, which claims to want to be republican and democratic, the citizen is still part of an elite, as a consequence of the multiple manifestations of prejudice that persist, be it under the facile cover of white silence toward blacks, the genteel word directed toward women, the condescending token change dispensed on the poor, the sentence read to the illiterate ... In this socio-political and economic context, a superficial and prejudiced reading of the

Constitution would not be truly democratic, nor would a reader who failed to search its soul, but proclaimed instead the facile discourse of the superior equals in our history, a history built by the callused hands of the discriminated, truly be a citizen.”

304. In citing the considerations above, the Government of Brazil would like to point out that affirmative action has not been limited to official speeches. Progressively, particularly after the Durban Conference, a series of continuous initiatives have been launched in this area, and an ongoing process of reflection and analysis over what can be done has taken place.

305. Reflection of the issue has been inspired primarily by the International Convention on the Elimination of All Forms of Racial Discrimination, an instrument of universal reach that is not limited to proposing punitive measures to combat racial discrimination. In conjunction with applicable suppressive measures, it establishes the possibility of adopting promotional measures, also called “affirmative action”.

306. In this context, article 1, paragraph 2, provides for the State parties, when the circumstances so warrant, to take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. Pursuant to the Convention, “these measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved”. The Government of Brazil understands this to mean “positive discrimination”, as it is called, which in many countries translates into “affirmative action”.

307. It should be mentioned that the racial discrimination that must be combated, eliminated, and eradicated is that defined in article 1 of the Convention. Under the terms of the article, racial discrimination constitutes “any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, or any other field of public life”.

308. It is worth reiterating that discrimination refers to any distinction, exclusion, restriction, or preference which has the purpose or effect of nullifying or impairing the recognition, enjoyment, or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural, and civil, or any other field of public life. This is the racial discrimination that the State parties are to prohibit and combat.

309. Article II, paragraph 2, which provides for positive discrimination, as it is called, with regard to the adoption of special and concrete measures whose purpose is, not to harm or impair the exercise of rights, but to provide greater protection to certain groups, in order that they may achieve the right of equality, encompasses a broad range of cases. Pursuant to the provision of article 1, paragraph 4, these special compensatory measures shall not be considered racial discrimination. Positive discrimination, or affirmative action, constitutes special and temporary measures that, in seeking to remedy past discrimination, have the purpose of accelerating the process toward equality, thereby allowing a substantial portion of the most vulnerable groups in society, such as ethnic and racial minorities, among other groups, to achieve equality. While

they represent compensatory policies adopted to ameliorate and remedy conditions arising from past discrimination, affirmative action seeks to transform formal equality into material and substantive equality.

310. According to Hélio Santos, an important scholar and the author of several books on the racial issue in Brazil, “affirmative actions are simultaneous or mandatory special and temporary measures, either taken or prescribed by the State, for purposes of eliminating inequalities accumulated through the course of history, thereby guaranteeing equal opportunity and treatment, as well as compensating losses caused by discrimination and marginalization rooted in race, ethnicity, religion, gender, and others. Therefore, affirmative actions seek to combat the cumulative effects of past discrimination”.

311. As mentioned in the introduction to this report, on 13 May 2002, the Government of Brazil decided to implement a national affirmative-action programme intended to actively promote the principles of diversity and pluralism in the filling of vacancies in the federal public administration and contracting of services by the Government. One of the objectives of the programme is to meet the percentage targets for participation by Afro-descendants, women, and the disabled in those functions. In permitting the adoption of affirmative action, Brazilian legislation is in absolute conformity with the International Convention on the Elimination of All Forms of Racial Discrimination, which sets forth the adoption of such actions under the terms of article 1, paragraph 4.

312. In a paper entitled “Affirmative action - the democratic substance of the principle of legal equality”, Professor Carmen Lúcia Antunes Rocha argues that the 1988 Constitution established, with uncommon legal force, the principle of legal equality as one of the central pillars of the Brazilian legal system. In what is known as the “Citizen’s Constitution”, the value of legal equality was reiterated and the paradigm on which it rested, redefined, on the basis of a dynamic concept that provides for transformative and active State action in the construction of the principle of equality. In this way, the Brazilian Constitution, as Carmen Rocha sees it, consecrates affirmative action as the most current democratic expression of legal equality promoted in and by society.

313. Brazilian law, in harmony with the Convention, includes specific precepts with respect to the adoption of special and temporary measures aimed at achieving equality. It is worth mentioning that the introduction, within the Brazilian legal system, of the principle of positive discrimination and the positive dimension of equality is supported by three types of rules contained in the Brazilian Constitution.

314. The first type of rule, whose substance is egalitarian and heavily semantic, charges the State with a duty to abolish substandard living conditions and inequalities, some of the most important aspects of which are:

- article 3, III - “to eradicate poverty and substandard living conditions and to reduce social and regional inequalities”;
- article 23, X - “to fight the causes [...] leading to substandard living conditions”;
- article 170, VII - “reduction of [...] social differences”.

315. A second type of rule provides for positive assistance to promote and integrate disadvantaged segments, with special emphasis for:

- article 3, IV - “to promote the well-being of all, without prejudice as to origin, race, sex, colour, age, and any other forms of discrimination”;
- article 23, X - “to fight the causes of poverty and the factors leading to substandard living conditions, and promoting the social integration of the underprivileged sectors of the population”;
- article 227, II - “the creation of programmes [...] for the social integration of adolescents with disabilities”.

316. Lastly, there are norms whose text prescribes “just discrimination” as a way of compensating for unequal opportunity or, in some cases, fomenting the development of sectors considered to be of high priority, some of the most salient of which are:

- article 7, XX - “protection of the labour market for women through specific incentives, as provided by law”;
- article 37, VIII - “the law shall reserve a percentage of public offices and positions for disabled persons and shall define the criteria for their admittance”;
- article 145, paragraph 1 - “whenever possible, taxes shall have an individual character and shall be graded according to the economic capacity of the taxpayer”;
- article 170, IX - “preferential treatment for small enterprises organized under Brazilian laws and having their head-office and management in Brazil”;
- article 179 - “The Union, the States, the Federal District, and the municipalities shall afford microenterprises and small enterprises, as defined by law, differentiated legal treatment, in order to foster their advancement, by simplifying their administration, tax, social security, and credit obligations or by the elimination or reduction of such obligations, through the application of specific laws”.

317. In the sphere of subconstitutional norms, some of the following legislation provides the basis for affirmative action:

- Decree-Law No. 5452/43 (CLT), which mandates, in its article 354, that two thirds of the employees of individual or incorporated companies must be Brazilian;
- Decree-Law No. 5452/43 (CLT), which establishes, in its article 373-A, the adoption of policies intended to correct distortions responsible for causing inequality between men and women;
- Law No. 8112/90, which prescribes, in its article 5, paragraph 2, quotas of up to 20 per cent for the disabled in the federal civil service;

- Law No. 8213/93, which sets, in its article 93, quotas for the disabled in the private sector;
- Law No. 8666/93, which waives, in its article 24, section XX, the competitive-bidding requirements in the contracting of philanthropic organizations for the disabled; and
- Law No. 9504/97, which provides, in article 10, paragraph 2, for quotas for women candidates in political parties. With respect to the quotas for women, the Supreme Election Court (TSE) declared: “At least twenty per cent of the vacancies in each party or coalition must be filled by women candidates.” The text of paragraph 3 of article 11 of Law No. 9100/95 is not compatible with section I of article 5 of the Constitution. (TSE, Special Appeal No. 13759, Rap. Nilson vital Naves, 1996.)

318. Thus, the Brazilian constitutional system correlates equality and discrimination in two different ways, complementary and bound by common agreement:

- (a) It prohibits discrimination in those circumstances in which such action would produce inequality; and,
- (b) It recommends discrimination as a way of compensating for unequal opportunity, that is, when such action is necessary to promote equality.

319. This twofold definition of avoiding inequality and promoting equality offers two equally distinct and complementary meanings:

- (a) A negative meaning, which imposes a negative obligation, abstention, a passive role, an obligation to not act: to not discriminate; and
- (b) A positive meaning, which imposes a positive obligation, assistance, an active role, an obligation to act: to promote equality.

320. That same system disciplines two types of discrimination: negative discrimination, unlawful, and, for that reason, prohibited, designated unjust discrimination; the other, positive, lawful, as a consequence of which it is prescribed.

321. In addition, the constitutional text contains the criteria for distinguishing discrimination, those criteria which define the two types of discrimination governed by the federal Constitution: one, adverse, and the other, in accordance with the principle of equality. This is set out in this provision of article 5, XLI: “The law shall punish any discrimination [...] against fundamental rights and freedoms”, so that in cases in which it does not constitute an attempt against fundamental rights and freedoms, discrimination is fully permissible under the Brazilian legal system.

322. We should underscore article 7, section XX, of the 1988 Constitution, which addresses the labour market for women, by setting forth specific incentives, as well as article 37, VII, which determines that by law a specific percentage of public offices and positions shall be reserved for the disabled. Article 145, paragraph 1, requires that taxes have a personal character and that they be scaled according to the economic means of the taxpayer.

323. In the area of subconstitutional legislation, the following can be mentioned:

- Decree-Law No. 5452/43 (Consolidated Labour Laws), which mandates, in its article 354, that two thirds of the employees of individual or incorporated companies must be Brazilian;
- Decree-Law No. 5452/43, which sets forth, in its article 373-A, the adoption of policies intended to correct distortions responsible for causing inequality between men and women;
- Law No. 8112/90, which prescribes, in its article 5, paragraph 2, quotas of up to 20 per cent for the disabled in the federal civil service;
- Law No. 8213/93, which sets out, in its article 93, quotas for the disabled in the private sector;
- Law No. 8666/93, which waives, in its article 24, section XX, the competitive-bidding requirements in the contracting of philanthropic organizations for the disabled; and
- Law No. 9100/95, also called the “Quotas Law”, which requires that at least 20 per cent of the candidacies for elected municipal offices be set aside for women.

324. Currently, the federal senate is considering Draft Law No. 650 of 1999, sponsored by Senator José Sarney, which establishes affirmative-action quotas for the black population in the access to public offices and positions, higher education, and the Higher Education Student Financing Fund. The bill stipulates that 20 per cent of the vacancies referred to above must be set aside for members of the black population.

Civil society initiatives (in partnership with the State)

325. Since the 1970s, a large number of non-governmental organizations representing the black community have emerged. Darién Davis suggests that these organizations can be grouped into five different categories: (a) those related to promoting the community in the educational and cultural fields; (b) organizations that provide legal services and deal directly with human rights issues and represent blacks in their complaints against public officials; (c) groups that address the psychological needs of blacks, such as self-esteem; (d) organizations that are active in the area of employment and developing skills for the labour market; and (e) organizations specifically aimed at addressing the needs of black women.

326. One of the areas in which inequality is most evident consists in the access blacks have to higher education. Various organizations of civil society have taken the initiative to develop alternative courses to prepare for the university entrance exams through which students gain access to university degree programmes. In general, these organizations depend on volunteer work, and they facilitate access by students and candidates who lack the necessary financial means. Examples of these initiatives include:

- Educafro, Pastoral do Negro/Movimento Negro, which conducts activities in Rio de Janeiro and São Paulo and has been in operation since the beginning of the 1990s;
- Cursinho do Núcleo de Consciência Negra, of the University of São Paulo, which has been in existence since 1994;
- Thema Educação, Movimento Negro, Tucuruvi, founded in 1998;
- Zumbi dos Palmares, Porto Alegre, in operation since 1996;
- Cursinho da PUC, NEAFRO (Núcleo de Estudos Africanos), an African studies centre, in existence since 1997;
- Instituto Educacional e Beneficente Steve Biko, which acts basically in Bahia and has been in existence since the beginning of the 1990s.

327. Since September 1999, the State Secretariat of Human Rights has operated as a link between the university entrance exam preparation courses that serve the black and underprivileged communities, the Ministry of Education and UNESCO. This effort led to the approval of projects for the courses aimed at producing educational material, acquiring transportation vouchers for the neediest students, training volunteer teachers, and raising the resources to purchase materials. This effort focused on courses in the States of Rio de Janeiro, São Paulo, Minas Gerais, Bahia, Pernambuco, and Mato Grosso do Sul.

328. Finally, we would like to mention that the Ministry of Education prepared, with the help of the Interministerial Working Group for the Promotion of the Black Population, “nine nationwide parameters for curricula”. Implemented by the Ministry of Education beginning in 1995, the objective of these parameters is to develop curricula for the eight grades of primary education, which must be adapted to each region’s peculiarities and recognize the Afro-Brazilian population and its cultural contribution to the nation’s construction. In this way, the Government, with its partners, seeks to combat prejudice and discrimination in the schools, replacing them with the values of democratic equality, cultural pluralism, and social justice.

VII. THE NATIONAL HUMAN RIGHTS PROGRAMME AND THE ISSUES OF RACISM AND DISCRIMINATION

329. Another important reference of Brazilian State action, with respect to the adoption of affirmative action policies designed to combat racism and discrimination, is the National Human Rights Programme (PNDH).

330. The first version of the programme was launched in 1996. We can assert that in the six years since its launching it has been possible to systematize the demands of Brazilian society with regard to human rights and identify alternative solutions for structural problems, thereby assisting in the formulation and implementation of public policies that foster the creation of State programmes and agencies established with a view to promoting and guaranteeing human rights.

331. In its first version, the National Human Rights Programme, which has since been refined and expanded, expressly alluded to compensatory policies, establishing as a goal the development of affirmative actions in favour of vulnerable groups of society. To this end, the National Human Rights Programme has the following goals:

- (a) To stimulate the presence of ethnic groups that comprise Brazilian society in institutional advertisements contracted by agencies of the direct and indirect federal administration and companies controlled by the federal Government;
- (b) To support the definition of actions that promote the black population and public policies;
- (c) To support actions by the private sector involving positive discrimination;
- (d) To create a database on the situation of civil, political, social, economic, and cultural rights within the black population in Brazil that can serve as a guide for the affirmative action policies intended to promote that community;
- (e) To develop affirmative actions that provide access by black students to professional training courses, universities, and high-tech fields;
- (f) To formulate compensatory policies that promote the black population from a social and economic standpoint.

332. PNDH's goals were, for the most part, incorporated into the federal Government's planning and budget instruments, becoming specific programmes and actions financed with resources provided for in the annual budgetary laws, pursuant to the Multi-Annual Plan.

333. Among the principal legislative measures that have emerged from PNDH's proposals are the acknowledgement of the deaths of those disappeared as a consequence of their political activities (Law No. 9140/95), for which deaths the State has assumed responsibility and granted compensation to the families of the victims; the transfer of jurisdiction, from the military courts to civilian courts, over deliberate crimes against life committed by military police officers (Law No. 9299/96), which paved the way for the indictment and prosecution of military police officers in cases of multiple and serious violations, such as those that took place in Carandiru, Corumbiara and Eldorado dos Carajás; the classification of the crime of torture as a crime (Law No. 9455/97), which constituted a milestone in the effort against criminal acts of that nature in Brazil; and the development of the proposed reform of the judicial branch, which includes measures intended to streamline the processing of those responsible for violations, the so-called "federalization" of human rights crimes.

334. PNDH also contributed to increasing Brazil's participation in the United Nations and regional (Organization of American States) systems of human rights promotion and protection, by maintaining the policy of adherence to international human rights agreements and conventions, and by fully incorporating the country into the inter-American system. Increased cooperation with international protection bodies has been evidenced in the number of United Nations special rapporteurs who have visited Brazil in recent years. These visits have resulted in the elaboration of reports containing conclusions and recommendations that are of significant utility in improving diagnostic mechanisms and identifying concrete measures to overcome problems related to human rights in Brazil.

335. The country has been visited by the special rapporteurs on child trafficking and child prostitution and pornography; on violence against women; on racism, racial discrimination, xenophobia, and related intolerance; on toxic waste; on the question of torture; and more recently, on the right to food. On 19 December 2001, the President of the Republic put forth an open invitation to all the thematic rapporteurs of the Commission on Human Rights to visit Brazil at any time. As evidence of the continuation of the cooperation with the United Nations thematic mechanisms, the special rapporteur on extrajudicial, summary and arbitrary executions visited the country in 2003.

336. Likewise, the cooperation with the OAS supervisory bodies has provided the opportunity to find amicable settlements in cases of violations under examination by the Inter-American Commission on Human Rights, thereby making it possible to grant compensation and indemnification to the victims of such violations or their families, as well as to adopt administrative and legislative measures to prevent new violations from occurring. The acceptance of the compulsory jurisdiction of the Inter-American Court of Human Rights represents, moreover, an additional guarantee to all Brazilians that the rights enshrined in the American Convention on Human Rights will be protected when the domestic courts prove incapable of ensuring the discharge of justice.

337. On the domestic front, the results stemming from the elaboration and implementation of PNDH can be measured by the increased space offered for public debate on questions related to the protection and promotion of human rights, such as the effort against the sexual exploitation of children and adolescents, the reform of the mechanisms for reintroducing juvenile offenders into society, maintenance of the minimum age of legal capacity, the effort against all forms of discrimination, the adoption of policies on affirmative action and the promotion of equality, and the struggle against the practice of torture. The efforts made in the area of the promotion and protection of human rights have been founded on the strategic importance of ensuring coordinated action among the federal, State, and municipal governments, the executive, legislative and judicial branches, as well as partnerships formed between Government agencies and organizations representing civil society.

338. In adopting the National Human Rights Programme on 13 May 1996, Brazil became one of the first countries in the world to fulfil one of the specific recommendations to emerge from the World Conference on Human Rights, held in Vienna, in 1993, officially designating human rights as a public Government policy for the first time. Without abjuring its full and indissoluble understanding of human rights, the original programme placed greater emphasis on guaranteeing the protection of civil rights.

339. The PNDH review represented a new milestone in the promotion and protection of human rights, insofar as it placed economic, social, and cultural rights on the same level as civil and political rights, thereby fulfilling the demands made by civil society organizations at the Fourth National Conference on Human Rights held on 13 and 14 May 1999 in the Chamber of Deputies in Brasilia.

340. On 12 May 2002, six years after the first version was launched, the Second National Human Rights Programme was unveiled. It set forth a series of actions intended to, among other things, overcome racist and exclusionary practices carried out against discriminated segments of society and promote equality and the full integration of Afro-descendants, homosexuals, women, the elderly, children, adolescents, Indians, the disabled and foreigners. Included on the list of public policies set out in the PNDH II, the result of an intense dialogue between Government agencies and civil-society entities, are 518 actions in the civil rights, economic, social and cultural fields aimed at ensuring Brazilians better living conditions and the full respect for their fundamental rights.

341. The updated National Programme offers the Government of Brazil and society the opportunity to assess the progress made since 1996, specifically the proposed actions that were transformed into Government programmes and the problems identified in PNDH's implementation. The inclusion of economic, social and cultural rights, in a manner consistent with the notion of the indivisibility and interdependence of all human rights as set forth in the Vienna Declaration and Programme of Action (1993), was guided by the parameters defined in the 1988 Federal Constitution and inspired by the International Covenant on Economic, Social and Cultural Rights and the San Salvador Protocol on Economic, Social and Cultural Rights, ratified by Brazil in 1992 and 1996, respectively.

342. PNDH II incorporates specific actions for guaranteeing the right to education, health, social security and social assistance, employment, housing, a healthy environment, food, culture and leisure, as well as proposals aimed at educating and raising awareness among all Brazilians, for the purpose of constructing and consolidating a culture of respect for human rights. So as to heed the wishes of civil society, new ways were established for following up and monitoring the actions considered in the National Programme, actions that were based on the strategic relationship between the implementation of the programme and the development of the corresponding budgets at the federal, State and municipal levels. PNDH II no longer restricts the proposed actions to short-, medium- and long-term objectives, but rather is implemented through annual action plans, which will define measures to be adopted, the budgetary allocations set aside to finance them, and the agencies that will be responsible for their implementation.

343. The implementation of PNDH II began in 2002 with budgetary resources provided for in the 2000-2003 multi-annual plan and in the corresponding annual budgetary law. It is expected that, in the course of 2003, PNDH II will have an influence on the discussion regarding the 2004-2007 multi-annual plan. The National Programme will also provide the parameters for and guide the determination of the social programmes that are to be developed in the country through 2007, when the programme is scheduled to undergo a review.

344. Discussions on the proposals for updating the programme were sponsored through regional seminars, which included broad participation by Government agencies and civil society entities, and subsequently recorded and consolidated by the Violence Studies Group of the

University of São Paulo. Following efforts to systematize and unify the proposals and after consulting with the ministries and agencies involved in the area of social policy, a text containing 500 proposals was prepared, under the supervision of the Civil Cabinet of the President of the Republic, in which all categories of rights were considered. Between 19 December 2001 and 15 March 2002, the State Secretariat for Human Rights held a public consultation on the Internet, out of which emerged, after the pertinent corrections and final adjustments were made, the PNDH II text containing 518 proposals for Government action that is currently in force.

345. Short-term proposals include:

- To support the Interministerial Working Group established by the presidential decree of 20 November 1995, for the purpose of recommending actions and policies for promoting the black population. The State Secretariat for Human Rights conferred on the Working Group a structure that is equivalent to that of an executive secretariat and, through the Department of Human Rights, has supported the Working Group's operation and actions;
- To establish the requirement that "colour" be included in all information or registration systems relative to the population and public databases. The colour requirement was included in the Annual List of Social Data and the General Registry of Employed and Unemployed Persons. The same requirement was included in the Brazilian Geographic and Statistical Institute's 2000 census;
- To support the Working Group on the Elimination of Discrimination in Employment and Occupation (GTEDEO), incorporated under the Ministry of Labour by Decree on 20 March 1996. GTEDEO is a tripartite body whose mission is to define an action plan and recommend strategies for combating discrimination in employment and occupation, pursuant to the principles contained in ILO Convention No. 111. The State Secretariat for Human Rights occupies a seat on the GTEDEO board and contributes to the formulation and enactment of its proposals;
- To support the development of actions to promote the black population and public policies. Current activities include publishing the "Source Guide to Black History in Contemporary Society" (in partnership with the National Archives) and a "Who's Who in Brazilian Negritude". Meetings have been held with entities that offer blacks and the disadvantaged university entrance exam preparation courses, in conjunction with the Ministry of Education and UNESCO;
- To support actions of the private sector in connection with positive discrimination, which include support for the Ethos Institute, which in partnership with the São Paulo Federation of Industries and the ABRINQ Foundation for the Rights of Children, launched the Business Commitment for the Promotion of Diversity in the Workplace;
- To stimulate the State secretariats for public safety to offer retraining courses and seminars on racial discrimination.

346. Medium-term proposals for action include:

- To rescind discriminatory norms remaining in infraconstitutional legislation;
- To improve the norms for combating discrimination against the black population;
- To develop a database on the situation within Brazilian society concerning the civil, political, social, economic and cultural rights of the black population which can serve as a guide for affirmative action aimed at promoting the interests of the community. In 1999, the Department of Human Rights will support and implement databases by means of agreements with NGOs that represent the rights of the black population;
- To promote the mapping and registration, as part of the nation's historical heritage, of those sites and documents of historical memory, as well as the protection of Afro-Brazilian cultural expressions. The Extraordinary Ministry of Agrarian Policy and the National Agrarian Settlement and Reform Institute (INCRA) has expropriated land in various States and returned land to the remaining runaway slave communities. In 1999, the Department of Human Rights will offer financial support for research that will conclude with the mapping of sites which are of historical relevance;
- To develop affirmative action for the access to professional, university, and high-tech courses by blacks. The issue is under review within the Department of Human Rights. In addition, several community initiatives have contributed toward achieving this goal;
- To instruct IBGE to adopt criteria for integrating mestizo and black persons as part of the overall black population. On the basis of discussions with the State Secretariat for Human Rights and IBGE, the requirement that colour be included in their surveys, including the 2000 census, was added;
- To foster an emphasis on the history and struggles of black peoples in the construction of our country in textbooks, and eliminating stereotypes and discriminatory references. The Department of Human Rights has supported the publication of innumerable editions of books that provide information on the history of blacks in Brazil, by the Palmares Foundation, the National Archives, etc.;
- To disseminate the international conventions, federal constitutional provisions and legislation that deal with racism. Together with the Ministry of Labour and Employment, the Department of Human Rights has produced publications containing the full texts of the international conventions on discrimination in employment. It has also made available publications containing domestic legislation;
- To support the preparation and publication of documents that contribute toward the dissemination of anti-discrimination legislation. In 1998, 150,000 copies of the publication containing the legislative texts relative to anti-discrimination policy, the National Human Rights Programme, and the Universal Declaration of Human Rights were distributed. For 1999, another 250,000 copies were prepared for distribution; and

- To facilitate discussions and communication between entities representing the black community and the different sectors of the Government, for the purpose of developing action plans and strategies to promote the black community. In order to fulfil this goal, the Department of Human Rights has supported and participated in meetings and seminars throughout the country.

347. Long-term proposals for action include:

- To promote actions that contribute to preserving historical memory and fomenting cultural production in the black community in Brazil, such as the “Resource Guide to Black History in Contemporary Society”, in partnership with the National Archives and Who’s Who in Brazilian Negritude; and
- To formulate compensatory policies that promote the black community economically and politically. Meetings with entities that offer university entrance exam preparation courses.

348. In addition to continuing the projects and activities not yet concluded and those intended to study how best to carry out the projects not yet executed, PNDH II presents more than 500 new proposals, which are broader and consider, further, the issue from the perspective of the effort against racism and discrimination.

349. With respect to the issues of race and discrimination, PNDH II has the following goals:

- To promote monitoring of radio and television programmes that encourage justifications for crime, violence, torture, racism and other forms of discrimination, the actions of extermination squads, and the death penalty, in order to identify the responsible parties and take the pertinent legal measures;
- To prohibit propaganda containing neo-Nazi ideas or those of other ideologies that advocate violence, particularly against minority groups;
- To propose legislation aimed at preventing the use of the Internet to encourage practices that violate human rights;
- To support, in conjunction with the available communication mediums, initiatives intended to raise the self-esteem of Afro-descendants, indigenous peoples, and other groups historically victimized by racism and other forms of discrimination;
- To guarantee all Brazilian citizens the right of freedom of belief and worship;
- To prevent and combat religious intolerance, including with regard to religious minorities and Afro-Brazilian cults;
- To implement the provisions of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief adopted by the General Assembly on 25 November 1981;

- To prohibit the dissemination of racist and/or xenophobic propaganda and messages that are defamatory to religions and incite hatred for spiritual and cultural values;
- To encourage dialogue among religious movements directed toward the construction of a pluralist society based on the recognition of and respect for differences in belief and worship;
- To support the functioning and implementation of the resolutions of the National Commission to Combat Racism incorporated in the Ministry of Justice;
- To stimulate the dissemination and application of anti-discrimination legislation, as well as the repeal of discriminatory norms contained in infraconstitutional legislation;
- To stimulate the establishment of channels providing the population with direct and regular access to government information and documents, particularly information on the status of investigations and legal actions concerning cases of human rights violations;
- To support the adoption, by the Government and the private sector, of affirmative action policies as a way to combat inequality;
- To promote studies on the modification of the Law of Public Competitive Bidding Procedures, so as to allow that, in cases in which all bidding procedures have been exhausted and the candidates remain tied, the criterion for breaking the tie, which currently consists in picking the winning bidder by lottery, be replaced with one involving the adoption, by the bidders, of affirmative action policies that favour discriminated groups;
- To support the inclusion in school curricula of material on the problem of discrimination in Brazilian society and the right of all groups and individuals to equal treatment before the law;
- To support the activities of the National Council on the Rights of Women, as well as the State and municipal women's rights councils;
- To promote the development of federal, State, and municipal government programmes intended to ensure equal rights at all levels, including as regards health, education and professional training, employment, social security, rural property and credit, culture, political freedom, and justice;
- To provide incentives for training primary and secondary education teachers on the National Parameters for Curricula in regard to questions connected with the promotion of gender equality and the effort to combat discrimination against women;
- To provide incentives for courses aimed at preparing women to exercise local leadership positions, for the purpose of meeting the quota requirements for women candidates to elected office;

- To support the regulation of article 7, section XX, of the federal Constitution, which sets forth provisions on the protection of women in the labour market;
- To support programmes aimed at raising awareness, with regard to issues related to gender and domestic and sexual violence, in the training and preparation of future health care and legal professionals and civil and military police officers, with an emphasis on the protection of the rights of Afro-descendant and indigenous women;
- To support the Brazilian State's acknowledgement that slavery and the transatlantic slave trade constituted grave and systematic violations of human rights, which today would be considered crimes against humanity;
- To support the Brazilian State's recognition of the economic, social, and political marginalization to which Afro-descendants have been subjected as a consequence of slavery;
- To adopt, within the scope of the union, and to promote the adoption by the States and municipalities of compensatory measures aimed at eliminating racial discrimination and promoting equal opportunity, such as: expanding access by Afro-descendants to public universities, professional courses, high-tech training, public offices and positions, including commissioned posts, in numbers that are proportional to their representation in Brazilian society as a whole;
- To establish databases on the situation in Brazilian society concerning the civil, political, social, economic and cultural rights of Afro-descendants, which should serve as guides in the adoption of affirmative public policies;
- To study the feasibility of establishing social reparation funds intended to finance policies for affirmative action and the promotion of equal opportunity;
- To implement the International Convention on the Elimination of All Forms of Racial Discrimination, ILO Convention No. 111 concerning discrimination in employment and occupation, and the Convention against Discrimination in Education;
- To promote the creation and functioning of assistance and legal counselling programmes to expand access by Afro-descendants to the legal system;
- To support the regulation of article 68 of the Temporary Constitutional Provisions Act, which sets forth provisions for recognizing the permanent ownership of the lands occupied by the remaining runaway slave communities;
- To promote the registration and identification of the remaining runaway slave communities throughout the national territory for the purpose of issuing permanent title deeds to their lands;
- To support measures intended to remove squatters and intruders on titled lands belonging to runaway slave communities;

- To support infrastructure projects in the remaining runaway slave communities as a way of preventing rural exodus and promoting the social and economic development of those communities;
- To establish an administrative unit within the National Agrarian Settlement and Reform Institute, INCRA, intended to provide support to small black farmer associations in the development projects of runaway slave community;
- To promote actions that contribute to preserving historical memory and fostering cultural production in the black community in Brazil;
- To promote the mapping and registration, as part of the nation's historical heritage, of those sites and documents that are of historical relevance, as well as the protection of Afro-Brazilian cultural expressions;
- To stimulate proportional representation by the racial groups that comprise Brazilian society in institutional advertisements contracted by agencies of the direct and indirect administration and State-owned companies;
- To encourage a dialogue with professional associations and public relations agents aimed at convincing them of the need to ensure that advertisements and commercials adequately reflect the racial composition of Brazilian society and avoiding the use of disparaging stereotypes;
- To examine the feasibility of modifying article 61 of the Brazilian Criminal Code for purposes of including race, racial discrimination, xenophobia, and related forms of intolerance as aggravating circumstances to be considered in the application of penalties;
- To propose measures intended to strengthen the role of the Public Ministry in promoting and protecting the rights and interests of the victims of racism, racial discrimination, and related forms of intolerance;
- To support the requirement that race/colour be included in the information and registration systems relative to the population and in public databases;
- To support the activities of the Working Group on the Elimination of Discrimination in Employment and Occupation, incorporated in the Ministry of Labour and Employment;
- To encourage the participation of Afro-descendant representatives on the federal, State, and municipal councils formed to safeguard rights and to support the creation of State and municipal councils intended to safeguard the rights of Afro-descendants;
- To stimulate the State secretariats for public safety to offer training courses and seminars on racism and racial discrimination;

- To propose a draft bill regulating articles 215, 216 and 242 of the federal Constitution, which address the exercise of cultural rights and the formation of Brazil's cultural heritage;
- To propose that the Brazilian Institute of Geography and Statistics adopt broad statistical criteria designed to consider blacks and mestizos as part of the overall Afro-descendant population;
- To support the review of textbooks for the purpose of reclaiming the historical record and the contribution of Afro-descendants to the construction of the nation's identity;
- To promote learning that is founded on tolerance, peace, respect for differences, and that takes into account the country's cultural diversity, including the teaching of the culture and history of Afro-descendants;
- To support the strengthening of the Palmares Cultural Foundation, assuring it the necessary means for the performance of its activities;
- To formulate and implement policies that protect and promote the rights of indigenous peoples, as substitutes for policies aimed at integrating and providing assistance to the indigenous populations;
- To support the restructuring of the National Indian Foundation, FUNAI, in such a way that permits the institution to guarantee the constitutional rights of indigenous peoples;
- To provide FUNAI with sufficient human and financial resources to fulfil its institutional mission of safeguarding the rights of indigenous peoples;
- To support the review of the Indian Statute (Law No. 6001/73), with the aim of securing the rapid approval of the draft bill of the Indigenous Societies Statute as well as promoting the ratification of ILO Convention No. 169 concerning indigenous and tribal peoples in independent countries;
- To assure the effective participation of indigenous peoples, their organizations, and the federal indigenous agency in the formulation and implementation of public policies to protect and promote indigenous rights;
- To assure the right of indigenous peoples to the reserve and domain lands they have traditionally occupied;
- To demarcate and register the lands traditionally occupied by indigenous peoples, specifically the reserve and domain lands that have not yet been demarcated and registered;

- To disseminate measures on the registration of indigenous lands, especially in Brazilian municipalities located in these regions, in order to increase confidence in and the stability of the relationship between indigenous peoples and the broader society;
- To guarantee indigenous peoples health assistance through the implementation of differentiated health programmes that take into consideration the specificities of the population and give priority to preventive medicine and food security measures;
- To assure indigenous peoples a differentiated education, which respects their sociocultural reality, and enables the provision of support for indigenous students in primary, secondary, and higher education;
- To promote the establishment of lines of credit and the granting of scholarships for indigenous university students;
- To implement policies for communicating and disseminating information on indigenous peoples, particularly in public and private primary and secondary schools, for the purpose of promoting equality and combating discrimination;
- To implement policies aimed at protecting and managing indigenous lands through the implementation of systems intended for the permanent monitoring of those lands and the surrounding areas, the promotion of partnerships with the federal police, the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA) and the State environmental secretariats, and the training of civil servants and members of the indigenous communities;
- To enable programmes and actions in the sphere of ethno-development aimed at the sustainable occupation of strategic areas within indigenous lands, such as areas unoccupied by invaders and/or access points for loggers and miners;
- To implement a database that allows for the gathering and organization of information on agrarian conflicts and violence on indigenous lands, which should be integrated in the maps that indicate existing agrarian conflicts and violence;
- To support the publication of materials containing data relative to discrimination and violence against indigenous peoples;
- To support the review of textbooks in order to reclaim the historical record and the contribution of indigenous peoples to the construction of the nation's identity;
- To promote learning that is founded on tolerance, peace, respect for differences, that takes into account the country's cultural diversity, including the teaching of the culture and history of indigenous peoples;
- To support and advise indigenous communities in the development and execution of sustainable ethno-development projects and actions;

- To support the creation and development of multisectorial administrative programmes managed by FUNAI, within the scope of the multi-annual plans and the federal budget;
- To guarantee the constitutional right of indigenous peoples to the exclusive use of the biodiversity on their lands, through the implementation of actions that prohibit the biopiracy of indigenous resources and traditional knowledge;
- To develop policies for protecting the cultural and biological property and the traditional knowledge of indigenous peoples, particularly actions aimed at cataloguing and registering patents and giving publicity to that property;
- To expand and strengthen assistance programmes for carriers of sickle-cell anaemia;
- To promote policies aimed at securing individuals their first job, which incorporate gender and race perspectives, and to create a widely publicized database directed toward youth seeking their first job;
- To organize databases containing social indicators that allow for the analysis of employment, underemployment, and unemployment conditions from the standpoint of gender and race;
- To stimulate the adoption of affirmative-action policies in the public and private sectors in order to promote broader participation by vulnerable groups in the labour market;
- To endeavour to secure the implementation of legislation that promotes equality in the labour market, without discrimination on the basis of age, race, sex, sexual orientation, belief, philosophical conviction, social status, and sociological state, taking into account individuals with special needs, typifying such discrimination, and determining the applicable penalties;
- To ensure the continued implementation of ILO Convention No. 111, which addresses discrimination in the workplace, and to strengthen the network of Centres for Promoting Equal Opportunity and Combating Discrimination in Employment and Profession programme incorporated in the Regional Labour Precincts and Subprecincts;
- To reinforce and expand the mechanisms for enforcing working conditions and the treatment of workers and domestic servants, as well as to review discriminatory regulations such as the prohibition against using social entrances and elevators;
- To implement the International Labour Organization's conventions ratified by Brazil, as well as the Declaration on the Fundamental Principles and Rights at Work, especially in regard to the freedom of association, the elimination of all forms of forced labour, the eradication of child labour, and the elimination of all forms of discrimination in respect of employment and profession;

- To support the development of the declarations on the rights of indigenous peoples within the scope of the United Nations and Organization of American States; and
- To ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

350. It is important to note that, in addition to the federal norms set forth, relevant norms aimed at promoting equality have been produced at the State level which reinforce and bolster the principles consecrated at the federal level.

351. Mention should be made of the principles set forth in State constitutions, specifically concerning:

(a) The adoption of compensatory measures, so as to overcome actual inequalities, prescribing preferences for persons discriminated against, which involve guaranteeing them greater participation in the labour market, education, health and other areas related to social rights (Pará State constitution, article 336);

(b) The obligation to include a black person in any State advertisement or commercial having more than two people (Bahia State constitution, article 289).

352. Since the promulgation of the 1988 federal Constitution, awareness concerning civil society's responsibility in advancing the defence and protection of human rights has been consolidated and has led to concrete actions.

353. Thus, entities created specifically to safeguard the rights of groups discriminated against and the private sector's cooperation in recognizing diversity as a valuable asset in the productive process has given discriminated groups and individuals the opportunity to reclaim their self-esteem, while combating the invisibility of social sectors and the reproduction of negative stereotypes. In this way, political activists, companies and NGOs representing indigenous peoples, blacks and gays have undertaken joint efforts to implement concrete measures aimed at overcoming the problem of discrimination. Some of the most significant of those efforts include:

- The implementation in various cities throughout the country of university entrance exam preparation courses specifically directed toward the Afro-descendant and disadvantaged population;
- The implementation, within the trade unions, of specific actions to address racial inequalities present in labour relations and employment and professional qualification policies;
- The introduction of legal-assistance services, free of charge, for the victims of racial and gender discrimination and discrimination based on sexual orientation;
- The development of health-care services and guidance for indigenous women, the introduction of indigenous schools and legal assistance services;

- The introduction of legal assistance and guidance services for the victims of discrimination based on sexual orientation;
- Since 1996 transnational companies, most notably affiliates of North American companies, have been experimenting with the adoption of policies for including blacks, homosexuals and the disabled on their staff;
- The creation of specific forums and networks for discussions on sickle-cell anaemia;
- The development of specific information projects on reproductive health, STD/AIDS, teenage pregnancy and population policies;
- The launching of regional and national magazines specifically targeting the Afro-descendant population;
- The production of children's literature containing content that values African traditions and the history of the Afro-descendant population;
- The increased use of new communication technologies for constructing networks, coordinating contacts, and exchanging information that is of interest to the Afro-descendant population;
- The promotion of a national debate on the introduction of a draft law establishing minimum quotas for Afro-descendant participation in commercials, films, TV programmes, and theatre productions (25 per cent in the case of commercials, films, TV programmes, and theatre productions; not less than 40 per cent in the case of publicity productions broadcast on TV or shown in movie theatres);
- The development of training and preparation courses for human rights advocates;
- The preparation and submission to the Committee on Economic, Social and Cultural Rights of alternative reports from civil society on the application of economic, social and cultural rights in Brazil;
- The establishment and maintenance of houses of worship of African origin;
- The introduction of forums strengthening and discussing African-based religions, intended to guarantee the right to the existence and expression of those traditions;
- The increased visibility of the role performed by religious leaders of African-based cults;
- The increased promotion of Afro-descendant girls and adolescents in the projects developed by the Black Movement organizations; and
- The increased participation of black women's organizations in national and international negotiations aimed at strengthening the social, economic, political and cultural rights of the female and Afro-descendant population.

VIII. NATIONAL AFFIRMATIVE ACTION PROGRAMME

354. Decree No. 4228, of 13 May 2002 (published in the 14 May 2002 edition of the Government gazette) governs the adoption of affirmative actions by the federal Government. A joint initiative of the ministries of justice; foreign relations; agricultural development; science and technology; planning, budget, and administration; labour and employment; and culture, the decree establishes the National Affirmative Action Programme.

355. It also sets up the Committee for the Evaluation and Monitoring of the National Affirmative Action Programme, made up of members of public agencies and entities, with a view to proposing, supporting and promoting actions intended for the programme's execution.

356. The decree recognizes the interlocutory role of the Black Movement and other movements representing segments that have been rendered vulnerable as a result of racism and/or discrimination, as well as reaffirming the need to adopt affirmative action.

357. The coordinating body of the programme presides over the State Secretariat for Human Rights of the Ministry of Justice. The National Affirmative Action Programme will consider, among other administrative and strategic management measures, the following actions, in accordance with the legislation in force:

(a) Compliance by agencies of the federal Government with the requirement guaranteeing the fulfilment of the percentage targets for participation by Afro-descendants, women and individuals with disabilities in the filling of commissioned posts of the Upper Executive and Advisory Group (DAS);

(b) The inclusion, on the terms and conditions negotiated for the transfer of resources executed by the federal Government, of clauses governing adherence to the programme;

(c) Compliance, in the competitive bidding procedures held by agencies of the federal Government, with additional point criteria employed for purposes of benefiting suppliers who demonstrate the adoption of policies that are compatible with the objectives of the programme; and

(d) The inclusion, in the contracting of service provision companies and technical personnel and consultants selected to develop projects in partnership with international organizations, of provisions establishing percentage targets for participation by Afro-descendants, women and individuals with disabilities.

358. For its part, the Committee for the Evaluation and Monitoring of the National Affirmative Action Programme will have the following goals:

(a) To propose the adoption of administrative and strategic management measures intended for the implementation of the programme;

(b) To support and promote actions aimed at the programme's execution;

- (c) To propose administrative directives and procedures intended to guarantee the adequate implementation of the programme, its incorporation in the by-laws of agencies that fall within the organizational structure of the federal public administration, and the corresponding fulfilment of the prescribed targets;
- (d) To coordinate, with its partners in the federal Government, the formulation of proposals that promote the implementation of affirmative-action policies;
- (e) To stimulate the development of training activities, with particular focus on the measures aimed at promoting equal opportunity and access to citizenship;
- (f) To promote greater awareness among civil servants concerning the need to protect human rights and eliminate inequality based on gender, race or disability;
- (g) To coordinate actions and partnerships with social enterprises and representatives of Afro-descendant, women's and disabled movements;
- (h) To systematize and assess the results achieved by the programme and to make those results available through the available communication mediums; and
- (i) To promote, on the domestic front, the international instruments for combating discrimination and promoting equality to which Brazil is a party.

359. The Committee for the Evaluation and Monitoring of the National Affirmative Action Programme is composed of the following members: the State Secretary for Human Rights, who will preside over the body; the president of the Institute for Applied Economic Research, IPEA, who will substitute for the committee president in his absence or when his attendance is not possible; a representative from each of the following: the Office of President of the Republic; the Ministry of Foreign Relations; the Ministry of Agricultural Development; the Ministry of Science and Technology; the Ministry of Planning, Budget and Administration; the Ministry of Labour and Employment; the Ministry of Culture; the Public Ministry of Labour; the National Council for Women's Rights; the National Council for Combating Discrimination; and from the Interministerial Working Group for the Promotion of the Black Population.

A. Brief assessment of affirmative action policies recently adopted in Brazil

360. In the Brazilian case, affirmative-action policies have been progressively applied with respect to such matters as preferential investments in the areas of education, health, housing, sanitation, potable water, environmental controls in regions or areas occupied primarily by Afro-descendants; the channelling of public resources, including with regard to the participation of the private sector in scholarship programmes for black students and, subsequently, the creation of a fund that allows mechanisms to support black students to be envisioned and materialize; sustainable development projects in runaway slave communities; projects for the preparation of black leaders; exchange programmes with African countries and projects designed to allow institutions in different regions to share their experiences.

361. The purpose of the Ministry of Agricultural Development's (MDA) affirmative action programme is to implement policies aimed at democratizing social relations. A series of measures were adopted to this end: a minimum quota of 20 per cent of blacks for the filling of

executive positions in MDA/INCRA in 2001 and 30 per cent in 2003; 20 per cent of the employees and consultants contracted by outsource service provision companies and international organizations must be black; public announcements for positions offered in the Ministry and the National Agrarian Settlement and Reform Institute through public civil service exams include the stipulation that 20 per cent of the available vacancies be set aside for black candidates; 30 per cent of MDA's budget allocated for agrarian reform programmes, including the Banco da Terra and the Family Agriculture programmes (PRONAF), must be channelled to predominantly black rural communities.

362. For its part, the Ministry of Justice is implementing affirmative actions that fulfil criteria aimed at ensuring that by the end of the current year the following objectives related to the participation by blacks, women and the disabled in the filling of upper administrative and advisory posts and the contracting of outsource services are achieved:

- (a) Afro-descendants, 20 per cent;
- (b) Women, 20 per cent;
- (c) Individuals with disabilities, 5 per cent.

363. In the Ministry of Foreign Relations, affirmative-action policies have been developed to allow Afro-descendants greater access to the Rio Branco Institute's Diplomatic Academy. These actions centre on granting scholarships for studies geared toward preparing for the entrance exam to a diplomatic career. The first group of applicants selected included 20 Afro-descendants, all of whom will receive, furthermore, guidance from diplomats who have volunteered their time. Also participating in the Ministry of Foreign Relations' programme are the Council on Science and Technology, the Palmares Foundation, the Ministry of Culture and the State Secretariat for Human Rights.

364. In the area of public bidding procedures, we must note the increasingly important role of outsourcing in the provision of services, for which purpose the corresponding public announcements have sought to establish quotas directed toward the most vulnerable segments of society.

365. In the area of employment, a crucial component in the integration of segments suffering in the country's social life, the adoption by the Ministry of Labour and Employment of the National Professional Qualification Plan bears mention. The principal purpose of the programme, one of the largest in the federal Government, is to provide training to Afro-descendant workers.

366. Another measure the Government adopted involved the appointment of Dr. Petronilha Beatriz Gonçalves e Silva and Professor Francisca Novantino Pinto de Angelo, an indigenous Brazilian, to the National Council on Education. A representative of the black community, Mrs. Leide Cardoso Neves, a member of the Women's Collective of Piauí, was also appointed to the Council. The Council's responsibilities include, among other things, the reduction of income, gender, ethnic and age inequality. Also participating on the Technical Committees of the National Council for Sustainable Rural Development are Mrs. Maria Rosalina dos Santos (family agriculture); Francisca Guimarães Sousa (rural economy diversification); and

Tatiana Karla Cardoso Neves (access to land). All of these women come from the Esperança Garcia Black Women's Collective of Piauí. Another important Afro-Brazilian appointment was that of Dr. Dora Lucia de Lima Bertulio to the National Commission against Torture, part of the Ministry of Justice's National Council on the Rights of the Human Person.

367. With respect to affirmative action in the area of higher education, the creation of a diversity programme by the State University of Santa Catarina, enabled 40 women to take part in the university's distance-delivered education programme, and the 40 full scholarships were offered to the Professor Everaldo Passos Technical School by the Centre for Technological and Human Resources Development of São José dos Campos.

368. Debates were conducted in various universities on the issue of affirmative action, including at the University of Brasília, the Federal University of Bahia, the Pontifical Catholic University of Minas Gerais and the State University of Santa Catarina.

369. Additionally, the National Council for Combating Discrimination was created, one of the objectives of which is to study the adoption of policies that favour Afro-descendants and other segments rendered vulnerable as a result of racism and discrimination. The Council is also mandated, pursuant to article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, to examine allegations of violations of the rights covered by the Convention.

370. The Ministry of Culture adopted, through Administrative Rule No. 484, of 22 August 2002, an affirmative action programme, which encompasses all associated entities and is aimed at applying the measures recommended by the National Human Rights Programme, particularly those directed toward Afro-descendants, women and individuals with disabilities.

371. The Ministry of Culture's Affirmative Action Programme includes the following administrative measures:

(a) In the filling of upper administrative and advisory posts, Afro-descendants, women and individuals with disabilities must be represented in the following percentages:

- Afro-descendants, 20 per cent;
- Women, 20 per cent; and
- Individuals with disabilities, 5 per cent.

(b) Under the terms of agreements or technical cooperation projects executed by the Ministry of Culture, or associated entities, clauses expressly requiring adherence to the National Human Rights Programme, particularly with respect to policies that promote equality, must be included;

(c) The public competitive-bidding procedures held by the Ministry of Culture must comply with the added criterion of giving preference to suppliers that demonstrate the adoption of affirmative actions, pursuant to the principles of Law No. 8666, of 21 June 1993;

(d) In the contracts signed with service provision companies, as well as technical personnel and consultants selected to develop projects in partnership with international organizations, participation by Afro-descendants, women and individuals with disabilities will be required in the following percentages:

- Afro-descendants, 20 per cent;
- Women, 20 per cent;
- Individuals with disabilities:
 - up to 200 employees, 2 per cent;
 - between 200 and 500 employees, 3 per cent;
 - between 500 and 1,000 employees, 4 per cent; and
 - above 1,000 employees, 5 per cent.

372. The Administrative Rule establishes that in cases in which persons belong to more than one of the main categories (Afro-descendants, women, disabled), priority will be given to the person belonging to three, two, and one of those categories, in that order.

373. The coordinating body of the Ministry of Culture's affirmative-action programme is headed by the Executive Secretary of the Ministry, who has the authority and duty to:

(a) Establish directives and administrative procedures intended to guarantee the programme's adequate implementation, its incorporation in the by-laws of the entities linked to the ministry's organizational structure, and the ultimate achievement of the goals set forth for the programme;

(b) Submit for the Minister of State's assessment the proposed supplementary directives, for the purpose of ensuring the programme's adequate execution;

(c) Work closely with social enterprises, coordinating partnerships with entities that safeguard and promote blacks, women and individuals with disabilities;

(d) Promote, within the Ministry of Culture and the associated entities, the respect for human rights, so as to raise awareness among employees about issues pertinent to the elimination of all forms of discrimination.

374. The administrative ruling of the Ministry of Culture also establishes an evaluation and monitoring commission for the programme, the purpose of which is to support, assess and supervise the implementation of the related actions, as well as make recommendations to the executive secretary on the adoption of measures intended to ensure the continuity and effectiveness of such actions. The Commission will be made up of representatives from the Ministry's executive secretariat and a representative from each of the associated entities.

375. The Ministry of Education established, through Law No. 19558, of 13 November 2002, the University Diversity Programme. The objective of the programme is to implement and assess strategies to promote access to higher education by individuals belonging to socially disadvantaged groups, particularly Afro-descendants and indigenous Brazilians. The programme will be carried out with resources transferred from the union to public or private not-for-profit entities that are active in the area of education and to develop innovative projects which serve the programme's ends. The transfer of resources by the union through the University Diversity Programme is expected to continue for a period of three years. Cash attendance and prize scholarships will be awarded to the students of the entities referred to above.

376. An equally significant development was the adoption of State human rights programmes in the States of Minas Gerais, Pernambuco, Rio Grande do Sul, Santa Catarina and São Paulo, setting out targets aimed at reinforcing the value of promoting racial equality.

B. Projections for the future of affirmative action in Brazil

377. President Luiz Inácio Lula da Silva attaches great importance to human rights and the struggle against racism and discrimination. After being sworn in on 1 January 2003, the President established in March a Special Secretariat, linked to the Office of the President of the Republic, to address the need for promotion of racial equality. Another important measure was the creation of a Special Secretariat to deal with women's rights.

378. The establishment of those bodies within the State apparatus underscores the importance of human rights in general and the effort against racism and discrimination specifically. It is expected that the secretariats will contribute toward the permanent inclusion of racial and gender considerations in Brazil's public policies.

379. The President of the Republic has a long history of being associated with the defence of human rights. During the presidential campaign, the then President-elect published a document in Salvador, Bahia, containing the following basic and preliminary principles, which serve as a starting point for reflection on the Government's programme in the effort against racism and discrimination in all its forms:

- The guarantee of a democratic and participatory policy formulation process;
- The consideration of the social issue as the principal organizing axis for the difficult political task of outlining strategies for the nation's reconstruction;
- The construction of a foundation for a democratic and populist programme for Brazil, with emphasis on the related social, national and democratic aspects;
- The reduction in the gap between whites and blacks, recognized by important studies and research work performed by Government agencies and non-governmental organizations, by universities and organizations of the black movement;

- The incorporation of the black population as citizens enjoying the full exercise of their rights and the creation of objective conditions for its access to and participation in the country's social and political benefits; and
- Joining the debate on race relations in the world, in the light of the current political, economic, social and cultural setting in times defined by globalization and neo-liberalism.

380. With this in mind, we present, for reference purposes, some suggestions for beginning the discussion on proposals for the Government's programme in 2002:

- To put into motion the titling of the urban and rural runaway slave community lands;
- To ensure the development of programmes aimed at professionalizing the labour force and generating income directed toward members of excluded groups, including the black population;
- To introduce, in the policies intended to support scientific and technological research, equal treatment for projects related to race relations;
- To guarantee the implementation of ILO Convention No. 111;
- To intensify the implementation of the Women's Integral Health Programme, including the development of specific programmes that consider race and gender together;
- To implement the International Convention on the Elimination of All Forms of Racial Discrimination;
- To introduce and intensify use of the requirement that colour be included in the information systems in all areas of the public sector that provide assistance to users;
- To ensure the development and detection of sickle-cell anaemia and thalassemia (during the first years of life), hypertension and myoimatosi, an ailment whose incidence is higher in the black population and which has serious repercussions for reproductive health;
- To guarantee the representation and visibility of ethnic groups in all of the Government's communications campaigns and activities, as well as those of entities in which the union has a political or economic investment;
- To ensure quality education and the adoption of inter-ethnic and non-sexist learning in education;
- To develop programmes that ensure equal opportunity and treatment in the cultural policies formulated and implemented;

- To promote the mapping and registration, as part of the nation's historical heritage, of those sites and documents of historical memory with regard to the runaway slave communities, as well as the protection of Afro-Brazilian cultural expressions;
- To create a programme for defining commissioned posts on the basis of gender and race criteria;
- To treat religiosity equally, while considering the importance of the freedom to worship for the Afro-descendant religions;
- To mount a programme for combating racial violence, with special emphasis on the conditions experienced by black youth;
- To create a participatory instrument and channels capable of diagnosing, proposing, monitoring, evaluating and enforcing the execution of anti-racist policies, with special attention given to providing stronger institutional backing to social actors who are at the forefront of the struggle;
- To guarantee the development of policies for combating the feminization of poverty, on the basis of the protection of women's employment, by means of specific incentives that give particular weight to black women through access, training, and skills development programmes aimed at the labour market;
- To guarantee the implementation of the violence prevention programme against the most vulnerable groups, such as children and adolescents, the elderly, women, blacks, the disabled, indigenous peoples, homosexuals and landless workers.

381. Any projections about the future of affirmative action in Brazil must first be the subject of reflection that is continuous and encompasses the National Affirmative Action Programme. In these first months of intensifying Government action in this area, resistance within certain sectors of the State bureaucracy has been clearly evident, a problem that could be overcome by intensifying the adoption of objective and concrete measures.

382. The sustainability of the programme's actions will be ensured through permanent dialogue with the institutions in society that are connected to the issue; efforts to raise awareness within the federal administration; the use of the available means of mass communication; the search for support from the United Nations, particularly the United Nations Development Programme, for whom the issue of combating discrimination is a priority; the improvement of technical cooperation efforts with the United Nations High Commissioner for Human Rights; and the intensification of the dialogue with the Committee on the Elimination of Racial Discrimination.

383. Another important aspect involves the need to ensure that the discussion on affirmative action policies is not limited to quotas. It will be necessary to extend the activities of the committee created by the National Affirmative Action Programme to the public policy arena. A list of the areas in which the activities of the committee created by the programme referred to above could be relevant are indicated below.

384. Within the federal public administration, the Committee could:
- Identify within each agency of the federal administration a specific “locus” responsible for implementing, monitoring and evaluating affirmative-action policies in its sphere. That “locus” should be tied to the highest-ranking official in the institution;
 - Identify and systematize the ongoing affirmative-action experiment within the federal administration;
 - Systematize and organize, on the basis of various existing documents (that is, documents produced within the Interministerial Group for the Promotion of the Black Population, the Durban Declaration and Programme of Action, National Human Rights Plans I and II, the preparatory documents for Durban stemming from the meetings in Santiago, Chile, and in Rio de Janeiro, the reports produced by civil society institutions, the document submitted to the President of the Republic by the Black Movement in 1995, the annals of the 1996 international conference, and the document “Diversity in PLANFOR”, published by the Ministry of Labour), the proposals therein contained;
 - Propose an affirmative action plan for the federal public administration on the basis of already existing systematized recommendations and the ongoing experiments;
 - Sharpen the debate on the racial issue in the federal public administration. Each ministry should have a discussion agenda that is fed and monitored by the committee;
 - Conduct, by presidential decree, a census on race, gender, and individuals with special needs in the federal public administration. The census would involve employees hired through the civil service exams, those with commissioned posts and outsource workers, as well as consultants. This type of mechanism could be copied at the State and municipal levels and within the private sector, both for-profit and not-for-profit;
 - Recommend that the State and municipal government levels establish affirmative action programmes, as well as a corresponding committee for assessment and monitoring;
 - Prepare a document, for the federal public administration, on policies for promoting diversity that include mandatory targets and a system of incentives;
 - Organize a working group involving jurists and other experts in public law to identify the possibilities offered in existing legislation with respect to the inclusion of affirmative-action criteria in the existing competitive-bidding procedures and other instruments employed by the State to procure goods and services;

- Extend to the other agencies of the federal public administration, including State-owned companies, affirmative-action measures such as those adopted by the federal Supreme Court, the Ministry of Agricultural Development, the Ministry of Justice and the Ministry of Foreign Relations;
- Adopt measures with the competent agencies, including the legislature, to include resources for the implementation of affirmative action policies in the 2003 budget; and
- Promote studies conducted in conjunction with agencies of the federal public administration aimed at identifying those factors that help to explain discrimination.

385. Proposals that extend beyond the federal public administration (the intersection of discrimination with the public policy arena) include proposals:

- To systematize and organize, on the basis of existing documents, affirmative action policies within the scope of public policies;
- To identify international experiments in the area of affirmative actions and analyse them in the context of Brazilian reality;
- To conduct a broad national campaign, following the elections, through the available communication channels against racial discrimination;
- To produce a CD containing information on this issue, and following the elections, to promote the widespread dissemination of this information, both within the federal public administration and to society at large;
- To enhance the reach of certain federal programmes, particularly in the area of human resources and the production of information (i.e. the Ministry of Health's PROFAE programme; the Ministry of Labour and Employment's PLANFOR programme; the Ministry of Education's teacher training programmes; the Ministry of Health's information systems - SINAN, SINASC, SIAB, etc.);
- To publish good practices on the promotion of the rights of Afro-descendants;
- To recommend that race/colour, in such cases, be required in all official surveys regarding administrative information and registries;
- To promote the distribution of awards and seals that are aimed at the effort against discrimination; and
- To include criteria for combating discrimination in the awards handed out by agencies of the federal public administration.

IX. DISCRIMINATORY PRACTICES

386. In spite of the initiatives undertaken by the Government and by non-governmental organizations to prevent racism and discrimination, including making available to citizens mechanisms for filing complaints, verifying and punishing those responsible, a large number of incidents still occur on a daily basis in the country, which are now presented by the Committee on the Elimination of Racial Discrimination in summary form (the examples below were gathered from news stories and by organizations belonging to the black movement).

387. The entrances to banks have traditionally been controlled by revolving doors that are blocked and sound an alarm every time a metal object of some sort is detected. Black people have been constant targets of discrimination and subjected to distressing situations in their efforts to enter banks. Flávio de Souza, a 42-year-old black lawyer, filed a complaint against the Caixa Econômica Federal with the 1st Police Precinct of Rio de Janeiro after having to endure such a situation. The bank's revolving door was not working, and a security officer was operating it manually. Although other people waiting in line to enter the bank were also carrying briefcases and handbags, Mr. de Souza was the only one who was required to open his. The humiliation to which the lawyer was subjected was made worse when he requested the presence of one of the bank's managers, at which point someone forced him to remove all the contents of his bag and place them in a receptacle next to the automatic door, even though he asserted that he was carrying only client documents. The lawyer also entered a case before the Human Rights Commission of the Brazilian Bar Association, it was reported in *O Estado de S. Paulo* on 20 November 1996.

388. An equally disturbing case took place in São Paulo when José Lúcio da Costa, a 27-year-old black supermarket manager, and his wife, who is white, went to the bank where they kept their account. His wife went through the revolving door, in spite of the fact that she was carrying an umbrella in her bag. However, Mr. da Costa was prevented from entering the bank, and despite removing all the objects he was carrying, the revolving door was blocked. After pulling his shirt up and removing his shoes, in order to show that he was not carrying any metal objects, Mr. da Costa was still not permitted to enter the bank. In protest, he remained at the front of a large line in only his underwear. Although the manager came to the door and Mr. da Costa confirmed that he was a client at the bank, the matter was not resolved. Mr. da Costa retained counsel to file criminal charges against those responsible for the incident, reported, *O Estado de S. Paulo* on 5 January 1995.

389. One of the complaints of racial discrimination filed with the Commission for Citizenship and Human Rights of the Legislative Assembly of Rio Grande do Sul refers to insults directed toward a woman who was trying to enter a bank. The bank's security guard called her a "*negra burra e chinelona*" (a "stupid, low-class black woman"). The case was investigated by the police and was resolved with a formal apology by the security guard to the woman.

390. Since 1995, many individuals accused of racism have been arrested. Discrimination occurs in the workplace, recreational areas, bars, and restaurants. In September 1998, Mônica Lopes, a 29-year-old journalist, was arrested on charges of racism after offending a security guard at a nightclub in São Paulo. According to witnesses, she referred to the security guard as a "*negro safado*" ("dirty nigger"). In October 1998, a couple was arrested, in the act, on charges of racism in Belo Horizonte. At a city club, the couple disparaged a woman and her two

daughters, calling them “*crioulas, macacas e sujas*” (“half-breeds, monkeys, and pigs”). In her capacity as a police officer, the woman immediately placed the couple under arrest. Army Lieutenant Jean Vic Vicente, 25 years of age, was arrested on charges of racism at the scene of the alleged infraction. He refused to present his documents or allow his car to be inspected by two police officers. He ignored their instructions and referred to officer Nilton Agripino Oliveira Filho as a “*negão*” (“big nigger”). Even when the officer pointed out that his name was Nilton, Lieutenant Vicente responded, “No it’s not. Your name is ‘*negão*’.”

391. In June 1998, the Permanent Extraordinary Commission for Human Rights and Citizenship of the São Paulo Municipal Council examined a case involving a public school teacher in northern section of São Paulo accused of instigating racism on school grounds. According to the official report, the teacher prodded two female students, one white and one black, into a physical confrontation, preventing other students from intervening to stop the fight. At the same time, he admitted being a racist and directed degrading and discriminatory comments toward the black student. The students stated the teacher made frequent racist pronouncements in the classroom and often provoked fights between students. The competent board charged with the supervision of the schools launched an inquiry, and the teacher was removed from the classroom, while various human rights entities were mobilized to follow the case.

392. The *Folha de S. Paulo* of 12 May 2000 reported that a businessman and his son in the city of Campos de Jordão, located in the interior of the State of São Paulo, had been arrested on charges of discriminating against black girls. The crime allegedly occurred when the two girls, one 18 and the other 20, left the stationery store without making a purchase. One of the businessmen said that he “*não gostava de negrinhas*” (“didn’t like little black girls”), while the other referred to them as “*putinhas*” (“little prostitutes”). A female witness confirmed that the girls were insulted in the stationery store, and this had led her to call the police. The two businessmen secured were released on bail.

“Cordial” racism and discrimination incidents

393. One of the few national studies on race attitudes was conducted by the *Folha de S. Paulo* in 1995 and published as a book entitled *Racismo Cordial* (Cordial Racism). In the opinion of Fernando Rodrigues, who was involved in the research and analysis of the data, this produced three noteworthy findings: 89 per cent of those interviewed said blacks in Brazil were subject to prejudice; however, only 10 per cent admitted that they themselves were somewhat or very prejudiced; and lastly, the study revealed that 87 per cent of the interviewees were prejudiced to some extent when asked to give their view on a specific list of prejudices.

394. When asked if they had been the victims of discrimination because of their skin colour, 64 per cent of blacks and 84 per cent of mestizos responded that they had not. Although the percentages are high, they still indicate that at least one-third of blacks have been subjected to discriminatory situations.

395. Another finding of the study was that blacks expressed some form of prejudice toward members of their own ethnicity. This intra-ethnic prejudice may be more indicative of low self-esteem than prejudice. Mestizos also manifested prejudice toward blacks in percentages that suggest that they are as prejudiced as whites.

396. The *Folha de S. Paulo* study found that racism is equally disseminated in large cities and small cities, and that in some cases it is more prevalent in small cities than in large cities. Another discovery was that wealthier segments are less prejudiced in relation to blacks than poorer segments.

397. According to professor Paulo Singer, the data emerging from the *Folha de S. Paulo* survey indicates that “the conditions for combating racial discrimination in Brazil are very favorable”. To him, this view is supported by the high percentages of whites, mestizos and blacks who disagreed with statements that expressed racial prejudice and, at the same time, agreed with anti-racist statements.

398. A survey conducted in Rio de Janeiro by the Centre for the Coordination of Marginalized Populations, in conjunction with the Federal Fluminense University (*Folha de S. Paulo*, 12 May 2000), reached the same conclusions as the *Folha de S. Paulo* study, with respect to the population’s views on racism. Specifically, 93 per cent of respondents (only the population of Rio de Janeiro was used for the survey) stated that prejudice exists in Brazil, but 87 per cent claimed to bear no personal racial prejudice. Similarly, 96 per cent of those interviewed said that they would not mind having a black boss, whereas when that same question was posed with regard to others, that is if they believed that others would, in general, mind having a black boss, opinion was divided, with 50 per cent responding that others would mind and 50 per cent responding that they would not mind. The same basic tendency was detected when the question referred to the individual’s view about having a black relative. Fifty-eight per cent responded that they would not like to see a close relative marry a black person, but 85 per cent stated that they would marry a black person.

Racial bias in the criminal justice system

399. According to Sueli Carneiro (1996), who coordinates Geledés, the Black Women’s Institute, a survey performed by the criminal courts of the city of São Paulo indicated that during the period in which the Afonso Arinos law remained in force, from 1951 to 1988, when the Constitution defined racism as a crime, the records showed only two legal actions involving racism. This figure symbolizes the failure in applying the 1951 law, which aimed at prohibiting racism.

400. The 1988 Constitution and Law No. 7716/89 provide more effective legal instruments for combating racial discrimination. Along these same lines, Geledés, according to Sueli Carneiro, assists on average four persons per week who are victimized by racial and/or sexual discrimination, adding up to a yearly total of nearly 200 cases.

401. On 16 June 1993, the Specialized Crime Unit against Racism was established in the State of São Paulo. In the four intervening years, the unit registered a total of 281 complaints and launched 140 police investigations. Of those, 120 referred to cases filed by black persons. Between 1995 and 1997, the Greater São Paulo Police Region entered the following police reports and inquiries as crimes of racism, as detailed in table 15.

Table 15

**Number of police reports and inquiries launched in the
Greater São Paulo Police Region, 1995-1997**

	Police reports			Police inquiries launched		
	1995	1996	1997	1995	1996	1997
Crime of racism	41	35	85	24	28	55

Source: Fundação SEADE, based on data provided by the São Paulo Secretariat for Public Safety.

402. In 1988, 389 police reports classified as crimes of racism were filed throughout the State of São Paulo (75 in the capital, 52 in greater São Paulo, and 262 in the rest of the State. Of this total, 254 led to police investigations,² 50 in the capital, 45 in greater São Paulo and 159 in the remaining areas of the State.

403. A study on racism and discrimination, performed by the University of São Paulo's Violence Studies Centre, in conjunction with Geledés, with regard to access to the criminal justice system, found that higher percentage of blacks are arrested at the scene of the alleged crime (58.1 per cent) than whites (46.0 per cent). It was also found that a higher percentage of white defendants (27.0 per cent) remain free on bail while their cases are being heard, in comparison to black defendants (15.5 per cent).

404. Black defendants are more likely to seek legal assistance provided by the State than whites, a factor the study found to be unfavourable to blacks. In reviewing the cases of defendants tried for aggravated robbery, the study revealed that 39.5 per cent of whites request legal assistance while 62 per cent of blacks avail themselves of this option. At the same time, in cases involving the identical crime, the proportion of black defendants found guilty (68.8 per cent) outstrips that of white defendants (59.4 per cent). Thus, the study points to a connection between cases in which the defendant is afforded public legal assistance and higher rates of conviction. In addition, "the proportion of convicted black defendants is far higher than their representation in the racial distribution of the municipality of São Paulo" (Adorno, 1995).

405. Another finding in the study was that white defendants who assault victims of the same ethnicity have a better chance of being acquitted (58.4 per cent) than of being convicted (42.2 per cent). However, when the assailant is black and the victim is white, the rate of conviction (57.8 per cent) is higher than the rate of acquittal (45.2 per cent).

406. The National Human Rights Movement's database, which gathers information from 14 federal units (13 States and the Federal District),³ reports that in 1997 only 15.75 per cent of the murder cases reported in the press indicated the victim's colour.

407. In a more detailed analysis of the composition of the percentage set forth above, out of the slightly more than 15 per cent of cases in which the victim's colour was identified, the database revealed that 66.1 per cent involved non-whites, including blacks, mestizos and dark-skinned individuals (the classifications employed in the original reports). White murder victims, therefore, accounted for 33.9 per cent of the total. Note that the percentage of non-white

murder victims (66.1 per cent) is far higher than their 46 per cent representation in the overall population of Brazil, as set out by PNAD above. The PNAD survey breaks down the composition of the Brazilian population on the basis of colour as follows: whites, 54 per cent; non-whites, 46 per cent (including blacks, mestizos, Asians, and Indians, as established in IBGE's colour classification). This data also reveals that white murder victims (33.9 per cent) are significantly underrepresented in comparison with their representation in Brazil's total population (54 per cent).

408. Another fact gleaned from the data by Oliveira in 1998 is that non-whites are far more affected by homicides that occur during police actions than whites. Of the 175 cases in which the victim's colour was reported, the use of deadly force by police officers was concentrated much more intensely on non-whites - 142 cases (81.1 per cent), as opposed to only 33 cases involving white victims - which means that the civil and military police, which are responsible for law enforcement in Brazil's States, kill at least three times more non-whites than whites. Of the 142 victims of homicide resulting from police actions, 105 were black, 33 were dark-skinned, and 4 were mestizo (on the basis of the classification employed in the press reports). This means that blacks suffer the effects of police violence in far higher proportions. If we consider the 1998 PNAD data referred to above, blacks represent 5.7 per cent of the population, and yet they account for 60 per cent of the murder victims resulting from police actions.

409. A similar conclusion emerged from a survey developed by the Rio de Janeiro-based Superior Institute for Religious Studies and published in the 15 May 2000 edition of the *Folha de S. Paulo*. The data revealed that in Rio de Janeiro and São Paulo blacks and mestizos involved in confrontations with the police die in numbers that are proportionally far higher than their effective representation in the general population. Thus, of the 805 persons killed by the Rio de Janeiro police department between 1993 and 1996, 29.8 per cent were described as black, although this segment represented only 8.4 per cent of the city's population. Mestizo victims accounted for 40.4 per cent of the deaths, although they made up only 31.6 per cent of the city's residents. For their part, whites represented only 29.8 per cent of the victims, even though they represented 60 per cent of the city's total population.

410. The survey found similar results in the city of São Paulo. Specifically, between 1996 and 1999, of the 203 deaths resulting from confrontations with the police, 13.3 per cent were black, in spite of the fact that their share of the city's total population was just 3.8 per cent. Mestizo victims accounted for 33 per cent of the cases, while that group's representation in the city's general population was 23.9 per cent. White victims made up 52.7 per cent of the cases, despite the fact that the segment was responsible for 69.9 per cent of São Paulo's population.

411. In its 1999 *Annual Report of Accounts Rendered*, the São Paulo police department's internal affairs division reported the same overrepresentation of black victims in the deaths resulting from confrontations with police units. The report's figures, however, vary significantly from those presented above, although they offer the same conclusions. Specifically, according to the internal affairs division, in 1999, 664 civilians were killed by the civil and military police. Of these, the internal affairs division obtained information on 280 cases. It found that 55 per cent of the victims were black.

412. With respect to the colour of Brazil's prison population, there is an absence of data that is either standardized or that employs the same criteria for classifying inmates, to the extent that the references to the issue of skin colour in the prison population should be approached with caution. In 1997, the Ministry of Justice's penitentiary census calculated that there were 170,000 inmates, 59 per cent (101,482) of whom had been convicted. In 2000, the prison population had risen to nearly 204,000. The rate of incarceration in Brazil increased dramatically between 1969 and 2000, from 30.6 inmates for every 100,000 of population to 122 inmates for every 100,000 of population.

413. The Ministry of Justice's 1995 Penitentiary Census lacked information concerning colour for 41.7 per cent of the inmate population in Brazil (*Folha de S. Paulo*, 20 May 1998). An analysis of the information indicated that the remainder of the prison population was 29.5 per cent white, 15.9 per cent mestizo, 10.3 per cent black, and about 2 per cent other. The weakness of the data is revealed in an examination of the data relative to the 1997 census, in which the percentage of the prison population on which there was no information regarding skin colour disappears and the percentage representation of each group rises: 48 per cent white, 30 per cent mestizo, 17 per cent black, and 5 per cent other. These variations in the data make a comparison with the data on the general population difficult.

414. The State of São Paulo accounts for nearly 40 per cent of the prison population in the country. Of the 52,264 inmates in the custody of the Secretariat for Penitentiary Administration, 53.7 per cent were white, 12.3 per cent black, 32.6 per cent mestizo, 0.5 per cent of Asian descent. In comparing this data, which refers to 1998, with the 1997 data on the distribution of the population in the State of São Paulo based on skin colour (*Síntese dos Indicadores Sociais*, 1998), we find a significant imbalance in the breakdown of the inmate population. Specifically, according to IBGE, the white population represented 73.5 per cent of the entire population of the State of São Paulo, but only 53.7 per cent of the inmates in prisons run by the Secretariat for Penitentiary Administration. At the same time, the black population, which accounted for 12.3 per cent of the inmate population, was overrepresented, in the light of the fact that its share of the total population was in the order of 4.4 per cent. The same was discovered with regard to mestizos, who in 1997 represented 20.9 per cent of the State population but made up 32.6 per cent of the correctional population.

415. In the 1997 *Blue Report (Relatório Azul)*, the Commission for Citizenship and Human Rights of the Legislative Assembly of Rio Grande do Sul, based on data from the Ministry of Justice's 1997 Penitentiary Census, reported that there were 11,414 inmates in the State. Whites corresponded to 72.6 per cent of the population, mestizos to 13.6 per cent, and blacks to 11.8 per cent. Even if differences in the classification and the criteria employed to identify skin colour are taken into account, the State of Rio Grande do Sul is yet another example of the underrepresentation of whites in the prison system and the overrepresentation of blacks and mestizos. Specifically, the 1997 IBGE data found that whites made up 86.9 per cent of the State's population. The black population accounted for 4.6 per cent, while the mestizo population contributed 8.4 per cent, percentages well below those found in the prison population (11.8 per cent and 13.6 per cent, respectively).

416. The State of Minas Gerais offers a final example of the overrepresentation of the black and mixed race populations and the underrepresentation of the white population in the prison system. According to a criminological census (*Censo Criminológico*) conducted in 1995, the

distribution of the prison population in the State based on colour was as follows: 30.08 per cent white, 33.28 per cent “mixed race”, 28.16 per cent black, 0.48 per cent of Asian and indigenous descent. The representation of the State’s three main population groups (where “mixed race” is understood to mean mestizo) was, respectively: 52.7 per cent white, 39.9 per cent mixed race, and 7.2 per cent black.

Situation in the States

417. The secretariats for public safety, State Supreme Courts, and public ministries of each State were asked to provide information regarding the number of police reports, official police investigations, inquiries, administrative proceedings, legal actions, and any other information considered relevant (State legislation, Government and non-governmental organization initiatives) concerning the crime of racism.

418. Five States did not supply any information for purposes of the preparation of this report: Acre, Maranhão, Piauí, Paraíba, and Rio Grande do Sul. The following States only submitted information pertaining to the secretariats for public safety: Amazonas, Espírito Santo, Pará, Pernambuco, Rio Grande do Norte, Roraima and Tocantins. The States that furnished information from the State Supreme Courts and the secretariats for public safety were the following: Ceará, the Federal District, Paraná, Rondônia, Santa Catarina and São Paulo.

419. Thus, only three States furnished information on filed, ongoing and completed cases in the 1995 to 1999 period. The 13 State Supreme Courts that volunteered information reported a total of 141 legal cases involving the crime of discrimination. The information received from the secretariats for public safety indicated a total of only 11 administrative inquiries or proceedings, in 13 States, aimed at verifying crimes of racism committed by police officers.

420. The information received from the secretariats revealed a total of 586 police investigations regarding the crime of racism in the period under consideration. Although 13 States submitted information, the problem is that all the information did not originate in the same State. Therefore, States that supplied information concerning inquiries may not have provided information on investigations and vice versa. The same problem is evident with the data gathered from the State Supreme Courts, which are not, moreover, from the same States that supplied information on police activities.

421. In general, we can conclude that the majority of Brazilian States have inadequate systems for compiling and storing information on matters pertaining to discrimination and racism. Much of the information submitted to the centre either was incomplete, referred to a single year, did not include administrative regions located in interior sections of the State, or only reported on administrative proceedings within the military police, while ignoring the civil police, or vice versa. Some States went so far as to declare that they did not record statistics on crimes of racism. A number of more detailed observations on the data submitted by the State are provided in the sections below.

Alagoas

422. The Public Ministry of Alagoas reported, through the State Attorney-General's Office, that only the Piaçabuçu Public Prosecutor's Office had registered a police investigation on the crime of racism, which was still ongoing.

423. The 1st Criminal Court of Mixed Jurisdiction, Maceió, reported on case file No. 1757/99 involving the crime of racism, for which the accused had been convicted and sentenced to six month's confinement and ordered to pay a fine for a period of 25 days in the amount of one minimum wage per day. The Attorney-General's Office also reported that there was no specific State legislation covering the crime of racism, nor a prosecutor's office that specialized in the matter.

424. The Public Ministry reported that one of the instruments at its disposal was the 1st Operational Support Center, encompassing the Human Rights Defense Center, which, between 1995 and the beginning of 2000, considered 19 administrative proceedings for the crime of prejudice based on colour, four of which had been set aside and filed.

Amapá

425. The Office of the Inspector General communicated that its records indicated only one legal action based on Law No. 9029/95, related to the practice of racism, in the 1995-1999 period.

Amazonas

426. The General Internal Affairs Division of the State Civil Police stated that there were no police investigations or administrative proceedings related to the practice of racial discrimination.

Bahia

427. The General Internal Affairs Division of the State Civil Police reported that no administrative proceedings or investigations were launched in the 1995-1999 period involving civil police officers accused of the crime of racism, as set forth in Law No. 7716/89.

428. The Public Ministry declared, through the Coordinating Body of the Operational Support Centre for the Office of Public Prosecutor and Citizenship, that 13 cases related to racial crimes had been registered in the State, all of which were still ongoing.

429. The Ministry also communicated that there was no specific legislation governing the issue at the State level. It did reveal the existence of the Public Prosecutor for Citizenship - Combating Racism, incorporated in the Public Ministry.

430. The Public Prosecutor for Citizenship was established in 1997. The office's ranking authority communicated that, in the body's first three years of operation, 88 inquiries had been launched, 43 of which were completed, resulting in 17 complaints. Fourteen administrative

proceedings had been handed back to the victims because they were deemed to involve discriminatory libel, which is subject to private legal action. Only 9 of the verification proceedings had been set aside and filed.

Ceará

431. The information provided by the Secretariat for Public Safety and Citizenship Defense indicated the existence of three police investigations within the Civil Police and an administrative proceeding within the General Internal Affairs Division of the Public Safety and Citizenship Defense agencies. For its part, the Military Police showed no records of any inquiries relative to the issue.

432. Between 1995 and 1999, two legal actions based on Law No. 7716/89 were conducted, according to the State Supreme Court.

Federal District

433. The Secretariat for Public Safety submitted information on 20 police investigations relative to the acts of racial discrimination in the 1995-1999 period. However, it was found that several of these cases were not based on Law No. 7716/89, but rather on article 140 of the Brazilian Criminal Code, which refers to libel.

434. The Secretariat for Public Safety also communicated that there were no records of a police investigation conducted within the scope of the General Internal Affairs Division of the Police in the 1995-1999 period.

435. The State Supreme Court provided information on only one ongoing legal action based on article 20 of Law No. 7716/89.

Espírito Santo

436. The State Secretariat for Safety reported back that there was no record within the Military or Civil Police of any administrative proceedings related to the crime of racial discrimination involving police officers.

Goiás

437. The State Supreme Court indicated the existence of five legal actions.

Mato Grosso

438. The Public Ministry stated that two legal actions had been filed in the State. The Secretariat for Public Safety, however, claimed that it had no available statistical information on crimes involving racism. At the same time, it asserted that “we have knowledge that there are not significant records in the State indicating incidents of this nature”.

Mato Grosso Do Sul

439. The State declared, through the Operational Support Centre for the Public Prosecutor's Office for the Constitutional Rights of the Citizen and Human Rights, that there were no records of cases involving the crime of racism in the State for the period under consideration.

440. However, a subsequent written communication from the Public Ministry's Prosecutor's Office for Criminal Justice indicated that a survey of public prosecutors and law enforcement officers had been conducted to identify any public criminal actions or police investigations concerning cases of racism in the State's administrative regions. Twelve criminal actions or inquiries related to racial discrimination were verified. There had been two reports filed in the administrative region of Dourados and one in each in the other regions (Aneurilândia, Bandeirantes, Campo Grande, Coxim, Iguatemi, Ivinhema, Miranda, Mundo Novo, Andradina, Paranaíba). Of the 12 incidents, four involved public criminal actions and the rest police investigations, most still ongoing. The Public Prosecutor for the Centre suggested that the small number of actions could possibly have been attributed to "confusion between the criminal definition of libel and racial discrimination".

441. Information from the Secretariat for Safety also indicated that there were no inquiries or proceeding of any type with regard to racism on record. However, the information was gathered from certain specialized units and departments (Car Burglary and Robbery, Drug Trafficking, and the Porto Murtinho department)

Minas Gerais

442. The information supplied by the Public Ministry indicates that there had been 334 legal actions associated with the crime of racism, based on an examination of complaints entered in the 1997-1999 period.

443. However, information submitted by the State Supreme Court pointed to only 97 cases in the 1995 to 1999 period. The court noted, however, that its data referred only to the large administrative regions in the State, which accounted for nearly 70 per cent of all legal actions.

Pará

444. The Secretariat for Public Safety reported no ongoing administrative proceedings had been opened within the military police with respect to the crime of racism.

Paraná

445. The State Public Ministry stated, through the Operational Support Centre of the Offices of Public Prosecutor for the Defense of Rights and Constitutional Guarantees, that no legal actions based on Law No. 7716/89, either concluded or ongoing, had been filed in the 1995-1999 period.

446. The State Supreme Court furnished information on legal actions in the State between 1995 and the first quarter of 1999. However, the data was grouped on the basis of generic items (crimes against life, crimes against property, crimes involving intoxicants, etc.), so that it was impossible to identify how many of these offences related to racial discrimination.

447. The State military police reported that an inquiry was launched in 1996 to verify an alleged crime of racism, although it was set aside and filed in 1997. The civil police declared that no inquiries had been launched during this same period. It also confirmed that there were no records of any administrative proceedings concerning the crime of racism.

Pernambuco

448. The State Public Ministry communicated, with respect to legislation aimed at combating racial discrimination, the publication of Decree No. 21670 on 27 May 1999 establishing the State human rights programme.

449. The civil police stated that 12 police inquiries based on Law No. 7716 had been conducted. This information, however, pertained only to 1999. The internal affairs division of the military police reported that it had launched five administrative proceedings between 1998 and 1999.

Rio Grande do Norte

450. The Secretariat for Public Safety indicated the existence of one police investigation based on Law No. 7716.

Rondônia

451. The State Supreme Court declared that three cases regarding racism had been identified in the records. The Secretariat for Public Safety submitted information on the existence of 39 police reports in the State concerning alleged incidents of racism and the establishment of 15 police investigations. The general internal affairs office of the civil police reported no administrative proceedings in connection with the crime of racism.

Roraima

452. The State Public Ministry communicated that the State had not enacted any specific legislation governing racism, that no specialized prosecutor's office had been set up to deal with the issue, and finally that only one police investigation and one administrative proceeding regarding this question had been identified in the records.

Santa Catarina

453. The Public Ministry stated, through the Centre for Public Prosecutors' Offices of the General Population, that although it did not have any systematic information on crimes involving racial discrimination, it was able to verify, in coordination with the public prosecutor's office, four ongoing legal actions in the State. The ministry also reported that it did not have a specialized prosecutor's office to deal with the issue at hand. It revealed the existence of State Law No. 10064, of 9 January 1996, which sets forth provisions on the applicable sanctions for entities and companies that commit acts of racial discrimination.

454. The General Precinct of the civil police of the Secretariat for Public Safety verified the existence of 110 police investigations in the State between 1996 and 1999. It also reported that a police investigation had been launched in 1998 against a civil police officer on charges of racism.

São Paulo

455. The coordinating body of analysis and planning of the secretariat for Public Safety reported that a total of 389 police reports had been filed State-wide in 1998, while 254 police investigations had been launched. With respect to the years prior to 1998, data regarding the number of police reports filed and investigations launched in the interior of the State, which accounted for 67 per cent and 62 per cent of the total, respectively, was not provided. Thus, the records revealed that there had been 141 police reports filed and 93 investigations launched in 1997; 49 police reports and 41 investigations in 1996; and 67 police reports and 34 investigations in 1995. Therefore, in 1995, 1996 and 1997 the total number of police reports and investigations reached 546 and 422 (figures that do not include the interior regions of the State).

456. The office of internal affairs of the military police reported that it had not received any information on the acts of racism committed by military police officers during the period under consideration.

457. The State Supreme Court provided information on 19 legal actions, although the assistant judge to the President states that their data for each of the State's administrative regions was not available and that the data that was available was not concentrated in the lower courts.

Rio de Janeiro

458. Only the State Supreme Court furnished information. It pointed to the existence of six legal actions, while noting, however, that the total number of actions was probably higher, given that the system in place at that time for collecting information in both the capital city and interior regions of the State was deficient, suggesting, therefore, that the actual number was higher.

Sergipe

459. The Public Ministry reported that the Public Prosecutor's Office for the Defense of the Citizen had conducted two police investigations regarding the crime of racism (one of which had been set aside and filed, while the other had resulted in an ongoing criminal action). In addition, an administrative proceeding had been held, resulting in a Term of Adjustment by which a shopping mall agreed to carry out a public awareness campaign after broadcasting advertisements considered offensive towards human rights.

460. The Secretariat for Public Safety only furnished data for 1999. The information revealed that 17 incident reports concerning alleged racist acts had been filed.

Tocantins

461. The Public Ministry stated that it had no knowledge of any proceedings regarding racist crimes. The Secretariat for Public Safety reported that a police investigation had been launched in 1996, which was then transferred, in that same year, to the State's judiciary. It also reported

that in 1999 the office of internal affairs had initiated an administrative proceeding, which was still ongoing. The secretariat confirmed that the State did not have a specialized division to deal with matters relating to racism.

X. CONCLUSIONS, COMMENTS AND SUGGESTIONS OF THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION TO THE GOVERNMENT OF BRAZIL WITH RESPECT TO THE TENTH, ELEVENTH, TWELFTH AND THIRTEENTH PERIODIC REPORTS

462. In 1996, Brazil submitted its tenth, eleventh, twelfth and thirteenth periodic reports in one document (CERD/C/263/Add.10) to the Committee on the Elimination of Racial Discrimination.

463. The Government of Brazil would like to respond to the Committee's observations and recommendations in that document, which have served, whenever applicable, as a reference in the adoption of public policies and the consideration of the issue of racism and racial discrimination in Brazil.

464. The principal points raised by the Committee in the document above include that:

"It regrets that the report submitted contains little specific information on the implementation of the Convention in practice. In this connection, the Committee takes note of the delegation's statement that the State party is ready to continue the dialogue in the near future and to provide it with fuller information on the measures taken to give effect to the Convention" (para. 2).

465. The Government of Brazil replied that, in consolidating the fourteenth, fifteenth, sixteenth and seventeenth periodic reports, set forth in the Convention, into this report, an effort was made to expand on the information provided by offering a broad and detailed analysis. In this way, it is the Government's expectation that this text will provide a more faithful assessment of the situation in Brazil regarding the Convention's implementation, as well as the progress that has been made and the weaknesses that persist in the safeguarding, promotion and protection of the rights set out in the Convention.

466. It was noted by the Committee in paragraph 3:

"The Committee notes that the State party has not made the declaration provided for by article 14 of the Convention; some members of the Committee requested that it should consider the possibility of doing so."

467. In reply, the Government of Brazil would like to inform the Committee that, pursuant to the recommendation and in response to the demands made by Brazilian civil society, it submitted to the United Nations the optional declaration provided for in article 14 of the Convention. The Government believes that this step will serve to enhance the struggle against racism and discrimination in Brazil.

468. In the Committee's observations on factors and difficulties impeding the implementation of the Convention, it is noted (para. 4),

“The Committee recognizes that Brazil is a country with a very sizeable geographical area and population and that, during the past decade, it has undergone far-reaching political, economic, and social changes. In spite of the numerous structural, political, economic, and social reforms, the authorities have not managed to control endemic poverty, thus exacerbating the social inequalities affecting the black, indigenous and mestizo populations in particular, and encouraging the emergence of a culture of violence.”

469. In reply, the Government of Brazil contended that the issue of poverty has received special attention from the Government. It is a complex question and, as such, some elements deserve consideration with respect to the Government's and Brazilian society's efforts in regard to this subject.

470. In Brazil, there is a “social deficit” which the Government, in conjunction with the broader society, has striven to resolve. In addressing poverty and its impact on the most vulnerable segments of the population, it is first necessary to recognize that much remains to be done, but, at the same time, that much has been accomplished in recent years. These accomplishments, in turn, have generated positive results, a brief summary of which we would like to offer in this section of the consolidated report submitted to the Committee.

471. It would not be an exaggeration, in examining this issue, to indicate the general concern of Brazilians with the undesirable effects the international situation has on the problem of the right to food in Brazil. On this point, it is important to stress that the Government of Brazil shares society's concerns with the negative impact the current situation has on critical aspects of human rights, including those directly or indirectly related to poverty.

472. We have argued that, in addition to the adjustments required on the domestic front, measures be adopted at the international level to forecast, reduce, and provide compensation for the undesirable effects that persisting problems or global changes, whether of a structural nature or arising from broader cyclical trends, have on human rights in their various dimensions. The struggle against poverty, in its various dimensions, must be incorporated into the international community's agenda.

473. In 2003, Brazil submitted a document (E/1990/5/Add.53) to the Committee on Economic, Social and Cultural Rights, which the Government would now like to refer to the Committee on the Elimination of Racial Discrimination for the purpose of providing a more detailed account of the efforts undertaken to combat poverty.

474. On the domestic front, the Government has reiterated its commitment to the fight against poverty. In 1995, a high-level body was created, the Council for Isolated Communities, linked to the Office of the President of the Republic. The new Council was intended to provide a focus for government action aimed at combating poverty.

475. The strategy for combating poverty implemented by the Executive Secretariat for Isolated Communities was formulated on the basis of previous experiments, particularly those associated with the provision of food.

476. The main objective of the strategy was to address hunger and poverty, within the context of a monetary stabilization plan and founded on a set of actions coordinated and promoted by State/society partnerships. To this end, a series of programmes, chosen as a result of their impact in improving the living conditions of the neediest segments of society, was identified.

477. Those programmes advanced six broad objectives: (a) to reduce infant mortality; (b) to improve the food situation of students and needy families; (c) to promote basic sanitation and housing programmes for low-income populations; (d) to stimulate family agriculture and support rural worker settlements; (e) to support the development of primary education; (f) to generate jobs and income and promote the professional qualification of individuals. The Government gave special attention to these actions, conferring on them a “seal of priority”, in order to expand their reach and increase their efficiency and effectiveness. The strategy also involved integrating and mobilizing these actions in geographic areas registering higher concentrations of poverty.

478. Beginning in 1999, changes were made to the Isolated Communities Council: its original duties involving the coordination and integration of actions aimed at combating poverty in areas of extreme social vulnerability were transferred to another body, the “Alvorada Project” (*Projeto Alvorada*). The council was charged with the mission to encourage, through the “active community” (*Comunidade Ativa*), local experiments in integrated and sustainable development and to promote innovative initiatives undertaken by State/society partnerships.

479. The federal Government’s principal strategy for combating poverty is the *Projeto Alvorada*, coordinated by the State Secretariat for Social Assistance, a department of the Ministry of Social Security and Assistance. The purpose of the project is to promote the unification and coordination of various national actions and programmes, especially in the areas of health, education and income generation, which have the capacity to improve the living conditions of needy populations located in the poorest regions of the country. To implement this strategy, the federal Government conducted a survey of the existing programmes within the ministries and those that would have the most significant impact with regard to improving the living standards of the populations served.

480. Through the *Projeto Alvorada*, the programmes given the highest priority receive additional financial support and are provided with an intensive management structure. In the project’s first stage, the 14 Brazilian States with a Human Development Index (HDI) below the national average were identified. These States are: Acre, Alagoas, Bahia, Ceará, Maranhão, Pará, Paraíba, Pernambuco, Piauí, Rio Grande do Norte, Rondônia, Roraima, Sergipe and Tocantins. The “Plan of supporting States with the lowest human development” is expected to benefit 31 million needy persons in 1,796 municipalities. In its second stage, designated the “Basic infrastructure for needy microregions and municipalities plan”, those microregions and municipalities located in States having an HDI equal to or below the national average were identified. They are: Amazonas, Amapá, Espírito Santo, Goiás, Minas Gerais, Mato Grosso, Paraná, Rio Grande dos Sul and São Paulo. This initiative is expected to benefit 5 million poor people.

481. The total resources allocated to federal programmes that bear the *Projeto Alvorada's* "seal of priority" in 2000-2002 add up to R\$ 13.2 billion. Lastly, in order to ensure the efficient and focused allocation of the resources, the "Alvorada Portal" was created, with the aim of registering poor families in the 23 States included in the *Projeto Alvorada*.

482. Through its implementation of the *Projeto Alvorada*, the federal Government seeks to respect the right to adequate food, to the extent that it provides low-income families with public goods and services that, taken together, can contribute to the ability of each individual to guarantee himself and his family access to food.

483. The single most significant manifestation of poverty is hunger. The hunger that prevails in Brazil is, essentially, a question of access to food, not availability of food. The country produces more than sufficient quantities to meet the needs of the population; however, it has not been possible to ensure an equitable distribution of food in the country. In fact, data from the Food and Agriculture Organization of the United Nations (FAO)⁴ reveals a food availability equivalent to 2,960 kilocalories per person per day, far above, therefore, the recommended minimum of 1,900 kilocalories/person/day.

484. Inequality in the distribution of food is, moreover, a reflection of inequality in the distribution of income. In Brazil, the gap between the rich and the poor is large. More than that: the gap has remained steady in recent decades. Between 1997 and 1999, for example, the Gini coefficient has remained with few exceptions at around 0.60, making it one of the highest in the world. In other words, a perverse sort of symmetry is evidenced, in which the wealthiest 10 per cent control 50 per cent of total family income and, as if staring into a mirror, the poorest 50 per cent hold 10 per cent of the nation's income. In addition, the average incomes of the wealthiest 10 per cent are between 22 and 31 times higher than those obtained by the poorest 40 per cent of the Brazilian population.

485. Reversing this state of affairs, inherited over the centuries from an exclusionary social structure, is the major challenge facing the country, for it requires profound changes in the distribution of productive assets. No democratic society, based on a market economy, ever achieved such a monumental task in a short period of time. It is important to emphasize, however, that the macroeconomic and social policies enacted by the federal Government in recent years, have contributed towards significantly reducing poverty and hunger in Brazil, even if they have failed to date to have an impact on the structure of income distribution in the country.

486. Among other achievements, these policies have promoted a real increase in family per capita income and an increase in food prices that has remained below the general inflation rate leading to, consequently, a decline, both in absolute and relative terms, in poverty and indigence. In 1990, 44 per cent of the Brazilian population - corresponding to 63 million people - were poor. By the end of the decade, that percentage had dropped to 32 per cent - or 54 million people. With respect to extreme poverty and indigence, the decline during this period was also significant. In 1990, 21 per cent of the population - 31 million people - did not earn enough income to adequately feed themselves, in 1999, this percentage fell to 13 per cent - that is, to 21 million people. It is worth noting that these reductions took place in all regions of the country and in rural and urban areas, as well.

487. We should point out that poverty and indigence definition lines (and, therefore, the results obtained with regard to total numbers and the proportion of poor versus indigent persons) are rather arbitrary. Defining the lines upward clearly results in larger numbers of poor and indigent persons. Each institution or researcher employs a preferred poverty line or the one seen as most appropriate. For this reason, there are often heated controversies about the “actual” number of poor and indigent persons.

488. International organizations, such as UNDP and the World Bank, have adopted a poverty line equivalent to US\$ 2 at purchasing power parity, per person per day, and an indigence line corresponding to US\$ 1 at purchasing power parity, per person per day. The poverty and indigence lines employed in this report correspond to the methodology developed by IPEA, which establishes regional poverty and indigence lines (ranging from a minimum of R\$ 68 to a maximum of R\$ 126, in 1999 reals, per person per month).

489. Thus, the indigence line refers to the cost gradations of a food basket, which is defined on a regional basis and considers the minimum caloric needs of an individual. The poverty line is calculated as a multiple of the indigence line, in which expenses related to food are considered a portion of minimum overall expenses, which include, among other things, clothing, housing and transportation. The poverty line corresponds to the per capita household income, for each year, that assures the minimum income levels required to meet an individual’s basic needs. Poverty and indigence lines are, thus, parameters that make it possible to classify all individuals who reside below those lines as poor or indigent.

490. Note that the standards developed by IPEA result in poverty and indigence figures that are nearly two times higher than those arrived at using UNDP and World Bank approaches for example. What must be emphasized is that, if the objective is to measure the evolution of poverty and indigence levels, it is important that the analysis be consistent over time, that is, that it use the same standards throughout the period in question. The decline in indigence levels in the 1990s, that is, the reduction in hunger in Brazil, is corroborated by two other indicators, infant malnutrition and mortality.

491. These two indicators give us a good picture of the quality of life of children and their families. According to data from the Ministry of Health, malnutrition among children under the age of 5 dropped 33 per cent between 1989 and 1996,⁵ falling from 15.7 per cent to 10.5 per cent in that period. As regards infant mortality, there was a reduction of 32 per cent in the 1990s: in 1990, the infant mortality rate stood at 48.3 for every 1,000 live births, a figure that dropped to 32.7 in 2001. It is also worth mentioning that, with respect to the causes of death in infants under the age of 1 year, the most significant reductions have been registered in deaths due to diarrhoea and acute respiratory infections, showing the positive effects of basic sanitation policies, massive vaccination campaigns, and the effort to provide basic health services.

492. The improvement in social indicators extends into the area of education. The period under consideration has witnessed a fall in the illiteracy rate of about 27 per cent among individuals 15 years or older. With regard to underage, child, and youth labour among 10 to 14-year-olds, the percentage dropped from 18.5 per cent in 1992 to 12.3 per cent in 1999.

493. Employment and income policies, as well as those pertaining to microcredits, are aimed at ensuring or expanding employment opportunities and the income potential of the economically active population. This effort includes policies designed to provide unemployment benefits and professional training to workers.

494. Public policies have also been directed towards agrarian reform and efforts to strengthen family agriculture. These policies encompass a huge proportion of the Brazilian population and address an area in which the vulnerability to poverty and indigence is highest.

495. At the same time, a broad array of programmes aimed at income redistribution, and which have a significant socio-economic impact, particularly in the prevention of poverty and indigence among the beneficiaries and their families, have been implemented.

496. With respect to employment and income policies, we should note that the Brazilian labour market encompasses a total workforce of 77 million people, the vast majority located in urban areas (77.3 per cent). This setting has undergone significant changes in recent years. The emerging setting suggests that increasingly working conditions and relations will become more precarious.

497. Unemployment has grown significantly in recent years, rising from 5 per cent in 1994 to 7.7 per cent in 2001; the average time unemployed workers remain without work has increased from 11.8 weeks in 1991 to 22.8 weeks in 2001. Similarly, the jobs created today generally are mostly those that do not include “signed work booklets” (that is, they are not covered by the applicable legislation) or that involve independent work, which translates into an effective increase in the ranks of the informal sector. Today, protected and salaried jobs, those referred to as “jobs with a signed work booklet”, incorporate less than half the employed workforce, whose participation in the labour market continues to dwindle.

498. Note that almost all the Government resources and policies in the area of job and income creation are directed towards those with work booklets. This is the case with unemployment insurance and guaranteed wages and the majority of worker training and mediation programmes. In the light of these circumstances, the only alternatives open to various segments of the informal sector with regard to securing employment and increasing incomes have been limited, basically, to microcredits, which includes a slice of the Employment and Income Generation Programme (PROGER), and the support provided to family agriculture.

499. The worsening indicators of the Brazilian labour market in the 1990s can be attributed to two main sources. First, the professional qualifications of Brazilian workers is inadequate to meet the requirements relative to modernization stemming from the structural transformations that have occurred in Brazil and the world. One of the principal public policies instituted in the mid-1990s to address this challenge was the National Professional Education Plan (PLANFOR).

500. On the other hand, the growing divide between the formal and informal sectors has been aggravated by the country’s labour legislation, which creates various obstacles to hiring, formalizing and even firing workers, thereby increasing the costs associated with the formal salaried sector and effectively reducing job creation. In an attempt to overcome these restrictions, a number of amendments have been proposed to the existing labour legislation which allow for greater flexibility in this area. It is important to stress, furthermore, that the

crucial aspect of the social security reform proposal (1998/99) involved a reduction in the payroll taxes paid by salaried workers and in the income taxes paid by self-employed individuals, the objective of which was to harmonize the tax burden of the two groups and remove the “anti-formal” slant of the social security system.

501. Some of the public programmes launched in the area of employment and income are listed below. PROGER was formally implemented through the Deliberating Council of the Workers’ Assistance Fund (CODEFAT) resolution No. 59/94. The programme’s principal objectives include: (a) promoting credit for sectors traditionally having little or no access to the financial system, thereby generating employment and income by means of the creation of new productive enterprises and the stimulation of already existing ones; (b) encouraging the informal establishment to organize, so as to prepare them to enter the formal sector; (c) permitting enterprises financed by the programme to support themselves.

502. PROGER, which was originally established to generate employment and income in the poorest urban areas, rapidly began to implement actions directed towards the rural populations. PROGER-rural, together with the PRONAF (National Programme for Strengthening Family Agriculture), will merge to form the greater PROGER. The allocation of the programme’s resources is currently being determined through a process in which the State and municipal commissions have assumed a central role. It is through the employment commissions that the related projects receive approval, by means of an analysis based on the directives, established by those same commissions, governing the local employment policies.

503. The decentralized execution of the programme’s resources, as set forth in resolution No. 59/94, is made possible by official financial institutions. Progress resources are now administered by financial agents, more specifically, the Banco do Brasil, the Banco Norwest, BNDES, the Caixa Econômica Federal, and Study and Project Creditor (FINAP). This approach was chosen due to the “capillarity” and structure of the financial institutions.

504. In the area of professional education, one of the Government’s major initiatives has been PLANFOR. The principal directives and criteria for releasing the programme’s resources were established through CODEFAT resolution No. 126/96. Currently, PLANFOR’s primary objectives are: “to gradually construct the bases for offering permanent professional education, with a focus on the demand identified in the labour market, for the purpose of providing training and retraining, every year, that is consistent with the current abilities and competence found in that specific area, at least 20 per cent of the economically active population over the age of 14, so as to contribute towards: (a) increasing the probability of obtaining employment and generating or raising incomes, reducing unemployment and underemployment rates; (b) increasing the probability of remaining in the labour market, reducing the risk of layoffs and firings and turnover rates; (c) elevating productivity, competitiveness, and income” (resolution No. 194/98, art. 2).

505. The State Qualification Plans (PEQs) and the Partnerships are responsible for PLANFOR’s implementation. The PEQs refer to the professional qualification projects carried out by the States, after approval by the State employment commissions, in a manner consistent with the demands of the municipal commissions, while the partnerships are associated with the PEQs’ complementary projects, conceptual advancement, evaluation, instructor training and

other projects. Upon approval of the PEQs, the directives governing the contracting of the units that execute the corresponding actions are determined by the States and on the basis of criteria defined by them.

506. For their part, the New Jobs Programme and unemployment insurance constitute an effort by the Ministry of Labour to coordinate the actions of worker intermediation and unemployment insurance programmes. The objective at the outset is to ensure that the worker who qualifies for unemployment insurance registers in the intermediation programme, which contributes towards reducing the time workers remain unemployed.

507. Unemployment insurance was instituted in Brazil in 1986, and its primary objectives are: (a) to provide financial assistance to unemployed workers who are fired without just cause, including for indirect reasons; and (b) to assist workers in their search for new jobs, promoting, to this end, integrated professional counselling, placement, and qualification actions. The programme benefits workers who have a signed work booklet and were fired without just cause, who, nonetheless, must fulfil the following previous requirements to qualify for unemployment insurance: (a) they must have received a salary for 6 consecutive months immediately prior to the date of termination; (b) they must have been employed by a juridical person, or a natural person having the status of a juridical person, for a period of at least 6 months in the 36 months prior to the date of termination that gave rise to the application for unemployment insurance; (c) they must not be receiving, at the time of the application, any continuous welfare or social security benefits, as prescribed in the Regulation on Social Security Benefits, with the exception of accident compensation and credit for time served; and (d) they may not receive income of any nature deemed sufficient to support themselves and their families.

508. The benefit is calculated on the basis of the last three salaries received by the worker prior to termination, the average amount of which is multiplied by variable percentages, according to a predetermined scale of amounts. However, the benefit may not be less than the equivalent of one minimum wage, while the maximum amount of the benefit is arrived at by means of a calculation developed by the Ministry of Labour. The unemployed worker receives the insurance on a monthly basis for a period ranging from three to five months, either in a continuous or alternating fashion, for every 16-month period, and may renew the benefit at the beginning of each 16-month period. The longer the period in which the worker remained in his last job position, within the previous 36 months, the longer the period for which he will receive the benefit. The maximum period can be extended, exceptionally, for two years for specific insured groups, as determined by the CODEFAT, provided that the additional expense incurred as a result of this extension does not surpass, for each six-month period, 10 per cent of the total amount of the FAT's Minimum Liquidity Reserve. According to the law, CODEFAT must consider, among other variables, the geographic and sectorial distribution of unemployment in the country and the average time specific groups of workers remain unemployed.

509. It is worth observing that microcredits, which consist in the granting of loans to develop small enterprises, both formal and informal, comprise an important component of the set of actions undertaken today by the Government and society as a whole. Through the mid-1990s, the only initiatives in evidence were specific and limited ones taken by Governments below the federal level and civil society. Although the potential demand for credit continues to outstrip the supply, significant progress has been made in the area of microcredits in recent times.

510. In enabling those segments of the population traditionally excluded from the nation's financial system access to productive credit, microcredit has assumed a strategic role in the effort against poverty. Through this system, alternative occupations and sources of income generation have been made available to the poorest segments of the population, to the extent that they are given the opportunity to invest in their small businesses. The specific methodology underlying the microcredit system, which requires the assisted provision of the credit (the credit agent assesses and tracks the businesses receiving support) and reduces the need for real guarantees by means of the formation of Solidarity Groups (persons who are granted the credit and mutually assume the responsibility for the payment of the loans), result in low default rates, while increasing the productivity of small enterprises.

511. In 1996, the National Bank for Economic and Social Developments (BNDES), created the Popular Productive Credit Programme in response to the debates that took place within the Solidarity Communities. The result of this was the dissemination of the concept of a sustainable microcredit system and support for the establishment of a network of institutions offering a supply of financial resources for capital funding. More recently BNDES also created the Institutional Development Programme with a view to strengthening the organizational development of the institutions that distribute microcredits. By December 2001, BNDES had provided support to 31 institutions, 28 of which were civil society entities, while 3 were financial institutions specializing in microcredits - the Micro-Enterprise Credit Societies - from whom it contracted loans in the amount of R\$ 55.8 million.

512. In 2001, the Brazilian Micro- and Small-Enterprise Support Service launched its National Micro-Credit Bid for the purpose of supporting the creation of new microcredit institutions and strengthening the existing ones.

513. In regard to the so-called "frontline institutions", that is, those that operate microcredits, the Crediamigo programme of the Banco do Nordeste, established in 1997, is today the largest in the country. Through December 2001, the programme had granted credits totalling R\$ 440 million. It is important to point out that Crediamigo operates separately (from a financial, accounting and management standpoint) from the bank's commercial activities.

514. Several State and, primarily, municipal initiatives are currently in motion. Some are administered by the public administration and receive budgetary appropriations, while others are the product of partnerships between the Government and civil society organizations. In many instances, international organizations have lent their support, as well.

515. Currently, three categories of initiatives involving microcredits can be identified in Brazil: those developed by civil society (non-governmental, not-for-profit organizations); those developed by the Government (various programmes performed by "frontline" and "second-line" institutions); those developed by the private sector (for-profit entities designated the Micro-Enterprise Credit Society).

516. The legislation imposed on the microcredit sector has also evolved in recent years. The enactment of Law No. 9790/99, which provides for the qualification of the Public Interest Civil Society Organization (OSCIP), authorizes non-governmental organizations to provide microcredits, something not allowed before. The publication of Provisional Measure No. 2172-32/01 exempted the OSCIPs from the Law of Usury, which caps interest charges

at 12 per cent per year. The publication of Law No. 10194/01 conferred on the Micro-Enterprise Credit Societies the legal status of for-profit financial institutions, specialized in microcredits, and incorporated under the National Financial System.

517. All these actions have converged to strengthen and expand the microcredit system in the country, although clearly the credit supply continues to lag behind demand. In fact, the changes that have been initiated are still very recent and the number of institutions,⁶ programmes, operations and resources involved are small in the context of the needs of a continent-sized nation with a population of millions living in poverty.

518. In the area of agricultural development, which the Government of Brazil considers important for the effort against poverty, it is worth noting that the traditional agricultural policy carried out throughout the 1970s and 1980s benefited large, export-oriented agricultural endeavours, both because of the need to produce positive current-account balances and that sector's capacity for political mobilization and for ensuring its demands were considered.

519. Family agriculture, however, corresponds to the vast majority of rural establishments in Brazil, employs 13.8 million people in 4.1 million establishments (more than 85 per cent of all Brazilian establishments), and avoids rural-urban migration; for these reasons, beginning in 1996 this sector became a focus of agricultural policy and rural credit, with the creation of a specific programme designed to support its development, PRONAF.

520. This new focus of attention is extremely relevant from the standpoint of Brazil's food supply, insofar as approximately 60 per cent of the food produced in the country in the mid-1990s originated in family agricultural establishments, which use a mere 30 per cent of the total cultivated land area in the country.

521. Actions to strengthen family agriculture are necessary to the extent that this sector faces greater difficulties in obtaining financing, has more precarious infrastructure, and is more exposed and vulnerable to price fluctuations in the agricultural market. In addition, the strengthening of family agriculture is also important to prevent poverty and indigence.

522. PRONAF, whose objective is to reduce social inequality and promote development in rural areas of Brazil, seeks to provide resources so that family agriculture (which includes fishing, aquaculture, apiculture and similar activities, as well as indigenous communities and remaining runaway slave communities) is able to develop in a stable and secure manner. As with other Brazilian social policies in the post-1988 Constitution era, one of the features of PRONAF is the incorporation, through the Rural Development Councils in the municipalities covered by the programme, of the principles of co-participation by the pertinent sectors of civil societies in its management model.

523. To gain access to PRONAF initiatives, the rural establishment must be run by the family, must operate mainly on the basis of labour provided by family members, not surpass an area equivalent to four fiscal modules, and be developed using means that are owned by the family. The programme's primary activity is to supply credit for family agriculture, an activity that reached more than 4,000 municipalities in 2001. In addition to providing credit, PRONAF also

engages in infrastructure improvement projects that benefit regions and establishments falling under the definition of family agriculture⁷ and offers training for agricultural technicians and municipal councillors encompassed in the programme.

524. It is important to note that in 2000 and 2001 the programme provided financing for more than 900,000 credit lines extended to family agriculturalists, allocating resources that added up to slightly more than R\$ 2 billion in both years. Since the programme's inception, 4.2 million credit lines have been extended to family agriculturalists, for a total loan volume of R\$ 10.3. In the area of infrastructure, PRONAF has provided financing, throughout the period of its existence, for projects that have benefited approximately 3.5 million families at a cost of R\$ 600 million. Finally, we should point out that 125,000 persons have been trained since 1996 to work in and with family agricultural establishments. The box sets out some examples of recent cases of rural development efforts supported by PRONAF.

525. With particular regard to agrarian reform, the Government would like to make clear that, since the 1960s, one of the central demands of rural workers has been the implementation of a broad agrarian reform project, in the light of the acute concentration of land ownership in Brazil.

526. Moving agrarian reform forward is not only important from the standpoint of social equality, as regards access to productive resources, but also from the standpoint of food supply. Reform is doubly significant, for it: increases the number of family agriculture establishments, which are focused primarily on food production (see comments above regarding PRONAF), and it reintegrates a social group rendered vulnerable into the productive process and reduces the incidence of poverty.

527. However, in spite of the potentially positive impact of the land-redistribution efforts in the 1964-1994 period, only 218,000 landless workers were settled through 360 projects arising from official agrarian reform programmes. By contrast, 565,000 landless families were settled between 1995 and 2001 through 4,275 agrarian reform projects, in what amounted to an unprecedented land redistribution campaign. In 2002, the federal Government announced a proposal to settle another 100,000 families.

528. The current agrarian reform programme uses two basic instruments to carry out the redistribution of land. The most traditional instrument involves the expropriation of unproductive land (also called "agrarian obtainment") and its redistribution throughout the wide array of projects, which take into consideration supplementary questions such as housing, rural credit, infrastructure, various support mechanism for producing and guaranteeing harvests, all aimed at making the settlements self-sufficient. This instrument was traditionally the most widely used in the past and continues to be in the current administration.

529. The second method of agrarian reform employs credit instruments and stems from pilot experiments performed from 1995 to 1997 in various north-eastern States aimed at settling families. Subsequently, in 1998 the Land and Agrarian Reform Fund, also known as the Land Bank, was established, the objective of which is to provide financing to agricultural workers for purposes of purchasing their own land. In addition, the programme extends financing for infrastructure, housing, basic sanitation, rural electrification and fencing, the projects for which

are supplemented by PRONAF as referred to above. Rural producers have up to 20 years to amortize the financing extended to them, with a 3-year grace period. The interest on the financing is predetermined and corresponds, on average, to 4 per cent per year.

530. The Banco da Terra entered into operation in 1999 and by 2001 had provided financing to approximately 40,000 agricultural workers at a total volume of around R\$ 680 million. The plan for 2002 was to extend financing to another 24,000 agricultural workers, for which nearly R\$ 400 million would be allocated.

531. We should draw attention to various other programmes that supplement the two prevailing instruments of agrarian reform. Among them are the Affirmative Action Programme (which benefits women agriculturalists, indigenous persons and the descendants of runaway slave communities), the National Literacy Programme in Settlements, and others aimed at registering property rights (the Emancipation Project) or supporting rural workers returning from the cities to the countryside (the Casulo Project).

532. The policies intended for direct income transfers are also important. Within the area of policies designed to combat poverty, those aimed at direct income transfers to needy persons and families have taken on greater importance.

533. In this regard, in 2002 budgetary resources in the amount of approximately R\$ 22.4 billion were allocated for this purpose. Note that the majority of the transfers (84 per cent) derive from social rights enshrined in the 1988 Constitution (that is, lifetime monthly incomes granted to the elderly and low-income individuals having special needs, as well as rural pensions) and that they have been distributed in increasing quantities since the beginning of the 1990s.

534. The impact of the universalization of these rights on household incomes has been significant. Income transfers carried out through programmes of the Social Security and Assistance Administration have had a powerful effect in reducing poverty and indigence in Brazil, as the various studies recently prepared by IPEA bear out.

535. With respect to the benefits in the amount of one minimum monthly salary, the sheer magnitude and scope deserve mention. In December 2001, Social Assistance paid out 2.1 million Continuously Provided Benefits (BPC) and Lifetime Monthly Incomes (RMV) and distributed 6.3 million benefits corresponding to the Rural Social Security Administration (not including the rural RMV, already included above). In addition to these benefits, it is important to mention that, as of December 2001, another 4.7 million were receiving "urban" social security assistance through the Social Security Administration, as beneficiaries of the "minimum social security" rule, that is, the provision that no permanent social security benefit in Brazil may be less than one current minimum monthly salary. The minimum social security benefits are also used as cross-subsidies and have a significant impact on the well-being of the recipients.

536. A recent study published by the Ministry of Social Security, with the support of IPEA (MPAS, 2001), concludes that the reduction in poverty levels throughout Brazil in the 1990s was possible as a result of the combination of economic stability and the increased transfer of income through the Social Security and Assistance Administration. According to data contained in

the 1999 National Sampling of Household, or PNAD, in the event no income transfers had taken place through the social security system, the percentage of persons living under the poverty line, calculated at a household income of R\$ 98 per capita, would rise from 34 per cent of the population to 45.3 per cent. This difference of 11.3 per cent corresponds to a total of 18.1 million persons who no longer live under the poverty line, because of the social security benefits they receive.

537. In regard to the Rural Social Security system, a broad study conducted by IPEA (Delgado and Cardoso Jr., 2000) showed that the incidence of poverty and indigence among the beneficiaries of the system is low. In this report, indigence is understood to mean households that are incapable, with their available incomes, of covering the expenses required to meet their basic needs with respect to food, hygiene, and cleanliness. The poor are understood to mean those who have insufficient incomes to cover all of their required consumption expenses. Based on a 1998 sample of 6,000 households in the south and north-east regions of Brazil and encompassed by the Rural Social Security system, the authors concluded that in the north-east of Brazil 85.3 per cent of the recipient households were above the poverty line. In the South, 90.8 per cent of the households visited were found to have incomes above those required to meet their basic consumption needs, thus falling outside the scope of poverty, as defined. Only 0.4 per cent of the households in the south and 2.1 per cent of the households in the north-east fell under the category of indigence, again, as defined above.

538. Finally, Schwarzer and Querino (2002) performed a simulation, based on the 1999 PNAD, of the impact that all the social security and assistance benefits had on poverty and indigence in the country. The concepts of poverty and indigence adopted in their study are related to those established in the Organic Law of Social Assistance governing access to social assistance benefits in Brazil. In this case, a household per capita income of less than one quarter of the official minimum monthly wage corresponds to indigence, while the poverty line is set at a household per capita income of half the official minimum monthly wage. The trials demonstrated that basic benefits equivalent to one minimum wage prevented the target audience from falling into indigence and that social security benefits above one minimum wage generally prevented the recipients and their dependants from slipping into indigence and poverty. The absence of benefits equivalent to one minimum wage would lead to a dramatic increase in the rate of indigence among the recipients, from 2 per cent to 45.2 per cent, while poverty would jump from 14.3 to 62.7 per cent. Among the Social Security system's contributors, a cut-off in transfers would push the poverty rate up from 3.7 to 42.7 per cent. This data underscores, in a clear and unequivocal fashion, the importance of the contributor-funded urban social security programme, the rural social security net, the social assistance programme, and the establishment of a minimum urban social security benefit equal to one minimum wage in reducing indigence and poverty in Brazil.

539. The remaining income transfers stem from recent initiatives of the executive branch. The purpose of these programmes is to raise household incomes and, through them, to combat maternal and infant malnutrition, thereby enabling access to food associated with primary health care (the Ministry of Health's Food Stipend); to raise education levels and keep children in school (the Ministry of Education's School Stipend); to eradicate child labour and promote the integration of at-risk youths into society (the Child Labour Eradication Programme and the Ministry of Social Security's Youth Agent); to ensure access to food for families victimized by drought (the Ministry of National Integration's Income Grant); and to guarantee cooking gas to

the neediest families (the Ministry of Mines and Energy's Gas Assistance). Note that this set of actions is in compliance with the State's obligation to respect the human right to adequate food, to the extent that it elevates the family incomes of the neediest families and reduces the relative burden that food costs represent for the family budget. The majority of those programmes were recently implemented, and for this reason results regarding their effectiveness are not yet available. Let us point out, however, that an assessment component was incorporated into the design of the programmes, which will enable us to measure the effects of this intervention model on the effort against hunger and poverty in the not-too-distant future.

540. We should indicate that in 2001 the federal Government implemented the Single Registry of Social Programmes of the Federal Government and mandated the use of specific forms by all federal Government agencies that coordinate programmes involving the direct transfer of income to recipients. The idea was to create a database that gathers information on those families requiring assistance from Government social programmes and, in this way, more effectively combat inequality, reduce poverty levels and promote social integration.

541. The Caixa Econômica Federal was charged with the task of administering the database, given its tradition for operating federal government programmes, its recognized competence in this area, its relationship with the States and municipalities - 1,970 fully integrated branches and offices and more than 8,600 lottery stores - specifically, its presence in the majority of Brazilian municipalities. To this end, the institution developed a system for processing the collected data and information. After identifying each beneficiary by means of a social registration number, the Caixa will distribute magnetic cards. Once the beneficiaries are in possession of their cards, they will be free to receive, without intermediaries and with a high degree of safety, their benefits. In 2001, the Single Registry gave priority to the north-east region and the northern areas of Minas Gerais, particularly those municipalities, 1,152 in all, declared to be in a situation of emergency/calamity, as a consequence of drought conditions.

542. It is expected that the single Registry and payment through the magnetic card will contribute significantly to the strengthening and visibility of the Government's social actions, thereby enabling an administrative process that is transparent and that ensures the rational use of resources.

543. Within the strategy for combating poverty, the issue of local development also bears mention. In more recent times, the federal Government has coordinated a strategy for inducing local integrated and sustainable development in poorer regions. It involves the effort to enable the emergence of more sustainable communities capable of meeting their local needs and developing their immediate potential; discovering or awakening their local vocations and developing specific areas of potential; and developing exchanges with the outside world by exploiting their local advantages. Currently, this initiative is being implemented by the *Comunidade Ativa* (Active Community) programme of the Civil Cabinet of the Office of the President of the Republic.

544. *Comunidade Ativa* seeks to promote integrated and sustainable local development, through partnerships established between the State and society and on the basis of an agenda formulated by the local community itself. The methodology adopted for this end provides for: management training; participatory diagnostics and planning; interlinking the supply of public programmes with the community's social demand, monitoring, and evaluation; and developing

enterprises. In this way, *Comunidade Ativa's* focus is on human and social capital (social organization), business capital, and the access to information. The expectation is that the synergy between different public policies at the local level will jump-start a continuous process of community mobilization, which, in short order, will not depend exclusively on the Government for its maintenance and expansion. In 2001, *Comunidade Ativa* completed the implementation of local integrated and sustainable development programmes in 157 municipalities and initiated the process in another 437; more than 17,000 persons were trained, including community leaders and representatives of the local development bodies.

545. The goal of *Comunidade Ativa* is to reach 604 Brazilian municipalities by 2002, addressing, in a coordinated fashion, more than 10,000 items contained in the local agendas. Of those items, the federal Government is responsible for 35 per cent of the actions, the municipalities for 21 per cent and the Brazilian Micro- and Small-Enterprise Support Service for the remaining 11 per cent. Note that activities linked to agriculture, agroindustries, tourism, health, sanitation, environmental management, infrastructure and educational programmes for worker training dominate the local agendas. As was mentioned in connection with the Projeto Alvorada, *Comunidade Ativa* constitutes an effort by the federal Government to fulfil its obligation to respect the right of humans to food. More than that: to the extent that the Government endeavours to make the local communities more sustainable, avoiding, therefore, that individuals and companies hinder people's access to food, the goal also involves protecting the right of needy families located in municipalities served by *Comunidade Ativa* to food.

546. Federal disbursements have increased progressively. In real terms, they went from R\$ 92.2 billion in 1993 to R\$ 138.7 billion in 1999, corresponding to a rise of almost 50 per cent. The priority given to the social area is similarly confirmed by the 37.4 per cent growth in per capita federal disbursement in the period considered. Indeed, in 1993 the average amount per individual incorporated into the Brazilian social assistance system was R\$ 618.2, a sum that reached R\$ 849.5 in 1999.

547. The comparisons with GDP reveal the same upward trend: in 1993, the proportion of disbursements in relation to GDP was 12 per cent, a figure that rose to 13.2 per cent in 1999. In other words, the growth of the Brazilian social State was relatively higher than GDP growth in those six years.

548. On taking office on 1 January 2003, the President of the Republic, Luiz Inácio Lula da Silva, established high-ranking administrative-policy government bodies for the purpose of combating poverty. Some of these included the Special Secretariat for Fishing, the Ministry of Social Assistance and Promotion, the Ministry of Cities, and the Extraordinary Ministry for Food Security and Combating Poverty. In addition, the President launched the *Programa Fome Zero* (the Zero Hunger Programme), encompassing short-, medium- and long-term emergency and structural actions. Implementation of the programme began in the poorest municipalities of the country.

549. The project reflects the outcome of one year of interaction and coordination involving political activists, non-governmental organizations, research institutes, trade unions, popular movements, social movements and organizations linked to the question of food security throughout Brazil. The project also recognizes that access to adequate food is an inalienable right, with the State having the duty to provide the conditions for the Brazilian population to

effectively exercise this right. The target audience of the programme consists of 9.3 million impoverished families (or 44 million people) that earn less than one dollar per day, or about R\$ 80 per month.

550. The programme is based on the premise that the task of eradicating hunger and ensuring the right of access to adequate food cannot only be a government initiative, even if all the sectorial agencies at the federal, State and municipal levels are efficiently coordinated. Active participation by organized entities of civil society is considered vital: trade unions, popular associations, NGOs, universities, schools, churches belonging to the widest array of faiths possible, business entities.

551. The main axis of the *Projeto Fome Zero* resides in the effective fusion of so-called structural policies - aimed at the redistribution of income, increased production, job creation, agrarian reform, among others - and compensatory policies. The project provides a permanent forum for discussion, improvements and concrete actions so that Brazil can ensure the access to food, a basic right of citizenship.

552. These are policies aimed at tackling the most profound causes of poverty: job and income creation; universal social security; incentives for family agriculture; the intensification of agrarian reform; school stipends and minimum income.

553. They are specific policies aimed at providing direct assistance to all families that lack the conditions required to live in dignity: Food Card; emergency food baskets; food stocks for security; food safety and quality; expansion of the Worker Food Programme; the campaign against mother and infant malnutrition; food consumption education; and expansion of school meal programmes.

554. At the local level, specific policies have been formulated for implementation by local governments and civil society that centre on: supporting family agriculture; providing incentives for production geared to self-consumption; establishing affordable restaurants; setting up food banks; forging partnerships with retailers; modernizing of supply equipment; establishing new relationships with supermarket chains; small and medium cities; food banks; promoting the consumption of regional products; and stimulating urban agriculture.

555. Regarding the Committee's comments in paragraphs 6 and 21 of its observations:

“The determination expressed by the delegation to ratify shortly ILO Convention No. 169 concerning indigenous and tribal peoples in independent countries is a step forward which the Committee hopes Brazil will take as soon as possible.”

and [...]

“The Committee encourages the State party to ratify ILO Convention No. 169 concerning indigenous and tribal peoples in independent countries”

the Government of Brazil commented that Brazil ratified ILO Convention No. 169. The treatment of the issue of indigenous peoples in Brazil has undergone a significant transformation, which has included the total and permanent incorporation of the human rights dimension.

556. Regarding the observations of the Committee in paragraph 7:

“Active participation by members of society at large in drafting the State party’s report is a welcome development, as is the determination expressed by the Brazilian authorities to disseminate widely the report and the Committee’s concluding observations”

Brazil has sought to adhere to the recommendation of the Committee on the Elimination of Racial Discrimination. The Committee’s position converges with the Government’s efforts to stimulate its interaction with civil society. In the preparation of this consolidated report, non-governmental organizations offered numerous contributions, which the Government incorporated into the text.

557. The Committee noted in paragraph 8:

“The statistical and qualitative information on the demographic composition of Brazil’s population and on the enjoyment of political, economic, social and cultural rights provided in the State party’s report clearly show that the indigenous, black and mestizo communities suffer from deep structural inequalities and that the measures taken by the Government effectively to combat those disparities are still insufficient.”

also in paragraph 9:

“The Committee notes that the report contains no information on the ‘indicators’ of the particular social difficulties encountered by the most vulnerable populations, especially the indigenous, black and mestizo populations.”

as well as in paragraph 17:

“The Committee requests the Government of Brazil to provide, in its next periodic report, precise information and ‘indicators’ on the social difficulties encountered by the indigenous black and mestizo populations, and in particular on rates of unemployment, imprisonment, alcoholism, drug use, delinquency and suicide. The Committee also draws the State party’s attention to the need to devise ‘indicators’ to assess policies and programmes for protecting and promoting the rights of the vulnerable populations.”

558. With respect to the comments made above, the Government of Brazil would like to note that, in preparing this consolidated report, it endeavoured to provide a more in-depth discussion of the information, including analysis from the standpoint of the statistical and demographic indicators, in an effort to respond to the observations of the Committee on the Elimination of Racial Discrimination. Efforts have been undertaken to apply more comprehensive methodologies in the official surveys on the population, particularly with respect to groups rendered vulnerable by racism and discrimination, that offer a truer picture of the country and the difficulties remaining to be overcome. In this report, the statistical data presented is, whenever possible, addressed in detail.

559. The Committee noted in paragraph 10:

“A number of sources of information concur that discriminatory attitudes towards the indigenous, black and mestizo populations persist within Brazilian society and are

apparent at a number of levels in the political, economic and social life of the country. These discriminatory attitudes concern, inter alia, the right to life and security of person, political participation, access to education and employment, access to basic public services, the right to health, the right to decent housing, land ownership, land use and law enforcement.”

and similarly in paragraph 11:

“Special concern is expressed about the fate of the most vulnerable populations, in particular indigenous people, blacks and mestizos.”

560. The Government of Brazil replied that an in-depth and broad discussion of these aspects is provided in this consolidated report. The Government of Brazil hopes it has, therefore, responded to the Committee’s concerns.

561. In response to the Committee’s concerns expressed in paragraph 12:

“Regarding the implementation of article 2 of the Convention, the Committee notes with concern the slow pace of certain legislative reforms, in particular the reform of the Criminal Code. The Committee notes with concern the maintenance of article 6 of the 1916 Civil Code of Brazil, containing a discriminatory restriction on the exercise of civil rights by the indigenous populations which is contrary to the 1988 Constitution of Brazil, although according to the explanations of the representative of Brazil this provision has become obsolete.”

the Government of Brazil replied that the reforms to which this observation makes reference are complex and require a broad mobilization effort within civil society and the National Congress. The Government of Brazil would like to refer the Committee to the information furnished in the previous consolidated report and to the observations made by the Brazilian delegation at the time of the oral presentation of that report.

562. Regarding the Committee’s concerns expressed in paragraph 13:

“The fact that illiterate citizens, who are found especially among the indigenous, black or mestizo population, or other vulnerable groups, cannot be elected in political elections is contrary to the spirit of article 5 (c) of the Convention.”

and later in the suggestions and recommendation in paragraph 18:

“The Committee recommends that the State party should do everything possible to speed up the current legislative reforms and, more specifically, to amend article 6 of the 1916 Civil Code of Brazil, which is contrary to its 1988 Constitution. The State party should also take measures to allow illiterate citizens from the most underprivileged population groups to be elected in political elections.”

the Government of Brazil replied that, although they cannot be elected to public office, Brazilian legislation guarantees illiterate persons the right to vote.

563. Regarding the Committee's concerns as expressed in paragraph 14:

“Particular note is taken of the fact that the indigenous populations encounter serious discrimination in regard to enjoyment of their civil, political, economic, social and cultural rights. Special concern is expressed about the unfair treatment of the indigenous populations during land demarcation and distribution, the violent and unlawful means used to settle numerous land disputes and the violence and intimidation used against them by private militias and even occasionally by members of the military police. Concern is also expressed about their social protection and the discrimination they suffer in the spheres of health, education, culture, employment, access to public office and housing.”

and in the suggestions and recommendations in paragraph 20:

“The Committee strongly recommends that the State party should adopt fair and equitable solutions for the demarcation, distribution and restitution of land. To that end, where land disputes are concerned, everything possible should be done to prevent discrimination against indigenous people, blacks or mestizos by the big landowners.”

as well as in the suggestions and recommendations in paragraph 19:

“The Committee recommends that the Government of Brazil put more vigorously into practice its determination to defend the fundamental rights of indigenous people, blacks, mestizos and members of other vulnerable groups, who are regularly the victims of serious intimidation and violence, sometimes leading to their death. It hopes that the authorities concerned will systematically prosecute those guilty of such crimes, whether they are members of private militias or State officials, and will take effective preventive measures, especially through training for the members of the military police. In addition, the State party should ensure that the victims of such acts receive compensation and are rehabilitated.”

the Government of Brazil noted that this consolidated report seeks to inform the Committee about the evolution, from various aspects, of the issue concerning indigenous people in Brazil since the previous report was submitted. The conflicts over land require attention and investigations involving the judicial branch. Some of the aspects mentioned by the Committee are from the perspective of respect for diversity and multi-ethnicity. Participation by indigenous populations in the decision-making process is stimulated. In addition to the developments witnessed on the domestic front, there is need to emphasize Brazil's active participation in the ongoing negotiations on the adoption of the Universal and Inter-American Declarations on the Rights of Indigenous Peoples, as well as those that resulted in the creation of the Permanent Forum on Indigenous Issues linked to the Economic and Social Council. At the international level, Brazil has participated in the effort to reformulate the Inter-American Indian Institute; within the Iberoamerican context, Brazil has taken part in the meetings concerning the restructuring of the Indigenous Fund.

564. The Committee noted its concern in paragraph 15:

“Regarding the implementation of article 6 of the Convention, the Committee notes with regret that the information provided on cases in which judicial remedies were exercised by the victims of acts of racial discrimination was insufficient and did not allow a proper assessment to be made.”

adding, among its suggestions and recommendations in paragraph 22:

“The Committee recommends that the next periodic report of Brazil contain detailed information on complaints filed by the victims of acts of racial discrimination and on how they were dealt with by the courts.”

565. The Government of Brazil replied that much progress has been made on this matter. This consolidated report details legal actions regarding racial discrimination, hence responding to the Committee’s concerns.

566. In reply to the suggestions and recommendations made in paragraph 16:

“The Committee hopes that the State party will continue and strengthen its efforts to improve the effectiveness of measures and programmes designed to ensure that all groups of the population fully enjoy their political, economic, social and cultural rights. The Committee also recommends that the State party devote due attention to developing programmes to foster awareness of human rights and of the need for tolerance, in order to prevent social and racial discrimination and prejudice.”

the Government of Brazil replied that this consolidated report offers a detailed analysis of the measures adopted and the possible perspectives for addressing the concern expressed by the Committee.

567. Finally, in reply to the suggestions and recommendations made in paragraph 24:

“The Committee recommends that the State party ratify at its earliest convenience the amendments to article 8, paragraph 6, of the Convention which were adopted by the 14th meeting of State parties”

the Government of Brazil replied that the possibility of ratifying the amendments referred to in the observation above is under consideration.

Notes

¹ Folha de S. Paulo of 6 April 2000.

² Fundação SEADE

³ São Paulo, Rio de Janeiro, Bahia, Pernambuco, Ceará, Alagoas, Goiás, Rio Grande do Sul, Amazonas, Sergipe, Federal District, Acre, Rio Grande do Norte and Roraima.

⁴ FAO “Report on food insecurity in the world”. Sofi: 2000.

⁵ Most recent data that is available on a national scale.

⁶ OSCIP has qualified 58 non-governmental organizations, while the SCM has qualified 14. Prior to 1995, experiments in this area among civil society were limited, and the private sector did not participate. Government efforts were also very narrowly focused.

⁷ A fiscal module is a measurement expressed in hectares, which is established for each municipality, on the basis of a number of factors, such as the type of activities that prevail in the municipality, the income derived from those activities, and so forth.
