

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 42ND SESSION BRAZIL, 2ND REPORT 6-7 MAY 2009

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Key facts¹

Ratification	Reservations	Party to Optional Protocol ²	Other core treaties ratified	Date of previous report/examination, an submission of present report
24/01/92	None	Yes	ICERD; ICCPR; ICCPR Op Prot; 2 nd Op Prot; CEDAW; CEDAW Op Prot; CAT; CAT Op Prot; CRC; Amendment to article 43 (2) of CRC; CRC Op Prot (armed conflict); CRC Op Prot (sale of children, child prostitution and	1 st report: 20/11/2001 1 st examination: 18/05/03 2 nd report: 28/01/2008 2 nd examination: 6-7/05/09

¹ The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

² Article 1 of the Optional Protocol provides that 'a State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications as provided for by the provisions of the present Protocol.'

			child pornography); ICRMW; CRD; CRD Op Prot; ICPED;	
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Opening remarks by the delegation

The delegation of Brazil was led by Mr Paulo de Tarso Vannuchi, Minister in Chief of the Special Secretariat of Human Rights of the Presidency of the Republic. He was supported by a large medium-level delegation consisting of representatives of the Ministry of Justice, Ministry of Social Development and Combating Hunger, Ministry of Education, Ministry of Social Welfare, Ministry of Culture, Ministry of Health, Ministry of Labour, Ministry of Cities, Ministry of External Relations, Special Secretariat of Policies for Women, National Institute for Colonization and Land Reform, Institute of Applied Economic Research, National Indigenous Foundation, and the Permanent Mission in Geneva.³ The Committee members were appreciative that the Brazilian delegation consisted of experts on the issues to be discussed as this had been a concluding observation from their first review of Brazil in 2003 when the delegation had only consisted of one member.⁴

Mr de Tarso Vannuchi opened the meeting with a 25 minute speech largely updating the Committee on progress that Brazil had made since their last review in 2003. These matters were already covered in Brazil's report⁵ and its reply⁶ to the list of issues so the presentation did not add any new information to the subsequent discussion. Frequently asserting the personal commitment of President Lula da Silva to economic, social and cultural rights, Mr de Tarso Vannuchi drew attention to Brazil's 'Zero Hunger'⁷ programme which provides basic nutrition for low income families and claimed that since 2003 Brazil has seen a reduction in poverty and an increase in the minimum salary. He acknowledged that serious regional inequalities continue to exist in the country, despite programmes aimed at reducing this, but was pleased to claim that NGO's are active in denouncing violations of economic, social and cultural rights and can push the Government to take action. He concluded that although the Government may make mistakes, Brazil is generally on the right track to ensuring the population's rights and freedoms.

Overview of key issues

The following overview addresses some of the Committee's concluding observations following the examination on the basis of those themes that the Committee dedicated most time to, whether they requested follow-up on implementation, and whether the final recommendation was specific and implementable within a certain timeframe. Each is assessed according to how it was addressed in the examination, including the initial views of the State, questions, comments and responses provided.

Overall, the Brazilian delegation appeared open to the Committee's questions with the head of the delegation assigning each question to the relevant expert in the team for a response, and contacting colleagues in Brazil for additional information when it was needed. All issues raised were responded to in some part by the delegation, sometimes with different delegation members commenting on the same issue, however not all questions were answered clearly at first nor to the level of detail requested, leading Committee members to repeat their questions (eg. many questions focused on statistics which the delegation did not have at hand or claimed did not exist at all).

³ The list of members of Brazil's delegation is available at http://www2.ohchr.org/english/bodies/cescr/docs/list/Delegation_Brazil_42.pdf

⁴ E/C.12/1/Add.87, 26 June 2003, Concluding observation 3.

⁵ E/C.12/BRA/2, 28 January 2008

⁶ E/C.12/BRA/Q/2/Add.1, 16 March 2009

⁷ The 'Zero Hunger' programme entails poor families receiving support for their food and education needs, as well as a family allowance which functions as a substitute income and contributes towards health costs.

The discussion covered the articles in the International Covenant on Economic, Social and Cultural Rights (the Covenant) in detail, however the following themes were repeatedly referred to: discrimination between blacks, whites and indigenous people; rights of women; rights of children; and social security and poverty.

Racial discrimination in enjoyment of economic, social and cultural rights

‘The Committee recommends that the State party take all appropriate measures to address the discrepancy between the life expectancies and poverty levels of the black and white population groups through a sharper focus on health and poverty eradication programmes for the former. The Committee requests updated statistical information and data on life expectancy and poverty levels in the State party, disaggregated by region and ethnic group.’⁸

‘The Committee urges the State party to strengthen remedial action to address the problem of illiteracy, particularly in rural areas and in the Afro Brazilian community.’⁹

‘The Committee recommends that the State party continue to strengthen its legal and institutional mechanisms aimed at combating discrimination in the field of employment and facilitating equal access to employment opportunities for women and for persons belonging to racial, ethnic and national minorities. The Committee requests the State party to provide, in its next periodic report, information on the extent to which access to employment is available to indigenous peoples living outside settlements.’¹⁰

The Committee members repeatedly questioned the discrepancies in enjoyment of economic, social and cultural rights between the black, white, and indigenous populations in Brazil. In response, the Brazilian delegation admitted the discrepancies but claimed that actions were being taken to reduce these and that improvements could be noted.

A number of Committee members focused on the legality and prosecution of racial discrimination. Mr Walid Sadi and Ms Maria Virginia Bras Gomes questioned the status of legislation on anti-racial discrimination, and Mr Alvaro Tirado Mejia requested information as to how many crimes had been considered breaches of anti-racism legislation and what action had been taken. The Brazilian delegation replied that whilst it did not have national data on racism crimes, it did have data for some states that showed an increase in investigations and prosecutions of racial crimes. The delegation promised to improve its data collection on this issue.

Mr Chandrashekhar Dasgupta particularly pressed for further clarity regarding the situation of indigenous people: the size of their population (citing different numbers provided by the delegation); the number of people benefiting from Government policies; what health services and work benefits were provided for those living in settlements as opposed to those living outside; and whether affirmative action was being taken to increase access to education. Ms Rocio Barahona Riera also asked whether there were grants available to assist indigenous people to access university education. The Brazilian delegation explained that the differing numbers for the indigenous population were due to the fact that ethnicity is self-declared and therefore individuals may claim their ethnicity differently at different times. Additionally, some agencies working on indigenous issues focus only on the population living in settlements, thus possibly giving rise to two different numbers for the indigenous population. Regarding settlements, the delegation stated that those indigenous people who live in settlements benefit from specific health services designed for them, whilst those living outside benefit from common Brazilian health services.

⁸ CESCR/E/C.12/BRA/CO/2, at para. 11, available at <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>

⁹ CESCR/E/C.12/BRA/CO/2, at para. 12, available at <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>

¹⁰ CESCR/E/C.12/BRA/CO/2, at para. 16, available at <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>

Various examples of affirmative action and non-discrimination were discussed. The Brazilian delegation referred to its reply¹¹ to the list of issues and stated that although affirmative actions focus primarily on the indigenous population as they are the minority in Brazil, reparations are available to Afro-descendants, as are scholarships for university attendance. The Labour Ministry reported that in order to tackle the discrepancy in employment between blacks and whites, capacity building programmes targeting blacks are being implemented.

Rights of women

‘The Committee urges the State party to enforce its legislation on gender equality, and to take all effective measures, including through the use of media and education, to overcome the traditional stereotypes regarding the status of women in the public and private spheres and to ensure, in practice, equality between men and women in all fields of life, as provided for in articles 2(2) and 3 of the Covenant. In this regard, the Committee draws the attention of the State party to its General Comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights and its General Comment No. 19 (2007) on the right to social security.’¹²

‘The Committee recommends that the State party strengthen measures to combat violence against women and its effects by, inter alia:

- a) *effectively enforcing the existing legislation on domestic violence;*
- b) *strengthening public awareness campaigns against domestic violence; and*
- c) *strengthening support for victims of domestic violence in order to ensure their access to adequate services for recovery, counselling and other forms of rehabilitation.’¹³*

‘The Committee recommends that the State party, taking into account the Committee’s General Comment No. 14(2000) on the Right to Health:

- a) *strengthen measures to reduce maternal mortality rates;*
- b) *increase healthcare funding for disadvantaged populations;*
- c) *ensure that the people living in poverty have access to free primary health care;*
- d) *establish community-based maternal health-care systems and referral systems for obstetric emergencies;*
- e) *ensure the equitable availability of healthcare facilities, particularly obstetric facilities, among the economically disadvantaged populations;*
- f) *ensure that economically disadvantaged populations have equitable access, in particular, to sexual and reproductive healthcare, taking the necessary measures to provide obstetric services of a high quality; and*
- g) *provide, in its next periodic report, detailed and updated information, including disaggregated statistical data and indicators, in order to assess the level of progress achieved in that area.’¹⁴*

‘The Committee reiterates the recommendation made in its concluding observations on the State party’s initial report, namely that the Committee requests the State party to undertake legislative and other measures, including a review of its present legislation, to protect women from the effects of clandestine and unsafe abortion and to ensure that women do not resort to such harmful procedures. The Committee requests the State party to provide in its next periodic report detailed information, based on comparative data, about maternal mortality and abortion in Brazil.’¹⁵

¹¹ E/C.12/BRA/Q/2/Add.1, 16 March 2009, at para. 10 and 11

¹² CESCR/E/C.12/BRA/CO/2, at para. 14, available at <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>

¹³ CESCR/E/C.12/BRA/CO/2, at para. 21, available at <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>

¹⁴ CESCR/E/C.12/BRA/CO/2, at para. 28, available at <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>

¹⁵ CESCR/E/C.12/BRA/CO/2, at para. 29, available at <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>

As with issues of racial discrimination, the question of women's rights was a cross-cutting topic that was repeatedly raised by Committee members. The members focused on the themes covered by the concluding observations: gender equality, violence against women, female sexual and reproductive health, and abortion.

On gender equality, Ms Barahona Riera requested further information on what affirmative action was being taken to encourage women to work in politics and the judiciary in particular. The Brazilian delegation made reference to policies introduced in 2008 and 2009 to increase the number of women employed in these sectors but did not provide further details.

In reaction to the news that Brazil had introduced a new law on domestic violence in 2006, the 'Maria da Penha Law' Mr Daode Zhan asked whether there had been a subsequent decrease in domestic violence. The Brazilian delegation explained that whilst they did not have data on the number of cases of domestic violence, it was possible to claim an improvement in the overall situation based on an increase in services available and the number of people using them, and increased awareness amongst the population concerning the law. Mr Clement Atangana did not receive an answer to his question as to how domestic violence cases are dealt with by the courts, the Brazilian delegation limiting their reply to explaining that such cases are criminal offences and that they have set up specialised centres to assist victims of domestic violence to have access to public defenders.

Ms Barahona Riera wanted to know the size of the budget for sexual and reproductive health which the Brazilian delegation promised to find out as the information would have to be disaggregated from the overall health budget.

The subject of maternal mortality was given a fair amount of attention. Mr Eibe Riedel and Mr Dasgupta both posed questions on this topic to which the Brazilian delegation responded by describing the work being done to decrease maternal mortality rates (increased training for medics, sexual education in schools, committees established to look at the issue, improvements in neo-natal health).

The Committee members were the most outspoken concerning the limited criteria for legal abortions in Brazil. Mr Riedel, Mr Dasgupta, Mr Sadi and Mr Tirado Mejia all questioned why the criteria could not be expanded to include such situations as when the baby or mother's life is at risk, or the pregnancy is the result of incest. In response the Ministry of Health announced that the Brazilian Supreme Court is currently examining the issue and a public debate on interrupting pregnancies is foreseen. As incest is considered to be rape abortion is already permitted in these cases.

Rights of children

*'The Committee recommends that the State party implement its measures against child sexual abuse, especially the abuse of girls, through, inter alia, monitoring, reporting, prosecution as well as through information campaigns targeting parents, communities and children. The Committee also recommends that instances of abuse and neglect of children be properly investigated within a child-sensitive inquiry and judicial procedure in order to ensure better protection of child victims, particularly the protection of their right to privacy. The Committee recommends that measures be taken to provide support services to children in legal proceedings, and for the physical and psychological recovery and social reintegration of the victims of rape and other sexual abuse or violence.'*¹⁶

'The Committee recommends that the State party:

- intensify its efforts to combat child labour;
- ensure that child labour is effectively prosecuted;
- take measures to rehabilitate victims of child labour;

¹⁶ CESCR/E/C.12/BRA/CO/2, at para. 22, available at <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>

- provide, in its next periodic report, information on the steps taken to address the problem of child labour, as well as the impact of such measures.’¹⁷

‘The Committee recommends that the State party:

- take effective measures to address the root causes of the phenomenon of street children;
- take effective and appropriate measures to ensure that street children have access to education, shelter and healthcare;
- address the sexual abuse and other exploitation of street children through the prosecution of perpetrators of abuse and the reintegration of victims into society; and
- include information, in its next periodic report, on the measures taken to address the situation of street children and on any progress made in this respect.’¹⁸

‘The Committee recommends that the State party:

- a) conduct a study to establish the full range of factors which contribute to children failing to complete primary school at the proper age;
- b) draw up policies and implement strategies to address the factors identified;
- c) include, in its next periodic report, information on the measures taken under subparagraphs (a) and (b) above and any progress achieved.’¹⁹

Another cross-cutting issue, the rights of children, was repeatedly discussed, particularly concerning sexual abuse, child labour, street children and access to education.

Concerning sexual abuse against children, the Brazilian delegation claimed that combating this was a priority for the Government and that it was undertaking various steps such as providing teachers with specialised training, and collaborating with other South American Governments. It recognised the need to take measures regarding the use of the internet for paedophilia.

In response to questions on child labour, the Brazilian delegation announced its aim to eradicate child labour in the coming years and that it was working with the International Labour Organisation to improve its national plan in this regard.

Mr Sadi and Mr Dasgupta expressed concern that Brazil did not have a clear definition of street children. In response the delegation reiterated that it made a distinction between two categories of street children, those who return home at night and those who sleep on streets.

In discussing children’s rights the Committee devoted most attention to the question of education. Mr Azzouz Kerdoun and Mr Philippe Texier asked what the Government was doing to increase children’s access to education, Mr Texier nuancing his question by asking what could be done to help families so that children could go to school rather than having to work. Ms Barahona Riera specifically requested information on plans to assist teenage mothers access education. The Brazilian delegation drew attention to their ‘More Education’ programme which is intended to expand the age bracket of children attending school.

Social security and Poverty

‘The Committee recommends that the State party:

- a) strengthen its measures to provide social security coverage for the economically disadvantaged populations, and that it be made available to persons who are unable to contribute towards the system; and

¹⁷ CESCR/E/C.12/BRA/CO/2, at para. 23, available at <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>

¹⁸ CESCR/E/C.12/BRA/CO/2, at para. 24, available at <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>

¹⁹ CESCR/E/C.12/BRA/CO/2, at para. 31, available at <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>

- b) *to intensify its efforts to regularise the situation of workers in the informal economy to enable them to benefit from a basic social protection package that may include an old age pension, a maternity benefit and access to healthcare.*²⁰

The Committee strongly recommends that the State party:

- a) *take all necessary measures to extend the Family Grant Programme to cover the large number of families that do not receive the benefit;*
- b) *improve the efficacy of the programme by reviewing targeting mechanisms to ensure equal access for the poorest families, particularly indigenous families;*
- c) *increase the rent benefit under the programme in order to enable recipients to enjoy their basic rights to food and housing;*
- d) *consider making the benefit universally available in order to ensure a guaranteed minimum income, in particular for the most disadvantaged and marginalised persons and families; and*
- e) *ensure that the programme integrates economic, social and cultural rights in line with the Committee's Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights, adopted on 4 May 2001 (E/C.12/2001/10).*²¹

*The Committee recommends that the State party intensify its efforts to reduce the persisting inequalities and social injustice between different regions, communities and individuals.*²²

A fair amount of time was dedicated in the session to a discussion of social security benefits, which the Brazilian delegation linked in an overall package with their 'Family Grant'²³ and 'Zero Hunger' programmes which attempt to assist families living in poverty.

Mr Dasgupta and Ms Bras Gomes were particularly concerned with the issue of social security benefits. Mr Dasgupta wanted to know what social security options existed for workers in the informal economy, and Ms Bras Gomes requested information as to what incentives existed for people to enrol in social security programmes, whether there was a minimum amount of social security benefits that could be guaranteed to individuals, and whether this was an adequate amount. Ms Bras Gomes also recommended that Brazil put in place a basic social security package for workers in the informal economy. In response the Brazilian delegation explained that there are currently 26.3 million beneficiaries of social security and that there is a system in place whereby informal workers can make contributions to social security and so receive some form of benefits in return.

Ms Barahona Riera asked what difficulties Brazil had encountered in implementing its 'Zero Hunger' programme, and Mr Sadi posed the challenge that as this programme was a temporary measure it was not the best way for the population to enjoy its right to food.

Ms Bras Gomes recommended that Brazil provide a guaranteed minimum income and asked what the time frame was to include more people in the 'Family Grant' programme. The Brazilian delegation explained that whilst the minimum social benefit someone receives is the equivalent of one minimum salary, guaranteeing all families a minimum income was difficult politically and practically and what was offered instead was a combination of social security benefits and the 'Family Grant' programme.

Other issues not reflected in concluding observations

²⁰ CESCR/E/C.12/BRA/CO/2, at para. 19, available at <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>

²¹ CESCR/E/C.12/BRA/CO/2, at para. 20, available at <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>

²² CESCR/E/C.12/BRA/CO/2, at para. 10, available at <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>

²³ The 'Family Grant' programme provides financial support to poor families.

The main issues discussed between the Committee and the Brazilian delegation are referred to in the concluding observations. Only a couple of points were raised and not reflected: trafficking of women and drug abuse.

Mr Atangana asked how the State was working to eradicate **trafficking of women**, to which the delegation responded that they had internal mechanisms in place, and were also collaborating with other countries in this effort.

Mr Tirado Mejia brought up the issue of Brazil being the second largest market for **drug** consumption in South America and requested information as to how the State was tackling this problem. The Brazilian delegation explained that they regard drug abuse as a public health problem and have established specialised units responsible for dealing with the issue.

Conclusions and next steps²⁴

Due to lack of time at the end of the session, the head of delegation, made a rapid conclusion expressing the hope of the delegation that they had been able to answer the Committee's questions satisfactorily and affirming their openness to continue working with the Committee in the future. The Chairman of the Committee thanked the delegation for their interaction.

In the Committee's Concluding Observations Brazil was asked to submit its third periodic report by 30 June 2014.

Last revised and updated: 1 July 2009.

²⁴ See Concluding Observations at para. 34, 35, 36, 37 and 38 for next steps. CESCR/E/C.12/BRA/CO/2, at para. 31, available at <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>

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