



**Economic and Social
Council**

Distr.
GENERAL

E/C.12/BRA/CO/2
12 June 2009

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS

Forty-second session
Geneva, 4-22 May 2009

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLES 16 AND 17 OF THE COVENANT**

Concluding observations of the Committee on Economic, Social and Cultural Rights

Brazil

1. The Committee on Economic, Social and Cultural Rights considered the second periodic report of Brazil on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/BRA/2) at its 6th, 7th and 8th meetings held on 6 and 7 May 2009 (E/C.12/2009/SR.6-8) and adopted, at its 23rd meeting held on 19 May, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second periodic report of the State party and the opportunity to engage in a constructive dialogue with the State party. The Committee also welcomes the State party's written replies to its list of issues, as well as the responses provided by the multisectoral delegation of the State party to the Committee's oral questions.

B. Positive aspects

3. The Committee welcomes the legislative and other measures adopted by the State party since the examination of its initial report, including the following:
 - (a) Law no. 11.340 (*Maria da Penha Law*), passed in 2006, which provides for the repression of domestic and family violence against women, for protective measures and for assistance to victims;
 - (b) The removal from the Penal Code of the discriminatory concept of an “honest woman”, previously applied in certain cases of sexual violence against women;
 - (c) The introduction, in 2003, of the National Qualification Plan to coordinate public policies on employment for disadvantaged groups, including indigenous peoples, Afro-Brazilians and women;
 - (d) The National School Food Programme established to provide meals free of charge for 37 million school children in public schools;
 - (e) The Brazil Free of Homophobia Programme, which aims to protect and promote the rights of homosexual persons, including their rights to personal security, education, health and work;
 - (f) Compulsory licensing of HIV/AIDS antiretroviral drugs in order to make them affordable and enable the extension of treatment to all patients;
 - (g) The National Housing of Social Interest System (SNHIS), whose main task is to urbanize slums, build houses, and improve the housing conditions of low-income groups;
 - (h) The National Fund for Housing of Social Interest, together with its Managing Council, designed to centralize and manage budgetary resources for programmes under the SNHIS.
4. The Committee notes with satisfaction the broad consultation with civil society organizations in the process of the preparation of the State party’s second periodic report.
5. The Committee welcomes the ratification by the State party of the following international instruments:
 - (a) ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (ratified in July 2002);
 - (b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (ratified in January 2004);

- (c) The WHO Framework Convention on Tobacco Control (ratified in November 2005).

C. Factors and difficulties impeding the implementation of the Covenant

6. The Committee notes the absence of any significant factors or difficulties impeding the effective implementation of the Covenant in the State party.

D. Principal subjects of concern and recommendations

7. The Committee notes with concern that the the Council on the Defence of the Rights of the Human Person has yet to comply with the 1993 Principles relating to the status of national institutions for the promotion and protection of human rights (the “Paris Principles”).

The Committee recommends that the State party adopt the necessary measures, legislative or otherwise, to enable the Council on the Defence of the Rights of the Human Person to fully conform to the Paris Principles. The Committee also urges the State party to ensure that economic, social and cultural rights are fully covered by the mandate of the Council on the Defence of the Rights of the Human Person and that the necessary resources are allocated for its effective functioning.

8. The Committee is deeply concerned about the culture of violence and impunity prevalent in the State party. In this regard, the Committee is concerned about reports that human rights defenders, including those assisting individuals and communities in asserting their economic, social and cultural rights, are threatened, harassed and subjected to violence, frequently by private militias commissioned by private and public actors. The Committee is also deeply concerned about the reports of the failure of the Brazilian authorities to ensure the safety of human rights defenders and prosecute those responsible for committing such acts.

The Committee recommends that the State party take all necessary measures to combat the culture of violence and impunity prevalent in the State party and to ensure the protection of human rights defenders against any violence, threats, retaliation, pressure or any arbitrary action as a consequence of their activities. The Committee recommends that the State party improve its human rights training for law enforcement officials, especially police officers, and ensure that all allegations of human rights violations are promptly and thoroughly investigated by an independent body capable of prosecuting perpetrators.

9. The Committee is concerned at the slow progress in the land reform process notwithstanding the constitutional rights to property and self-determination, as well as the enactment of legislation to facilitate the demarcation of land belonging to the indigenous peoples, the State party’s adoption of the United Nations Declaration on the Rights of Indigenous Peoples (adopted in 2007) and its ratification of ILO Convention No. 169. (art. 1, para. 1)

The Committee recalls the recommendation made in its concluding observations on the State party’s initial report in this regard and recommends that the State party

expeditiously complete the process of demarcation and allocation of indigenous land in accordance with the Constitution and existing laws.

10. The Committee remains concerned about the persistent inequalities in economic conditions and associated social injustice prevailing in the State party between different regions, communities and individuals, despite the positive measures taken by the State party in that regard, such as the Zero Hunger Programme and the increase in the minimum wage. (art. 2, para. 2)

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

11. The Committee notes with concern that there remains a significant discrepancy between the respective life expectancies of the black and white populations despite the increase in the average life expectancy from 65.6 years in the early 1990s to 71.6 years in 2004. Furthermore, the Committee remains concerned at the significant difference in the poverty levels of black and white population groups, while noting that the overall poverty indicators in the State party improved between 2001 and 2004. (art. 2, para. 2)

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.

12. The Committee notes that illiteracy rates remain a problem in the State party and that inequalities persist in literacy levels between the white and black populations. The Committee is further concerned that the average illiteracy rate is significantly higher in rural areas in the north of the State party. (art. 2, para. 2)

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.

13. The Committee is concerned that persons with disabilities still suffer discrimination in access to employment despite the quotas for the employment of persons with disabilities in both the public and private sectors. (art. 2, para. 2)

The Committee encourages the State party to effectively implement its measures to overcome the obstacles faced by persons with disabilities in accessing the labour market.

14. The Committee is concerned that negative gender roles persist, including the representation of women as sex objects and the traditional stereotypes of women in the family and society, and

that these may render women more vulnerable to domestic and other forms of violence. Moreover, although women in general have a higher educational level than men, they are still underrepresented in elected office and administrative and managerial posts, are concentrated in less remunerative and/or part-time employment and receive lower average pay and limited social protection. (art. 3)

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, paragraph 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.

15. The Committee notes with concern the large numbers of Brazilians employed under inhuman and degrading conditions similar to slavery or subjected to forced labour and other exploitative labour conditions, particularly in forest clearing, logging, and the harvesting of sugar cane, and is concerned that the phenomenon of forced labour disproportionately affects young men from low-income families. (art. 7)

The Committee recommends that the State party:

- (a) Take effective measures to end all forms of exploitative labour;**
- (b) Ensure that violations concerning prohibited labour practices, such as forced labour, are stringently prosecuted;**
- (c) Provide, in its next periodic report, information on the steps taken to address exploitative labour conditions, as well as the impact of such measures.**

16. The Committee notes with concern persisting racial inequalities in access to employment, particularly affecting Afro-Brazilians and indigenous peoples. Furthermore, the Committee is concerned at the disparity in working conditions based on gender and race, despite the State party's initiatives in this area. The Committee also notes with regret the absence of statistical data on the extent to which indigenous peoples living outside settlements enjoy access to employment. (arts. 2, para. 2, and 7)

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.

17. The Committee is concerned at reports of the murders of union leaders. In addition, the Committee notes with concern that trade union leaders are frequently subjected to other forms of harassment, including intimidation and malicious prosecution, despite the steps taken by the State party to improve the implementation of article 8, paragraph 1, of the Covenant, including the long-overdue legalization of trade union federations. (art. 8)

The Committee recommends that the State party take adequate measures to ensure the protection of trade union members and leaders from all forms of harassment and intimidation and thoroughly investigate reports alleging any form of violence.

18. The Committee is also concerned at reports that membership of trade unions frequently results in the blacklisting of trade union members and leaders. (art. 8)

The Committee recommends that the State party take effective measures to ensure that employees participating in trade unions are not subjected to blacklisting and that they are able freely to exercise their rights under article 8 of the Covenant.

19. The Committee is concerned at the high proportion of the population excluded from any form of social security, especially the high number of people employed in the informal economy. In particular, the Committee is concerned that the majority of domestic workers are not eligible for any social security benefits and that the provision for persons who have not been able to contribute to the social security system is inadequate. In this regard, the Committee notes that the Continued Benefit Programme, for instance, is available only to persons with an income of less than 25 per cent of the minimum wage. (art. 9)

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;

(b) Intensify its efforts to regularize 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 health care.

20. The Committee is concerned that, despite its significant contribution to poverty reduction, the Family Grant Programme (*Bolsa Familia*) is subject to certain limitations. (art. 9)

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 marginalized persons and families;

(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 notes with concern the prevalence of domestic violence against women in the State party. (art. 10, para. 1)

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;**
- (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.**

22. The Committee is concerned at the prevalence of sexual abuse of and violence against children, particularly girls, and at the absence of information on measures taken to address this phenomenon or to assist child victims of abuse. (art. 10, paras. 1 and 3)

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.

23. The Committee is concerned that child labour continues to be widespread in the State party, despite the measures taken and the reduction in the cases of child labour for the 5-9 years age group. (art. 10, para. 3)

The Committee recommends that the State party:

- (a) Intensify its efforts to combat child labour;**
- (b) Ensure that child labour is effectively prosecuted;**
- (c) Take measures to rehabilitate victims of child labour;**
- (d) 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.**

24. The Committee is concerned that, despite the State party's efforts to address the phenomenon of street children, many children continue to live on the streets where they remain vulnerable to abuse, including sexual abuse, and to other forms of exploitation. (art. 10, para. 3)

The Committee recommends that the State party:

- (a) Take effective measures to address the root causes of the phenomenon of street children;**
- (b) Take effective and appropriate measures to ensure that street children have access to education, shelter and health care;**
- (c) Address the sexual abuse and other exploitation of street children through the prosecution of perpetrators of abuse and the reintegration of victims into society;**
- (d) Include information, in its next periodic report, on the measures taken to address the situation of street children and any progress made in this respect.**

25. The Committee notes with concern that more than 6 million people in the State party live in precarious urban settlements, that there is a large number of homeless people and that significant migration inflows into urban areas have exacerbated the housing shortage. The Committee is further concerned about the absence of adequate measures to provide social housing for low-income families and disadvantaged and marginalized individuals and groups, while acknowledging the State party's efforts in this regard. (art. 11, para. 1)

The Committee recommends that the State party adopt additional measures to deal with the problem of homelessness, ensure adequate access to housing for low-income families, disadvantaged and marginalized individuals and groups and improve the water and sanitation facilities of existing housing units.

26. The Committee is deeply concerned that continued deforestation in the State party, albeit at a slower pace, impacts negatively the enjoyment of economic, social and cultural rights under the Covenant. (art. 11, para. 2(a))

The Committee recommends that the State party take the necessary measures to

combat continued deforestation in order to ensure the effective enjoyment of economic, social and cultural rights, especially by indigenous and vulnerable groups of people.

27. The Committee is concerned that the growing number of HIV/AIDS cases registered during the last decade constitutes a serious health problem. The Committee notes with concern that, although treatment with antiretroviral drug therapy is available for free in the State party, the prevalence of HIV/AIDS is still high. In this regard, the Committee notes the higher prevalence of HIV/AIDS among economically disadvantaged communities. (art. 12, paras. 1 and 2(c))

The Committee recommends that the State party intensify its efforts to control the spread of HIV/AIDS. The Committee further recommends that the State party continue to strengthen measures to address the special vulnerability of marginalized sections of society to HIV/AIDS.

28. The Committee is concerned that maternal mortality rates remain extremely high and that the risk of maternal death disproportionately affects marginalized communities, particularly Afro-Brazilians, indigenous women and women from rural areas. Furthermore, the Committee notes that these disparities are attributable, in part, to the inequitable distribution of emergency obstetric care facilities and to the fact that health-care funding fails to pay adequate attention to disadvantaged populations. The Committee is particularly concerned that the majority of maternal deaths are preventable with adequate medical care. (art. 12, paras. 1 and 2(d))

The Committee recommends that the State party, taking into account the Committee's general comment no. 14 (2000) on the right to the highest attainable standard of health:

- (a) Strengthen measures to reduce maternal mortality rates;**
- (b) Increase health-care 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 health-care facilities, particularly obstetric facilities, among the economically disadvantaged populations;**
- (f) Ensure that economically disadvantaged populations have equitable access, in particular, to sexual and reproductive health care, taking the necessary measures to provide obstetric services of a high quality;**
- (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.

29. The Committee notes with concern that clandestine abortions remain a major cause of death among women. (art. 12, paras. 1 and 2(d))

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 abortions 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.

30. The Committee notes with concern that it is still permissible to promote the use of tobacco through advertising in the State party and that, while the use of tobacco-derived products is banned in publicly accessible areas, smoking is permitted in areas specially designed for the purpose. The Committee notes, however, that the State party has taken important steps to reduce the threat tobacco poses for life, health, the environment and the general population by ratifying the WHO Framework Convention on Tobacco Control and developing public policies to reduce tobacco use. (art. 12, para. 1)

The Committee recommends that the State party take measures to ban the promotion of tobacco products and enact legislation to ensure that all enclosed public environments are completely free of tobacco.

31. The Committee is concerned that 43 per cent of children between 7 and 14 years of age do not complete the eighth grade of basic education at the proper age, despite the State party's efforts to ensure the provision of compulsory elementary education free of charge and its programmes to encourage parents and caregivers to enrol young children in primary school. (art. 13, paras. 1 and 2(a))

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.**

32. The Committee is concerned that there remain significant disparities in access to higher education based on region, ethnic origin and gender. The Committee acknowledges the initiatives taken by the State party to grant wider access to higher education, including the Programme for the Incorporation of Vocational Training into Secondary Education, in the form

of Youth and Adult Education (*Proeja*) and the University for All Programme. (arts. 2, para. 2, and 13, para. 2(c))

The Committee recommends that the State party design and implement strategies to improve access to higher education by disadvantaged groups and provide, in its next periodic report, information on the impact of measures taken in this regard.

33. The Committee notes with concern that the enjoyment of the right to cultural life under article 15 of the Covenant is largely limited to the educated and/or affluent segments of society in the State party and that cultural resources and assets are concentrated in large cities, with relatively little provision being made for smaller regions and towns. (art. 15, para. 1(a))

The Committee recommends that the State party take measures to encourage the broader participation of its citizens in cultural life, inter alia, by:

(a) Ensuring the wider availability of cultural resources and assets, particularly in smaller cities and regions, and ensuring, in this regard, special provision through subsidies and other forms of assistance for those who lack the means to participate in the cultural activities of their choice;

(b) Incorporating into the school curricula education on the rights guaranteed under article 15 of the Covenant.

34. The Committee requests the State party to provide, in its third periodic report, detailed information regarding the question whether the rights enshrined in the Covenant can and have been directly applied in its courts.

35. The Committee recommends that the State party provide, in its third periodic report, updated statistical data on the enjoyment of each Covenant right, disaggregated by age, gender, ethnic origin, urban/rural population and other relevant status, on an annual comparative basis over the past five years.

36. The Committee invites the State party to consider ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

37. The Committee requests the State party to disseminate the present concluding observations widely among all segments of society, particularly among State officials, the judiciary and civil society organizations, translate them into all local languages and inform the Committee on the steps taken to implement them in its next periodic report. It also encourages the State party to continue engaging non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

38. The Committee invites the State party to submit a common core document in accordance

with the 2006 harmonized guidelines on reporting under the international human rights treaties (HRI/GEN/2/Rev.4, chap. I).

39. The Committee requests the State party to submit its third periodic report by 30 June 2014.
