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لجنة حقوق الإنسان
الدورة الحادية والستون
البند ١١ (د) من جدول الأعمال المؤقت

الحقوق المدنية والسياسية، بما في ذلك مسائل استقلال القضاء، وإقامة العدل، والإفلات من العقاب

تقرير المقرر الخاص المعني باستقلال القضاة
والخامين، السيد لياندر ديسبوي

إضافة

البعثة إلى البرازيل ** *

* يعمم موجز التقرير بجميع اللغات الرسمية. ويرد التقرير ذاته في مرفق هذه الوثيقة ويعمم بلغة التقديم وبالإنكليزية فقط.

** تأخر تقديم هذه الوثيقة لتضمينها أحدث المعلومات المتوفرة.

موجز

بناء على دعوة الحكومة، قام المقرر الخاص المعني باستقلال القضاة والمحامين بزيارة البرازيل بين ١٣ و ٢٥ تشرين الأول/أكتوبر ٢٠٠٤. وشملت الزيارة برازيليا وساو باولو وبورتو أليغري وريسيفي وبيليم، وكانت تدرج في إطار الدعوة المفتوحة الموجهة إلى الإجراءات الخاصة التابعة للجنة حقوق الإنسان. وكانت المقررة الخاصة المعنية بحالات الإعدام خارج القضاء أو بإجراءات موجزة أو تعسفاً، التي زارت البرازيل في عام ٢٠٠٣، قد أوصت بهذه الزيارة.

وأبانت السلطات تفتحاً كبيراً تجاه المقرر الخاص، وتسنى له إقامة حوار بناء مع جميع قطاعات القضاء ومع ممثلين للمجتمع المدني. وجاءت بعثته في سياق نقاش وطني كبير بشأن الإصلاحات القضائية التي اعتمد مجلس الشيوخ معظمها بعد الزيارة بمدة قصيرة (تشرين الثاني/نوفمبر ٢٠٠٤) ودخلت حيز النفاذ في ٣١ كانون الأول/ديسمبر ٢٠٠٤. ويتوقع أن تسهم الإصلاحات المعتمدة في تدارك مواطن القصور الكثيرة التي وقف عليها المقرر الخاص فيما يتعلق بأداء النظام القضائي البرازيلي. وتشكل هذه الإصلاحات خطوة إيجابية، وسيتمتع في السنوات المقبلة رصد تأثيرها على المشاكل الهيكلية التي تعترى القضاء.

ويعرض المقرر الخاص مواطن القصور الرئيسية، ومن بينها: صعوبات الوصول إلى العدالة، والبطء والتراخي الشائع، وضعف تمثيل النساء والمتحدرين من أصل أفريقي والسكان الأصليين في مناصب القضاء العليا، والترعة البيئة نحو محسوبية الأقارب وعدم الاعتماد على المسابقات في تعيين الموظفين القضائيين. ومن المؤكد أن أخطر هذه المشاكل هي المشكلة الأولى، بما أن نسبة لا يستهان بها من السكان البرازيليين لا يتسنى لها، لأسباب اجتماعية أو اقتصادية أو ثقافية أو لأسباب متصلة بالإقصاء الاجتماعي، الوصول إلى الخدمات القضائية أو تتعرض للتمييز لدى الحصول عليها.

ويتفاقم الوضع عندما يتعلق الأمر بمجموعات ضعيفة بصورة خاصة كالأطفال والمراهقين، والسكان الأصليين، والمثليين الجنسيين، والمتشبهين بالجنس الآخر، وأحفاد العبيد الأفارقة، والمتحدرين من أصل أفريقي، والمعوقين، وغيرهم. وينطبق ذلك أيضاً على أعضاء الحركات الاجتماعية، العمال الزراعيين والمدافعين عن البيئة، الذين يعانون من مزدوجة جراح ممارسة القضاء في مجال إقامة العدل نفس التمييز الذي يتعرضون إليه في المجتمع.

وفي بلد يعيش أكثر من نصف سكانه (٧٠ مليوناً) تحت خط الفقر ويتسم بمظاهر تفاوت صارخة، يتعين تدعيم دور هيئة المساعدة القضائية، التي لا يزال حضورها متواضعاً وإن كان يستحق الثناء.

وتتمثل إحدى المشاكل العويصة الأخرى في تراخي القضاء، الأمر الذي يؤثر في الواقع على الحق في الخدمات القضائية أو يقوض فعاليتها. وعلى هذا النحو، يستغرق صدور الأحكام القضائية سنين، مما يؤدي إلى انعدام اليقين في المجالين المدني والجنائي على حد سواء وينتهي في حالات كثيرة إلى الإفلات من العقاب.

وتقترن إقامة العدل بمشكلة السجون الخطيرة وتزايد مؤشرات الجريمة وارتفاع مستويات العنف، مما يؤثر في أحيان كثيرة على أداء القضاء. ويتعرض القضاة والمحامون والمدافعون، في أماكن عديدة، للعنف والتهديد، لا سيما في القضايا المتعلقة بمسائل اجتماعية كالسكان الأصليين وحماية البيئة والأراضي.

وينظر المجتمع إلى القضاء البرازيلي نظرة سلبية. والجهاز القضائي، كسلطة من سلطات الدولة، له تاريخ عريق في الاستقلالية. ويوصي المقرر الخاص بالقيام على نحو منهجي بتحديد وتقييم التجارب الإيجابية في النظام القضائي، ولا سيما مبادراته الرامية إلى الاقتراب من الشعب، مثل مراكز إدماج المواطنين والمحاكم الفيدرالية الخاصة المتنقلة.

ويوصي المقرر الخاص أيضاً باعتماد وسائل من أجل تحسين شفافية السلطة القضائية، كتنظيم مسابقات تغفل فيها الأسماء لتقلد المناصب القضائية ومسابقات عامة لتعيين الموظفين المساعدين في المحاكم؛ ووضع معايير موضوعية لتقييم الجدارة كشرط من شروط الترقية؛ والقيام بمبادرات للتدريب المستمر في مجال حقوق الإنسان والقانون الدولي؛ واتخاذ إجراءات إيجابية من أجل النهوض بتمثيل النساء والمتحدرين من أصل أفريقي والسكان الأصليين في السلطة القضائية؛ وإتباع نوع من الرقابة الاجتماعية فيما يتعلق بالتعيين في المناصب القضائية العليا.

Annex

**REPORT SUBMITTED BY THE SPECIAL RAPPOREUR
ON THE INDEPENDENCE OF JUDGES AND LAWYERS**

MR. LEANDRO Despouy

(13-25 October 2004)

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Introduction

1. The Special Rapporteur on the independence of judges and lawyers visited Brazil from 13 to 25 October 2004. The mission took place a month before the adoption of major judicial reforms that had been under discussion for the past 12 years. The Special Rapporteur's visit should be viewed in this context, as many of the reforms adopted coincide with the recommendations he made during his visit.
2. The Special Rapporteur would like to thank the Brazilian authorities for their cooperation and, particularly, for the assistance provided by the Special Secretariat for Human Rights, as well as the United Nations Development Programme (UNDP) for providing logistical support, coordinating a busy schedule and researching the main subjects of concern for the mission. He would also like to thank the United Nations Children's Fund (UNICEF) and the United Nations Office on Drugs and Crime (UNODC).
3. The Special Rapporteur had the opportunity to meet representatives of the most important institutions and organizations during a busy schedule involving over 60 meetings with around 500 people. He was able to have talks with individuals from all parts of the legislative and judicial system: judges and judges' associations; the Public Prosecutor's Office and prosecutors' associations; the Brazilian Bar Association; and the Office of the Public Defender. He had meetings with lawmakers and officials from the executive at the federal, state and municipal levels. He met many representatives of civil society and was in constant contact with the press during his visit.
4. The mission started and finished in Brasília, passing through the cities of São Paulo, Porto Alegre, Recife and Belém. The Special Rapporteur also met people from other states, including Ceará, Rio Grande do Norte, Paraíba, Maranhão, Roraima and Rondônia, and received information on the situation in other parts of the country.
5. The Special Rapporteur had the opportunity to meet the Minister of Justice, the minister in charge of the Special Secretariat for Human Rights, the deputy mayor of São Paulo, the presidents of the Federal Supreme Court, the Superior Court of Justice, the state courts in São Paulo, Rio Grande do Sul, Pernambuco and Pará and the São Paulo Military Court, the attorneys general of the states of São Paulo, Rio Grande do Sul, Pernambuco and Pará, the Defender-General, the public defenders general of the states of Rio Grande do Sul, Pernambuco and Pará, and representatives of the Brazilian Bar Association in all the states visited.
6. During his visit, the Special Rapporteur received reports from various sources on specific cases of human rights violations, which he will examine in the light of the documentation forwarded by the Brazilian authorities before bringing it to the attention of the Commission on Human Rights. In Belém, for example, the Special Rapporteur visited a police station where he heard the testimony of individuals who had been detained for up to nine months without having the opportunity to be heard by a judge.

I. BACKGROUND

7. One of the defining features of post-dictatorship Brazil is its openness to the outside world and its demonstrated willingness to play a major role on the world stage. In line with this, the country has ratified the core international human rights instruments and has extended an open invitation to the special procedures of the Commission on Human Rights to visit the country. The Special Rapporteur's visit took place in the context of this invitation from the Brazilian Government.

8. In recent years, special rapporteurs have visited Brazil and, like the Committee on the Rights of the Child (which considered the country's periodic report at its thirty-seventh session, from 13 September to 1 October 2004), have produced a sizeable list of the shortcomings of the Brazilian judicial system.¹ Moreover, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, who visited the country in 2003, recommended in her report that the Special Rapporteur on the independence of judges and lawyers should also pay a visit.²

9. Brazil is a huge country and one in which there are great disparities in wealth distribution, with millions of Brazilians living below the poverty line. The people living on the outskirts of the major urban conglomerations are marginalized, cut off from civic life and in a situation, or at risk, of social exclusion. Although such conditions can be found throughout the country, an enormous difference can be observed between the relatively developed south and the more impoverished north.

10. At the same time, Brazil has a powerful movement of civil-society organizations pushing strongly for genuine social change to eradicate the last vestiges of authoritarianism and the consequences of the long years of dictatorship, so as to create a society in which the institutions are commensurate with higher levels of citizen participation.

11. The visit took place a few weeks before the adoption of major judicial reforms, and the Special Rapporteur was able to comment on their feasibility. The main aims of the visit were: (a) to examine the independence of the judicial system; (b) to determine whether the appropriate coordination exists between the various protagonists to ensure that justice is properly served; and (c) to determine whether the most needy members of the population have effective access to justice.

II. ORGANIZATION OF THE JUDICIAL SYSTEM

12. The 1988 Federal Constitution establishes the independence of the judiciary, its composition, its powers and its administrative and financial autonomy. It operates at the federal and state levels, and there are also military, labour and electoral courts, though the latter two types of court are not covered in this report.

A. Federal Supreme Court

13. The Federal Supreme Court is competent to determine the constitutionality of federal and state-level laws and regulations. It is also competent to try certain federal officials, such as the President.

B. Superior Court of Justice

14. The Superior Court of Justice is the highest organ for the administration and enforcement of federal law and hears appeals in that connection.

C. Federal justice

15. The system of federal justice is divided into five regions that cover the whole country, and tries cases, among others, in which the State is a party. Federal regional courts hear, on appeal, cases tried by federal judges and by state judges exercising federal authority in their jurisdiction.

16. The system of federal justice also includes the special federal courts, consisting of judges who are competent to impose settlements and pass judgement and sentence in the more straightforward civil cases and in cases involving minor criminal offences, by means of oral and summary proceedings.

D. State justice

17. The Constitution gives states the power to organize their own system of justice. State courts of justice hear appeals against decisions taken by lower state courts. The State system of justice also includes special state courts, consisting of judges who are competent to impose settlements and pass judgement and sentence in the more straightforward civil cases and in cases involving minor criminal offences, by means of oral and summary proceedings.³

E. Military justice

18. Military justice in Brazil has jurisdiction over military offences. The Constitution provides for legislation to define military justice and the powers of military judges and courts. In states with over 20,000 military police officers, the Constitution provides for the establishment of state-level military courts to try and to judge military police officers for military offences.

III. DELAYS AND LACK OF ACCESS TO JUSTICE

19. A study carried out by the Brazilian Judges Association to determine public perceptions of the judiciary found that it is seen as “a mysterious black box impenetrable for the ordinary person, full of secrets that only special beings [judges] can decipher”.⁴

20. The main reasons for this perception are, in addition to several prominent cases of corruption, the delays in the system of justice and the difficulties the poor or marginalized have in gaining access to it; this was the explanation given consistently by the people to whom the Special Rapporteur talked during his visit. In a society like Brazil’s in which there is so much inequality, the poorest, excluded people do not have enough information on how to claim their rights through the judicial system. Hiring a lawyer is out of the question for a very high percentage of the population for lack of financial resources.

21. The first general analysis of the judiciary, which was carried out in 2003, revealed that 17.3 million cases had been initiated and allocated to a judge - the equivalent of one case for every 10 inhabitants.⁵ This extraordinary figure shows how severely congested the system of justice is. According to the Movimento Nacional de Direitos Humanos (National Human Rights Movement), 80 per cent of the cases under way are before higher courts ruling on matters connected with the State.⁶ Paradoxically, the public authorities are more involved than any other party in court cases and are thus one of the main causes of litigation. Civil society accuses the judiciary of giving priority to individual actions dealing with money matters rather than to collective actions. In the Rio de Janeiro Court of Justice, 16 firms account for 44.9 per cent of the legal actions initiated. In the Court of Justice, actions related to the financial market account for over 60 per cent of the proceedings under way.⁷

22. The Brazilian legal system relies heavily on constitutional guarantees and therefore provides for many remedies, which ultimately delay court decisions. The President of the Recife Court of Justice cited a case in which 34 remedies had been invoked, not to mention a large number of procedural objections. Another difficulty is the excessive number of cases that reach the Federal Supreme Court.

23. The problem of delays is worse in some parts of the country than in others. In the State of São Paulo, where about 13 million cases are under way, there is one judge for every 24,000 inhabitants, leaving each judge with an average of 8,000 to 10,000 cases. By contrast, in Rio Grande do Sul, which has a more up-to-date judicial system, there are less delays, the courts have been equipped with information technology and different forms of virtual proceedings are being tested.

A. Discrimination against or further victimization of social groups within the judicial system

24. Lack of access to justice is more of a problem for social groups who suffer from discrimination or marginalization. The Special Rapporteur heard many accounts of court cases involving people from these groups who claimed that the initial violation of their rights had been compounded by their victimization by the judicial system, which reproduces the same discrimination and the same prejudices in the administration of justice. The people most affected are children and young persons, women, people on low incomes, indigenous people, homosexuals, transvestites, the Quilombola,⁸ people of African descent, the sick and members of social movements such as landless workers and environmentalists.

25. With regard to violence against women, the Inter-American Commission on Human Rights has identified a general pattern of negligence and ineffectiveness on the part of the State in prosecuting and convicting aggressors, and has stressed that “the condoning of this situation by the entire system only serves to perpetuate the psychological, social, and historical roots and factors that sustain and encourage violence against women”.⁹

26. Brazil still has no specific legislation on domestic violence. For this reason, many cases of this kind of violence are classed as minor offences, which only aggravates the problem of impunity.¹⁰

27. It is alleged that cases of sexual abuse and domestic violence, including against adolescents, are not dealt with by the appropriate authority or with due care by the different actors in the administration of justice. On the contrary, in some areas a prevailing machismo tends to lay the blame on the victims of these offences. For example, one judge ruled in a case concerning the sexual exploitation and abuse of a 14-year-old girl that “she was no beginner when it comes to sex and was able and old enough to get away from her aggressor”.

28. The victims of sexual exploitation and individuals who prostitute themselves are generally at a high risk of violence and ill-treatment in a climate of blatant impunity for their aggressors. The Special Rapporteur received information from attorneys acting on behalf of such individuals regarding specific cases in which the complaints filed by them had not been processed.¹¹ Transvestites, transsexuals and homosexuals are also frequently the victims of violence and discrimination. When they turn to the judicial system, they are often confronted with the same prejudices and stereotypes they face in society at large.

29. Nevertheless, there is already in Brazil a body of jurisprudence on issues related to sexual orientation, which has enabled significant progress to be made in recognizing the human rights of lesbians and gays. Although still insufficient, this jurisprudence contains pioneering judgements on issues such as equal treatment in the public sector, employment contracts and family matters.¹²

B. Children and young persons

30. There is reportedly a strong sense of impunity for crimes against children and young persons, mainly in two areas: (a) murders of teenagers and young people by death squads; and (b) offences of sexual exploitation and abuse.¹³ The situation is worse when the lawyers defending the victims, or the judges in charge of the proceedings, are threatened.

31. The Special Rapporteur is deeply concerned about the cases of violence and sexual abuse involving individuals from the judicial and political spheres and shares the views on this subject of the Joint Parliamentary Commission of Inquiry of the National Congress, which was set up in 2003 to investigate violence against children and young persons in Brazil and the networks that sexually exploit them. The Commission reports as follows: “We find the involvement of figures of authority such as politicians and judges particularly alarming. As public officials, they can be expected to be committed to protecting society and rights in general, and the rights of children and young persons in particular ... The political influence of these individuals poisons the whole system of responsibilities, leading to absolute impunity for exploiters [of children]. It is difficult to file complaints, conduct competent investigations and try anyone who is charged ... In some cases the authorities are not directly involved in sexual exploitation but they are nevertheless accomplices either by omission or collusion. Graft becomes a factor in the impunity of many abusers who, even when they have been caught, manage to obtain their release thanks to local political influence.”¹⁴

32. The 1990 Children and Young Persons Act provides for an exemplary system of guarantees, but has not yet been implemented throughout the country. There is thus a pressing need to establish special criminal courts to try offences against children and young persons.

The experience of existing special courts has led to better care for victims and has reduced delays and impunity while raising the conviction rate. As at the beginning of 2004, the country had only four special courts, in the states of Bahia, Ceará, Pernambuco and Rondônia.¹⁵

33. In Porto Alegre and Recife, the Special Rapporteur heard reports of cases where the Office of the Public Defender had not been represented at any stage of the proceedings against young people in conflict with the law. However, on the basis of the principles set out in the 1990 Act, the National Council on the Rights of Children and Young Persons decided to establish, within each public defender's office, children's units specialized in providing more appropriate care for child victims of crime and young persons in conflict with the law. As at January 2004, there were 150 such units, but there are many states in which they have not yet been set up.¹⁶

C. Criminalization of social movements

34. For decades there have been social conflicts and tension in Brazil which it has proved impossible to resolve by legislative or policy measures and which are now dealt with by the courts; they involve environmental and land issues, the demands of indigenous movements and Blacks, and the situation of the Quilombola communities. These social movements object strongly to being victimized twice over by the judicial system. When they are the victims, the proceedings last for decades without reaching a verdict. This contrasts with the large number of activists and leaders of social movements who are the defendants in court cases. In the State of Rio Grande do Sul alone, almost a hundred landless workers - mostly from the leadership - are on trial, in what they see as a sort of judicial persecution intended to weaken and neutralize their movement as a fighting force.¹⁷

35. In the State of Pará, the situation is even more serious, with a high rate of violence and blatant impunity. Only 85 of the individuals involved in the 1,207 murders of rural workers between 1985 and March 2001 have been sentenced, meaning there was no judicial follow-up in 95 per cent of the cases. In the same period, 340 rural workers were murdered in southern and south-eastern Pará. Only two of these crimes came to trial, meaning that in 99.4 per cent of all cases no one was either convicted or acquitted of a criminal offence.¹⁸ There is no denying that these crimes were committed with impunity.

36. One particularly sensitive issue concerns the situation of indigenous communities, which is often aggravated when they campaign to protect the environment. The Special Rapporteur was told that some indigenous community leaders in the Amazon states have been threatened. A witness from the State of Roraima said that "while indigenous rights defenders are threatened, people supporting the environmentalists' cause are killed". Judges, lawyers and defence attorneys dealing with these issues are at great risk and the threats against them often lead to serious incidents of violence. As was mentioned at the start, the many statements collected by the Special Rapporteur are still being processed and will be sent to the Brazilian authorities.

IV. FUNCTIONING FOR THE SYSTEM OF JUSTICE

A. Office of the Public Defender

37. According to the Brazilian Institute of Geography and Statistics, over 70 million Brazilians live below the poverty line. With this in mind, it is easy to imagine the decisive importance of the Office of the Public Defender, which plays a crucial role in the functioning of the state courts and which is responsible for providing advice and a legal defence for the poor at every level of the court system. The Federal Constitution requires the Union and the states to provide comprehensive legal assistance free of charge to anyone who cannot afford to pay professional fees and court costs. Free legal assistance is an established fundamental right of every citizen; at the federal level it is provided by the Office of the Public Defender of the Union and at the state level by the Office of the Public Defender of the State.

38. Notwithstanding the enormous amount of work done by this institution, it is unable to meet all needs. Wherever it works, it is short of the budget resources, staff and support structures (e.g. information technology, of which it has little if any) it needs to perform its huge task.

39. Moreover, despite the constitutional provision, the Office of the Public Defender is still not established in the states of Santa Catarina, Goiás and São Paulo. The situation in São Paulo is typical, with almost 15 million people in need of assistance and most legal assistance provided by private lawyers under 43,000 agreements with the Brazilian Bar Association.¹⁹ Not all the lawyers receive a fee for providing this service, because of the way the system works. Another point to be borne in mind is that, however admirable the work they do, it does not come with the same guarantees of autonomy and independence as the work done by public defenders, and there are no checks on the quality of the service provided. Demand is now so pressing that civil society in São Paulo has started a campaign for the establishment of a public defender's office, involving 433 organizations that support a draft law for this purpose. The draft includes innovative measures on (a) decentralization, that is, setting up branches in the less privileged areas of the state where most low-income families live, and (b) a multidisciplinary approach that goes beyond traditional legal representation to look for solutions that are alternatives to litigation in the courts. The Special Rapporteur hopes that the State Governor will soon submit the draft, as planned, to the Legislative Assembly for consideration and quick adoption.

40. An important step in strengthening this institution was the reform of the judicial system recently passed by the Senate, on 17 November 2004, which granted financial, budgetary and administrative autonomy to the State Office of the Public Defender. Unfortunately, this autonomy was not extended to the federal Office of the Public Defender, which is considerably weakened by having so few defence attorneys (only 96 for the whole country, as compared with 1,486 federal judges).

B. Investigative powers of the Public Prosecutor's Office

41. The Public Prosecutor's Office is responsible for instigating criminal proceedings, and its role in clarifying several events of public interest has raised its profile in recent years. The fact that the Constitution (art. 129) does not expressly give it powers to investigate is the

subject of a lively debate at the moment. A federal deputy from the State of Maranhão who was accused of fraud on the basis of investigations carried out by the Public Prosecutor's Office has applied to the Federal Supreme Court for the case to be dismissed on the grounds that the investigation was unconstitutional.

42. The Court's decision on this matter is currently pending. The arguments for giving the Public Prosecutor's Office powers of investigation include the following: (a) the Constitution does not give the police a monopoly on criminal investigations, but establishes other mechanisms such as parliamentary commissions of inquiry; (b) investigation is a function of the constitutional mandate of the Public Prosecutor's Office to exercise external control over police activities; (c) the investigative activities of the Public Prosecutor's Office are not a substitute for police investigations, but rather complement them; and (d) the functional independence of the Public Prosecutor's Office facilitates the conduct of investigations, especially in cases involving individuals with political or financial influence, such as cases of corruption, organized crime or human rights violations involving, for example, police officers.

43. Despite the commendable investigative work done by the Public Prosecutor's Office, which made it possible to break the vicious circle of impunity in several high-profile cases (as in operation Anaconda, which dismantled a network providing police protection for smugglers and drug-traffickers and selling judicial decisions to them),²⁰ there can be no doubt that all the activities of this institution - like those of any other in a position of authority - should be legally regulated so as to ensure proper oversight. At this stage of the debate, the Special Rapporteur understands that what is proposed is the proper regulation of its investigative powers rather than their negation, basically to consolidate the right to a defence.

44. The Federal Supreme Court should, in its decision, uphold the principle of legal certainty and should not invalidate convictions based on investigations carried out by the Public Prosecutor's Office.

C. Military courts

45. The system of military justice dates back to 1808, when the Supreme Military Council of Justice and courts martial were established. In 1969, during the military dictatorship, an amendment to article 144 of the Federal Constitution established the competence of military courts to try offences committed by the military police. Military courts and judges are organs of the judiciary (art. 92, para. 6). Military justice is divided into federal military justice (under which members of the army, navy and air force are tried) and state military justice (under which members of the auxiliary forces - military police officers and military firefighters - are tried).

46. The 1988 Constitution did not change that arrangement, and specified that state military justice could be established by state legislation proposed by the Court of Justice. It is administered in the first instance by "councils of justice" and in the second by the Court of Justice itself or by the Military Court of Justice in states with more than 20,000 military police officers. In most Brazilian states, military justice is restricted to courts of first instance, and the Court of Justice deals with appeals. Military courts of justice were set up only in São Paulo and, in similar form, in Minas Gerais and Rio Grande do Sul. In other states, this function is performed by a special chamber of the Court of Justice.

47. The courts of first instance in the state military justice system are the councils of justice, consisting of a judge advocate and four officers whose rank depends on that of the accused. There are special courts (for trying officers) and standing courts. The appellate body is the Superior Military Court, consisting of 15 judges appointed for life (10 military and 5 civilian judges; 2 of the latter must be elected from among the judges and officials of the Public Prosecutor's Office specializing in military justice). Consequently, only three judges are civilians, so that the Court is dominated by the military.

48. Cases are distributed in the first instance among four military courts, each of which is headed by a civilian judge (a judge advocate). Each of these courts forms a council of justice consisting of the judge advocate and four military judges drawn from a list of military police officers.

49. The advocates are judges who enter the military justice system by means of a competitive examination open to civilians as well as to former police officers with legal training. In 1995, the majority of judge advocates were former police officers.

50. The judge advocate conducts the investigation and the decision is taken by majority vote. Appeals are taken to the Court of Military Justice, which consists of seven members: four military police colonels and three civilians. The colonels are nominated by the military and appointed as military judges by the Governor.

51. Investigations under the system of military justice are conducted by the military police. This is one of the principal sources of criticism of the system, as familiarity and esprit de corps may lead to impunity. The Special Rapporteur received many reports of this happening.

52. Under the Constitution, the powers of the military courts and their basic rules of procedure are established by ordinary legislation. Military offences are defined as either military offences proper or non-exclusive military offences: the former are those provided for exclusively in the Military Criminal Code, while the latter are provided for both in military criminal legislation and in the ordinary Criminal Code.

53. Military offences proper are those that can only be committed by members of the military, such as desertion, violence against a superior or subordinate, disobeying orders, abandonment of post or illegal retention of command. Non-exclusive military offences may be committed by any citizen, whether they are a civilian or a soldier, but when they are committed by a soldier under certain circumstances the law considers them to be military offences. This category also includes offences committed by civilians that are defined by law as military offences. However, the recent reform excludes military jurisdiction in cases where the victim is a civilian. About 70 per cent of the offences tried by military courts are not military offences proper.

54. The fact that ordinary legislation can define the nature of offences means that it has been able to exclude certain offences from being considered as military offences. For example, Federal Act No. 9299 of 7 August 1996, known as the Bicudo Act, established that the use of a government-issue weapon in offences committed by a soldier or military police officer was not

sufficient to classify the offence as a military one. The Act was a step forward in that it embodied the idea that intentional crimes against the person of civilians by soldiers or military police officers should be tried by the ordinary courts.

55. Nevertheless, bodily harm, intentional homicide, illegal detention, torture, extortion, rape and other offences remain within the jurisdiction of the military courts, which also have the power to decide on the intentional or culpable nature of the crime.²¹

56. Although the latest judicial reform consolidates the progress made to prevent military courts from trying civilians, there is no doubt that the next step must be to restrict the military courts to trying exclusively military infractions and offences.

D. Judges

1. Entry to the profession and career progression

57. In Brazil, entry to the judiciary is via public competitive examinations. Each state regulates and organizes such examinations. The federal system of justice holds its own examination in the five regions of the country.

58. To meet constitutional requirements, competitive examinations must respect the principles of equality and transparency. Consequently, steps must be taken to ensure that the written tests are not identified prior to marking. However, in some states, anonymity is not maintained in the examinations, so that entry to the judiciary is not a transparent process. The situation is even more serious in states like Tocantins, where the regulations drawn up by the State Court of Justice allow the exclusion of candidates on the basis of secret background checks; candidates have no right of appeal and are unable to exercise their right to a defence.²² The Special Rapporteur believes that the example of the State of São Paulo, where anonymity is respected in the written examinations, should be followed in other states.

59. The Special Rapporteur believes it is necessary to encourage judges to learn more about and to implement international law, particularly the human rights treaties. In São Paulo, for example, the first human rights course for judges was held as recently as 2000.

60. The Constitution establishes that the promotion of judges should be based on seniority and merit. Each court of justice must define objective criteria for evaluating merit. The Special Rapporteur recommends that those courts that have not yet done so should do this soon and, in any case, should always respect the principle of seniority, which is, moreover, a verifiable element of transparency.

61. The Federal Supreme Court consists of 11 judges appointed for life. They must have appropriate legal experience and personal standing; they are proposed by the President, subject to the approval of Congress. As the lack of a mechanism to give the public a say in their appointment increases the risk of politicization, it would be advisable to set up such a mechanism.

2. Representation of women and people of African descent or indigenous origin in top judicial positions

62. The Special Rapporteur observed that the judicial system basically consists of white males, although there is an exception in the Court of Justice in the State of Pará, which consists for the most part of women. However, discrimination against women is blatant; they occupy only 5 per cent of the top jobs in the judiciary and Public Prosecutor's Office. The situation is even worse for people of African descent or indigenous origin, who occupy less than 1 per cent of such jobs.²³

3. Nepotism

63. Although the majority of ancillary court staff are recruited by competitive examination, the Special Rapporteur heard many claims that judges hired relatives to fill positions of responsibility. This practice is aggravated by the factors mentioned earlier with regard to competitive examinations. For example, until 2004, there had never been a public competitive examination for judicial officials in the State of Maranhão.

4. Secrecy (confidentiality)

64. Proceedings are held in public under Brazilian law. Only the protection of privacy and the public interest can justify the secrecy of procedural acts, as provided for by article 5, paragraph 60, of the Constitution.

65. However, the Special Rapporteur is concerned about the excessive use, and sometimes abuse, of secrecy, particularly in cases against judges, prosecutors or politicians and even in cases of human rights violations. In cases involving human rights violations, a public trial is in the best interests of a society that is keen to defend human rights, as it allows people to become involved in cases. Moreover, when the records of cases are kept secret, no one who was not a direct victim of the offence is told why, and this seriously damages transparency in the system of justice. Although there may be some conflict between protecting the parties' right to privacy and holding the proceedings in public, especially when persons holding public office are involved, the Special Rapporteur understands that there are many legal options available for resolving this conflict while protecting the public interest.

V. JUDICIAL REFORM

66. On 17 November 2004, after 12 years of discussion, the Brazilian Senate adopted the first chapter of the judicial reform. This reform, which has been criticized from some quarters as being too timid and from others as being too radical, should be seen as an important, though not the last, step towards improving the functioning of the system of justice. "This is not the system of justice we want" was one of the phrases the Special Rapporteur heard repeatedly during his visit. He found a great readiness to debate the issue in judicial circles and among other legal professionals, which shows how the extremely well-qualified people working in this dynamic sector are closely involved and keenly interested in this issue. However, although most of them agreed on the analysis, the same could not be said of the proposed changes, which tend to give priority to protecting the immediate interests of each group.

67. When the reform was adopted, the President and the presidents of the Senate, the Chamber of Deputies and the Federal Supreme Court signed a “State agreement on a more efficient and republican judicial system”, in which they undertook to take a number of measures with the aim of, among other things: implementing the reform that had been adopted; reforming the system of appeals and rules of procedure; strengthening the Office of the Public Defender, the special courts and the mobile courts; complying with the decisions of international human rights bodies; computerizing the system; ensuring consistency between administrative actions and established case law; producing statistics; and encouraging the use of alternative sentences.²⁴

68. For reasons of space, we will restrict ourselves to mentioning below the most significant points of the reform, which include the progress made in the Office of the Public Defender, as mentioned above (paras. 36-39).

A. Defining serious violations of human rights as federal offences

69. Since becoming a democracy, Brazil has ratified most of the international human rights instruments. Under the reform, in the case of serious violations of human rights that might involve the State’s international responsibility, the Prosecutor-General may request the Superior Court of Justice, at any stage of proceedings, to have the case transferred from the state courts to the federal courts.

70. This aspect of the reform was strongly resisted by state judges, who feared that it might be abused to the advantage of the federal system of justice, which would be a big step backwards. However, there is no such risk if the measure is invoked only on an exceptional basis when the impartiality of the investigation procedure is in question. Moreover, the fact that the decision is entrusted to a judicial authority acts as a real guarantee.

71. Surprisingly, some parts of Brazilian legal opinion do not consider international treaties as having constitutional status. However, most legal experts agree that article 5, paragraph 2, of the Federal Constitution grants recognition to the rights and guarantees enshrined in international treaties. The recently adopted reform establishes that international human rights conventions adopted by special majority in both chambers of Congress have the status of a constitutional amendment. Another important point is the acceptance of the jurisdiction of the International Criminal Court, which Brazil campaigned to establish.

B. External oversight: establishment of the National Council of Justice and the National Council of the Public Prosecutor’s Office

72. With the establishment of the National Council of Justice, the reform introduced for the first time external oversight of the judiciary. The Council is a joint body consisting of 15 members appointed by the President, with the approval of the Senate. Nine of its members are judges, and representation of the three hierarchical levels of the state and federal systems of justice is guaranteed. Of the six remaining members, two represent the Public Prosecutor’s Office, two are lawyers appointed by the Federal Council of the Brazilian Bar Association and two are citizens of high standing with legal experience, one appointed by the Chamber of Deputies and the other by the Senate.

73. The work of the National Council of Justice involves planning the activities of the judiciary at the national level and verifying the legality of the administrative acts performed by members or organs of the judiciary, without detriment to the powers of the Brazilian Court of Audit. Its disciplinary powers allow it to impose sanctions, including removal from a post though not dismissal.

74. The reform also establishes an oversight body for the Public Prosecutor's Office - the National Council of the Public Prosecutor's Office. Half of this joint body's 14 members come from the Public Prosecutor's Office (four from the federal office and three from state offices). The other members consist of two judges, two lawyers nominated by the Federal Council of the Brazilian Bar Association and two citizens with outstanding legal knowledge, one nominated by the Chamber of Deputies and the other by the Senate. The members of the National Council of the Public Prosecutor's Office are appointed by the President with the approval of an absolute majority of the Senate and has powers in its field similar to those of the National Council of Justice.

75. During his visit and discussions with various groups on the question of external oversight of the judiciary and the Public Prosecutor's Office, the Special Rapporteur found no resistance to the proposal to set up the National Council of the Public Prosecutor's Office. However, there were differences of opinion on the National Council of Justice, particularly within the judiciary. Unlike most of the judicial branches of government in the Latin American region that were under the rule of successive dictators, the Brazilian judiciary maintained a high level of independence vis-à-vis the other branches of government. This explains its traditional attachment to preserving its identity, which is why the reform was met with reservations over the possibility that outsiders might intervene in matters traditionally dealt with by judges themselves.

76. However, the worldwide trend is for all branches of government to be subjected to external oversight. This contributes to transparency in their acts, the proper functioning of institutions and respect for citizens' right to know the officials who discharge public tasks or responsibilities. Moreover, the Special Rapporteur trusts that the National Council of Justice will help make Brazilian justice more consistent and banish the widely held notion that it resembles an archipelago of separate islands.

77. By comparison with many similar systems, Brazil's system of external oversight has a relatively high number of judges working for it after the recently adopted reform.

C. Binding summary judgements and summary judgements barring appeals

78. Both types of summary judgement are aimed at reducing court delays and the number of cases that reach the higher courts. When a single issue is addressed by several judges, the number of legal actions is needlessly increased, and over the years the courts' ability to resolve disputes effectively is reduced. As the judicial system is heavily overloaded, it makes no sense for the Federal Supreme Court to rule on certain legal issues only for the legal controversy to continue in the ordinary courts. The principle of legal certainty is also undermined.

79. The Senate has endorsed the introduction of the binding summary judgement (*súmula vinculante*), but deputies are still considering the possible introduction of the summary judgement barring appeals (*súmula impeditiva de recursos*). Even though the Federal Supreme Court's decisions are already binding in respect of compliance with the Constitution at the abstract level, the innovation consists of applying binding summary judgements - after the case has been fully considered by the ordinary courts and a special quorum of two thirds has been reached in the deliberations - to specific, common cases in which there might otherwise be a plethora of actions revolving around a single issue. Such judgements are binding on the other organs of the judiciary and on the authorities at the federal, state and municipal levels.

80. In various meetings during his visit, the Special Rapporteur found that some lower-court judges, lawyers and officials from the Public Prosecutor's Office had reservations about binding summary judgements, on the grounds that they might curb the trial judge's discretion. In contrast, the Special Rapporteur heard fewer objections from legal professionals and judges to summary judgements barring appeals, since the bar applies to the parties but is not binding on the judge. This makes it possible to simultaneously develop case law and markedly reduce the number of appeals in cases that have already been the subject of a decision by judges from higher courts.

81. Both types of summary judgement are intended to address one of the most serious problems affecting the Brazilian system of justice: chronic delays.

VI. SUCCESSFUL INITIATIVES

82. During his visit, the Special Rapporteur identified several successful initiatives that deserve to be highlighted as they are not theoretical solutions imported from elsewhere but practical, home-grown solutions that could be replicated in other parts of the country experiencing similar problems.

A. Citizens advice centres in São Paulo

83. Citizens advice centres were introduced in 1996 on the outskirts of São Paulo. They are intended to bring the justice system closer to the community by offering a range of public services. They are a joint initiative of the executive, the judiciary and the Public Prosecutor's Office. There are currently seven of them, strategically placed in areas with high levels of violence, where the poorest and neediest population lives. The facilitation and provision of access to services serves a highly educational purpose in that it brings the State closer to the community, so that the latter can take advantage of the public services available.

84. The centres give the public access to a judge, a prosecutor, a police officer and representatives of employment, housing, consumer protection and welfare agencies. It is hoped that they will enable conflicts to be prevented and settled.

85. The local community, represented by a council, is responsible for taking decisions on the use of the centres. The community takes ownership of a platform that encourages community involvement and gives it an effective mechanism for preventing violence.

B. Public hearings in Porto Alegre

86. In Rio Grande do Sul, the Office of the Auditor-General is coordinating a project called “Listen to the community”.

87. This consists of public hearings open to people working in the judicial and other spheres and to the general public, where they can discuss issues relating to the functioning of the judiciary and make suggestions for dealing with the causes of any malfunctioning. For example, they may discuss the shortage of judges and prosecutors or the creation of jobs for social workers and psychiatrists in judicial offices. This is a valuable experiment in citizen participation in the administration of justice and in opening up the judicial world and bringing it closer to the community, and is defined by the local populace itself as the “social control of justice”.

C. Belém Rights Bureau

88. In August 2004, the Pará Office of the Public Defender opened the Rights Bureau, whose services include the issuance of basic civil documents, reconciliation and mediation in disputes, the provision of legal advice and assistance in human rights and civic issues, and the organization of seminars on these subjects. This initiative is supported by the Special Secretariat for Human Rights through links with local institutions.

D. Mobile special federal courts

89. Special federal courts were established pursuant to Act No. 10.259 of 12 July 2001 to facilitate access to justice by simplifying consideration of less complex legal actions involving small claims (penalties of up to two years’ imprisonment and 60 times the minimum wage). They work on the basis of the principles of orality, simplicity, informality, procedural brevity and speediness, and aim to achieve agreement and reconciliation where possible.

90. The Federal Regional Court in Region 1, which covers 13 states and the Federal District (about 80 per cent of Brazilian territory), launched a project entitled “Mobile special federal courts - overcoming distance”. The aim of the project is to provide mobile courts that can go anywhere, in order to provide a more comprehensive judicial service and to bring the courts closer to ill-served groups who are a long way from the nearest public services.

91. Out of a total of 1,490,000 cases being processed in Region 1, 600,000 are being dealt with by mobile courts. A little over two years since they were set up, over 70,000 people have been dealt with and over 30,000 cases tried.²⁵

E. Vida Nova project in the Office of the Public Defender of the Federal District

92. The Vida Nova (“New Life”) project, which started in 1997, is an experiment in the rehabilitation of young persons living in a semi-open system. Sixty young people work in the Office of the Public Defender, receiving the minimum wage and schooling. They stay for up to two years, depending on their school results. Some 300 young people had benefited from the project up to 2003.²⁶

F. Community legal advisers in São Paulo

93. This gender-based project consists of training women in their rights and the protection of those rights, so that they can then train and advise other women and men. It was started 10 years ago in the State of São Paulo and has helped some 2,000 women.²⁷

VII. CONCLUSIONS

94. The mission took place against the backdrop of a full national debate on judicial reform which, after 12 years of discussion, was partially adopted by the Senate in November 2004, a few weeks after the visit.

95. The Special Rapporteur found an atmosphere of great openness and his presence attracted a good deal of interest, as shown by the full press coverage everywhere he went. Although he observed a general consensus on the problems facing the system of justice, the same could not be said of the proposed remedies or solutions, which more often than not represented the immediate interests of a group rather than a comprehensive vision of the changes needed.

96. The adoption of the reform is an important step towards changing the system of justice, insofar as it marks the beginning of a process of change aimed at resolving structural problems - delays, lack of access and impunity in some areas - but it needs to be supplemented by other measures and, above all, its implementation needs to be monitored.

97. As well as the structural problems that have already been mentioned, the report draws attention to the consequences of certain discriminatory behaviours that often lead to the further victimization of certain groups, as well as a marked trend towards the criminalization of social movements.

98. The low level of women's representation is striking, with women occupying only 5 per cent of the top posts in the judiciary and the Public Prosecutor's Office. The situation is even worse for people of African descent and indigenous people, who occupy less than 1 per cent of such posts.

99. Threats and acts of violence against judges, lawyers and defence attorneys working on cases that involve social issues such as indigenous, environmental and land issues are a source of serious concern for the Special Rapporteur.

100. In almost every place visited, the reports and information received showed that the judicial system is clearly suffering not only from an overload of work but also from a lack of the resources needed if it is to perform its tasks effectively. While the shortage of staff and technological resources is a widespread problem, the hardest-hit institution, and the one with the least resources, is the Office of the Public Defender.

101. A lack of transparency in the mechanisms that regulate the functioning of the judiciary was observed in such areas as: (a) entry to a judicial career, as the competitive examinations in many states are not anonymous; (b) promotion, when there are no

objective criteria for assessing merit; (c) appointment to the highest positions; (d) recruitment of ancillary court staff; (e) the use of secrecy; and (f) the functioning of the military system of justice.

102. Brazil has carried out some innovative and creative experiments in an effort to find other ways to settle disputes and bring justice closer to the people and, particularly, to the needy groups living on the outskirts of the major urban conglomerations. These experiments deserve to be copied in other parts of this vast country.

VIII. Recommendations

103. One of the main problems with the Brazilian system of justice concerns the public's access to it; to address this, there is an urgent need to strengthen the Office of the Public Defender. The adoption of the judicial reform is an important step in this direction, but it is not enough. The Special Rapporteur recommends that:

(a) The medium- and long-term impact of the reform on the operational capacity of the Office of the Public Defender should be monitored;

(b) The Federal Office of the Public Defender should be given financial and administrative autonomy, like its state counterparts; and

(c) A public defender's office should be established in those states that do not yet have one. The Special Rapporteur recommends that, notwithstanding the laudable work done by the Brazilian Bar Association, the bill providing for the establishment of a highly innovative public defender's office in the State of São Paulo should be submitted and debated by parliament as soon as possible.

104. Crimes and offences committed against children and young persons are a matter of great concern. In this area, priority should be given to the full implementation of the system provided for in the 1990 Children and Young Persons Act. In particular, it is necessary to set up special courts to deal with crimes against children and young persons, as well as children's units in public defenders' offices.

105. With regard to military justice, the Special Rapporteur recommends limiting its jurisdiction to military offences and having all offences committed by military police officers against civilians tried by the ordinary courts.

106. In view of the threats and acts of violence against judges, lawyers and defence attorneys, especially those working on cases involving social issues (such as land, indigenous or environmental issues), the Special Rapporteur recommends that the Special Representative of the Secretary-General on the situation of human rights defenders should visit the country.

107. Because of the discrimination against some clearly vulnerable groups, a visit by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance would be advisable.

108. With regard to the regulations governing a career in the judiciary, the Special Rapporteur recommends that:

(a) Competitive examinations for entry to the judiciary should be anonymous;

(b) In-service, lifelong training should be provided for judges, particularly in human rights and international law; it is strongly recommended that the handbook *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* (No. 9 in the Professional Training Series), which can be found on the web site of the Office of the United Nations High Commissioner for Human Rights (www.ohchr.org), should be used in universities and made available to professional associations of judges and lawyers. The same recommendation applies to the Bangalore Principles of Judicial Conduct;

(c) Objective criteria should be established for assessing merit as a criterion for promotion;

(d) Affirmative action should be taken to encourage more women, Blacks and indigenous people to enter the judiciary;

(e) Ancillary court staff should be recruited by means of public competitive examinations;

(f) Measures should be taken to impose some form of social control over appointments to the top positions in the judicial system, particularly in the Federal Supreme Court; and

(g) Measures should be taken to eliminate systematic discrimination in the judicial sphere on the basis of, inter alia, gender or ethnic origin.

109. Steps should be taken to bring those working in the judicial system closer to the population. Experiments such as the “Listen to the community” project in Rio Grande do Sul, the citizens advice centres in São Paulo and the mobile special federal courts are steps in the right direction, and should be strengthened and replicated. Another way of bringing judges closer to the people is through regular visits to prisons, as provided for by law.

110. It is vital to collect statistical data on the functioning of the system of justice in order to monitor the effectiveness of judicial services. The Special Rapporteur recommends that an advanced system for collecting such data should be set up and that indicators should be established to evaluate improvements in judicial services. This exercise would be particularly useful for measuring the impact of the changes introduced by the judicial reform.

111. In order to prevent abuse, the authorities should restrict the use of secrecy (confidentiality) and, in cases where it cannot be avoided, should inform the parties of the status of the proceedings.

112. In order to make judicial procedures more effective, and bearing in mind that the reform adopted makes speedy judicial and administrative procedures a fundamental right, the reforms being introduced should protect existing guarantees and at the same time simplify their application. This should be done by reducing the number of appeals and streamlining procedures so that the judicial decision meets the double requirement of being both effective and timely.

113. It is strongly recommended that judges, prosecutors, lawyers and defence attorneys should implement the international human rights instruments ratified by Brazil and that they should invoke them in their decisions and in other judicial proceedings.

114. Given the complex nature of organized crime, national efforts alone are not sufficient to combat it. It is therefore crucial to combine the efforts of everyone involved in combating it and to establish channels of cooperation between countries, especially in border areas. The international cooperation efforts under way in this area are manifestly inadequate.

115. It would be a good idea to identify and systematically evaluate successful initiatives taken at the federal, State and municipal levels with a view to studying their viability and implementation elsewhere. In this respect, the executive could organize a national meeting to learn about them and assess their viability. This would not only permit a useful exchange of ideas, but would also promote their implementation in other places, while leaving it up to the State authorities to adapt and implement them.

116. The Brazilian Government could call on the United Nations system for technical cooperation in implementing these recommendations. In particular, the United Nations country team could provide technical assistance in such areas as: (a) the development of indicators for evaluating the functioning of the system of justice and statistical data-collection methods; (b) the identification and analysis of successful experiments that could be replicated; (c) the development of forms of affirmative action to promote greater representativeness in the judiciary; and (d) the organization of international cooperation initiatives in the judicial sector.

Notes

¹ Visita del Relator Especial sobre la cuestión de tortura (E/CN.4/2001/66/Add.2); visita del Relator Especial sobre la venta de niños, la prostitución infantil y la utilización de niños en la pornografía (E/CN.4/2004/9/Add.2); observaciones finales del Comité de los Derechos del Niño (CRC/C/15/Add.241).

² E/CN.4/2004/7/Add.3.

³ Ministério da Justiça, "Diagnóstico do poder judiciário", Brasília, 2004, págs. 17 a 19.

⁴ AMB, Pesquisa qualitativa "Imagem do Poder Judiciário", Brasília, 2004, pág. 61.

⁵ Ministério de Justiça, *op. cit.*, pág. 34.

⁶ Movimento Nacional de Direitos Humanos, "Uma reflexão sobre o judiciário brasileiro frente aos direitos humanos", 2004.

⁷ *Ibídem.*

⁸ Originariamente, los quilombos eran esclavos negros que se rebelaron a su condición de esclavitud. Hoy en día, las comunidades quilombolas consisten en grupos sociales cuya identidad étnica los distingue del resto de la sociedad. La legislación brasileña ha adoptado este concepto de comunidad quilombola y reconoce que la determinación de la condición de quilombola tiene lugar a través de la autoidentificación. Existen comunidades quilombolas por lo menos en 18 Estados del Brasil. Una de las cuestiones que ponen las comunidades de quilombolas es la demarcación de las tierras. (<http://www.cpisp.org.br/comunidades/>).

⁹ Organización de los Estados Americanos (OEA). Comisión Interamericana de Derechos Humanos N°54/01, caso 12051, *Brasil, María da Penha Maia Fernandes*, 16 de abril de 2001, párrs. 55 y 56.

¹⁰ Proyecto Violencia de Género CLADEM-UNIFEM, *Balanco sobre esforços e atividades dirigidas a erradicar a violência contra as mulheres na América Latina e Caribe*, 2003 (www.cladem.org).

¹¹ Alves Araújo A., "Violencia contra profissionais do sexo e homossexuais, Stuação dos carecas", Maringá, 2004, pág. 9.

¹² Loyola de Souza F., Reinaldo de Lima Lopes J., Cogo Leivas P.G., Raupp Rios R., "A justiça e os direitos de gays e lésbicas", Porto Alegre, 2003.

¹³ Ambos problemas ya fueron denunciados por otros Relatores Especiales que visitaron recientemente el Brasil, específicamente la Relatora Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias y el Relator Especial sobre la venta de niños, la prostitución infantil y la utilización de niños en la pornografía.

¹⁴ Informe final de la Comisión, julio de 2004. pág. 48.

¹⁵ En Rondônia existe un tribunal híbrido que también trata de delitos de tránsito. UNICEF, "Varas especializadas e infancia", 2004, pág. 17.

¹⁶ UNICEF, Defensorías públicas e infancia, 2004, págs. 13 y 30.

¹⁷ Movimento dos trabalhadores rurais sem terra, "A criminalização da luta pela terra no Estado do Rio Grande do Sul", Porto Alegre, 2004.

¹⁸ Informe preparado en ocasión de la visita del Relator por las siguientes organizaciones no gubernamentales: Movimento dos Trabalhadores Rurais sem Terra, Comissão Pastoral da Terra, Terra de Direitos, y Rede Social de Justiça e Direitos Humanos, Brasília, octubre de 2004.

¹⁹ Una parte de la asistencia judicial es prestada por la Fiscalía (Procuradoria) de Asistencia Judicial. Este órgano está presente sólo en 21 de las 645 ciudades del Estado de San Pablo.

²⁰ CONAMP, Poder investigatório do Ministério Público, Brasília, julio de 2004, pág. 2.

- ²¹ Informe preparado en ocasión de la visita del Relator por la Comissão Municipal de Direitos Humanos, San Pablo, octubre de 2004, págs. 2 a 11.
- ²² Informe preparado en ocasión de la visita del Relator por la Associação Juízes para a Democracia, San Pablo, octubre de 2004.
- ²³ Informe preparado en ocasión de la visita del Relator por la Procuradoria Regional da República, Brasilia, octubre de 2004.
- ²⁴ Firmado el 15 de diciembre de 2004 y publicado en el Diário Oficial da União 241, el 16 de diciembre de 2004, sec. 1, pág. 8 (www.mj.gov.br/reforma).
- ²⁵ Tribunal Regional Federal da Primeira Região, Juizados Especiais Federais Itinerantes, Brasília, octubre de 2004, págs. 9 a 12.
- ²⁶ UNICEF, *op.cit.*, págs. 10 y 11.
- ²⁷ União de Mulheres de São Paulo, Instituto Brasileiro de Advocacia Pública, Movimento do Ministério Público Democrático, Promotoras Legais Populares, Carta de Principios, San Pablo, 2004.

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