



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE

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

BRAZIL*

**Replies by the Government of Brazil on the concluding observations
of the Human Rights Committee (CCPR/C/BRA/CO/2)**

[18 April 2008]

1. Further to the dialogue maintained with the Human Rights Committee on the occasion of the consideration of Brazil's second periodic report at its 85th Session, October 2005, and resumed during the meeting between Commissioner Nigel Rodley and Ambassador Sérgio Florêncio, Alternate Representative at the Brazilian Mission to the United Nations in Geneva, on October 18, 2007, the Brazilian State hereby formally provides additional information in respect of paragraphs 6, 12, 16, and 18 of the Human Rights Committee's final observations (CCPR/C/BRA/CO/2).

2. The Brazilian State recognizes that said information has been overdue since November 2006. This situation shows that the Brazilian State needs to adopt more effective institutional mechanisms to follow up on recommendations from both conventional and extra-conventional human rights protection mechanisms. The Brazilian State is wholly committed to this objective, which it has set as one of its voluntary commitments, as expressed in connection with its candidacy to the Human Rights Council.

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

3. As it finally submits the additional information requested, the Brazilian State wishes to reiterate its appreciation to the Human Rights Committee for its work on monitoring Brazil's implementation of the International Covenant on Civil and Political Rights, and to reaffirm its determination to proceed with the dialogue with the Human Rights Committee at a level consistent with the importance Brazil attaches to greater promotion and protection of human rights both at home and abroad.

PARAGRAPH 6. The State party should accelerate the demarcation of indigenous lands and provide effective civil and criminal remedies for deliberate trespass on those lands.

Settlement process

4. An analysis of the indigenous issue in Brazil is better set in historical perspective. The settlement process begun five centuries ago during Portugal's overseas expansion led to the wiping out of many indigenous peoples either by arms or owing to the contagion of exogenous diseases connected with the implementation of policies aimed at the Indians' assimilation into a new society of markedly European extraction.

5. Although the number of indigenous peoples living in Brazil at the time of the Europeans' arrival is not known, it is estimated that native inhabitants of the land numbered five million then. There are currently about 460,000 Indians in Brazil - 25 percent of the country's total population - divided into 225 ethnic groups. Although the indigenous peoples currently have the highest population growth rate of all Brazilian ethnic groups, the drastic reduction in their numbers since pre-colonial times shows the high price these peoples have paid as a result of a settlement process based on the use of force and assimilation policies.

6. It should be noted that this demographic information covers only the indigenous peoples living on lands recognized as being traditionally occupied. The census taken by the Brazilian Geography and Statistics Institute (IBGE) in 2000 showed that about 730,000 Brazilians declared themselves to be Indians and that some of them live in urban centres. It should also be noted that there are in Brazil about 63 as yet uncontacted indigenous groups, as well as traditional communities that claim for being recognized as indigenous by the pertinent federal agency.

Current situation

7. By the late 1970s, the indigenous issue acquired increasing relevance for civil society. At the same time, indigenous communities began their first self-organization movements aimed at defending their rights and interests. Various indigenous and indigenist organizations promoted wide debate to ensure the demarcation of traditionally occupied lands and to bring about a critical reflection about the integration policy in force until then. As these groups organized themselves politically to defend the Indians' rights to their lands, the lineaments of a new indigenist policy began to be discussed, based on respect for these people's forms of sociocultural organization.

8. The major changes introduced by the 1988 Federal Constitution in the approach to and treatment of indigenous peoples thus resulted from the country's redemocratization process. The Federal Constitution replaced the integrationist model applied to the legal protection of the

indigenous peoples with a legal framework based on respect for their cultural specificities and on the recognition of these communities' pre-existing rights over the lands they have traditionally occupied.

9. These recent developments have paved the way for a speedier demarcation and regularization of indigenous lands in Brazil. The existence of a specific legal framework, of well-defined technical procedures, and of partnerships with government agencies, governmental and nongovernmental international organizations, and representatives of the concerned indigenous communities for demarcation purposes has endowed demarcation of indigenous lands with greater legitimacy, consistency, and timeliness.

Demarcation of indigenous lands

10. Although the process of regularization of indigenous lands is usually referred to as "demarcation", the latter is but one of the administrative phases of the process, which also includes identification and bounding, physical demarcation, homologation, and land registration. It should be pointed out that all these procedures are public and transparent.

Identification and bounding

11. This phase, in which the concerned indigenous community is directly involved, begins with the setting-up of a technical working group consisting of experts of the National Indian Foundation (FUNAI), the National Institute for Settlement and Agrarian Reform (INCRA), and/or the state's land department responsible for the area to be identified and delimited. The technical working group carries out studies and research on the field, in documentation centers, in municipal, state, and federal land agencies, as well as in land and real estate registry offices in order to prepare a detailed report on the identification and delimitation of the studied area, upon which all subsequent stages will be based.

12. The purpose of the historical, anthropological, ethnographic, sociological, legal, cartographic and environmental studies and of the land survey carried out at this stage is to verify that the land has indeed been traditionally occupied by its indigenous inhabitants. These studies provide inputs for the subsequent phases of the land regularization process in accordance with the dictates of the Federal Constitution.

13. Based on these studies, which must be approved by FUNAI's President, the Minister of Justice issues a decision, which is published in the Official Gazette, stating that the area has proven to have been traditionally occupied by the indigenous group living on it. Upon this decision's publication, that indigenous group's original right over a portion of the Brazilian territory is formally recognized.

14. It should be pointed out that if third parties feel that they have incurred losses owing to the demarcation process, they may challenge the decision within up to ninety days from its publication in the Official Gazette. Such challenges, which delay the demarcation process, are reviewed by FUNAI, whose President may either decide in favour of a new study or confirm of the area's legal status, in which case the procedure continues.

15. If non-indigenous inhabitants are found living in the area to be delimited, a land survey and an assessment of improvements made must be carried through. The analysis of non-indigenous occupation of the land is based on criteria that seek to determine bona fide occupation and the time it began. This review is done by a Standing Inquiry Commission appointed by FUNAI's President, which defines the amount of compensation for improvements of lands occupied in good faith.

Physical demarcation

16. In this phase, the limits of the indigenous land are materially fixed on the field in accordance with the Minister of Justice's decision. At this time, the demarcation costs are estimated, the form of demarcation is selected, and the actual demarcation is carried out, as well as the verification and acceptance of the work done.

Homologation

17. On the basis of the data collected during the physical demarcation process, documents are drawn up to confirm the demarcated limits, which are then homologated by a Presidential Decree.

Registration

18. The administrative process of regularization of indigenous lands ends with the land's registration at the land office of the district where it is located and at the Federal Patrimony Secretariat at the Ministry of Finance.

Demarcation policy

19. In the Brazilian State's view, the most objective guarantee of the indigenous peoples' individual and collective rights is the fact that their lands are recognized, demarcated, and regularized. The Indigenous Lands Protection Program implemented by FUNAI aims at the regularization of the territories traditionally occupied by indigenous peoples, in accordance with the constitutional provisions applicable to the issue. It should be noted that the use of the term "territories" to mean indigenous lands and of the term "peoples" to mean the indigenous populations is defined and placed in context under ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, ratified by Brazil in 2004, which recognizes that these terms cannot be used to support actions that imply an aggression to the States' territorial integrity and political unity.

20. The Indigenous Lands Protection Programme can be seen as a historic watershed in the realization of the indigenous peoples' original rights. Of a total 611 recognized indigenous territories, Brazil has so far delimited, formalized, homologated, and regularized 488 for the indigenous peoples' permanent, imprescriptible, and exclusive right. The area of indigenous lands whose demarcation process is currently at least in the delimitation phase totals 105,673,003 hectares, equivalent to 12.41 percent of the Brazilian territory or, for comparison purposes, to approximately twice the territory of France. The other 123 areas are still pending demarcation, as shown in the table below:

**Indigenous lands' situation
(Summary)**

	No. of lands	Area (ha)	%
Under study	123	0	-
Delimited	33	1 751 576	1.66
Formalized	30	8 101 306	7.67
Homologated	27	3 599 921	3.40
Regularized	398	92 219 200	87.27
Total	611	105 672 003	100.00

21. To further this process and better preserve and protect the rights of the indigenous peoples in general, the Brazilian State introduced the Indigenous Peoples' Social Agenda on September 21, 2007. This initiative calls for a wide range of actions, including the demarcation of indigenous lands, indemnification and resettlement of 9,000 rural families that currently occupy these lands, recovery of 10,000 hectares of degraded areas on indigenous lands, reinforcement of eleven fronts for the protection of isolated indigenous peoples, and the establishment of "indigenous citizenship territories", where indigenous communities will actively participate in the formulation and implementation of policies and integrated initiatives aimed at meeting their needs, beginning with the indigenous areas of the Upper Rio Negro, the Javari Valley, and the Raposa Serra do Sol Indigenous Land/São Marcos.

22. The Indigenous Peoples' Social Agenda calls also for the recording of 20 indigenous languages threatened with extinction and for reinforcement of their use; the establishment of 150 culture points for the production and dissemination of contents in indigenous languages; and for promoting income-generation and self-support projects.

23. The Indigenous Peoples' Social Agenda also encompasses sanitation projects under the Growth Acceleration Program/National Health Foundation (FUNASA), aimed at building or expanding water supply and sewerage systems as well as introducing sanitary improvements in indigenous areas throughout the country.

24. Under this agenda, urban indigenous populations will also benefit, as their organizations will be strengthened in order to exert social control over government actions.

25. For implementation of the initiatives included on the agenda, FUNAI's budget for 2008 was increased by 44 percent, totaling R\$ 305 million, in addition to over R\$ 200 million earmarked for FUNASA activities.

26. One cannot ignore that progress in recognizing the indigenous peoples' original rights coexists with the occurrence of violence against some Brazilian indigenous peoples, usually owing to dispute over land ownership. In this connection, special mention should be made to the challenges faced by the Guarani-Kaiowa communities in the Dourados region, state of Mato Grosso do Sul, as they seek to assert their claims for their traditionally occupied lands and demand protection of their physical integrity, as well as the maintenance of their forms of social organization and economic life.

27. Mistaken indigenist policies of the past have led the Guarani-Ñandeva and Kaiowa peoples in particular to concentrate on small reservations, whose lands' size and quality are not sufficient for them to keep up with their traditional forms of subsistence. Many members of these communities have ended up finding work in productive activities outside their indigenous environment as seasonal workers in sugar mills, earning low salaries, losing their identity and self-esteem, and falling victims of serious health problems, such as alcoholism, and the attendant condition of indigence.

Legal protection of indigenous territories

28. Under the 1988 Federal Constitution, the indigenous territories are seen as the space necessary for the peoples that inhabit them to exercise their identity rights. The concepts of ethnicity, culture, and territory are to a great extent inseparable and inform the normative framework in place in Brazil in this regard. Article 231, paragraph 1 of the Constitution states that lands traditionally occupied by Indians “[...] are necessary for their physical and cultural reproduction in accordance with their usages, customs, and traditions.”

29. The legitimacy of ensuring the legal defense of indigenous territories and the rights and interests of the original populations that inhabit them is recognized under article 232 of the Constitution; they can count on the assistance of the Attorney General's Office to ensure their rights. It is also incumbent upon the Attorney General's Office, as provided under article 129, II and V of the Constitution, to defend in court the rights and interests of the indigenous populations and ensure that public authorities and public services fully respect their rights under the Constitution, adopting the requisite measures to guarantee them. The task of defending the indigenous peoples' rights and interests in court and before other public bodies whose actions may constitute a violation of these rights assigns to the General Attorney's Office a salient role in this respect, without prejudice to the increasing degree of empowerment demonstrated by the indigenous and indigenist organizations in performing this task.

30. It is incumbent upon the Federal Police under the provisions of Decree No. 73332/1971 to prevent, investigate, and deter crimes against indigenous life and patrimony and the indigenous communities. The Federal Police acts in conjunction with FUNAI, which has the power of an administrative police to defend the rights of the indigenous peoples.

31. Of particular interest to Brazil is military presence on indigenous lands in border areas, particularly in the Amazonian region. Military presence in these areas should be seen as imperative, as part of the State's inescapable duty to watch over and protect border zones, as well as protecting the indigenous communities living in them. The social and logistic role played by the Armed Forces in rainforest regions to the benefit of those communities should be stressed.

32. As regards the need to adopt measures for protecting the indigenous peoples' rights over their lands, it should be noted that despite the growing empowerment of indigenous and indigenist organizations and the work of the General Attorney's Office in the defense of these peoples, the demarcation process is often severely hampered by suits brought by landowners who feel harmed by demarcation. A case in point has to do with the homologation of the Raposa Serra do Sol Indigenous Land that in 2005 became the object of intense legal dispute,

which was settled by the Supreme Court only on June 4, 2007, with the dismissal of the preliminary order that allowed non-indigenous occupants to remain on the lands. After this irrevocable decision, the occupants that refuse to leave have to be forcibly evicted; this eviction had already begun when this report was being prepared.

PARAGRAPH 12. *The State party should:*

(a) Take stringent measures to eradicate extrajudicial killing, torture, and other forms of ill-treatment and abuse committed by law enforcement officials;

(b) Ensure prompt and impartial investigations into all allegations of human rights violations committed by law enforcement officials. Such investigations should, in particular, not be undertaken by or under the authority of the police, but by an independent body, and the accused should be subject to suspension or re-assignment during the process of investigation;

(c) Prosecute perpetrators and ensure that they are punished in a manner proportionate to the seriousness of the crimes committed, and grant effective remedies, including redress, to the victims;

(d) Give utmost consideration to the recommendations of the United Nations Special Rapporteurs on the question of torture, on extrajudicial, summary or arbitrary executions, and on the independence of judges and lawyers contained in the reports of their visits to the country.

General considerations

33. To understand the Brazilian State's actions in respect of public security it is necessary to understand first the country's federative structure and the constitutional provisions applicable to the subject.

34. The Federal Constitution assigns to the federated states the bulk of responsibility for public security. It is specifically incumbent upon the states to prevent, deter, and investigate criminal acts. The Federal Government also acts in preventive, ostensive, and investigative police work through the federal police in cases involving crimes against the Union, crimes that have international or interstate repercussions, and crimes involving drug trafficking, contraband, and customs evasion.

35. In addition to this policing task, the Federal Government plays a major role in supporting the federated states through the allocation of resources. For such purpose, there are two federal funds: the National Public Security Fund (FNPS)¹ and the National Penitentiary Fund

¹ FNPS was established in 2001 by law that was amended in 2003. Since then, the Fund, whose objective is to support projects in the area of public security and violence prevention, may finance projects aimed at the following: (i) re-equipping, training, and qualification of civil and military police, military firefighter crews, and municipal guards; (ii) information, intelligence, and investigation as well as police statistics systems; (iii) structural organization and modernization of the technical and scientific police; community police programs; and (v) crime

(FUNPEN), which are managed by the Federal Government and whose resources are transferred to the states according to criteria defined by law. These two Funds are the states' main source of resources; through them, the Federal Government seeks to foster the introduction of "good practices" into state public security policies.

36. Once the constitutional and normative framework of competence assignment in public security matters is understood, it becomes clear that as the states are endowed with most attributions in this regard; they are also responsible for nearly all human rights violations by police officers.

37. The states screen, train, investigate, and punish their own police officers, whether administratively or criminally through the State Judiciary. Cases only arrive at the federal courts by appeal or, after approval of Constitutional Amendment No. 45/2004, if they refer to human rights violations. Although welcome from a legal standpoint, Constitutional Amendment No. 45/2004 has not yet been put into practice. As to date there has been no instance of federalization of cases of human rights violations by police officers.

Human rights violations by police officers - lethality

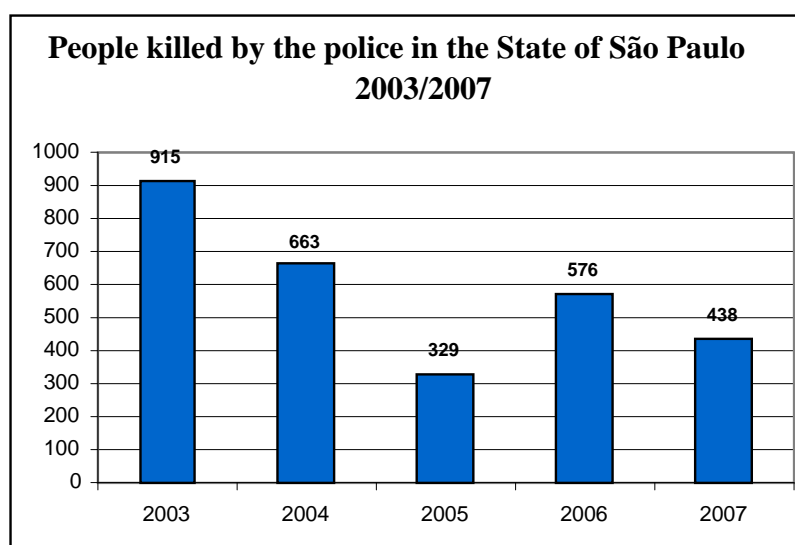
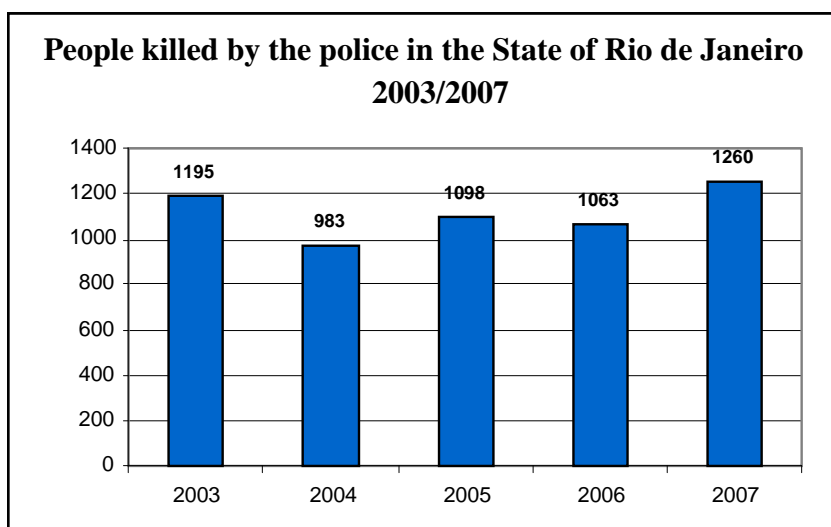
38. Despite the progress achieved in recent years, police corruption and violence remain serious problems in Brazil. This can be attributed to a series of factors, including the existence within the police forces of an institutional ethos partially imbued with values and practices inherited from the military dictatorship that ruled the country from 1964 through 1984, and the low salaries paid to police officers - a problem that is more acute in some states - in addition to a flawed institutional framework pertaining to the investigation and punishment of police officers guilty of violence perpetrated while on duty.

39. Violation of fundamental rights by police officers assumes many forms. Although some do not involve the use of physical force - as in the case of forcible entry or illegal breach of secrecy of telephone communications - practices such as torture and excessive use of force, responsible for an extremely high rate of lethality in police actions still persist in the country.

40. There is no accurate data on the number of dead under police action in Brazil. Few states produce such data in a systematic way; in many cases, there are no historical series and such data are not obligatorily relayed to the Federal Government. Moreover, the data collection criteria differ from state to state and there are many cases of people killed in police actions that are recorded as common homicide.

and violence prevention programs. To be eligible for the Fund, States must commit themselves to achieving the following results: (i) a diagnosis of public security problems and identification of possible solutions; (ii) development of joint actions by the various public security bodies; (iii) training of civil and military police and military fire fighters crew; (iv) reduction of police corruption and violence; (v) reduction of criminal activity and public insecurity; and (vi) repression of organized crime. FNSP resources may also be allocated to Municipalities, provided these have a public security plan and maintain a Municipal Guard, implement community policing initiatives, or establish a Public Security Council.

41. Although underestimated, official figures submitted by the states with serious security problems, such as Rio de Janeiro and São Paulo, are alarming, as can be seen from the charts below:²



42. These figures allow no comparison as the criteria used to arrive at them are different. Nevertheless, they indicate the seriousness of the problem, which is even more serious, as the charts reflect only the number of people killed in direct confrontation with the police but do not include common homicides by police officers or that result from the action of extermination groups in which police officers participate.

² Source: State of São Paulo Public Security Department.

43. Brazil still experiences difficulty in dealing with extermination groups in which police officers participate. Notwithstanding some good examples of investigation in states such as São Paulo, the judiciary still finds it difficult to characterize this activity and to mete out appropriate punishment. Currently, there is news of the existence of extermination groups with police participation in at least six States (Rio de Janeiro, São Paulo, Paraíba, Bahia, Goiás, and Ceará).

44. There are also problems with the investigation and actual punishment for deaths owing to police action. The police usually describe such cases as “resistance followed by death”, and thus many cases do not even come before a trial jury, which should investigate if police action had gone beyond the applicable legal precepts, thereby consisting in attempted or consummated felonious act against life. It is thus recognized that the transfer of competence from military to common courts for judging crimes against life committed by the military police has not fully achieved the objective of ensuring impartiality at every step of the judicial proceedings, as the criminal investigation phase has remained under the responsibility of the military police itself.

45. Despite the aforementioned problems, some administrative changes may provide a way out. An example of good practice worth mentioning is the research done by the São Paulo Police Magistrate’s Office, which led to a change in the norms of the State Public Attorney’s Office and Judiciary, which in turn reoriented inquiry assignments, thereby strengthening the judicial appreciation of cases of deaths stemming from police action.

Control of police activity

46. As regards control of police activity, it should be noted that control is diffusely assigned as it is exercised by various agencies, most of them at state level. In addition to Judicial Administrative Departments - the police own instances responsible for investigating crimes and disciplinary infractions by police officers - there are different players of different institutional levels that exert external control over police activity, as is the case of the Executive’s Police Ombudsman Offices and the Legislature’s Human Rights Commissions.

47. There is no uniform model of police control in the states. As regards internal control, some states have one Judicial Administrative Department, while others have one Judicial Administrative Office for each type of police.

48. The National Public Security Secretariat did a survey on the organizational profile of Judicial Administrative Offices in 2006 and 2007. Although some States did not respond to the survey, the tables below show that most work done by these offices is the investigation of violent crimes committed by police officers:

Type of occurrence	No. of occurrences recorded (2005)					
	General		Civilian Police		Military Police	
	Abs. fig.	Aver.	Abs. fig.	Aver.	Abs. fig.	Aver.
Police violence	904	113.0	667	33.0	1 900	100.0
Abuse of authority	365	45.6	759	38.0	526	27.7
Corruption	186	23.3	474	23.7	228	12.0
Police participation in crimes against property	159	19.9	88	4.4	72	3.8
Police participation in crimes involving drugs	27	3.4	42	2.1	58	3.1
Police participation in other crimes	843	105.4	583	29.2	2 256	118.7
Disciplinary infraction	815	101.9	1 198	59.9	2 959	155.7
Deficiencies in police work	550	68.8	558	27.9	317	16.7
Other denunciations against policemen	880	110.0	1 577	78.9	1 127	59.3
Police officers' denunciation of arbitrariness by superiors	16	2.0	13	0.7	26	1.4
Praise and suggestion about police work	30	3.8	25	1.3	9 640	507.4

Type of occurrence	No. of occurrences recorded (2006)							
	General		Civilian Police		Military Police		Firemen	
	Abs. fig.	Aver.	Abs. fig.	Aver.	Abs. fig.	Aver.	Abs. fig.	Aver.
Police violence	668	167.0	3 287	273.9	1 901	126.7	0	0.0
Abuse of authority	243	60.8	1 145	95.4	1 272	84.8	2	0.7
Corruption	217	54.3	147	12.3	177	11.8	0	0.0
Police participation in crimes against property	92	23.0	337	28.1	401	26.7	0	0.0
Police participation in crimes involving drugs	22	5.5	159	13.3	41	2.7	0	0.0
Police participation in other crimes	335	83.8	9 605	800.4	2 215	147.7	7	2.3
Disciplinary infraction	2 104	526.0	9 853	821.1	6 623	441.5	0	0.0
Deficiencies in police work	77	19.3	9 891	824.3	292	19.5	0	0.0
Other denunciations against policemen	1 823	455.8	10 094	841.2	2 248	149.5	3	1.0
Police officers' denunciation of arbitrariness by superiors	36	9.0	9 349	779.1	85	5.7	0	0.0
Praise and suggestion about police work	0	0.0	9 672	806.0	1 624	108.3	10	3.3

49. From a constitutional standpoint, the Public Attorney's Office is responsible for the external control of police activity but not all states have specialized control bodies in their Public Attorney's Offices. However, a significant novelty is worth noting: in May 2007, the Public Attorney's Office's National Council established by Constitutional Amendment No. 45/2004 issued a resolution regulating the police external control activity.

Federal Government action

50. In 2007, the Brazilian State launched the National Public Security and Citizenship Programme (PRONASCI), whose main lineament is the coordination of public security policies and social action, with emphasis on crime prevention and respect for human rights. PRONASCI's challenge is to combat organized crime, dismantle its corruption schemes in the penitentiary system, and guarantee the citizens' security. The programme addresses the causes of violence, without neglecting specific strategies for social order and crime deterrence; it revolves around the following main axes: (i) training and valorization of public security professionals; (ii) restructuring of the penitentiary system; (iii) combating police corruption; and (iv) involving the community in violence prevention. PRONASCI is focused on youth and seeks to bring young people in situation of vulnerability under social programmes. It should be recalled that 68.2 percent of deaths of young people aged 15-24 are due to violence - a worrisome, high rate as compared with world indicators.

51. In addition to PRONASCI, the Federal Government fosters the adoption of models and good practices by State police forces, subjecting the provision of resources from the National Public Security Fund (FNSP) to the adoption of such models, as well as offering training courses to state police forces at request. The areas in which the Federal Government supports the adoption of good practices include the promotion of human rights, the legal use of force continuum, the combating of torture and ill-treatment of prisoners under police custody, the control of criminal investigations, and punishment of crimes committed by policemen. These initiatives include the following:

Training policemen in human rights and in the legal use of force continuum

52. The Ministry of Justice's National Public Security Secretariat (SENASP) has invested heavily in the training of State police forces in human rights. The disciplines are taught in specialization courses through the National Public Security Specialization Network (RENAESP), the Distance Education Network (EAD), and the Encounters on Human Rights.

53. From 2000 through 2007, 27,658 public security professionals were trained through the Encounters on Human Rights. These Encounters consist in seminars aiming at motivating and raising awareness of public security professionals, as well as mobilizing leaders to become multipliers of a human rights culture among their ranks.

54. In 2006, 6,885 professionals were also trained in human rights through the Distance Education Network (EAD), which also addresses subjects such as crime and violence prevention, use of force, crisis management, and preservation of crime scenes, among other subjects. In 2007 alone, 11,346 police officers enrolled in the EAD course on legal use of force continuum. In 2006 and 2007, EAD trained a total of 11,000 professionals and expects to train another 180,000 in 2008.

Incentive to the establishment, implementation, and operation of Police Judicial Administrative Departments in the States

55. Since 2004, the Special Secretariat for Human Rights under the President's Office has implemented a program in support of the establishment, implementation, and operation of Police Judicial Administrative Departments in the states. This is done in partnership with the National Public Security Secretariat (SENASP), which, in addition to rendering advisory services to that program, makes possible the Judicial Administrative Departments by providing resources from the National Public Security Fund (FNSP).

56. Currently, 14 States have Police Judicial Administrative Departments, including the States of Rio de Janeiro and São Paulo, where the lethality rate in police actions is quite high.

Procurement of non-lethal weapons for the States

57. Resources from the National Public Security Fund are not only transferred to the States; they are also used by the Federal Government for the procurement of equipment later donated to the States. A look at the Federal Government's direct acquisition of weapons in 2003 and 2006 shows an increase in the number of nonlethal weapons transferred to the States, as seen in the following table:

Transport equipment	2003	2004	2005	2006	Total
Patrol cars	1 719	373	85	176	2 353
Vans/pickups	8	32	9	55	104
Prisoner transportation vehicles	29	52	0	0	81
Motorcycles	31	85	87	137	340
Other	8 273	68	721	104	9 166
Total	10 060	610	902	472	12 044

Lethal weapons	2003	2004	2005	2006	Total
Carbines and rifles	45	17	148	255	465
Pistols and guns	4 010	12 503	2 709	1 701	20 923
Machine guns	102	60	90	91	343
Rifles	62	38	72	0	172
Other	970	103 191	2 597	79 090	185 848
Total	5 189	115 809	5 616	81 137	207 751

Protective equipment	2003	2004	2005	2006	Total
Handcuffs	24	18	3 253	251	3 546
Bullet-proof vest	1 155	1 788	3 468	3 913	10 324
Other	15 892	11 160	7 516	2 234	36 802
Total	17 071	12 966	14 237	6 398	50 672

	2003	2004	2005	2006	Total
Civil works (construction and remodeling)	3	3	33	14	53
Nonlethal weapons	6 988	2 395	6 771	11 682	27 836
Communications equipment	4 805	6 791	2 526	2 495	16 617
Data processing equipment	5 125	13 492	5 935	7 206	31 758
Electronic equipment	5 323	3 974	5 399	1 751	16 447
Furniture	8 732	14 548	8 416	1 894	33 590

58. Despite the progress made, Brazil still has difficulty in establishing and maintaining a crime data bank. This need is met today by data produced by the states. The Federal Government has thus issued instructions on the standardization of data collection and classification criteria and has subsidized the procurement of equipment.

59. Similarly, there is no data bank on human rights violations committed by the police as recommended by Asma Jahangir, the then Special Rapporteur on extrajudicial, summary or arbitrary executions during her Brazilian visit in October 2003. Few States produce such data; historical series are not always available and there is no obligation to relay such data to the Federal Government.

60. To solve the problem of fragmented data, the National Congress is considering a bill submitted by the Executive to regulate a Unified Public Security System. The bill contemplates, among other things, the establishment of a National Public Security and Justice Statistics System (SINESP). This system will consolidate the data provided by the federal agencies on an obligatory basis and by the states voluntarily under agreements with the Federal Government. Under the bill, States failing to provide and to keep their data and information up-to-date will not be eligible for receiving resources from the National Public Security Fund (FNSP) nor for celebrating agreements with the Federal Government for public security actions.

Combating torture

61. Although torture is a flagrant attempt against human dignity and its practice is banned and punished under the commitments Brazil has undertaken both internally and internationally in this regard, the Brazilian State recognizes that torture is still a serious, recurring fact in the country.

62. Relatively few diagnostic studies on torture in Brazil analyze its frequency, causes, and motivation so as to inform an effective prevention and control policy. Other challenges to effectively combating the practice of torture consist in the resistance on the part of public agents to denounce and investigate cases of torture perpetrated by their professional peers; in the victims' and their relatives' fear to denounce torture; and in the public agents' and the population's mistaken perception that the practice of torture might be justified in combating organized crime.

63. Based on the recommendations of the report prepared by Sir Nigel Rodley, the then Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment as a follow-up to his visit to Brazil in 2001, the Brazilian Government, through the Special Secretariat for Human Rights under the President's Office (SEDH/PR) introduced in 2006 a Plan of Integrated Actions to Prevent and Combat Torture. The plan has had the adhesion

of twelve States: Alagoas, Bahia, Ceará, Maranhão, Paraíba, Piauí, Espírito Santo, Pernambuco, Acre, Rio Grande do Sul, Rio Grande do Norte, and the Federal District. Some measures proposed by the Plan include the videotaping of police interrogations and the staging of unannounced visits to units holding arrested individuals. Actions envisaged by the Plan are aimed at effectively punishing the practice of torture and at empowering victims. Another measure consists in the establishment of specific judicial administrative departments for the police and the prison systems, and the qualification of civil society entities for monitoring facilities where punishment or liberty deprivation measures are applied.

64. Another important measure contemplated by the Plan is the dissociation of the medical examiners from State Public Security Departments. The purpose is to prevent medical examiners from being unduly pressured to produce biased reports about suspected aggressions committed by police or prison officers. A pilot experiment in this respect has been done in the state of Pará and should be soon extended to other states that have adhered to the Plan.

65. To ensure full compliance with the normative framework applicable to this issue, the President's Office, through the Special Secretariat for Human Rights, has set up a National Committee on Preventing and Combating Torture, made up of entities from different government levels. It is incumbent on this Committee to recommend policies and to promote inter-institutional cooperation on preventing and combating torture.

66. As regards domestic legislation, it seeks to provide comprehensive protection of the rights of suspects under criminal investigation and of prisoners. The 1997 Law against Torture introduced a class of penalty for torture into Brazilian legislation. Although approval of the Law against Torture meant a major formal advance, its enforcement and effectiveness have been modest. Many are the instances of investigations when the police or the public attorney's office disqualifies allegations of torture, labeling it bodily lesions or abuse of authority; as a result, few cases result in conviction for the practice of torture.

67. Another significant advance was Brazil's ratification, on December 20, 2006 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Brazilian State recognized, pursuant to article 22 of the Convention, the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of torture. Accordingly, steps are being taken to set up a national mechanism for preventing and combating torture, pursuant to the newly ratified Optional Protocol.

Combating impunity

68. Constitutional Amendment No. 45/2004 introduced in Brazilian law the possibility of shifting the jurisdictional competence of State Judiciaries to the Federal Judiciary in serious cases of human rights violation. This measure aims at meeting civil society's demands in regard to combating impunity, the failure of justice, and the unjustified defeat in judicial suits involving such violations.

69. Although the possibility of federalization of cases of human rights violations serves as a pressure instrument to instill greater impartiality and agility into investigations and proceedings under the responsibility of the State Judiciaries - as illustrated by the speedy completion in 2005

of the police inquiry and penal action that resulted in the investigation and conviction of the murderers of missionary Dorothy Stang - federalization is yet to be applied to any other case.

70. It should be further noted that the Special Secretariat for Human Rights (SEDH/PR), the Ministry of Justice (MJ), and the National Justice Council (CNJ) have signed an agreement on monitoring cases involving serious human rights violations, calling for the exchange of information among them. This initiative seeks to ensure agility in judicial proceedings that investigate such violations.

Visits by United Nations Special Rapporteurs

71. Brazil supports cooperation and dialogue with the special procedures system and on November 10, 2001 it extended a standing invitation. Eleven special rapporteurs have visited Brazil since 1998. They included rapporteurs assigned to the following issues: sale of children, prostitution, and pornography; violence against women; right to food; racism, racial discrimination, xenophobia, and related forms of intolerance; torture; extrajudicial, summary, and arbitrary executions; independence of judges and lawyers; and protection of human rights defenders. Brazil assisted all of them in the fulfillment of their mandates, applying itself in a transparent, constructive way to the consideration of the visits' findings and to the ensuing recommendations.

72. Brazil received the visit of Philip Alston, Special Rapporteur on extrajudicial, summary or arbitrary executions, from 3 to 14 November 2007. His agenda included meetings with officials of different government levels and agencies, civil society leaders, and members of victims' families in Brasilia, Rio de Janeiro, São Paulo, and Pernambuco. The mission proceeded in a climate of cordiality and will produce recommendations by the Special Rapporteur, which Brazil will earnestly consider and follow up in an appropriate manner.

PARAGRAPH 16. The State party should urgently take steps to improve the conditions for all persons deprived of their liberty before trial and after conviction. It should ensure that detention in police custody before access to counsel is limited to one or two days following arrest, and end the practice of remand detention in police stations. The State party should develop a system of bail pending trial, ensure that defendants are brought to trial as speedily as possible, and implement alternatives to imprisonment. In addition, the State party should take urgent measures to end the widespread practice of detaining prisoners in prolonged confinement even after their sentences have expired.

General considerations

73. In Brazil, nearly all penal establishments are managed by the States. Each State administers a separate ensemble of penal establishments with different organizational structures and applies a differentiated treatment to issues such as occupation level, monthly cost per prisoner, and prison agents' salaries.

74. Under the Penal Execution Law, the Judiciary's responsibility toward prisoners does not end with sentencing. Judges must follow up the life of prisoners throughout their passage through the penal system. It is incumbent on judges to decide on (a) accumulation or unification of penalties; (b) progression or regression in sentence serving; (c) sentence attenuation or

remission; (d) conditional suspension of sentence; (f) temporary leaves; (g) form of serving a rights restrictive sentence and supervision of its execution; and (h) conversion of a rights restrictive sentence and fine into a liberty deprivation sentence. In addition, judges accumulate functions related to management of the penal system, as they must undertake monthly inspections of penal establishments, adopt measures for the appropriate functioning of facilities, and promote, as needed, the determination of responsibilities. Judges have also competence to interdict, wholly or partially, any penal establishment inadequately run or that violates the Law on Penal Executions.

75. The prison population in Brazil is housed in different categories of establishments, including penitentiaries, presidiums, public jails, detention houses, and police districts or precincts. The Law on Penal Executions (LEP) provides that the various establishment categories are identifiable by specific characteristics and serve specific types of prisoner. In principle, upon being arrested, a crime suspect should be taken to the police precinct to be booked and for initial detention. After some days, unless he is let go, he should be transferred to a jail or detention house to await trial. If convicted, he should be transferred to a specific establishment for convicts.

76. Under LEP, establishments for convicts should be divided into three basic categories: closed establishments (presidiums); semi-open establishments, including agricultural and industrial colonies; and open establishments, i.e., the “detainee’s home.” The choice of establishment depends on the sentence passed, the type of crime committed, and the presumed danger posed by the detainee. If a convict starts serving his sentence in a presidium, he should be gradually transferred to less restrictive kinds of establishment before serving his full sentence, so as to get used to greater freedom before being returned to society.

77. Despite formal advances embodied in the Law on Penal Execution, the Brazilian State recognizes that it still lacks the requisite structure to guarantee the law’s effective enforcement. The problem is particularly serious in institutions for housing detainees under a semi-open or open regime. In addition, presidiums do not have sufficient room to receive new convicts, which causes convicted prisoners to be kept for years in police precincts. Data from the National Penitentiary Department (DEPEN) show that in June 2007 Brazilian prisons and jails housed 419,551 detainees, surpassing the system’s capacity by approximately 200,000 prisoners, and that 651 detainees were killed in 2007.

The penitentiary system’s improved conditions

78. The Brazilian State has favoured across-the-board coordinated action by the different government levels and agencies responsible for implementing public policies on the penitentiary system.

79. Accordingly, the Federal Government allocates resources for improving State penal establishment facilities under agreements for the procurement of medical and ambulatory equipment, X-ray machines, metal detectors, vehicles for transporting prisoners, and computers, in addition to direct acquisitions to be later donated to the states. One can notice a more efficient use of resources owing to coordinated action by the Federal and the State Governments, which has had a positive, immediate effect on the operation of detention facilities. In 2007 alone, about R\$ 26.7 million were spent in overhauling penal establishments in twenty-three states.

80. In addition to better equipment, investment has been also made on increasing the number of vacancies in the prison system. In 2007, about R\$ 125.7 million were spent on creating 5,349 new vacancies in State penitentiary systems, while R\$ 8.2 million were spent on revamping penal establishments in the States. Also worth noting is the addition of 4,184 new vacancies under agreements signed in previous years.

81. In this connection, mention should be made of the National Health Plan for the Penitentiary System, under a partnership between the Ministries of Justice and of Health. The Plan's objective is to give the prison population access to the Unified Health System (SUS) through primary care initiatives and services at prison units and the referral of sick prisoners to other levels of public health services, as needed. Currently, the Plan counts on over 140 registered health teams in ten States. These teams promote initiatives in prisons in the areas of oral health; women's health; sexually transmitted diseases and AIDS; mental health; hepatitis; tuberculosis; hypertension; diabetes; and Hansen's disease. Their work also provides basic pharmaceutical assistance, immunizations, and collection of material for lab tests. There are resources for the financing and ongoing evaluation of the work of the teams in prison facilities. It should be noted that adherence to the National Health Plan for the Penitentiary System by the States must be on the States' own initiative and is governed by criteria and conditions defined by the Ministry of Health's Administrative Order No. 1777.

82. Another initiative worth noting is the protocol signed in 2001 by the Ministries of Justice and Education for formulating and implementing policies aimed at the alphabetization and at raising the schooling level of detainees and former detainees, in line with the general educational policies geared to young people and adults. This joint effort has led to the inclusion of the prison population as one of the targets of the Literate Brazil Programme established under Resolution No. 23/2005. In addition to this interministerial initiative, the National Congress is being encouraged to approve a bill on including in the Law on Penal Execution the possibility of partial sentence remission on the basis of time devoted to studying, as this law provides this possibility only on the basis of time devoted to work.

Reduction of the imposition of prolonged preventive custody

83. Every year the Federal Government transfers financial resources to the State Public Security/Social Defence Departments for professional training and valorization; violence prevention and reduction; knowledge management; institutional reorganization; structuring of forensic evidence expertise; and in forms of external control and social participation in dealing with public security issues. To this end, funds are to be allocated to the States for building functional facilities, such as police precincts and police academies. It should be noted that projects for building police precincts that include cells for keeping prisoners will not be approved. The latter is incumbent on the State departments in charge of prisons, which should submit their requests to the Ministry of Justice's National Penitentiary Department.

84. It should be reiterated that the Federal Constitution grants the States autonomy for addressing public security issues. The Federal Government's role is to act as an inductor of more appropriate public policies, establishing criteria to allow the states to adopt such policies. States such as Rio Grande do Sul, Ceará, and the Federal District do not keep detainees under custody

at police precincts. Pilot experiments, such as the São Paulo 9th District Participative Police Precinct and the Rio de Janeiro 5th District's Legal Precinct do not keep detainees under custody either; these are taken to the respective state's temporary custody houses or detention centers.

Imposition of alternative penalties in lieu of deprivation of liberty

85. The Brazilian State has endeavoured to promote the imposition of alternative sentences in lieu of deprivation of liberty, consistently with the ideal of social rehabilitation of offenders; in addition, this helps attenuate the problem of overcrowding in detention centres. In the Brazilian State's view, deprivation of liberty is not always the best form of punishing crimes; more appropriate alternatives should be sought to guarantee public security and promote the offenders' social rehabilitation, consistently with the commitments undertaken by the country in the area of human rights.

86. According to the Human Rights Committee, alternative measures are not yet widely accepted by society or by the authorities responsible for imposing them. This is why the Brazilian State considers it essential to develop programmes for changing this situation.

87. Since 2003, the Ministry of Justice has reinforced the National Programme in Support of Alternative Penalties and Measures. A strategic pillar of the national criminal and penitentiary policy, this programme has the following objectives: (i) production and dissemination of knowledge about alternative penalties and measures; (ii) identification, evaluation, and promotion of good practices in this area; and (iii) technical and financial support for state judiciaries and executives for promoting improvements in their enforcement and oversight systems.

88. In December 2003, a new change in the legislation widened the range of possibilities for alternative sentences with the passing of Law 10826/2003, known as the Disarmament Statute.

89. In 2004, a Second Cycle of Regional Training in Monitoring and Oversight of Alternative Penalties and Measures was held, involving states from the Northeast, the North, and the South. In 2005, the city of Curitiba hosted the First National Congress of Alternative Penalties and Measures Execution, with institutional support from the Ministry of Justice. In November 2006, a new edition of the event was held in Recife. A third edition took place in Belo Horizonte in November 2007, while the Third Regional Training Cycle took place in the North. A fourth edition is scheduled for June 2008 in Manaus (AM) under the theme Alternative Penalties: an effective, differentiated penal response. All these efforts testify to the Brazilian State's commitment to creating conditions for overcoming the obstacles to the effective application of alternative penalties and measures.

90. In July 2006, the Federal Government's alternative penalties and measures policy reached a new level with the establishment at the Ministry of Justice of a General Coordination Office for Promoting the Alternative Penalties and Measures Program (CGPMA). This office is responsible for supporting the implementation, by the States, of the Alternative Penalties and Measures Policy and for providing the requisite assistance.

91. In August 2006, Laws 11343/06 and 11344/06 expanded the possibilities for replacing the penalty of deprivation of liberty and fine-tuned the process of monitoring the State's penal response, by establishing interdisciplinary teams and rehabilitation centers in connection with the execution of alternative penalties.

92. In September 2006, a National Survey on the Execution of Alternative Penalties was released as another major step in this endeavour. This collaborative effort between Brazil and the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD) produced the first nationwide diagnosis of the execution of alternative penalties. The study provides a trustworthy picture of the situation in nine capitals (Belém, Belo Horizonte, Campo Grande, Curitiba, Fortaleza, Porto Alegre, Recife, Salvador, and São Paulo) and in the Federal District. It ranges from the socioeconomic characterization of the individuals receiving alternative sentences in lieu of deprivation of liberty to information about actual enforcement to the identification of crimes that most often give rise to replacement of the modalities of penalty meted out by the Judiciary.

93. In December 2006, the CGPMA Management report pointed out that between January and September 2006, the States had notified the execution of 63,457 alternative penalties and measures in Brazil, a 200-percent increase over the 2002 survey, which showed 21,560 executions. This trend should continue, as in those nine 2006 months alone 301,402 alternative penalties and measures were applied in the country. In 2007, demand increased by 20 percent and 422,522 alternative penalties and measures were applied in Brazil.

94. All the actions herein reported have increased the application of alternative penalties and measures in the country: in 2002, 21,560 people were serving alternative penalties or measures; by the end of 2008, it is estimated that about 500,000 people will benefit from the application of these measures.

95. Today Brazil has 18 specialized courts, complemented by 249 centrals and nuclei for the monitoring and oversight of alternative penalties and measures; this is the public apparatus that exists in the country for this purpose. These services involve judicial institutions - the Judiciary, the Public Prosecutor's and the Public Defender's Offices -, the Executive, and organized civil society entities, which are essential for guaranteeing full compliance with court decisions, as shown by the Report on Alternative Penalties and Measures Public Services published by the Ministry of Justice.

Penitentiary system's Ombudsman's Office

96. The Penitentiary System's Ombudsman's Office was established in 2004 under the Ministry of Justice's National Penitentiary Department. Its establishment was a major milestone in improving penal execution in the country.

97. The Ombudsman's Office's main attribution is to serve as a civil society interlocutor before the bodies in charge of penitentiary administration, both in the States and in the Federal Government. It receives suggestions, complaints, questions, denunciations, and requests for assistance.

98. It is also incumbent on the Ombudsman's Office to coordinate support for the setting-up and functioning of Community Councils, which are penal execution bodies, with the participation of civil society. These councils discharge supervision, coordination, and assistance functions. These actions favor the creation of a network of players responsible for social control of the penitentiary system.

99. The Ombudsman's Office also informs the administrative proceedings for individual and Christmas pardon, as well as the requests for legal aid to prisoners.

100. In addition to act at the prompting of civil society and agencies involved in penal execution, the Ombudsman's Office undertakes periodic inspections of penal establishments of the national penitentiary system.

101. In 2007, for the purpose of strengthening the internal and external control mechanisms of penal execution, an Initiative for the Establishment and Revamping of Penitentiary System's Ombudsman's Offices was launched, as part of the Penal Execution Improvement Programme. The establishment of autonomous penitentiary system's ombudsman's offices was also included as one of the objectives of the Penitentiary System's Master Plan, which was adhered to by 11 States where the National Public Security and Citizenship Programme (PRONASCI) will be first implemented.

102. Currently, 12 States - São Paulo, Rio de Janeiro, Minas Gerais, Paraná, Bahia, Ceará, Rio Grande do Norte, Goiás, Pernambuco, Alagoas, Sergipe, and Acre - have specialized penitentiary system's ombudsman's offices. Still in 2008, the Federal Government will seek to encourage, by providing training and funding, the establishment of penitentiary system's ombudsman's offices in the States that do not have them.

PARAGRAPH 18. To combat impunity, the State party should consider other methods of accountability for human rights crimes committed under the military dictatorship, including disqualifying of gross human rights violators from relevant public office and establishing justice and truth inquiry processes. The State party should make public all documents relevant to human rights abuses, including the documents currently withheld pursuant to presidential Decree 4553.

103. Brazil lived under a dictatorship from 1964 through 1985. This period was politically marked by arbitrary detentions, torture, extrajudicial executions, and forced disappearance perpetrated by security agents against political dissidents. With the advent of democratic transition, civil society entities began to demand investigations to identify those responsible for disappearances and deaths during the military regime, and the localization of the remains of those that disappeared.

104. Significant progress in this connection was achieved in 1995 with the passing of Law 9140 that recognized that 136 disappeared people were killed because of their political activity under the dictatorship, made the State accountable for those deaths, granted indemnification to the victim's families, and established the Special Commission on Political Dead and Disappeared Persons (CEMDP). Law 9140 also opened the possibility of including, after CEMDP's consideration, people that died other than from natural causes on police premises and in similar locations.

105. In August 2002, Law 10536 was passed, amending Law 140/95 and extending its life. The new law extended the life of the previous law for the purposes of indemnification, from August 15, 1979 to October 5, 1988, when the new Constitution was promulgated. In addition, it extended for a further 120 days as of its publication in the Official Gazette the deadline for relatives to submit claims for the recognition of disappeared status and eligibility for indemnification.

106. Another change took place in 2004 with the issuing of Provisional Measure 176/2004, later made into Law 10875/04, which establishes the discipline in cases of deaths caused by police repression at public protests or in armed conflict with government agents, and of suicides committed by people about to be arrested or as a result of psychological sequels stemming from acts of torture committed by government agents. Before promulgation of the new law, any suit brought in connection with suicide or death during marches, for instance, was dismissed and deemed ineligible for the indemnification provided under the law.

107. The findings of the CEDMP, after 11 years of work, were published as a book entitled "Right to Memory and Truth," released on August 29, 2007 at a public ceremony at the Planalto Palace, in the presence of President Luiz Inácio Lula da Silva.

108. The book has helped to further consolidate respect for human rights and the recognition of violations occurred in the country in recent history. Throwing light on that period of shadows and disclosing all information about human rights violations during the last dictatorial cycle are imperatives for a nation that legitimately aspires to a new status on the international scene and in the United Nations directing mechanisms.

109. In recording in the annals of history and publicizing the work done by CEDMP over 11 years, the book's publication represents a further step on a four-decade journey. On this journey, Brazilians who were often on opposite sides in the political arena were united in their efforts.

110. The importance of the book goes beyond the mere presentation of CEDMP's findings; it is the first public, official version of the facts occurred under the military regime that explicitly recognizes the Brazilian State's responsibility for the deaths and disappearances that occurred in that period. This recognition was explicitly reiterated by the President of the Republic before the victim's families and representatives of various segments of society and the State attending that ceremony.

111. A double image of Brazil as it enters the twenty-first century carrying new dreams and facing new challenges is found on the book's pages. One image is that of a country that has steadily strengthened its democratic institutions in the course of over 20 years. This is the positive image, exciting and promising, of a nation that seems to have definitively chosen democracy, in the understanding that democracy is a powerful shield against hatred and war impulses fueled by oppression. But the book shows another image, which is seen in the obstacles met by those determined to know the truth, and particularly by those who demand their millenary, sacred right to bury their beloved ones.

112. As, in late 2006, it closed the first phase of its activities - the phase of analysis, investigation, and judgment of the suits related to the 339 deaths and disappearances brought to light, in addition to the other 136 cases already recognized in the Annex to Law 9140/05 - CEMDP is now concentrating its attention on two other procedures.

113. The first, started in September 2006, is the collection of blood samples from blood relatives of disappeared or dead persons whose bodies were not released to their families. The purpose is to establish a data bank on genetic profiles - a DNA bank - for the purpose of comparison and unequivocal identification of remains eventually found and of bones already set aside for analysis.

114. The second is the systematic organization of data on the possible location of clandestine graves in big cities and in rural areas where militants may have been buried, particularly on the Araguaia River, in the south of the state of Pará. In doing so, CEMDP will be complying with the provisions of Art. 4, II of Law 9140/05, which requires "efforts aimed at locating the remains of disappeared persons if there are signs indicating the location where they may rest."

115. It should be noted that the work of locating and identifying the remains of the military regime's opponents should receive a boost from a court decision determining the opening of the Armed Forces' files on the operations carried out against the Araguaia Guerrilla. In 1982, relatives of 22 Brazilians killed or disappeared during the conflict that became known as the Araguaia Guerrilla brought their claims before the judiciary. They demanded the location of the remains of the disappeared that had settled on the banks of the Araguaia River and formed part of the armed movement of a political, revolutionary nature, which was destroyed after strong State repression. After judgment by lower courts, a federal court determined, in June 2003, the opening of the secret records on the Araguaia Guerrilla and their submitting to the court. The Federal Public Prosecutor's Office appealed the court's decision on the basis of formal proceeding issues, without entering into the case's merit. After new appeals, the Superior Court of Justice upheld the 2003 court decision, and it was up to the Government to execute the order after being formally notified.

116. Decree No. 4553 of December 27, 2002 cited by the Human Rights Committee in its recommendations to the Brazilian State provides for the safeguarding of data, information, documents and confidential materials of interest to the security of society and the State. The Human Rights Committee was concerned about the provision of article 7 of that decree, establishing a lapse of 50 and 30 years to maintain the highly confidential and confidential classification of documents, and the possibility of extending such classification once, for an equal period, in the case of confidential documents, and indefinitely in the case of highly confidential documents. Those provisions were changed by Decree No. 5301 of December 9, 2004, which in addition to reducing those deadlines to 30 and 20 years, respectively, permits the extension of those deadlines only once, for an equal period. The possibility of indefinite extension will depend on the approval of a commission consisting of seven Ministers of State.

117. It should be added that article 8 of the 1988 Constitution - Constitutional Temporary Provisions - determines that amnesty shall be granted to those who between September 18, 1946 and the date of the Constitution's promulgation were affected for exclusively political reasons by exception acts. In Brasília, a Special Amnesty Commission was set up for the purpose of granting political amnesty. In 1988, in the state of São Paulo, a Special Amnesty Commission was also set up for processing and informing measures required under article 8 of the Constitutional Temporary Provisions. The States of Rio Grande do Sul, Paraná, and Santa Catarina have also passed specific legislation to make political prisoners that underwent torture and ill-treatment during the dictatorship eligible for indemnification.
