

Human Rights in Brazil 2008

A Report by
Network for Social Justice and Human Rights

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Preface

With the annual publication of this report, the Network for Social Justice and Human Rights is fulfilling its role of responding to a demand for action and coordination of human rights violation claims, guided by the ethical benchmark of human dignity.

The word “network” gives the idea of interlacing. Its work is the result of the experience of various organizations and grassroots movements, which collaborated with their knowledge and accomplishments. This reminds us that one of the functions of the Network for Social Justice and Human Rights is to provide support to grassroots movements in conflict situations. In this regard, the Report is a tool in the struggle to achieve basic rights. It allows us to nourish ourselves with hope for the construction of another possible world.

The current global economic policies are not sustainable. Today, two-thirds of the world population live below the poverty line; nearly 3 billion people live on a monthly income of less than US\$60; more than 25% of the population do not have access to potable water, and at least one in seven persons goes hungry every day. For the most part, this is the result of not having access to basic rights, such as education, land or work.

This Report revisits some of the themes developed in prior reports, demonstrating that the struggle for human rights is a process. This year, the book specifically introduces new topics related to gender issues, such as the situation of incarcerated women, the criminalization of abortion, and the situation of migrant women, which helps us to understand how violence and discrimination affects

women, as well as its relation with the lack of income distribution, work and education opportunities, as well as political representation.

Some of the themes dealt with in the Report clearly indicate the need for deep reflection on the role of our legal system in maintaining impunity in cases of human rights violations. This is the case of human rights violations against landless workers, as we see in Rio Grande do Sul, where MST members are being investigated under the framework of the National Security Law because of their struggle for agrarian reform.

The common theme that unites all organizations that contributed to this Report is the idea that human beings should have a life of dignity. To achieve this, we need to demand government policies based on a truly democratic system, which respects all rights as indivisible.

To this end, the report Human Rights in Brazil is an important tool.

Kenarik Boujikian Felipe, Court Judge in São Paulo, co-founder and former-president of the Association of Judges for Democracy, former-president of the Latin American and Caribbean Association of Judges for Democracy.

Introduction

In 2008, the Report on Human Rights in Brazil celebrates its ninth edition. Once again, the work presents a wide panorama of themes linked to human rights. There are 26 articles with important data and analyses on, for example, the right to land, to education, to work, and to social justice over these last years, and especially with regard to the situation in 2008.

One of the most notable focal points was the virulent racist wave against indigenous peoples that has spread throughout the country, as shown in the article by the Missionary Indigenous Council: “With its nationalist façade, this wave managed to garner support, or at least the complicit silence, of traditional sectors engaged in fighting in defense of indigenous peoples and grassroots sectors. Based on a local situation, that of the private interests of those invading State lands (such as indigenous lands), in 2008 part of Brazilian society came to look at indigenous peoples as enemies. The constitutional rights of the indigenous peoples came to be seen as privileges that should be urgently reviewed by the National Congress; the ONU (UN) came to be seen as an imperialist threat and neighboring countries as potential enemies.”

For the third year, the Director of the Brazilian Association for Agrarian Reform, José Juliano de Carvalho Filho, analyzes the agrarian policy of the Lula government. “The historical, unjust, and atrocious characteristics of the agrarian structure are maintained over time, year after year and government after government. Government actions may vary, but still have the same effects of inequitable land distribution. The benefits of governmental support continue to be absorbed first and foremost by large landholders and corporations.”

With respect to slave labor, the report shows, through the collaboration of Ricardo Rezende and Adônia Prado, who are members of UFRJ’s Contemporary Slave Labor Research Group, that between January and September of 2008, there were 179 denunciations of rural production units engaged in slave labor, involving 5,203 workers.

Between 2003 and September 2008, coinciding with the Lula administration, there were 1,446 denunciations. In the same period, the number of potentially enslaved people was 42,526 and, of these, 26,318 were freed. The state considered the “champion” in slavery has been Pará. Other states that appear with regularity in last the six years are Mato Grosso, Maranhão, Tocantins and Goiás. In 2008, by the end of September, the only region of the country without any denunciations of slavery was the Southeast. The region with the highest percentage of cases was the Center-West (31.6%).

The denial of rights for sugarcane workers in the State of São Paulo is dealt with in an article by Maria Aparecida de Moraes Silva and Jadir Damião Ribeiro. “Case analysis revealed that the precarious state of labor relations in the cane fields exists by reason of the large supply of labor coming from other states, on the one hand, and, on the other, the flexibilization of labor standards. The workers have a low level of education, which means their knowledge and access to their labor rights is restricted,” state the researchers.

The report shows that education, a universal human right, is being gradually disputed by market interests. “The idea has gained strength that private institutions have much to offer with regard to expanding access to early childhood, secondary and higher education, still not yet universal in Brazil” analyze Sérgio Haddad and Mariângela Graciano of Education Action.

Problems related to police brutality in São Paulo are also presented in the Report. Social scientists Adriana Loche and Leandro Siqueira, of the Santo Dias Human Rights Center of the São Paulo Archdiocese, write: “When the number of deaths caused by police in the first half of 2007 is compared with the figure for the first half of 2008, the number increased by 21.9%, rising from 201 deaths in 2007 to 245 deaths in 2008. On the other hand, the number of police killed in these confrontations went down from 15 to 14. The proportion of deaths was 11.4 civilians for every police death. Following a downward trend, the number of murders in the state fell 13% in the first half of 2008 compared to the same period in 2007.”

Attorneys Beatriz Galli and Carmen Hein Campos analyze the case of thousands of women being prosecuted for practicing abortion in Mato Grosso do Sul, in addition to mapping out the situation in Brazil, in view of the fact that it is estimated that more than 1 million abortions are performed each year. “There are about 250,000 hospitalizations per year due to abortion complications. Its illegality comes at a high price for the public health system, costing the country around 35 million Reais per year. Unsafe abortion is one of the main avoidable causes of maternal death in Brazil, and it reveals a pattern of inequality and social injustice. Maternal death due to unsafe abortion practices, and the health complications that they generate exacerbate the unequal access to health care, due to socioeconomic reasons, ethnicity, and racial discrimination.”

Researchers Lívia Gimenes da Fonseca and Luciana de Souza Ramos outline the women's prison system in Brazil. "The characteristics of incarcerated women in Brazil today show that they are young, of African descent, and in the majority serving prison time for drug trafficking. The women who are serving prison time experience lack of family support, with no guarantee of partner visitation or remaining with any children born during their prison term, which demonstrates the double punishment of women." The article also shows that, in São Paulo, almost half of the incarcerated women wait more than a year to move to a prison location, compared to 36.9% of men in the same situation, and that generally they "opt for staying in a crowded jail in order to stay close to their family and children."

International politics and human rights are highlighted in the last section of the report. Some of the issues included were the impacts of the Initiative for Integration of South American Regional Infrastructure (IIRSA), and an assessment of policies implemented during the last year of the "Bush Era" in Latin America.

HUMAN RIGHTS IN THE COUNTRYSIDE



The number of settled families continues to fall. In 2007, 66,983 families were settled. In 2008, up to November 7th, 21,058 families were settled in 1,960 projects. Of these, only 70 are new projects (created in 2008), with the settlement of 3,643 families. The Agrarian Ombudsman's Office continues to record murders in the countryside. From 2001 to 2007, 534 murders were recorded. These numbers confirm the inadequate performance of the Lula government's agrarian policy.

Agrarian Policy under Lula Administration

*José Juliano de Carvalho Filho**

“(...)We are many Severinos
equal in everything in life....”

(João Cabral de Melo Neto—Morte e Vida Severina)

Introduction

In the last three years, in this same space, we have had the opportunity to follow the agrarian policy of the Lula government. It has been our honor to do so, given that it entails collaboration in the public debate on the Brazilian agrarian policy. On the other hand, dear reader, it is a task that is often frustrating and even revolting. The historical, unjust, and atrocious characteristics of the agrarian structure are maintained over time, year after year and government after government. Government actions may vary, but still with the same effects of inequitable land distribution. The benefits continue to be absorbed first and foremost by large

*José Juliano de Carvalho Filho is an economist, a retired professor at FEA-USP and Director of ABRA (Brazilian Association for Agrarian Reform). He is a member of the Advisory Board of the Social Network for Justice and Human Rights.

enterprises. For the *Severinos* there are only palliative, ineffective and non-structural measures. For the majority of the rural population, the situation is still as masterfully described in João Cabral de Melo Neto's poem¹ "...this is the portion given to you on this estate./It is not a large hole/It is a mid-size hole./it is the land that you wanted to see divided."

The above citation is not given to dramatize the situation of the landless and/or peasants. It helps us express the real drama lived by a large part of the rural population, with a trend toward worsening.

The Lula government doesn't stray from the norm when compared to the rest.

There is real policy and fairy-tale policy. As Professor Francisco de Oliveira tells us, inspired by Framisci, "Those that are dominated control the lesser policy (...) since it doesn't affect large-scale capital interests, or large-scale policy..."²

In the 2005 Report we noted the hope arising from the National Agrarian Reform Plan (PNRA), but it was rejected by the government. In that same article, we already registered disenchantment. The government abandoned the pretense of setting up an agrarian policy with structural clout.

The article published in the 2006 Report confirmed what had been anticipated. The proposal for agrarian reform with the potential to alter structures in the countryside and upend the situation of injustice and exclusion was evaded over time. The promise of "wide, massive, and quality agrarian reform" passed into the realm of fairytales.

In last year's Report we concluded that the Brazilian agrarian policy as based on the "agribusiness model." At the time we affirmed that "the prevalence of this model, in the absence of a national project with adequate public control, defined the agrarian question of the present day." We likewise stated that this policy "was characterized by strong aggravation of the old effects of the advance of capital in detriment to the workers and peasants." We spoke about the concentration of land ownership, loss of biodiversity, reduction of poly-cultivation, aggravation of the exploitation of labor, slave labor, deaths due to exhaustion, migration of rural workers, the expansion of sugarcane plantation in the Amazon, pollution of water sources, violence of rural militia groups, reduction of agricultural employment, lack of food security, increased agrarian conflicts, and inefficacy of public policies.

¹ João Cabral de Melo Neto, "Morte e Vida Severina" (*Life and Death of Severino*)

² Francisco de Oliveira: Critical reasoning against the cynicism of those without reason. Interview given to Professors Jaldes Reis de Meneses (DHI-UFPB) and Maria Aparecida Ramos (DSS-UFPB). Economists Group cbrasileira@uol.com.br, 10/IX/2008.

In 2008 the predilection for agribusiness was not only confirmed, it was deepened. Let's look at the chief facts that prove this statement.³

Provisional Measure 410

On December 28th, 2007, the government issued Provisional Measure (MP) 410 "that provided for, among other issues, dispensing with the obligation to make entries in the Work Record Cards of rural workers who perform temporary work. According to its terms, in order to hire rural workers for up to two months, it is sufficient to draw up a written contract. If the term of two months were to be exceeded in a given year, the labor contract would be considered with an indefinite term. In other words, the government was trying to impose so-called flexibility for short-term rural work, with evident benefits for employers (especially in sugarcane plantations)."⁴

MP 410 was strongly contested by representatives of rural social movements, particularly Via Campesina and the Federation of Rural Workers of the State of São Paulo (FERAESP). The workers were concerned about the possibility of the measure aggravating even further the precarious labor relations in the countryside, as well as making it difficult to investigate cases of slave labor. Some jurists⁵ also indicated that the measure might make investigative work difficult, with the proliferation of ambiguous situations, and defended the obligation to make entries on the Work Card.

This Provisional Measure became Law No. 11.718/2008, which toned down the exemption on signed cards for rural workers, although it had created a short-term rural worker contract. It also established transitory standards regarding retirement of rural workers and extended the term for contracting rural financing. The original Provisional Measure was toned down, but the intention was revealed.

Provisional Measure 422

The statement that the government has a preference for agribusiness was again proven with the issuance of MP 422 by the Lula government in March, and approved in July. This permits INCRA to give title directly, without bidding, to properties in Legal Amazonia with up to 15 rural modules or 1,500 hectares.⁶

³ For presentation of the facts we used work performed by students of the subject. These authors will be cited for each item.

⁴ Boletim de Políticas Sociais (Bulletin of Social Policies), No. 16, of IPEA, Brancolina Ferreira "Agrarian Policy."

⁵ According to an interview with Labor Judge and member of the National Association of Labor Magistrates, Zéu Palmeira, given to the NP Agency on March 15, 2008.

⁶ The referenced draft conversion law alters Law no.8.666 of June 21, 1993, which instituted standards for bidding and public administration contracts (Bidding Law).

In this regard, we draw attention to an article by Professor Ariovaldo Umbelino de Oliveira, our colleague at ABRA, who follows and analyzes the land issues in Brazil and Amazonia (in particular) with great competence and courage.

Professor Umbelino says: “Now, with signature of Provisional Measure 422, which again alters Law No. 8.666, the alienation of public property of the Union by dispensing with bidding, is up to 15 fiscal modules. As the majority of the municipalities of Legal Amazonia have modules of 100 hectares, the exclusion from bidding comes to almost 1,500 hectares (...) the Lula government is doing what no government, after the military regime did: ‘selling’ to agribusiness more than 50 million hectares of public lands in Amazonia, which should be reserved for Agrarian Reform, demarcation of indigenous or quilombola lands, creation of units of environmental conservation.”

Land Policy for Amazonia – IRFAN

The considerations presented here are, in large part, extracted from the analysis performed by Gerson Teixeira⁷, a specialist in the subject. The referenced document analyzed the “proposed Provisional Measure (MP) that originated with the Office of Strategic Matters of the Presidency (SAE), with provisions for the creation of the Amazon Land Regulation Institute—IRFAM, and on substantive changes to INCRA’s prerogatives in the region, as well as on essential land policy topics by means of changes to the Land Statute – Law No. 4.504 of 1964.”

The principal changes envisioned in the proposed MP are as follows:

- Creation of IRFAM (a federal public authority) with the mission of administering land policy in the region of operations of SUDAM, which includes the states of Acre, Amapá, Amazonas, Mato Grosso, Rondônia, Roraima, Tocantins, Pará, and Maranhão west of the 44th Meridian;
- Section 1 of Article 2 of the proposed MP determines that INCRA’s powers in Amazonia would be restricted “to settlements and agrarian reform.” However, Item II of the same provision sets “standardization,” supervision, acquisition, expropriation, alienation, and concession of rural real estate in Amazonia as being

⁷ Ariovaldo Umbelino de Oliveira – “Provisional Measure 422 of the Lula Government and Legalization of the Appropriation of Public Lands in Amazonia.”

⁹ Gerson Teixeira – “The Draft of a Provisional Measure Altering Land Use Policy for the Amazon.” The proposed weakening of INCRA, set in the draft MP, is analogous to the recent dismemberment of IBAMA. In this case, the Chico Mendes Institute was created for the purpose of streamlining the environmental licensing procedures required for PAC’s works. However this may be, it also is intended to benefit capital in the process of integrating Amazonia within the agri-business model.

within IRFAM's powers. That is, once the MP is in effect, INCRA will lose its influence on land acquisition processes.

Besides the above powers, IRFAM will also have full responsibility for the processes of discrimination, collection, application, and incorporation within the public domain of unoccupied lands in Amazonia, as well as jurisdiction with regard to leasing and acquisition of lands by foreigners. In this latter case, the proposed MP confers the regulatory character of Article 190 of the Federal Constitution specifically for Amazonia, which fact, despite its flagrant unconstitutionality, evidences the efforts for removal of all obstacles for capital investment in that region, whatever its origin.

Creation of Gesinpra¹⁰

“Bill No. 346/2007, authored by Deputy Eduardo Sciarra (DEM-PR), covers the creation of a deliberative council called Gesinpra, destined to manage the “National System of Registration of the Agrarian Reform Program” (SINPRA), the purpose of which is to serve as a base for selection of candidates for agrarian reform. The Bill was approved on May 7, 2008, in the Commission of Agriculture, Ranching, Supply and Rural Development of the Chamber of Deputies, and was then sent on to the Commission on the Constitution, Justice, and Citizenship (CCJ) with a terminative character. If approved in the CCJ, it will not need to be voted on in a plenary session.”

“Its most delicate point is that it anticipates exclusion from the agrarian reform process of anyone who invades public buildings or lands, because it can thus, according to its author, *“give privilege to persons who have some vocation and experience with the land or training in its cultivation.”* Although the administration of the system falls to Gesinpra¹¹, INCRA is in charge of its being carried out, maintained, and publicized, with credentialled municipal governments being among the entities that can perform registrations with Sinpra.”

The bill, besides representing a direct intervention in INCRA’s prerogatives, hampers the social movements that are fighting for access to land. It ratifies and strengthens the restrictions in force since the Cardoso administration (Decree No. 2250 of June 11, 1997).

¹⁰ Text authored by Brancolina Ferreira, extracted from the Boletim de Políticas Sociais (Social Policies Bulletin) 16 of IPEA (in process of publication).

¹¹ The deliberative council will be made up of representatives of eight entities: the Ministry of Agrarian Development, who will preside; the National Settlement and Agrarian Reform Institute (INCRA); the Ministry of Agriculture, Ranching, and Supply; the Ministry of Justice; the Commission on Agriculture, Ranching, and Rural Development of the Chamber of Deputies; the National Agriculture Confederation (CAN); the National Confederation of Family Agricultural Workers (CONTAG); and the Organization of Brazilian Cooperatives (OCB).

Offensive Against Social Movements: Public Ministry of Rio Grande do Sul

This information merits special attention. We therefore reproduce below a part of the excellent text by IPEA researcher Brancolina Ferreira.

“The minutes of the meeting held December 3, 2007, by the Superior Council of the Rio Grande do Sul Public Ministry records approval of a series of sanctions against the Landless Workers Movement (MST), having as their ultimate objective the dissolution thereof and the closure of its schools, as well as recommendation of investigation of the actions of INVRA, CONAB, and Via Campesina in that state. The three-page document recommends various measures, such as: deterring marches and movement of agricultural workers; deactivation of camps; investigation of camp residents and managers with regard to the use of public funds; intervention in MST schools; prevention of the presence of children and adolescents in the camps; and verification of the variances for land purposes at the settlements. It also suggests the cancellation of the electoral enrollment of landless agricultural workers in the regions in conflict and formulation of an official policy by the Public Ministry for the purpose of “protecting legality in the countryside.” In order to fulfill these resolutions it proposes the creation of a task force for the purpose of “promoting a public civil action aimed at dissolution of the MST and declaration of its illegality.” Such recommendations are being carried out in conjunction with the courts and the military.”

“This ‘strategy’ should have been secret for ten years, but it happened to come to public notice upon being attached as proof of an accusation made in the courts against MST camp residents who were in two areas ceded by owners in the vicinity of Fazenda Coqueiros—the initial(s) on the action make it clear that the promoters acted based on Council guidelines. On the basis of the MP complaint, the Rio Grande do Sul Military Brigade proceeded to evict hundreds of families from the Coqueiros do Sul camps. Huts, cultivated fields, livestock, and even the health clinic and school set up by the landless were destroyed. The families were thrown on the roadside in Sarandi, exposed to the cold and without any protection. In short, the attack by the Public Ministry, the rapid consent of judges, and the quick mobilization of the Military Brigade mounted a wartime scenario: the MP gets the courts to move using an ideological discourse; the judge decides in favor of the measure; the Military Brigade responds quickly to the judicial orders.”

MST’s attorney, Juvelino Stronzake, explained to the newspaper *Folha de São Paulo*¹²: “With the exception of the Eldorado do Carajás massacre, this is the

¹² Eduardo Scolese, “Conselho de promotores do Rio Grande do Sul pede fim do MST” (Rio Grande do Sul Promoters Council asks for an end to the MST), *Folha de São Paulo*, 24/06/2008.

event that stands out the most in the history of the movement. It is significant for its being an instance of the State trying to limit popular organization.” We only saw similar situations during the dictatorship.

At the same time, in the National Congress, deputies tied to large landowners are insisting on the application of the penalties provided for in the National Security Law¹³, against demonstrations by social movements, including the MST. The offensive against rural workers in Congress is old news. In 2005, the final report of the Parliamentary Land Inquiry Commission - CPI da Terra—, prepared by then-federal deputy João Alfredo (PSOL-CE), was rejected and replaced by a parallel report authored by Abelardo Lupion (DEM-PR). In the text, that member of parliament asks that land occupations be considered heinous crimes and terrorist acts. Actions against agrarian reform and democratization of access to land now follow the pathway of drafts of laws which go against the interests not only of rural workers and family farmers, but also of those who long for a more just and egalitarian society.

Other Considerations

Aside from the facts herein related, the case should be noted of an attempt—at least until now—to annul the ongoing demarcation of the Raposa Serra do Sol Indigenous Reservation and the change in standards which govern the process of regularization for remaining quilombo lands. INCRA's Statute No. 49, of September 28, 2008, makes recognition of quilombola territories difficult in any event. With regard to the Indigenous Reservation, the termination of ongoing demarcation will signify a victory for large landowners.

What is happening with indigenous territories and quilombo lands has been recurrent throughout our history. In the name of development and the interests of the poorest (it's always the same ritual), what it really means is to benefit the economic groups tied to agri-business.

Conclusion

Finally, it must be said that the set of instruments placed at INCRA's disposal do not have sufficient power to confront the economic and political forces that accompany the advance of agribusiness. To play at making agrarian policy, with the use of legerdemain, is a recurring factor in Brazilian political history.

¹³ Law No. 7.170/83, the National Security Law, defines crimes against national security, the political and social order, establishes their processes and judgment and makes other provisions. The idea of using it against members of a social movement seems anodyne, if only because it establishes the competence of Military Courts to litigate and judge the crimes anticipated under this Law. The ruralists maintain that the members of the MST should be held responsible for crimes against the political and social order.

The number of settled families continues to fall. In 2007, 66,983 families were settled. This result reaffirms the falling trend and expresses the poor performance seen since 2004. Unofficial data for 2008 confirm the inadequate performance of the Lula government's agrarian policy. In 2008, up to November 7th, 21,058 families were settled in 1,960 projects. Of these, only 70 are new projects (created in 2008), with the settlement of 3,643 families. (Sources: MDA/INCRA/SDM/Sipra and IPEA).

The Agrarian Ombudsman's Office continues to record murders in the countryside. From 2001 to 2007, 534 murders were recorded, 133 of which arose out of agrarian conflict and 101 are under investigation. In 2008, up to July 31st, 20 murders were recorded, two of which arising from agrarian conflict and 13 are under investigation. According to the Pastoral Land Commission (CPT), in 2007, 28 worker deaths were verified due to land disputes, and 800,000 persons were involved in 1.5 thousand conflicts.

CPT has been stating for some time that crimes against rural workers are unending because they are always treated with impunity. From 1985 to 2007, it registered the killings of 1,493 workers in 1,113 occurrences. Of these, only 85 cases went to trial; of those found guilty, 75 were people who carried out orders, and 19 were those who gave the orders, but nobody is currently in prison.

Fighting for Human Rights is Not a Crime

*Antônio Canuto**

In 2008, violence against workers in the countryside persists. But besides the well-known methods employed by private militia groups – killings, death threats, evictions – what stands out this year is the clearer and more direct repression by the government, above all by the agencies of the Executive and Judiciary powers, in an attempt to intimidate and criminalize demonstrations of rural grassroots movements.

The old violence of private militia groups

On February 23, in the state of Amazonas, in the town of Lábrea, 53 year old Francisco da Silva, president of the Union Association of Rural workers of Amazonas was found dead, shot in the head. In July 2007, he had been in Manaus when a document about the conflicts that were occurring in the region was published in various government publications. It denounced the death threats that he was receiving, and an ambush from

* *Antônio Canuto is the Executive Secretary of the National Board of the Pastoral Commission on Land (CPT).*

which he had gotten out unharmed. In March 2007, the Pastoral Commission on Land (CPI) of Amazonas requested the presence of the Federal Police to remove the gunmen of the region to ensure the physical integrity of rural workers. Among those workers mentioned was Francisco da Silva.

On April 29 in Rondônia, near the Catâneo Farm in the town of Campo Novo, Edson Dutra was ambushed and killed by gunmen. An activist in the social movements, he was driving a truck that carried rural landless workers. While trying to clear the road that was blocked, he was shot and killed. Twenty days earlier, on April 9, the gunmen had evicted at gunpoint more than 200 families who had been camped there, burning down the shacks with all their belongings. Death threats were made.

On March 14 in Paraná, Reverend Luiz Carlos Gabas of the Anglican Church in Cascavel, who had protested on behalf of the landless, had his car hit by two other cars in a clear attempt to intimidate him.

On March 30 in the Libertaçao Camponesa (Peasant Liberation) settlement in the municipality of Ortigueira, 42 year old MST member Eli Dallemole was executed in front of his family. He was one of the leaders of the Terra Livre (Free Land) encampment on the Compramil Farm in Ortigueira, which has been occupied since 2003, and had received death threats. On March 8, gunmen had terrorized the 35 families camped in the area, setting fire to all their belongs. Children were threatened and pushed around, and men and women were beaten. Eli was welcomed into the Libertaçao Camponesa settlement, where the death threats became more frequent, culminating in his assassination.

At dawn on May 8, the Primeiros Passos (First Steps) encampment of the Movement for the Liberation of the Landless (MLST) with more than 150 families located on Highway BR 369 between the municipalities of Cascavel and Corbélia was attacked by a private militia. Heavily-armed men invaded the encampment with tractors, earth-movers and a heavy-duty armored truck from behind which the gunmen shot, a death's head of agribusiness. The whole plantation and all the structures of the encampment, including a school and a church, were destroyed.

In April, in the state of Pará, large landowners contracted security companies at the cost of between R\$ 10 to R\$ 15 thousand a month to repress MST activities that remembered the massacre of Eldorado dos Carajás. They had orders to shoot if the “invaders” crossed the sides of the highway and headed to the gate of the farms.

On April 24, in the township of Tucurui, a 51-year old settlement member named Emival Barbosa Machado was shot in the head and killed. He had denounced the illegal extraction of lumber. He received death threats, which he reported to the police in Tucuruí. The killer was recognized by Emival’s sister, Ericélia Machado, and was jailed. But on the evening of the same day, he was freed by the police.

Not even children can escape the violence. On May 5, two armed men invaded and shot up the village of Anajá of the Guajajara people on the indigenous Araribóia land, in the municipality of Arame, Maranhão. A five year old girl, M.S., was shot in the head and died within an hour. According to the Guajajara, the killers were the same ones who killed Timóteo Guajajara at the beginning of 2007.

These facts show that repression has been carefully planned, with the goal of eliminating anyone who opposes the interests of large landowners.

The violence of governmental institutions

What stands out in 2008 is the repression against social movements, in a clear attempt to criminalize them. These actions come from the Executive government, as well as from the Judiciary system, and find support and endorsement in the National Congress. Here are some examples:

In order to celebrate International Women's Day, on March 8, women peasants carried out demonstrations throughout Brazil, showing how the current Brazilian development plan is giving support to large corporations and to agribusiness to the detriment of family farming and food sovereignty.

In Minas Gerais, 600 women, representatives of the Landless Workers Movement (MST), the Movement of People Affected by Dams (MAB), afro-descendant and indigenous communities, paralyzed the activities of Minerações Brasileira Reunidas (United Brazilian Mining – MBR). Their goal was to denounce environmental degradation and land concentration. To contain the demonstration, the state government sent 14 carloads of military police, a helicopter, 10 jeeps and a truckload of shock troops. The police arrived shooting at the demonstrators and one woman was wounded.

A protest of around 200 women of La Via Campesina at the Cachoeira Dantas Mill, in the township of Agua Preta, in the state of Pernambuco, was surrounded by the Military Police. Numerous policemen were shooting as they entered the encampment, where there were 30 children.

It was in Rio Grande do Sul, however, that the women's protests caused the most violent reaction by the police. Nine hundred women of La Via Campesina occupied an area of 2,000 hectares of the Swedish-Finnish company Stora Enso in Rosario do Sul, located near the border, to denounce the illegal expropriation of Brazilian territory for the establishment of agribusiness and its monocultures. Repression was not slow in coming. A large contingent of the State Military Brigade arrived at the site, humiliating and hitting the women. Eight hundred were detained and separated from their small children. More than 50 were wounded. The work of the press was curtailed. Reporters and photographers were prevented from documenting the aggression, as the Journalists Union of Rio Grande do Sul reported.

The Judiciary System

It is in the realm of the judiciary system that the criminalization of the movements is really apparent. And there are three ways in which this happens:

- Favorable rulings for the interests of agribusiness and large corporations in court cases.
- Condemnations of grassroots leaders.
- Impunity of crimes committed against rural workers.

1. Rulings for the interests of agribusiness

Some important cases marked 2008. One of them was about the Raposa Serra do Sol indigenous land in Roraima. In the area that was designated as indigenous territory in 1998 and approved in 2005, conforming to all the legal requirements, a group of six large rice producers stayed illegally. When an operation was initiated to remove them, the Supreme Court granted its preliminary suspension. The justification was that the indigenous reserve was in a continuous area in a border region with Venezuela and Guiana, and this could make it difficult to inspect the borders. Six rice producers spoke more loudly than 18,992 indigenous people, from five tribes, who have lived in the region of Raposa Serra do Sol for more than four thousand years.

Another case occurred in Marabá, Pará, where Federal Judge Carlos Henrique Haddad did not recognize the claim made by INCRA's National Attorney's Office against Vale Mining Company for the abuses committed against rural communities.

2. Condemnation of grassroots leaders

Condemning the leadership of rural movements for organizing protests was another common situation in 2008. One example was the condemnation of attorney José Batista Afonso, member of the CPT National Board, and Raimundo Nonato da Silva, regional coordinator of the Union Federation of Rural Workers of Pará (FETAGRI). Both were sentenced to two years and five months in prison by the Federal Judge of Marabá, Carlos Henrique Haddad, in a court case related to the occupation of INCRA headquarters in April of 1999 by more than 10 thousand rural workers.

In 2002, the Public Prosecutor's office had proposed the suspension of the trial, upon payment of food baskets. When the conditions imposed on the court case were fulfilled, and just when the Public Prosecutor's office was going to require the case extinction, another judge who assumed the case cancelled all previous decisions, and determined that the court cases would continue. The partiality of the judge is evident in the formulation of the sentence. On the one hand it states with respect to José Batista that "it is possible that he may not have incited the invasion of the INCRA office by

rural workers, and it appears believable that he would not have been able to control the excited crowd". However, the severity of the penalty is based on the allegation that the accused had "incited or ordered someone subject to his authority to commit the crime".

Also in Marabá, the same judge ordered three MST and Mineworkers Movement (MTM) leaders—Eurival Martins Carvalho, Raimundo Benigno, and Luiz Salomé—to pay a fine of R\$ 5,200,000 for the occupation of the Carajás railroad of Vale Mining Company in the months of April and May. The intention was to condemn the workers simply for being leaders, since legally the fine should be imposed on each one of the workers who participated in the protest. The judge, however, said "they led various persons in the invasion of the railroad, and for this reason must be held responsible for the total amount of the damages, as well as pay the fine imposed because of the disorder that occurred."

A statement signed by grassroots organizations in the region says, "Besides being contrary to good sense, the decision is flagrantly illegal and immoral. To attribute a crime to people because they are leaders is legally absurd and gives a death blow to democracy".

In Alagoas at the end of September, former coordinators of the Land, Work and Liberty Movement (MTL), the brothers Valdemir Augustinho de Souza and Ivandeje Maria de Souza, ("Vanda"), were sentenced to 24 years in prison by Judge Gilvan de Santana, for the crimes of forming a gang and damaging assets. The judge considered them to have led the invasion of 300 landless workers at the office of the Conceição do Peixe factory, causing an estimated R\$200 thousand in damages.

On October 22, the Federal Court of Santa Catarina condemned Néri Fabris, member of the MST, to two years in prison for occupying the side of a highway in June of 2002. He was accused of being an "invasion professional". Fabris was part of a group of 70 persons from the MST who occupied part of highway BR-470, in the municipality of Gaspar.

3. Impunity of crimes committed against rural workers

CPT has been stating for some time that crimes against rural workers are unending because they are always treated with impunity. From 1985 to 2007, it registered the killings of 1,493 workers in 1,113 occurrences. Of these, only 85 cases went to trial; of those found guilty, 75 were people who carried out orders, and 19 were those who gave the orders, but nobody is currently in prison.

In 2008, there were intense repercussions in Brazil and in other countries over the absolution of Vitalmiro Bastos de Moura ("Bida"), one of those who ordered the killing of Sister Dorothy Stang, and who was condemned to 30 years in prison in 2007.

A new jury found him innocent based on a change in the testimonies of Rayfran das Neves Sales, one of the gunmen, and of Amayr Feijoli da Cunha (“Tato”) who was the intermediary man between Bida and Rayfran. During the trial, there were numerous new versions of the facts. But the trial documents include a recording of a conversation between two gunmen, Rayfran and Clodoaldo, in which they comment on the offer of R\$ 20,000 to change their testimony to absolve the ranchers. This evidence was not considered in the trial.

The Public Prosecutor Office

What was most puzzling this year was the action of the Attorney General’s Office in the process of criminalizing rural movements and their leaders. It was from that office, which has the responsibility of defending individual and collective rights, that the most violent attacks were launched against rural movements, in particular in the state of Rio Grande do Sul. Besides contradicting itself, it proposed actions that go totally against the international treaties that Brazil has ratified, even calling for the dissolution of the MST and the decree of its illegality.

Only after the deliberations of the Superior Council of the Office of the State Attorney General was it possible to begin to understand some of the court decisions and the belligerent actions of the Military Brigade. Actions that were well orchestrated among the Attorney General’s Office, the Judiciary, and the Executive branch of the government.

On May 8, a group of 750 police officers from the Military Brigade invaded the encampment of the MST in São Gabriel. The police destroyed all the shacks, and flew very low in their helicopters, terrorizing people, including many children. They threw dirt on people’s food, and prevented human rights defenders and congress-members from monitoring the situation. Two workers were arrested.

On June 3, a MST encampment along the sides of Highway RS-040 in Viamão was invaded by the Military Brigade. A group of more than 100 police offices and a shock battalion destroyed the shacks that were being built by the families. The police obtained immediate acceptance by local judges who issued warrants against MST leaders, prohibited marches, and displaced people who lived in encampments.

In Coqueiros do Sul, hundreds of families were evicted from two encampments, on June 17. The petition of the State Attorney General’s office, dated on June 16, received a favorable response on the same day. In the following morning, at dawn, more than 500 men from the Military Brigade entered the encampments by surprise, before the arrival of the court official. One of them explained that, “It’s not a question of removing encampments, but rather of dismantling the bases that the MST uses.”

In this context, it became known that two public prosecutors from Rio Grande do Sul participated in a secret inquiry, initiated in mid-2007, to investigate “crimes of the MST.” The report of this investigation accused the movement of bringing together a group of “leftists and anti-capitalists”, of threatening national security, of disrupting elections, and of ideologically indoctrinating children at their schools by using books by authors such as Florestan Fernandes and Paulo Freire.

On December 3, 2007, this report was presented to the Superior Council of the Attorney General’s Office, which approved it. According to the minutes of this meeting: “the Superior Council of the Attorney General’s Office unanimously accepts the vote of the Council-Report, in the following terms: ‘the designation of a team of court prosecutors to promote public civil action with a goal of dissolving the MST and declaring it illegal’. And further: ‘vote to take all the appropriate measures with a goal of suspending the marches or other protests of landless people’”. The Attorney General’s Office decided to intervene in the MST schools, “with a goal of taking all measures that will be necessary for returning them to legality in the pedagogical aspect, as well as in the structure of external influence of the MST”.

The repercussion from these measures was great, to the extent that a Special Commission of the Council for Defense of the Human Person (CDDPH) was created, a body linked to the Special Secretariat of Human Rights to investigate “attempts to criminalize social movements through the initiatives of the State Attorney General’s office, decisions of the Judiciary of Rio Grande do Sul, and actions of the Military Brigade of Rio Grande do Sul.” The report of this commission, presented on September 30, concluded that “there exist indications of criminalization of social movements by the State”.

As Professor Jacques Alfonsin says: “The severity of the rights violations contained in these legal actions, and in their truculent executions resides in the fact that they extend their effects to a whole group of people whose members include every type of person, including children, elderly men and women. All these people are prejudged as criminals because they are MST members. What these actions propose is nonsense because it would open the possibility for group punishment with no distinction between the guilty and the innocent, including children”. (In Pastoral da Terra, year 33, nº 193, July to September 2008, p. 14)

This whole process ends up judging the defenders of human rights as criminals. For this reason, on October 17 in Belém, Pará, more than 70 organizations launched the To Struggle for Human Rights is Not a Crime Campaign. The goal of the campaign is to build a coalition that acts against criminalization of social movements and their supporters.

Social movements—and especially the MST—have only one way to fight for their rights, which is the force of their demonstrations in order to give visibility to their complaints. By preventing MST members from knowing the content of accusations against them, the Public Prosecutor's office in the state of Rio Grande do Sul is bringing back repression we saw during the military dictatorship, when democratic rights were restricted and hundreds of activists were arrested for their political activities. The use of the National Security Law and judicial secrecy mechanisms is an attempt to exterminate the MST and criminalize social movements in Brazil.

Criminalization of Social Movements in Brazil¹

Aton Fon Filho¹ and Suzana Angélica Paim Figueiredo²

Brazilian society recently took note that, in the far south of the country, a new attempt is being put together to allow the development of repressive mechanisms and institute new coordination of authoritarian entities. The leak concerning the set of actions against the Landless Workers Movement (MST), developed by the Public Prosecutor's Office of the State of Rio Grande do Sul and the local section of the Federal Public Prosecutor, demonstrates that more than exercising legal functions, these institutions use legal power to achieve illegal objectives and, under the cover of a democratic regime, violate human rights.

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¹ Article extracted from “Criminalização dos Protestos e Movimentos Sociais” (Criminalization of Protests and Social Movements), a collection resulting from the International Seminar on Criminalization of Social Movements sponsored by the Rosa Luxemburg Stiftung Institute and the Network for Social Justice and Human Rights. The Spanish version is titled “Criminalización de la protesta y Movimientos Sociales,” São Paulo: Rosa Luxemburg Stiftung Institute, October 2008.

This type of situation is not recent, but in recent years we never saw such degrees of preparation and articulation. The very privilege of access to the judicial framework in Brazil, arising out of the material inequality operating in society, establishes a watch tower from which the dominant classes observe and control attempts of grassroots movements to achieve basic rights.

Confrontation between two forces is not resolved simply as a function of the resources that each has at its disposal, but by the concrete possibilities of their use. This is valid in the military and political spheres, and is also supported in the legal system, where the parties have, by definition, access to given alternatives, in accordance with predetermined situations. It is not enough, for example, for there to be generic legal provision for interposing an appeal, if the specific conditions are not given that admit its interposition; it is not enough for one to have a right, if there are no possibilities of pleading before a judge.

Precisely for this reason, the guarantee of the right to a defense—a full defense, in constitutional terms—is a basic regulating element of a democratic regime, since that is what protects the citizens against the arbitrary actions of the State. The right to a defense—a full one—cannot be translated into a mere formality.

The MST is the defendant in a political action

The accusation made against eight MST activists in the Federal Court of Rio Grande do Sul is based on a political action, because the defendants are accused of having violated Articles 16; 17, caput; 20, caput and 23, I of the National Security Law:

Art. 16 – being a member of or having an association, party, committee, group or class entity the purpose of which is changing the current regime or the State by Law, by violent means or with the use of serious threats.

Sentence: Solitary confinement, from 1 to 5 years.

Art. 17 – Trying to change, with use of violence or serious threat, the current regime, order, or the State by Law.

Sentence: Solitary confinement, from 3 to 15 years.

Art. 20 – To devastate, pillage, extort, rob, kidnap, maintain in a private jail, burn, depredate, cause an explosion, commit a personal assault or commit acts of terrorism, for political nonconformity or to obtain funds destined to maintain clandestine or subversive political organizations.

Sentence: Solitary confinement, from 3 to 10 years.

*Art. 23 – To incite:**I – Subversion of the political or social order.*

These penal provisions criminalize participation in a political organization, and link political association with terrorism. The National Security Law has the effect of prohibiting the exercise of a full defense, given that it obliges each of the defendants to justify the actions of all members of an organization. So, if one of them is condemned in Rio Grande do Sul, any other member of the same association—even without their knowledge—can receive the same sentence, even in a remote village in Amazonas.

If the defendants are accused of belonging to an organization which is said to be criminal, it is the very organization which, in fact, is being accused, without any possibility of defending itself. As for the defendants, they are in reality only arbitrarily chosen pawns, as anyone of the thousands of MST members could equally figure in the accusation, even if nothing can be proven against them personally. The simple fact of admitting to affiliation, or such being proven, would already justify the accusation.

Even if only one of the accused admitted an affiliation with the MST, this fact alone can imply that the MST would be such an “association, party, committee, class organization or group, which the objective is to overthrow the current regime or the Rule of Law, by violent means or with the use of serious threat.”

In addition to criminalizing the MST as an organization, things are proceeding judicially so as to prevent activists from defending themselves, with the objective of destroying a social movement that gives voice to peasant’s demands. The National Security Law was intended to prevent a full defense, dealing with a political process that aims at criminalizing the demands and activities of an organization.

The Federal Constitution establishes (art. 93, IX) that “all judgments by the organs of the Judicial branch shall be public...upon penalty of nullification.” It authorizes the law to restrict the presence, in determined acts, to the parties themselves and their attorneys, or only to the latter when “the preservation of the interested party’s right to privacy does not prejudice the public’s right to be informed.”

In this legal case against the MST, the defendants are accused of belonging to an organization which is said to be terrorist. For this reason, judicial secrecy was decreed. It wasn’t the defendants who asked for such secrecy, in defense of their privacy. It was the Public Prosecutor who asked for it, and it was granted by the judge, allegedly in defense of the public interest.

Social movements—and especially the MST—have only one way to fight for their rights, which is the force of their demonstrations in order to give visibility to their complaints. By preventing MST members from knowing the content of accusations

against them, the Public Prosecutor's office in the state of Rio Grande do Sul is bringing back repression we saw during the military dictatorship, when democratic rights were restricted and hundreds of activists were arrested for their political activities. The use of the National Security Law and judicial secrecy mechanisms is an attempt to exterminate the MST and criminalize social movements in Brazil.

The transformation of the “principle of security” as the fundamental axis of human rights, a fact that is currently widespread in a way that is unprecedented in the recent history of humanity, and its use for a “declaration of a state of emergency” under the pretext of fighting terrorism, can also be verified in Brazil, with a special emphasis in Rio Grande do Sul (RS) in 2007 and 2008, where social movements that opposed the neoliberal model of state government, or only the neodevelopmentist model of the federal government, are branded as terrorists by institutions of the State of Rio Grande do Sul.

“State of Emergency” in Rio Grande do Sul and the criminalization of the MST

Leandro Gaspar Scalabrin¹

“The tradition of the oppressed teaches us that the state of emergency in which we live is actually the general rule”.

Walter Benjamin

Introduction

The “State of Emergency” is paradoxical: the court order legalizes its own suspension; the law foresees when it will not be applied, that is, when to break the rule is to follow the rule. If breaking the law can be following it, how can we distinguish what is a transgression and what is the execution of the law? And nevertheless this paradoxical

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figure that hands us over to totalitarianism, the “State of Emergency” is present in the majority of court orders, including the Brazilian ones, constituting, it can be said, a paradigm – a logical pattern – of being based on judicial order in western and “democratic” modernity. This pattern was created in 1791 under the name of “state of siege”, establishing a legal picture for the suspension of judicial order in “extreme cases”, originally applied only to fortified cities and military strongholds.

Another recent example of this state of emergency logic was the work of the German government in 2007 during the G8 Summit in Heiligendamm, a place with few residents but logically easy to protect, where they built:

A security fence around the area and around this fence, they created another “special rights zone” where the rights of freedom of assembly and freedom of movement could be “legally” limited. A special unit or a type of special authority (Kavala) of the police was created, in which all the government authorities (in an intensive international exchange) cooperated and received all the tasks of the police. The “Kavala” was transformed into a higher authority, acting autonomously, in which the separation between civil and military police, between the federal and state agencies, and between the secret service and the police, disappeared. “They dodged all the demands for separation and the principle of separation of powers by which, according to the Constitution, excessive measures of the executive power and of the police should be avoided” (Donat, 2007, 45). Nevertheless, these were registered in the Basic Law owing to the experiences of fascism, specifically to avoid the formation of an uncontrolled police apparatus. The Kavala assumed leadership, not only in planning but also in the “operational measures”. So it also became the place to address any right of assembly. And it always acted according to its own “forecast of anti-terrorist risk”. Whoever wanted to remain in the area defined as a risk zone or wanted to use their right to assemble, would interfere in a general way in the security concept, becoming a terrorist and potential enemy. It was stated *a posteriori* that at no moment was there any concrete risk of terrorist attacks. Even so, this “risk forecast” also became a directive for the court (which, according to the principles of the Rule of Law is and should be independent): these new authorities not only suspended the separation between the police and the jurisdiction, but the Kavala was also the competent body to describe in its “situation reports” the truth to the judges – with all the consequences that this would entail for freedom of assembly, legal protection from police rules and actions of the penal system. The other novelty was the fact of the Kavala police preparing and autonomously publishing offensive press releases. These were characterized by incorrect messages and false risk forecasts, which on their part heated up the public climate a bit (GENSCHEL e STOLLE, 2008).

So the western “democracies” progressively substituted the declaration of “state of

siege” for an unprecedented generalization of the paradigm of security as a normal technique of government, as we saw in France in 2005, in Germany in 2007, and in the United States in the last few years, which, inverting its policy of human rights, has sponsored the torture of terrorism suspects, holds “prisoners of war” in Guantanamo without a formal accusation or right of defense, besides spying on its own American citizens by means of telephone taps and violation of emails, without legal orders (O GLOBO, 2008). Such generalization occurs more intensely starting with September 11, 2001 (with the attempts against the twin towers in New York and the Pentagon in Washington), to the point of inaugurating, for Mikel Berraondo López, a fourth² stage in the history of human rights, a stage that has just begun.

Starting at this moment a retrocession occurred with respect to human rights that, from what we see, has already become generalized and assumes a very dangerous curtailment of the international process of acceptance, respect, and enjoyment of human rights. As a consequence of the attacks, and owing to the involvement of Islamic fundamentalist organizations in carrying it out, an international crusade began against terrorism and against the Islamic world, accused of being the protector and motivator of international terrorist networks. The United States consolidated, if it is possible, its role of promoting international justice and the principle of security, converted itself into the basic axis of human rights [...] Starting with September 11, protection and security were elevated above the rest of human rights, relegating the exercise of all these to the existence of a situation of total security. The exercise of rights like freedom and other rights such as the presumption of innocence were drastically limited – this was transformed in such a way that in some countries such as the United States, there now exists in its place a presumption of guilt³, which allows detentions and arbitrary rulings to be carried out against Arab citizens or anyone who has Muslim links. (LÓPEZ, 2004).

“National security” and the MST

The transformation of the “principle of security” as the fundamental axis of human rights, a fact that is currently widespread in a way that is unprecedented in the recent history of humanity, and its use for a “declaration of a state of emergency” under the pretext of fighting terrorism, can also be verified in Brazil, with a special emphasis in Rio Grande do

² “So then, we would speak of a first normative step in which treaties and international conventions on human rights are created; of a second step of building institutions, in which besides continuing with the normative work, a whole series of institutions are built to protect human rights; a third step after the Cold War, characterized by an initial depoliticization of human rights; and finally a fourth step in international security, in which the principle of security is converted into the main motor of human rights, relegating the exercise of the majority of them under the collective necessity to ensure security.” (LÓPEZ, *op. cit.*)

³ The presumption of guilt killed the Brazilian Jean Charles, who had no Muslim connection whatsoever, in the United Kingdom, where Scotland Yard shot first to see afterwards whether he was a terrorist with a bomb.

Sul (RS) in 2007 and 2008, where social movements that opposed the neoliberal model of state government, or only the neodevelopmentist model of the federal government, are branded as terrorists by institutions of the State of Rio Grande do Sul.

To put the issue in context, it is necessary to show some recent events that reflect the position of military and civil authorities in this respect. Two documents of the Military Brigade, one from 2006 (Situation of the MST in the northern region of RS) and another from 2007 ("classified" intelligence report n. 1124-100-2007, put together by the secret service of the Military Brigade, the PM2), this from the General Staff, characterizes La Via Campesina – especially the Rural Landless Workers Movement (MST) – as movements that have ceased carrying out typical actions for social demands in favor of carrying out criminal actions, organized tactically as if they were paramilitary operations. The State Attorney General's Office (MPE) of Rio Grande do Sul accepted this thesis in a "confidential" proceeding (administrative proceeding n.º 16315-09.00/07-9), during which the initiation of legal actions to dissolve the MST were approved – having had a setback of the institution because of repercussion about the proposal. The Federal Attorney General's Office of Carazinho, a city in the interior of the state, placed the encampments, marches and other activities of the MST carried out between 2004 and 2006, within the framework of articles 16, 17, and 20 of the National Security Law, which charges the "members of groups" that have as a goal to change the Rule of Law by the use of violence and acts of terrorism with political nonconformity.

Along the same lines, the struggle of the indigenous people for demarcation and homologation of indigenous lands in the Amazon region, particularly of the Yanomami and Raposa Serra do Sol territories, which finally resulted in the demarcation of the Raposa Serra do Sol reserve by the federal government, constituted for the Brazilian military "a threat to national sovereignty" and they have taken a stand against its enactment. (MALDOS, 2008).

Although almost quaint, illustrative as to the characterization of the social movements as "terrorist organizations", is the fact that it was not until July 20, 2008, that the African National Congress and Nelson Mandela were removed from the list of terrorists by the CIA and this happened 15 years after Nelson Mandela received the Nobel Peace Prize.

The unprecedented generalization of the security paradigm as a normal technique of government, especially in Rio Grande do Sul, can be seen in the actions and omission of the State and Federal Attorney General's Office, in the decisions and omissions of the Judicial branch, and in the actions of the security organs of state government.

The actions of the State Attorney General's Office of Rio Grande do Sul in this sense began in September 2007 when in the name of zeal "for public security" it asked

– and the court complied – for a preliminary ruling against the MST and the FARSUL⁴, determining that they be restrained from going to Coqueiros do Sul and prevented from entering the “Republic of Carazinho”⁵. The justification for the court action of interdiction of the district was to avoid a conflict between the landless – who moved toward the region in three marches with around 1,000 people, coming from different regions of the state – and the ruralists (right-wing landowners). On restraining the “two parts” of the conflict, the prosecutor tried to show himself as “impartial, not taking either side”. The order was established with “secret” documents from the Military Brigade – reports of the situation and offensive press releases, the same techniques as the German Kavala – that recommended the suspension of the landless marches and forecast the risk of a conflict between the two sides. The judge of the proceeding was “so impartial” that he would not let the movement’s lawyer see the secret documents, used in the proceeding by the prosecutor. Two months after the decision, the police prediction turned out to be false, since there was no ruralist movement but only the marches of two thousand landless workers, who were prevented from entering the district under gunpoint and the use of tear gas. The decision, without decreeing a state of emergency⁶, recognized as “besieged” the four municipalities of the district, an area of 2,108 km², in which the right of the landless to come and go and meet peacefully was suspended.

The Court of Justice, evaluating the habeas corpus request to ensure the right of the landless workers to come and go, confirmed the decision that determined this “zone of restricted rights”, creating the precedent that would be utilized again seven months later, when, on July 11, 2008, carrying out the determinations of its Superior Council, the State Attorney General’s office joined with public civil action in the “republic of Carazinho” and obtained a preliminary order for the eviction of 300 landless families – who were demanding the expropriation of the Guerra Farm (8,000 hectares) – of two encampments that existed in Coqueiros do Sul for more than two years, in areas in which the lands had been legally granted by their owners. The State Attorney General’s office asked for the ruling to understand that “the State has a duty to ensure public security for the citizens and so to preserve public order and the invulnerability of persons and of the patrimony”⁷. On June 17 2008, the same State Attorney General’s office joined with three other actions in the Districts of São Gabriel, Canoas and Pedro Osório, requesting “preventative guardianship” for the members of the MST

⁴ Federation representative of the rural syndicates, that is, of the landowners.

⁵ Allusion to the Court District of Carazinho, in the state of Rio Grande do Sul, a jurisdiction that includes the municipalities of Carazinho, Almirante Tamandaré do Sul, Coqueiros do Sul and Santo Antônio do Planalto.

⁶ Another similar decision was handed down on August 10, 2007, by the judge of the District of Itapecerica da Serra – SP, who granted a preliminary ruling banning the Homeless Workers Movement from carrying out an encampment in public areas of the municipality (streets, plazas, buildings). Then a municipal decree (n. 1980 on 05-18-07), which decrees the existence of an abnormal situation provoked by actions of public, social, and political disorder in the whole territory of the municipality.

Abstain from approaching, through marches, walks, or other mass movements of the landless and other members of social movements [...] to a distance less than two kilometers from the territorial limits [...] of the Southall Farm (13,627 hectares), of the Granja Nene Farm (1,246 hectares), and of the Palma Farm (3,029 hectares).

The four requests were deferred by the judiciary power, specifying

To the police forces [...] that they constantly monitor the actions of the culprits that are trying to move toward the Farm, [...] preventing them, if that's the case by intercepting their marches, walks, or other mass movements of the landless and other members of the social movements [...] from arriving at a minimum distance of two kilometers from the external territorial limits [...]⁸

And levying a daily fine of R\$10,000.00 in case of violations. The funds had been appealed by “interlocutory appeal” against the decisions, that, until that moment, had not been ruled on. In practice, the actions had created special zones where the right to come and go, right of assembly and protest are suspended, in the same pattern as that used by the German police in 2007 during the protests against the meeting of the G8 in Heiligendamm.

The granting of “preventative bans” and now of “preventative guardianships” has been the main mechanism used for the companies and landowners to establish “exceptions” to the right of assembly and free expression; these legal tools have been granted by the Judicial Branch that has taken a stand in favor of the right of property, to the detriment of the right to assemble, in the conflicts between both. On this subject, the situation of the Federation of Bank Employees of Rio Grande do Sul (representing 38 unions) is illustrative. It issued a communiqué saying that in the stoppage of October 8, 2008, it would not disturb the ownership or plunder any bank agency. Even so, various banks joined with preventative bans. The Federation denounced the unnecessary utilization of preventative bans by the banks as a way of putting a stop to the exercise of the right to strike and freely expand the movement. (CORREIO DO POVO, 2008). There also exist preventative bans, issued in 2008, outlawing protests by people affected by the hydroelectric plant of

⁷ The source of the actions in Carazinho is configured in the fourth step identified by López, since it places “public security” above other human rights, the right to agrarian reform and the right to housing for families who ended up evicted and with nowhere to sleep for various days, when it rains and during the coldest times of the year. One elderly man died because of health problems in the days following the eviction.

⁸ The actions affirm that the landless encampments near these four farms are responsible for numerous crimes practiced against them, although there is no proof or criminal convictions against MST members, constituting – together with the use of the term “defendant” (a penal term) in civil actions – application of the “presumption of guilt” also in this case.

Chapecó, in the district of Planalto (RS) and São Carlos (SC), under penalty of fines of R\$5,000.00 and R\$50,000.00 per day. In 2007, the state judiciary of Panambi (RS) granted a ban against the Metalworkers Union of that city which was carrying out a campaign for better wages at the Tromink corporation. In all these proceedings, the court authorized the use of force by the military police to carry out the decision.

Another significant fact showing the generalization of the security paradigm as a normal technique of government in RS occurred when there was the simultaneous action of the Civil Police (60 agents), Military Police (800 policemen), Federal Police, Firemen, and State Highway Patrol, carrying out the order issued by the Judicial Branch and supported by the State Attorney General's office, to seek and apprehend 200 reais, a copy machine, and a ring in the place where more than 1,500 landless workers, members of the house of representatives, councilmen, professors, students, union members, and supporters of agrarian reform participated in the XXIV State Congress of the MST-RS, in the community of Coanol in the settlement of the Annoni Farm, where the MST was founded in the 1980s. An army of 1,000 men with approximately 100 vehicles, helicopters, horses, and dogs surrounded all access roads to the site, which remained cut off the whole day. From 6:00 a.m. on, no one could enter or leave the site. All the activities that were programmed for the last day, when the main decisions would be made, were suspended. Those present tried to express their right to assemble; the army wanted to enter and identify all participants as criminals. At the end of the evening, around 200 police entered the site and inspected the buses and lodgings: nothing was found. The police action finished at 5:00 p.m. on January 17 and ended the Congress. The year: 2008, 40 years after the dissolution of the Congress of the National Student Union in Ibiúna by the military dictatorship.

History of interventions: from the AI-5 to the IO-6

“They know what they are doing and they continue to do it”⁹.
Peter Sloterdijk

Such is the size of the generalization of the security paradigm as a normal technique of government that it has gotten to the point of stating, in the struggle against terrorism,

⁹ The author, starting with the famous phrase used by Marx to trace the contours of the lack of ideological knowledge, “They know not what they do” arrives at the conclusion in cynicism “they know what they do and they continue to do it”. Cynicism would be the reason of our age, called post-ideological, where power learns to laugh at itself, which allows them to reveal the secret of their functioning and to continue functioning as such. “Capitalism offers nothing to believe, cynicism is its morality”. (SAFATLE, op. cit., p. 69 e 92).

“there are no rules”¹⁰. Diverging in part from the United States, the State of Rio Grande do Sul, to achieve efficiency in the repressive apparatus, standardized the “rules” of the “generalization of emergency”. The rules consist of Operation Instruction nº 6-1” (IO-6), October 6, 2007, which can be compared to “Institutional Act nº 5”, from December 13, 1968 (AI-5).¹¹

AI-5, from General A. Costa e Silva¹², granted to the “President of the Republic” the power to suspend the political rights of any citizens, a suspension that implies, among other things, the prohibition of activities or demonstrations about political matters and the application, when necessary, of the security measure of “guarded freedom” and the “prohibition against frequenting specific places”, with everything that is done in accordance with the Act being excluded from any judicial review.

IO-6, of Colonel Noble Nilson Bueno,¹³ granted to the Regional Commanders of the Military Brigade of RS the power to suspend political activities of social movements, a suspension that carries, among other things, the prohibition against carrying out acts or protests in public agencies and private areas, and application of the security measure of “the prohibition of frequenting certain places”, even without a court order for such or without any complaint of a crime by the owner of a private area.

The factors, utilized as a pretext by the Armed Forces to unleash the repressive escalation in 1968, with the AI-5 [accusations against the government, growth of protests in the streets and rise of armed groups (BRASIL, 2008)], are similar to those utilized as a pretext by the General Staff of BM to unleash in 2007 a new repressive escalation against social movements. The finality of IO-6 (see item 1) is to regulate police action in the following situations:

- a) *Actions of groups, organized or not, who begin to launch an occupation or mass invasion of public or private areas;*
- b) *New outbreak of violence and of criminality in the countryside,*
- c) *Exhaustion of the authorities' capacity to negotiate.*

¹⁰ With AI-5, the government had “legal” support for, among others measures: shutting down the congress, annulling mandates, suspending political rights, firing public officials, firing judges, decreeing a state of siege without consulting other powers, confiscating belongings, suspending the guarantee of habeas corpus, forbidding the AI-5 from being questioned in court (FIGUEIREDO, 2005). The relation to be safeguarded is that IO-6, as it will be seen, does not foresee any of these measures.

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¹²Then Brazilian dictator who took power in the coup of April 1, 1964.

¹³ In October 2007 Commander General of the Military Brigade, named by the governor of the State of Rio Grande do Sul.

IO-6 specifies that

The invasions of urban or rural areas, public or private, including highways and their margins, constitute in Brazil, conduct attempting to, in the majority of cases, force the governments to broaden agrarian reform. In other situations they constitute strategic maneuvers with goals of a political nature [...] (item 3) and proposes, in its group of recommendations, measures to prevent that these political activities occur, even foreseeing that all of its recommendations “be applied...to the actions of social movements in general in occupations that are making demands or protesting” (item 4, point j). Item 3 of the instruction foresees measures that must be taken in a situation of normality, imminent occupation, occupation that is happening, and of requisition of police force for support in fulfilling the court order of reintegration.

In a situation of “normality” (item 3, point b), the police will have to keep a current register of the rural and urban areas, public and private, that can be considered possible occupation sites, containing the data about the existing encampments in the region, identification of possible leaders or groups involved in each encampment or settlement, data about the public buildings (for example INCRA and the Farm Ministry) and that may be invaded suddenly, and even data about the buildings and urban land areas that can be occupied by the social movements in general.

When a situation of imminent occupation is occurring, the police must install police barriers in the areas that give access to the sites that would be occupied and prevent the political act (the occupation) from being carried out – item 3, points c-1 and c-2 of IO-6. The instruction attributed to the regional command of the Military Brigade, once they know of the movement of a large number of people on foot or in vehicles on their way to a known destination, the power to decide if they have the spirit of invasion, which would characterize the situation as one of imminent occupation (item 03, point c) and would authorize the use of barriers and the use of force to prevent them from promoting their political act. Therefore, as occurred with the Kavala in Germany, the Brigade itself is the one charged with the rule that institutes a policy of preventative policing, with the goal of preventing political protests (which would be the MST occupations) from being carried out, as the instruction itself recognizes, and other protests, whether of students, teachers, of a union or a social movement). The Military Brigade characterized as a “situation of imminent occupation” the event of July 24, 2008, when landless workers marched to INCRA headquarters in Porto Alegre, demanding the fulfillment of the Term of Adjustment of Conduct signed with the MPF for the settlement of one thousand families by April of 2008 (which had still not been fulfilled). The military brigade “intercepted the landless workers, inspected them and accompanied the group to the regional headquarters of INCRA. [...] There, to enter in the building,

written authorization was obtained from the superintendent of the institute, if not given, the Military Brigade would not leave” and on July 28, a group “left to participate in a meeting in the university (about the criminalization of the movement) and the Military Brigade decided that those who “left the INCRA building would not be able to return” (MENDELSKI, 2008, p. 2).

In the situation of an occupation that is occurring, the commandos must isolate the area according [...] to article 6 of the CPP, after confirming the ownership of the property and then managing [...] the voluntary exit of the invaders even if there is not a court order for this (item 3, points d-1, d-2 and d-7 of IO-6). This chapter of the instruction creates an exception to that which is provided for in Brazilian law, which can be characterized as a deviation or an abuse of power. The Brazilian legal order establishes that in cases of dispossession of private areas¹⁴, where there is no use of violence against persons, the State (police, prosecutors, and judges) only intervenes when there is a complaint; that is, the legal system establishes that the military police can only act after being called by the owner, never being able to act “preventatively”¹⁵. In civil matters, the police can only retake possession of occupied areas after a court ruling¹⁶. On the other hand, the Brigade can never “cut off”¹⁷ private areas under the terms of article 6º of the Penal Code, since this deals with the “police inquest” to be carried out by the civil police and refers to the isolating of the “site of the crime” after the exit and removal of the people to avoid destroying evidence¹⁸. One of the examples of the application of this ruling occurred on June 4, 2008, in an occupation of a particular area of just one hectare by 27 – 4 were children—landless, near Águas Claras, in Viamão – RS. One hundred military police from the Special Operations Battalion, even using a helicopter, went into action and contained the occupation. (CORREIO DO Povo, 2008). According to the landless workers, first the area was cordoned off after the Brigade found the owner of the area and made him file a complaint to give “legality” to the operation. At 3:41 p.m. the demonstrators received notice of arrest from the commander of the 18th Brigade of Military Police. Afterwards, under orders from then-

¹⁴ Art. 161, II of the Penal Code, a penal type which includes occupations and protests carried out by union or social movements to demand rights.

¹⁵ In these cases of occupations of private areas, the police can only act officially if there is violence against a person – which the police have no way of knowing before the occupation is underway! Even in the case of violence, how can the police know about an occurrence before anyone communicates it?

¹⁶ The Brazilian court system allows the owner – by his own means – to use force to retake possession, not allowing police force to do it.

¹⁷ This “isolation” in practice has consisted in the temporary imprisonment of all the demonstrators at the site of a protest, even encircling them with huge police contingents of shock battalions, cutting off food and water.

¹⁸ The rule of the brigade even appears to be a joke in Portuguese: the law says “isolate” the “scene of the crime” so that no one touches anything; the brigade isolates the “scene of the crime” with the whole world inside. In reality, they have tried to find a legal basis for this abusive action, this becomes clear when we see in IO-6 that the goal of isolation is to prevent “a larger contingent of invaders from joining the group that is there”(item 3, point d-1).

subcommander-general Paulo Roberto Mendes, "All were registered and had to sign the document". (ZERO HORA, 2008). Another example occurred in an MST encampment in Gramado dos Loureiros (RS), evicted by the Military Brigade on July 29, 2008, from the side of State Highway RS324. According to a statement by a rural landowner, in a court petition, the Military Brigade informed him that his property would be the target of an occupation, as a result a preventative ban was issued against the MST. According to those in the encampment, the Military Brigade pressured the agency responsible for the road to issue a reintegration of ownership (deferred by the court) that authorized the use of force and the eviction of the landless. The evictions were made without any type of negotiation.

And finally in the situations of carrying out the order for the action of removal of the invaders (item 3, point f), IO-6 establishes that if the vacating is voluntary (item 3, point f-1), all the "invaders" must be inspected, illicit materials must be apprehended, criminally identified¹⁹ and brought to the police station (item 3, points f-1-e). In the case of compulsory reintigration (item 3, point f-2), besides the inspection, identification, and criminalization, all the means of transport used in the invasion must be seized (item 3, points f-2 and f). In the various instructions (item 4), the instruction already establishes that in carrying out the Court Order, a command post must be established where all the politicians, the press, and other professionals who have come to the site must be directed, not involving them directly in carrying out the measure so that they do not affect the normal course of activities (item 4, inciso b); the specified instruction, even the implementation and maintenance of a Control Book of the existing situations in the State, which must be included on the web site of the PM-3 on the internet (item 4, point i).

In this way, IO-6 generalizes the paradigm of security as a normal technique of government in RS, transforming the state of emergency into a general rule of the system. Through its application, there has been a massive criminal identification of activists and the maintenance of "secret archives" with data about activists and members of social movements. The Brazilian Federal Constitution ensures that the citizen, identified civilly, has the right to not be submitted to criminal identification (art. 5º, LVIII). The theory of federal law n.º 10.054/2000 is the same, which establishes that

The prisoner caught in the act, the defendant in a police inquest, someone who has committed an infraction [...], as well as those who have had a warrant issued for their arrest, if they are not yet criminally identified, will be submitted to criminal identification including fingerprinting and photographed (art. 1º)

And that "the proof of civil identification can be done through presenting an identity card recognized by the law (art. 2º)²⁰. The law does not authorize the creation and maintenance of a

¹⁹ Once again, the rule cites as the legal basis art. 6º of the penal code, that is inapplicable to the situation because it's a question of identification by the authority of the civil police for the fingerprinting process and not for carrying out the registration of members and leaders of the social movements for the repression of the organizations, as is being done by the Brigade.

²⁰ The Supreme Court of Justice has ratified the literal terms of the law: STJ - RHC 12965 (DF - 5ª T. - Rel. Min. Felix Fischer - DJU 10.11.2003) e RHC 12969 (DF - 5ª T. - Rel. Min. Félix Fischer - DJU 20.09.2004).

“secret”²¹ database such as those maintained by the PM2 of Rio Grande do Sul, and the use of these in court proceedings, as the MPE has done, that used two of these “reports” in civil actions: a so-called report on the members of La Via Campesina that are active in the actions of the social movements in the last few years, with the names of around 500 supposed members of the MST and of the Movement of Peasant Women (MMC); and the other, so-called report on the main leaders who are active in the MST march to Coqueiros do Sul in 2007, with photos of seven supposed leaders of the march where below the photo, the caption “Role: Leadership” can be read and attached is the “police file” of each one of them.

A less thorough analysis of IO-6 and ignorance about how it has been applied can lead one to not see it as “abnormal” because it establishes also the use of dissuasion through an official with the profile of a high-risk negotiator (item 3, point c-2), specifies by priority establishing contacts with authorities, seeking political support for a good way of conducting the cases (item 3, point d-6) and managing the voluntary and peaceful exit of the invaders (item 3, point d-7), speaks about clarifying the demands of the intention of Military Brigade in a peaceful retreat (item 3, points f-2 e b), in providing for the security of all involved (3, points f-2 e j), taking care of the wounded (3, points f-2 and g), using women police to handle women (4, point f), anticipates an extensive legal base in the Federal and State Constitutions and federal and state law (item 2). These provisions of the rule are hypocritical²², because with them there is an attempt to “mask” the instruction with democratic images, appearances of the state of law, founded on laws, constituting the “ideological text” of IO-6 and which hides the real text, the “stressed text”, that it is the institution of a policy of prevention, to repress social movements, as has been shown, and will continue being shown, in this paper; as is being proven by the way in which and against whom the instruction has been used in practice, in the concrete facts of real life, for example:

- November 28 2007: 300 members of the Movement of Unemployed Workers who occupied the former Corlac factory are evicted by force without negotiations and are required to “march” to the police station;

- March 4 2008: women of La Via Campesina who were occupying the Tarumã Farm, belonging to Stora Enso, are evicted by force, without negotiations, following a court order or a complaint by the property owner. At least 50 women were wounded, among them two pregnant women, whose pregnancies were threatened because of

²¹ *The secret files seem to be like those kept by the DOPS during the military dictatorship.*

²² Hypocrisy “proves its respect for duty and virtue, taking on their appearance and using them as a mask for one’s conscience, just as for other people’s conscience” (HEGEL). Hypocrisy is one of the multiple masks of insincerity of those who hide the particularity of interest by means of universality of duty; a mask that falls when faced with a criticism capable of unveiling the true interests behind the appearance of universality, confronting thus the “ideological text” with the “highlighted text”. (Safatle, op. cit., p. 29).

blows from billy clubs. One landless woman was arrested. All the women were identified, had their ID cards taken by the Military Battalion, were separated from their children and from the few men. A video with images of the attacks was illegally confiscated by the Military Brigade;

- March 14, 2008: seven teachers and one student are arrested and handcuffed during a protest in the Administrative Center in Porto Alegre;

- May 20, 2008: the Military Battalion prevents students from carrying out a protest in front of the State Secretary of Education in Porto Alegre. A student was temporarily detained;

- June 10, 2008: five farmers were wounded during the occupation of Bunge, in Passo Fundo, during the national campaign against agribusiness. The Brigade isolated the area, even without having an order to retake possession or a complaint from the owner. There was no negotiation, only tear gas and rubber bullets shot at the head of the demonstrators;

- June 11, 2008: Twelve people wounded (one seriously, with internal hemorrhage owing to the blows that he received) and another 12 were arrested during a protest against transnational corporations and corruption of the Yeda government. The march was prevented from moving through the streets of Porto Alegre.

- October 16, 2008 (in the morning): more than 200 bank workers on strike and in a protest in front of the central agency of Banrisul, were dispersed with billy clubs and attacks without any prior negotiation;

- October 16, 2008 (in the evening): the participants in the 13th March of Those Without (Cry of the Excluded) were prevented from carrying out a public event in front of the Piratini Palace by the shock troops of the Military Brigade, personally commanded by Colonel Mendes (general commandant of the Military Brigade). One teacher had her leg fractured and another demonstrator received deep cuts on her neck, both caused by "moral effect" bombs.

In Rio Grande do Sul, those who oppose the ruling system can no longer meet in a specific place or carry out a demonstration without the "participation" of the Military Brigade. IO-6 set up an autonomous police structure and a preventative policy similar to the German Kavala, and, in practice, instituted "rigid" police actions in demonstrations, identical to the era of the Brazilian military dictatorship, without, paradoxically, revoking the "Constitution" or formally suspending the "right of assembly". So IO-6 set up a "dual" state: without revoking the structure of the Democratic State based on Law, creating a second (totalitarian) structure that can exist alongside the first, thanks to the generalization of the

emergency directives; dual also because it follows, at the same time, Law and its negation²³.

The silence of (in)justice

“The size of the virulence indicates the size of the combat”

Hegel

This section is aimed at highlighting that it is only when the mechanisms and institutions of the Rule of Law, which were created to inspect and deter abuses by the police forces and ensure fundamental rights—stitutions among which we can cite the Attorney General’s Office—are lacking, that the situation that has been happening in Rio Grande do Sul can occur. In various episodes complicity has been established between those responsible for the oversight of the law and illegality, between authority and crime.

The fact that “institution” of the Attorney General’s Office of Rio Grande do Sul was missing in action can be inferred from the filing of the request to set up the Direct Action of Unconstitutionality against IO-6, formulated by the special commission of the Council for Defense of the Rights of the Human Person (agency of the Brazilian State responsible for the investigation of human rights violations), created to analyze the situation in Rio Grande do Sul. The legal ruling welcomed by the Attorney General concluded that technically “it is not possible to question Instruction Operational Note n. 006.1/EMBM/2007 in the headquarters of concentrated control of constitutionality”, advocating the filing of the item and not proposing any other measure against IO-6.

The “impartiality” that has characterized the actions of judges and prosecutors, especially of the “Republic of Carazinho” recalls that of Le Chapelier. On April 14, 1791, the Fraternal Union of Construction Workers of Paris tried to sign a minimum wage agreement with the contractors. The businessmen did not want to sign the agreement and stated that the movement intended to “impose their requests by force”, constituting

²³ The same duality restores State Decree 28-10-08 N. 45,959 which, without revoking the right to strike of state public employees, considers as an “unauthorized absence” the days not worked because of a strike or work stoppage. The “second structure” created by the decree determines that the heads of the public government bureaus are forbidden from certifying the effectiveness of the public employees who are striking under penalty of criminal responsibility, as well as the colleagues of the striking workers who had knowledge of the stoppage by the other workers, and even establishes the restoration of unionism against the employee who “misses service” for more than 30 days because of “unauthorized absence”, that is, because of a strike (such unionism makes possible the dismissal of the employee). To consider a strike as an “unauthorized absence”, besides not paying for the days, has consequences on the holidays, on the bonus, cafeteria subsidies, transportation subsidies, promotions, and other things. In 2008, the state teachers carried out various work stoppages as well as the employees of SUSEPE (penitentiary services) who went on strike for 40 days. The employees of the civil police had announced a state of strike some days before the decree and a month earlier (September), the court employees (SINTRAJUFE) had been “warned” by the Court of Justice that the employees who participated in stoppages would have the point cut (which did not occur, because of the absence of legal provision). As preparation for the decree, in September the state government annulled the release of CPERS-Union (teachers) leaders.

“an attack on the rights of men and on the freedom of individuals”. The workers then presented a petition to the city asking the city to intervene in their favor. The mayor of Paris intervened by publishing a manifesto, accusing those participating in the movement of “breaking the law, enemies of freedom and guilty as disturbers of the peace and public order”. On June 14, member of the Chamber of Deputies Le Chapelier presented a proposal for a law to the National Assembly, accepting the assumptions of the businessmen that the right to freedom of assembly, sanctioned by the Declaration of the Rights of Man, did not allow citizens belonging to specific professions to meet to defend their common interests. The Le Chapelier Law, approved on June 17, 1791, impartially outlawed “worker associations”, to advocate salary increases, as well as “owner coalitions” to reduce salaries. The example of France was followed by England in 1800. The motives for these laws are the interests of class; the French bourgeoisie, after having taken power with the help of the Fourth Estate, did not intend to share with them the advantages of the new position. For the liberals, freedom, proclaimed by the Declaration of the Rights of Man, was the right to ownership and free competition. For the workers, freedom was the right to have a more dignified life (BENEVOLO, 2006, p. 19-21).

The French liberals, just like the Carazinho liberals, took a position in defense of “order” and of property, although they show their “impartiality” in their petitions. The Federal Constitution speaks, in article 3º, I, of social justice as a fundamental goal of the Brazilian Republic, but it also speaks in legality, in its article 5º, II, as in its caption in article 37. There are cases, however, in which the values of order and justice are shown as incompatible and we are obliged to take a position for one side or the other. The June 3, 2008 column in the newspaper O Globo by the writer from Rio Grande do Sul, Luis Fernando Veríssimo, reflects on this conflict, recalling that Goethe was said to prefer injustice to disorder. Veríssimo states that “whoever finds that disorder is worse than injustice has nothing to complain about and nothing to appeal”. This is the case of the big estate owners who are members of FARSUL, who rejoiced with the preventative ban in the district that was extremely favorable to them since they only have to complain and appeal about their interest in keeping things as they are: they don’t need to demonstrate. The landless are in a different situation—they need to organize as a movement and carry out protests to try to get a few small bits of Brazilian lands to change hands.

What we have seen is sectors of the Judiciary Branch and of the Attorney General’s Office²⁴, to not make a gross generalization, stating that “the whole” institution has

²⁴ The partiality of these institutions and of the media can be seen because there are numerous “task forces” of the MPE: war on drugs, corruption and organized crime, defense of the environment, historical patrimony but none against the criminalization of the social movements (even after all the accusations presented). Different treatment is given to other accusations present against the social movements: “NGOs enter the list... The Public Ministry of Accounts....sent...representation... requesting investigation of the use of public funds by NGOs linked to agrarian reform and resettlement in the State.”(CORREIO DO POVO, 2008).

adopted this stand – generally by intermediary of its members that act and have jurisdiction over areas of conflict (such as Carazinho, Canoas, Pedro Osório and São Gabriel, in the case of the MST; or Nonoai and Planalto, in the case of those affected by dams), are preferring to defend the accused, in the majority of cases, dropping their role of overseeing and punishing abuses by the police (in the case of the MPE) when they have not acted against the accused, being accomplices in crimes, such as in the case of the use of the “secret reports” of the Military Brigade against the MPE. All this makes us remember, once again, the Brazilian military dictatorship, era of loving Brazil as it was or leaving it, which supposedly ended in 1985, an era in which the “law” was used, with a “at the court’s pleasure”, to persecute workers, journalists, students, and clergy for facts that have nothing to do with the security of the State. The trial of the metalworkers of São Paulo for carrying out a peaceful strike without any political connotation was just one scandal. It’s true that the court ended up declaring the incompetence of the Military Justice, but allowed, for an intolerable time, the trial to continue. The leaders of the metalworkers were preliminarily jailed and after preventively jailed, putting Military Justice scandalously on the side of the bosses. (FRAGOSO, 2008).

Conclusion

We could state that the decade of the greatest “tolerance” for pressure from popular movements, unions, environmentalists, indigenous, etc. which are natural in a democratic society – and which coincide with a moment in which these pressures were greater and stronger and with the existence of a democratic constitutional order – is being undermined by the ideology of exceptionalism²⁵²⁵ Ideology that guides the external security policy of the United States since September 11, 2001 (DUNNE, 2007), as well as the public security policy of RS after 2007 – when Yeda Rorato Crusius came to office as the Governor of the state., which appears to affirm itself as a general rule of western democracies.

The new liberals, cynically assumed or hypocritically masked, those who prefer injustice to disorder, who want to perpetuate our societies divided into classes, but do not admit that there are conflicts in it, link themselves to a liberal tradition of democracy, to which, according to the Brazilian philosopher Marilena Chauí (2006), recalling Espinosa, sees democracy as the rule of law and of order to ensure individual liberties, which redounds in the attempt to contain social conflicts. They forget, according to the philosopher, that democracy, more than respect for established laws, is conflict. Democracy is the only form of politics that considers conflict legitimate. According to Espinoza, good politics is when hope (“a changeable happiness about the idea of future or past thing”) overcomes fear (“a changeable sadness about the idea of a future or past thing”) and

allows harmony to overcome discord among men. But not any harmony—it has to be democratic harmony, that is, a regime in which citizens are not submitted to any tyrannical power. Peace is not simply the absence of war. A city in which peace depends on the inertia of the subjects must more correctly be called solitude, not city (CHAUÍ, 2006). From there, the possibility of uniting the idea of harmony with the possibility of conflict, peculiar to democracy:

Instead of security (which for Espinosa would be the happiness of hope without the threat of fear), the power of one only reintroduces the contingency on a deeper level, because everything appears to depend on the capricious will of just one. This produces endless insecurity and instability. (CHAUÍ, 2006).

In this context of the hegemony of the liberal conception of democracy in Rio Grande do Sul, of the prevalence of order over justice, generalization of the paradigm of security as a normal technique of government and of the attempt to suffocate the social conflicts resulting from class divisions in our society, we should defend, as Heleno Fragoso defended in the era of the military dictatorship, that which really provides security and which characterizes a democratic regime: the maximum possible application of the sphere of freedom and of tolerance towards those who oppose the ruling system, exhorting the judicial power and the attorney general's office so that they are not part of the repressive apparatus, that they put themselves at the service of the ruling class, in the state of emergency in which we live, and which unfortunately is, in truth, the general rule.

Case analysis revealed that the precarious state of labor relations in the São Paulo cane fields exists by reason of the large supply of labor coming from other states, on the one hand, and, on the other, the flexibilization of labor standards caused by neo-liberal policies. The workers have a low level of education, which means their knowledge and access to labor rights is restricted. This fact is one more aggravation of the situation of exploitation to which these workers are submitted.

Denial of Rights in the “World Ethanol Capital”

Maria Aparecida de Mores Silva¹ and Jadir Damião Ribeiro²

The State of São Paulo is today the largest producer of sugar and ethanol in Brazil. The area occupied by sugarcane cultivation corresponds to 5.1 million hectares, with perspectives for continual growth in coming years, aimed, above all, at the production of ethanol for national and international markets. While this production increases, others decline, principally food production. Additionally, this process implies a concentration of land, not to mention the fact that in recent years mechanization of cane cutting has intensified, which is responsible for the continual reduction of jobs, not only for local workers but also for migrants. Furthermore, this production is characterized by constant increases in labor productivity levels, by means of imposition of a daily production average, currently about 12 tons of cut cane. Such facts contributed to the occurrence of 22 deaths in the period from 2004 to 2008, due to excess of labor.

¹ Maria Aparecida de Mores Silva is a Professor at UNESP (State University of São Paulo), a member of the Post-Graduate Programs in Sociology at UFSCar and Geography at UNESP/PP, and a CNPq researcher.

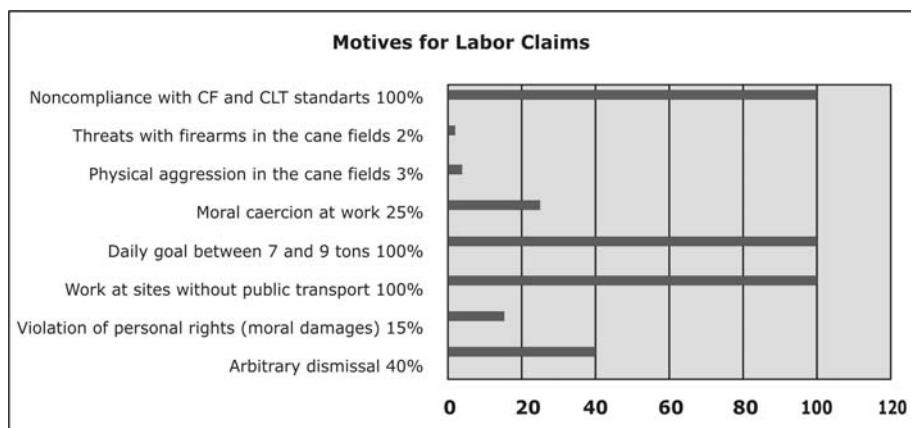
² Jadir Damião Ribeiro is a scholarship recipient in the CNPq Science Track, graduating from the School of Law of the Franca Municipal Law Foundation.

The objective of this text is to analyze the workers' forms of resistance with respect to the disregarding of their rights. To this end, we will present some quantitative data referring to workers' claims, the result of research carried out in the Labor Courts of the cities of the Ribeirão Preto region of São Paulo, where there is great concentration of large mills, an area formerly known as "The Brazilian California," and which is now, due to ethanol production, called the "World Ethanol Capital."

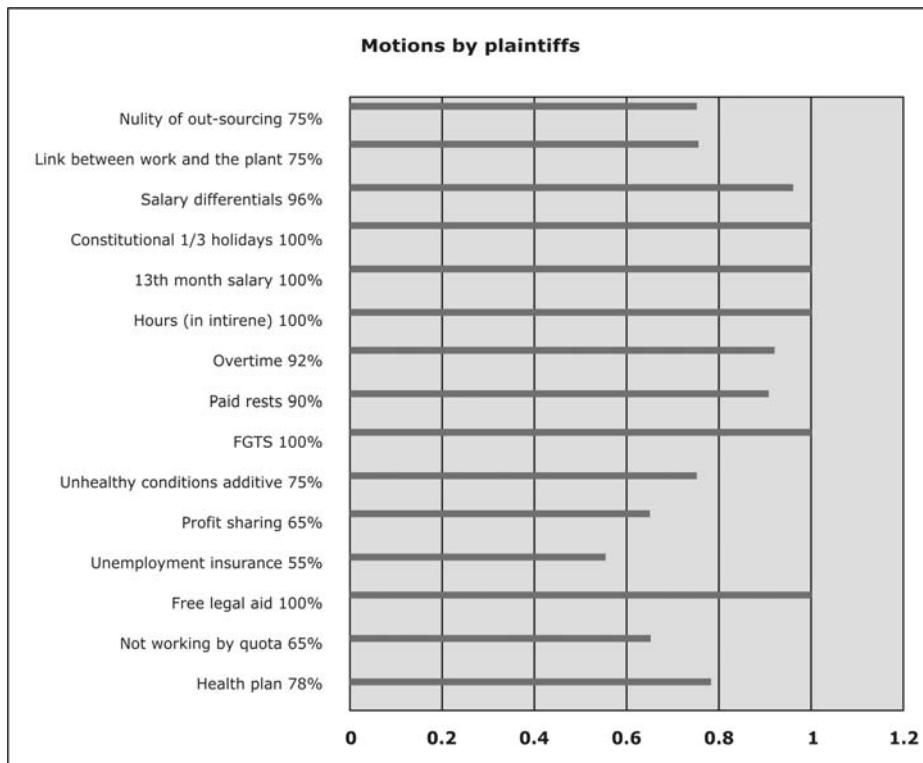
Firstly, we want to distance ourselves from the erroneous idea that the legal system is a neutral field. We presume that this field is influenced by political and economic power, conflicts, disputes and resistance.

The following graphs are the result of labor complaints initiated by cane cutters in the region.

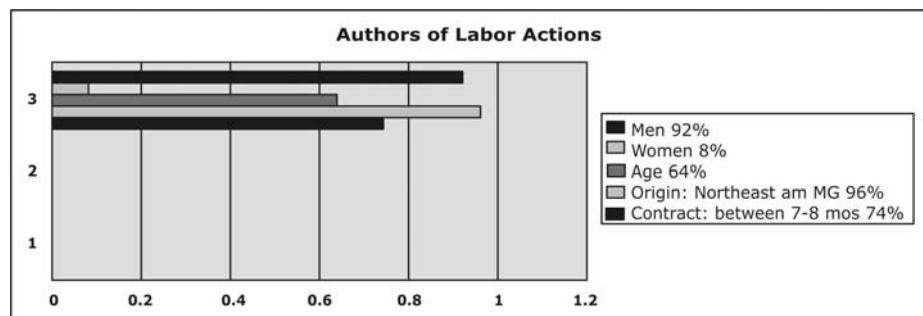
Graph 1 Actions instituted by rural workers in the courts of Batatais, Franca, Sertãozinho (2002-2006). Field Research (2007).



Graph 2 Motions by the authors of claims in the courts of Batatais, Franca, Sertãozinho (2002-2006). Field Research (2007).



Graph 3 Items claimed by rural workers in the courts of Batatais, Franca, Sertãozinho (2002-2006). Field Research (2007).



Case analysis revealed that the precarious state of labor relations in São Paulo cane fields exists by reason of the large supply of labor coming from other states, on the one hand, and, on the other, the flexibilization of labor standards. The workers have a low level of education, which means their knowledge and access to labor rights is restricted. Even in the face of a legal problem, these workers hesitate to continue with their claims, because of their labor dependency of the industry. Labor standards are disregarded, particularly NR31, which regulates relations in the rural labor environment. This fact is one more aggravation of the situation of exploitation to which these workers are submitted.

In some of the cases analyzed, this situation was interpreted by the judges as slavery. The excessive force imposed during the work day caused, between 2004 and 2008, the death of 22 workers in São Paulo, according to the Pastoral Migrant Office.

In the First Court of Jaboticabal, the claims are as follows³: labor contract of a determined length, when it should be for an indeterminate length; fraudulent third party outsourcing in the rural environment; non-payment of salary differentials; non-payment of constitutional 1/3 increase in holidays; non-payment of the thirteenth month's salary; non-payment of weekly rests; non-payment of the forty percent (40%) indemnity on FGTS; non-payment of the health additive; non-payment of the share in the mill's profits; non-payment of unemployment insurance; the requirement to work by production and not by the hour; lack of a health plan, among others.

Regarding labor relations, the most common claims are: unhealthy work environment; moral coercion; imposition of a goal to be met daily; work performed at locales without public transportation; violation of personal rights (moral damages); arbitrary dismissal, etc.

And, finally, the data point out:

- 82% of the claims were made by men; 18% by women; 84% were migrant workers; 25% were between 18 and 55 years old; 93% of the labor contracts had a duration of six to eight months; 30% of the litigation was resolved in the first round of negotiation (agreements); 70% of the claims continued; 8% of the claimants withdrew their claims.

The contractual illegality of the 5X1 system

The Federal Constitution of 1988 assures that rural workers who work for thirty days will have, for each 6 days worked, one paid day of rest, preferably on Sundays, in accordance with Article 7, Paragraph XV, of CF/88. But in the sugarcane industry the work system is called 5x1, which means that people work 5 or 6 days with one day off. Under this system, people are required to work Sundays and holidays. However, the

³ According to Jaboticabal Forum employees, of 2,000 judicial cases, 85% were or are being made by rural workers.

workers do not receive overtime pay, which corresponds to 50% of the normal hourly rate. This system makes it difficult for workers to organize and maintain social relations. They are deprived of having time for their families and friends. In several of the trials we analyzed, the workers claim that they received threats from the company if they didn't accept the 5X1 system.

The unhealthiness of work in the sugarcane fields⁴

Our research showed that in 95% of the claims judged in the Jaboticabal Labor Court, the workers demanded additional payment, alleging unhealthy working conditions, with exposure to the sun. They also argued that their health was endangered by inhalation of the soot produced by burning the sugarcane stalks. The experts named by the Court concluded that, in fact, rural workers are subject to two unhealthy agents: heat, by reason of which they are due an additive of 20% in their salary, and cane soot, which gives them the right to another 40% pay increase.

According to one of the experts named by the court, “the work performed by the claimant is subject to the physical agent of heat, as well as chemical agents from the aromatic hydrocarbons and other carbon compounds related to incomplete burning of sugarcane stalks”.

The investigation also concluded that the burning of sugarcane, as well as exposure to high temperature, causes fatigue and excessive sweating. Thus, for the experts, the quantity of sweat produced can, in short periods, reach up to two liters per hour. The doctors say that at the rate of one liter per hour a man can theoretically lose 600 Kcal/hour. The effects of such exposure to intense heat produce so-called heat illnesses, as, if the blood flow in the skin and the production of sweat were insufficient to promote adequate heat loss, or if these mechanisms stop functioning appropriately, physiological fatigue can occur.

These heat illnesses are divided into heat exhaustion, dehydration, heat cramps, and thermal shock. With regard to heat exhaustion, such is caused by an insufficient supply of blood for the cerebral cortex, resulting in the dilation of blood vessels in response to the heat. Low blood pressure is the result, in part, of an inadequate movement of blood from the heart and, in part, of vasodilation that affects a large area of the human body.

With regard to dehydration of the workers, in its initial stage, it reduces the volume of blood, causing heat exhaustion. But, in extreme cases, it causes disturbances in cellular function, even leading to deterioration of the organism. Muscular deficiency, reduction of secretions (especially by the salivary glands), loss of appetite, difficulty in swallowing, accumulation of acid in tissue will occur with elevated intensity. Thus, for the experts,

dehydration causes temporary uraemia, fever, and can even cause death. “Dehydration in extreme cases can lead to death.”⁶

Heat cramps, according to the physicians, occur when the sodium chloride in the blood is reduced, so as to reach concentrations less than a critical point in muscular spasms. Thus, a high loss of chloride is facilitated by intense sweating and lack of acclimatization. Research shows that the cane cutters are subject to various highly unhealthy agents working in the open air. These unhealthy agents, together with the increased levels of exploitation of the labor force and the imbalance in labor relations in the cane sector, presumably were the principal causes of death of cane cutters in the period between 2004 and 2008.⁷

However, in spite all these problems, our research demonstrates that cane cutters are not mere passive victims of the exploitation process to which they are submitted. In 2008, there were several strikes in the state of São Paulo, in addition to hundreds of workers quitting before harvest was completed.

⁵ Guimarães, Thiago. “Queima de cana-de-açúcar pode causar câncer em cortadores” (Burning of sugarcane can cause cancer in cutters). <http://www1.folha.uol.com.br/folha/cotidiano/ult95u108437.shtml>. Accessed on 22/02/2008.

The region of the Cerrado (a savannah) is as important for its richness in biodiversity as the Amazon—it is shelter for nearly 160,000 species of plants and animals, many of which are endangered species. However, its destruction has not generated much visibility, in spite of the intensity and consequences it has caused. Studies indicate that each year nearly 22,000 square kilometers of savannah are cleared. It is estimated that more than half of the region has already been devastated, and at this rate, its total destruction will be complete by the year 2030. In June of 2008, the Institute of Man and the Environment of the Amazon (Imazon) registered an increase in the deforestation rate in the Amazon, principally in the states of Mato Grosso and Pará, where more than 600,000 square kilometers have been devastated. This number represents a 23% increase from the data gathered in June of 2007. INPE calculates that in the last 20 years, one hectare [metric unit of area equal to 10,000 square meters, or 2.471 acres] of forest disappears every 10 seconds in Brazil. Of a total of four million square kilometers, nearly 700,000 have already been deforested. Predictions from The Institute for Environmental Research in the Amazon indicate that another 670,000 square kilometers will be devastated by 2030 if the current predatory model is maintained in the region.

Impacts of Expansion of Sugarcane Monocropping for Ethanol Production¹

Maria Luisa Mendonça²

Brazil is the fourth country of the world which most emits carbon gas into the atmosphere. This occurs principally because of the destruction of the Amazon Rainforest,

¹ This text was prepared with the help of Isidoro Revers, Marluce Melo and Plácido Júnior and was extracted from the report “Impactos da produção de cana no Cerrado e Amazônia” (“Impacts of the production of sugarcane in the Cerrado and the Amazon”), published by The Pastoral Land Commission and the Network for Social Justice and Human Rights. It was translated into English by Sheila Rutz, with the support of Global Exchange.

² Maria Luisa Mendonça is the director of the Network for Social Justice and Human Rights.

a destruction which accounts for 80% of the carbon gas emissions in the country.³ The expansion of monocropping for the production of agro-fuels tends to exacerbate this problem, advancing the agricultural borders of the Amazon and the Cerrado.

Diverse studies show that the expansion of monocropping represents a greater risk for global warming than do emissions of carbon coming from fossil fuels. In spite of the Brazilian government's attempts to convince the international community that Brazilian ethanol is "renewable," between 2007 and 2008 there was a significant change with regard to this idea.

The problem of many studies done before was that they excluded the environmental impacts of the model of production, from the use of natural resources (like land and water) to the pressure to use preservation areas, or areas used for food production. One report from Time Magazine observes that these studies have calculated the potential to tie up carbon from agro-fuels without taking into account the impact of monocropping in areas where vegetation and soil accumulate a great quantity of carbon. "It is as if these scientists imagine that biofuels are cultivated in parking lots," said the article.⁴

One of the most important studies about the change in the forms of land use and its relation to the increase in carbon emissions was published in Science magazine. The authors affirm that "The majority of the previous studies discovered that replacing gasoline with biofuels could reduce carbon emission. Those analyses do not take into account that carbon emission happens when farmers, throughout the world, respond to higher prices and convert forests and fields into new plantations, to substitute plantations of grain which were used for biofuels."⁵

The article cites the increase in soy prices as an influencing factor in the acceleration of deforestation in the Amazon, and estimates that its cultivation for the production of diesel results in a carbon debt from which will take 319 years to recover. According to researcher Timothy Searchinger, from Princeton University, "Forests and fields have much carbon, however, there is no way to reap the benefits by transforming these lands into crops for biofuels." This study demonstrates that the effects of production of agro-fuels should be evaluated with the whole cycle of monoculture expansion. In Brazil, we know that sugarcane plantations are expanding very quickly, "pushing" forward agricultural borders and, at the same time, preparing the way for the expansion of cattle-raising and soy production. Given this, a true environmental impact study should include the whole agricultural sector and the whole process of ethanol production.

³ *Seedling Magazine, July, 2007, www.grain.org/seedling*

⁴ *Time Magazine, April 14, 2008, The Clean Energy Myth.*

⁵ *Science Magazine, February 28, 2008 Use of U.S. Cropland for Biofuels Increases Greenhouse Gases Through Emissions from Land-Use change.*

In January of 2008, the Smithsonian Institute of Tropical Research reported that sugar-based ethanol and soy-based agro-diesel cause more damage to the environment than fossil fuels. The research draws attention to the environmental destruction in Brazil, caused by the increase in the production of sugarcane and soy in the Amazon, the Atlantic Rainforest, and the Cerrado. According to researcher William Laurance, “the production of fuels, be it from soy or sugar, also causes an increase in the cost of food, both in a direct and indirect way.”⁶

The release of these studies confirms the denouncements from social organizations and shows the change in tone of the international debate on these issues. As the newspaper El País observes, “diverse research centers, and the majority of ecological and human rights groups send out daily declarations affirming that biofuels do not help to combat climatic changes, but provoke serious environmental impacts on regions with high ecological value, alter the price of food, and consolidate an agricultural model based on exploitation of workers and high dependence on big multinational companies.”⁷

The Expansion of Sugarcane Plantations in the Cerrado

The Cerrado is known as the “father of water,” for it fills up the principal water basins of the country. With nearly two million square kilometers, this biome is located between the Amazon, the Atlantic Rainforest, the Pantanal, the Caatinga, and includes the states of Minas Gerais, Mato Grosso, Mato Grosso do Sul, Goiás, the Federal District, Tocantins, the south of Maranhão, the west of Bahia, and part of the state of São Paulo.

The region is as important for its richness in biodiversity as the Amazon—It is shelter for nearly 160,000 species of plants and animals, many of which are endangered species. However, its destruction has not generated much visibility, in spite of the intensity and the consequences it has caused. Studies indicate that each year nearly 22,000 square kilometers of savannah are cleared. It is estimated that more than half of the region has already been devastated, and at this rate, its total destruction will be complete by the year 2030.

In the last few years, the Brazilian government has targeted the Cerrado as a priority area for the expansion of sugarcane, for this region is characterized by favorable topography—it is level, of good quality, and has water-supply potential. Facts furnished by IBGE (Brazilian Institute of Geography and Statistics), show that in the 2007 harvest, sugarcane production occupied 5.8 million hectares of the Cerrado.⁸

⁶ Lusa, 09/01/2008 , Estudo da “Science” diz que etanol pode ser mais nocivo ao Ambiente do que a gasolina (“Science” study says that ethanol can be more harmful to the Environment than gasoline), www.ultimahora.publico.clix.pt/noticia.

⁷El País, Biocombustíveis perdem o rótulo ecológico (Biofuels lose their ecological label), 31/3/2008.

⁸ PrimaPagina, Cana pressiona área de proteção no Cerrado (Cane pressures protected area in the Cerrado), 09/04/2008, http://www.pnud.org.br/meio_ambiente/reportagens/index.php?id01=2902&lay=mam

The sugarcane industry has expanded rapidly and generated enormous environmental damage. To begin planting sugarcane, it is necessary to clear the native vegetation, and thus all of the trees are uprooted. In August of 2008, an agreement between the Ministry of the Environment and the Ministry of Agriculture resulted in a series of modifications in the Law of Environmental Crimes. One of these results was announced in a decree from President Lula that allows for the construction of sugarcane factories in the Pantanal. According to data from the National Institute for Space Research (INPE), from IBGE and the Ministry of the Environment (MMA), new sugarcane factories are being built in conservation areas, close to natural springs.

One report from the Society, Population and Nature Institute (ISPN) affirms that “Deforestation done for sugarcane production directly harms rural populations who survive off the biodiversity of the Cerrado. The other terminal consequence is that small food farmers leave their lands, having been lured into temporary employment in the sugarcane fields. This will diminish the food production in the area, which only serves to aggravate the migration to urban slums.”¹⁰

A study from the Center for Studies in Applied Economics, University of São Paulo, estimates that in the next five year, US\$14.6 billion will be spent in the construction of 73 new ethanol companies in the Center-South region. Researcher Sérgio De Zen believes that “Ethanol has become an environmental threat.”¹¹

According to professor Antônio Thomaz Júnior of the Department of Geography of the State University of São Paulo (Unesp), “the expansion of sugarcane in Brazil for the production of ethanol may certainly advance over areas currently cultivating food crops, besides placing at risk the integrity of important biomes, like the Amazon and Pantanal.”¹²

Another concern is the demand for water in agro-fuels production. The director of the Scientific Committee of the Stockholm International Institute for Water, Jan Lundqvist, warns that “Currently the quantity of water used throughout the world in food production is approximately 7,000 m³. In 2050, the prediction is that this quantity will increase to 11,000 m³, almost double of what it is today. And the projections indicate that the demand of water necessary to produce biofuels

⁹ PrimaPagina, *Plantio ocupou, em 2007, 162 mil hectares do bioma que hoje o governo indica como áreas de conservação* (*Planting occupied, in 2007, 162,000 hectares of the biome that the government today says are conservation areas*), 08/04/2008.

¹⁰ O Estado de São Paulo, *Cana coloca em risco o cerrado brasileiro* (*Cane puts the Brazilian Cerrado at Risk*) 03/12/07, 01:54, <http://conexaotocantins.com.br/noticia/cana-coloca-em-risco-o-cerrado-brasileiro/926>

¹¹ O Estado de S. Paulo, *Cana invade os pastos e expulsa os rebanhos* (*Cane invades fields and drives out livestock*), 15/04/07.

¹² Cana pode prejudicar meio ambiente e produção de alimentos (*Cane may harm the environment and food production*), 03/04/2007, <http://www.reporterbrasil.com.br/exibe.php?id=984>

will increase in the same proportions as the demand of water for food production, which would represent 20 -30 m³ of water in 2050. This is just not possible.”¹³

One study on the environmental impact of ethanol production on water sources, published by the National Academies Press reveals that “The quality of underground water, rivers, the coast, and springs can be impacted by the rise in use of fertilizers and pesticides in biofuel production. High levels of nitrogen are the principal cause of the decrease of oxygen in regions known as ‘death zones,’ which are lethal for the majority of living beings. Pollution sedimented in lakes and rivers can also cause soil erosion.”¹⁴

Devastation of Brazilian Amazonia

In recent years, INPE (National Institute for Space Research) has published alarming data on the rate of deforestation in Brazilian Amazonia. Between August 2006 and July 2007 the devastation affected 11,200 km². Between August 2007 and March 2008, the System for Detection of Deforestation in Real Time (Deter) recorded 4,732 km² of deforestation.¹⁵ In April 2008 more than 1.1 thousand km² of forest were devastated.¹⁶

In June of 2008, the Institute of Man and the Environment of the Amazon (Imazon) registered an increase in the deforestation rate in the Amazon, principally in the states of Mato Grosso and Pará , where more than 600,000 square kilometers have been devastated. This number represents a 23% increase from the data gathered in June of 2007. According to Paulo Barreto, a representative for Imazon, this increase is a result of the expansion of farming and ranching in the region.¹⁷

INPE calculates that in the last 20 years, one hectare of forest disappears every 10 seconds in Brazil. Of a total of four million square kilometers, nearly 700,000 have already been deforested. Predictions from The Institute for Environment Research in the Amazon indicate that another 670,000 square kilometers will be devastated by 2030 if the current predatory model is maintained in the region.¹⁸ Another study by the ISPNE warns that deforestation may completely destroy the Brazilian Amazon in only 40 years.¹⁹

In July of 2008, research published by PNAS reveals that Brazil was responsible for 47.8% of the destruction of tropical rainforests in the world. The study was conducted

¹³ BBC Brasil, *Biocombustível causaria falta de água* (Biofuel could cause water shortage), 13/08/07.

¹⁴ National Academies Press, *Report Considers Impact of Ethanol Production on Water Resources*, 10/10/07 <http://www.nationalacademies.org/morenews/20071010.html>

¹⁵ Folha de São Paulo, 15/5/2008. “Inpe prevê desmatamento maior em 2008 (INPE anticipates greater deforestation in 2008)”.

¹⁶ Radioagência Notícias do Planalto, 03/06/08, *Amazônia sofre com crescimento acelerado do desmatamento* (Amazonia suffers from accelerated increase in deforestation).

¹⁷ Radioagência Notícias do Planalto, *Desmatamento na Amazônia registra alta no mês de junho* (Deforestation in Amazonia reaches record high in June), 29/07/08.

¹⁸ Adital – 15/02/08, *Amazônia devastada* (Amazonia devastated), article by Frei Betto.

¹⁹ Última Instância – 16/06/2008, *O Ministério Público e a expansão da atividade sucroalcooleira* (The Public Prosecutor and expansion of sugar-alcohol activity), article by Jefferson Aparecido Dias.

by professor Matthew Hensen of the University of South Dakota (USA), and covered the time period from 2000 - 2005.²⁰ All recent studies show the biggest level of Brazilian Amazon deforestation happened in the state of Mato Grosso, responsible for 54% of the total. This state is followed by Pará with 18%, and Rondônia with 16%.²¹

This data demonstrates the impact of the expansion of large-scale farming activities on deforestation. This expansion was one of the principal reasons why the former Minister of the Environment, Marina Silva, left her position. She was under great pressure to give in to the demands of large-scale farmers, especially given the increase in price of agricultural commodities due to the rise in relationship of the energy and food markets. The Brazilian government has ignored the dimension of the environmental crises caused by the implementation of a development model based on mono-cropping and exportation. This model has caused the increase in deforestation both in the Amazon and in the Cerrado.

Environmentalist Lester Brown, one of the pioneers in this area, declared in the newspaper Folha de São Paulo, that “biofuels are the major threat to the diversity of the Planet.” He suggests that “Brazil begin to develop other sources of energy, such as sun and wind, which have great potential.” And he asserts, “What we have to do is think of a new economy, with renewable sources of energy, that have a diversified system of transport, and in which we reuse and recycle everything...If we do not restructure the world economy, economic progress will not be sustained.”²² However, the Brazilian government continues to insist on defending the expansion of large-scale mono-cropping for the production of agroenergy. Besides President Lula’s discourses in favor of this model, the government instituted a series of administrative and economic measures to facilitate this expansion.

“Grilagem” (Illegal Land Appropriation)

In July of 2008, the Senate approved a Provisionary Measure proposed by the government increasing the area of public lands in the Amazon which can be sold without auctioning, from 500 to 1,500 hectares. According to former Minister of the Environment, Senator Marina Silva, who voted against the measure, “This will increase illegal land appropriation and consequently deforestation in the Amazon. It will encourage the privatization of public forests, without having to answer to any kind of process of auctioning.”²³ On August 6, 2008, President Lula signed a law regulating this Provisionary Measure, and besides confirming the increase

20 Folha de São Paulo, 01/07/2008, “Brasil é líder total em desmatamento, mostra novo estudo” (New study shows Brazil is the leader in deforestation)

21 REBRIP – Rede Brasileira pela Integração dos Povos, 28/1/1008, Press note. Desmatamento na Amazônia revela insustentabilidade do modelo agroexportador Deforestation in Amazonia reveals unsustainability of the agri-exportation model).

22 Folha São Paulo, 2/7/2007. Interview/Lester Brown, “Biocombustíveis são maior ameaça à diversidade na Terra”(Biofuels are greatest threat to diversity on Earth), <http://www1.folha.uol.com.br/jsp/brasil/fc0207200721.htm>

23 Diário de Pernambuco, 10/07/2008, Mais área pública na Amazônia (More public area in Amazonia). http://www.pernambuco.com/diario/2008/07/10/brasil10_0.asp

of areas which can be sold without auctioning, also vetoed an article which restricted this measure in certain preservation zones.

The term “grilagem” refers to fraudulent practices of public and private land appropriation. Historically, this mechanism was utilized to guarantee dominion of the “colonels” or large-landowners over the vast extension of territories. With the modernization of agriculture, besides political dominion, land property made possible the increase of economic and technological dominion, including the advance of multinational companies which appropriate public lands to produce commodities on a large scale. The principal mechanisms used in “grilagem” of land are illegal registers made in cooperation with corrupt registry offices and members of the judiciary system.

The practice of “grilagem,” or illegal possession of public lands, represents a serious problem in the Amazon, for it serves predatory activities, like illegal extraction of wood, followed by the implantation of intensive farming and cattle-raising. In July of 2008, a study by Imazon estimated that nearly 42 million hectares of land in the Amazon are illegally possessed. According to forestry engineer Paulo Barreto, coordinator of the study, “this practice is like a free privatization of the forest.”²⁴ Barreto estimates that besides cases of fraudulent documents, there are nearly 40 million hectares of land with duplicate titles. Finally, he concludes that the area of illegal possession of land in the Amazon amounts to at least 80 million hectares.

The majority of irregularities are to be found in the states of Pará, with 16 million hectares of “grilagem”, and Mato Grosso, with 9.6 million. These states also register the highest indices of deforestation. Even INCRA (National Institute of Colonization and Land Reform), which is responsible for the managing of public lands in the Amazon, admits that it does not have control over the 710.2 thousand square kilometers of the Amazon. This territory is equivalent to 14% of the region, and 65% of all the lands regulated by INCRA. The biggest share of this land, the equivalent of 288.6 thousand square kilometers, is in the state of Pará.²⁵

According to Professor Ariovaldo Umbelino, of the University of São Paulo (USP), “more than 212 million hectares of pubic land, used or not, are not in the records of INCRA, nor in the states’ Institutes of Lands, nor in the notary publics’ Registry of Real Estate. So even though they are fenced off, to the State they do not exist. Another 84 million hectares are registered at INCRA as being owned, and among these, only 21 million hectares are legally possessed through current legislation. It is important to clarify that the Constitution of 1988 permits ownership regularization of only up to 50

²⁴ O Estado de São Paulo – 6/6/2008, Amazônia: 8,5% das terras tem posse ilegal (Amazonia: 8.5% of lands held illegally).

²⁵ Folha Online 27/06/2008, País ignora o que ocorre em 14% da Amazônia, diz Incra (Country ignores what happens in 14% of Amazonia, says INCRA).

hectares, and only exceptionally up to 100 hectares. Any occupied area greater than this cannot be legalized.”²⁶

The Expansion of Sugarcane Cultivation in the Amazon

On July 29, 2007, Minister of Agriculture Reinholt Stephanus declared to O Globo newspaper that, “There is no sugarcane in the Amazon. We know of no such projects, old or new, in the region.” This affirmation was been repeated many times by President Lula, who wants to avoid criticism, especially from countries which plan to import Brazilian ethanol. In June of 2008, in his speech to the UN’s Food and Agriculture Organization, President Lula affirmed that there was no production of sugarcane in the Amazon.

However, even the National Supply Company (CONAB)—an organ linked to the Ministry of Agriculture—registered an increase in the production of sugarcane in the Amazon from 17.6 million tons to 19.3 million tons between 2007-2008.²⁷ In Tocantins, there was a 13% increase (from 4.5 thousand to 5.1 thousand hectares), followed by Mato Grosso with a 10% increase, and the state of Amazonas with 8% (from 4.8 thousand to 5.2 thousand hectares). In Pará, sugarcane plantations occupy around 10.5 thousand hectares. According to research from the University of São Paulo, Pará is seen as one of the principal areas of expansion for the production of ethanol.²⁸

In 2006, CONAB demonstrated that the Northern region has the highest indices of increase in sugarcane production in the country. The expansion was 68.9% in Tocantins, 55.1% in Amazonas and 34.3% in Pará. The production from the three states was 1.6 million tons, representing an increase of 46.8% in relation to the previous harvest.²⁹

This data has generated concern in Brazil and in other countries. According to researcher Écio Rodrigues, from the Federal University of Acre (Ufac), “The carbon from the destruction of the forest will not be recuperated by planting sugarcane. For this reason the world is very worried about the transformation of Brazil into a major exporter of biofuels.”³⁰ Pressured by criticisms from various sectors, the Brazilian government decided to create a zoning project for the expansion of sugarcane plantations. However, the government did not explain what it will do with current sugarcane plantations in the Amazon, Pantanal, and Cerrado.

²⁶ Brasil de Fato, *Lula é o presidente companheiro dos grileiros da Amazônia* (*Lula is the President-buddy of the Amazon grileiros*), article by Ariovaldo Umbelino, 08/08/2008, <http://www.brasildefato.com.br/v01/agencia/analise/lula-e-o-presidente-companheiro-dos-grileiros-da-amazonia>

²⁷ Adital – 11/02/08, *Amazônia, ecocídio anunciado*, (*Amazonia, Ecocide Announced*) article by Frei Betto.

²⁸ http://www.paranegeocios.com.br/anterior_cont.asp?id=1670

²⁹ Jornal Valor Econômico, 01/06/2006.

³⁰ Cana-de-açúcar avança na Amazônia com recursos públicos (*Sugar Cane Advances in Amazonia with public funds*), 16/06/2008. <http://www.reporterbrasil.org.br/agrocombustiveis/clipping.php?id=25>

The expansion of sugarcane plantations in states located in the Amazon and Cerrado

Acre: The Álcool Verde plant planted more than 2,000 hectares of sugarcane along the BR-317 highway, and has plans to reach more than 30,000 hectares in the region, with the capacity of producing 3 million tons of sugar per harvest.³¹ Álcool Verde predicts a production of 36 million liters of ethanol in the first harvest, and plans to increase its production of sugar fivefold by 2015.³² Embrapa (Brazilian Institute for Agriculture Research) predicts that in the municipality of Capixaba, sugarcane production will increase tenfold by 2012. Currently, there are nearly 45 square kilometers of sugarcane in Capixaba, which is 70 kilometers from Rio Branco. Some see this as a strategic state, for it could serve as a bridge for ethanol exportation to the Pacific Ocean through the Transoceanic Highway, which connects Brazil and Peru.

Amazonas: CONAB estimates that the production of sugarcane in the state will increase from 273.1 thousand tons to 303 thousand tons between 2007-2008, representing an increase of 10.90%.³⁴ There is a plan for the production of ethanol at a company named Jayoro, which includes the cultivation of 60,000 hectares of sugarcane in regions of native forests.

Goiás: The sugarcane plantations occupy 339.2 thousand hectares. In 2005, the planted area was 174,756 hectares; in 2006 it rose to 256,998 hectares, which represents an increase of 47.06%. According to the Union for the Sugar Industry of the State of Goiás (Sifaeg), in the 2008/2009 harvest, there are 27 plants in operation, with a predicted increase to 55 plants by 2012. In total, there are 97 projects for new plants, with fiscal incentives approved by the state government.³⁵ The increase in the production of ethanol in this year's harvest will be 78%, producing 2.12 billion liters.³⁶ Besides the destruction of native vegetation, the sugarcane industry replaces areas of food production and cattle-raising, expanding the agricultural borders through the Amazon.

Maranhão: Data from IBGE indicate that between 2005-2006 the cultivation of sugarcane in the state increased by 20.93%.³⁷ In September of 2006, the state government

³¹ AGÊNCIA AMAZÔNIA, Acre deve ampliar cultivo de cana para produzir etanol (Acre to widen cane cultivation to produce ethanol). http://www.jbrasiliabiodiesel.com.br/index.php?option=com_content&task=view&id=192&Itemid=60

³² O Estado de São Paulo, Usineiro paulista vai para o Acre (Paulista sugar mill goes to Acre), 02/03/2007 http://www.riosvivos.org.br/canal.php?canal=19&mat_id=10304

³³ Folha de São Paulo, Embrapa relata expansão de cana na Amazônia (EMBRAPA reports cane expansion in Amazonia), 1/6/08.

³⁴ http://www.paranegocios.com.br/anterior_cont.asp?id=1670

³⁵ Jornal O Popular, Estado tem 97 projetos aprovados para implantação ou expansão de usinas de álcool e açúcar (State has 97 projects approved for startup or expansion of alcohol and sugar factories), 04/06/08.

³⁶ Jornal O Popular, Produção de álcool em usinas goianas vai crescer 78% este ano (Alcohol production at Goiana plants to increase 78% this year).

³⁷ Plantações de cana aumentam 20% no MA (MA cane fields increase by 20%), 5/2/06. <http://www.badauonline.com.br/2006/2/5/Pagina6662.htm>

created the Maranhão Program for the Production of Biofuel, which plans for the construction of 45 new plants, with estimates to produce between 4-7 billion liters of ethanol.³⁸ The government cites [as part of the program] the advantages of the facilities of the Port of Itaqui, and two railways, the Carajás railway, and the Railway Company of the Northeast. The first part of the project plans for the construction of 20 plants in five years, which would represent and expansion of 15% in the national production of ethanol. According to the governor of Maranhão, the state would be able to use 500,000 hectares for sugarcane plantations.³⁹

Mato Grosso: Currently, there are 11 functioning plants in Mato Grosso. The sugarcane plantations occupy the regions of the Pantanal, the Cerrado, and the Amazon, an area of 214,511 hectares. In the last harvest, the plants processed around 16,750,000 tons of sugarcane, achieving a production of 538,139 tons of sugar and 844,395 m³ of ethanol.⁴⁰ The sugarcane harvest in 2008 should increase by 6%, and the plantations will occupy 216,037 hectares.⁴¹ The Secretary of Planning hopes to triple the current 800 million liters of ethanol. According to Sindalcool-MT, expansion of sugarcane plantations by nearly 2 million hectares is anticipated around the municipality of Alto Taquari. A new plant will cultivate 35,000 hectares in the region beginning in 2009, with the capacity to process 3 million tons of sugarcane.⁴²

Mato Grosso do Sul: CONAB estimates an increase of 51,000 hectares of sugarcane plantations in Mato Grosso do Sul in the 2007/2008 harvest, which signifies a 32% increase over the previous harvest which already included 160,000 hectares. Thus, the state will have 211.1 thousand hectares of sugarcane production.⁴³ There are nine plants installed in the state, and nearly 50 new projects, with solicitations for fiscal incentives, which may occupy up to 800,000 hectares in the next few years. This according to predictions from the state's Secretary for Agrarian Development.⁴⁴ In August of 2008, Governor Antré Pucinelli affirmed that "Mato Grosso do Sul will be the world's biggest producer of ethanol in seven years."⁴⁵

Minas Gerais: Data from CONAB indicate that the sugarcane harvest in 2008 will be 60.2 million tons. This quantity is 47% more than last year's harvest of 46 million

³⁸ Maranhão lança projeto para produção de etanol (Maranhão begins ethanol production project), 04/09/2006, <http://www.unica.com.br/noticias/show.asp?newsCode=%BF75855B0-0595-40CB-9DB7-78D44B15E488%7D>

³⁹ Radiobras, Maranhão terá programa de incentivo ao plantio de cana-de-açúcar para geração de energia (Maranhão to have incentive program for planting sugar cane for energy production), <http://www.radiobras.gov.br/abrn/brasilagora/materia.phtml?materia=234630>

⁴⁰ IBGE, <http://www.sidra.ibge.gov.br/bda/tabela/protabl.asp?z=i&o=1&i=P>

⁴¹ Jornal A Gazeta, Mato Grosso terá a maior safra de cana este ano (Mato Grosso will have the largest cane harvest this year), 11/3/08. http://www2.ajcsp.com.br/boletim_informativo/2008/03/mato-grosso-tera-maior-safra-de-cana.html

⁴² Google News, Cana-de-açúcar avança em Mato Grosso (Sugar cane advances in Mato Grosso), 24/03/2008 – 19:20.

⁴³ Correio do Estado, Cana espalha-se por mais 51 mil hectares em MS (Cane spreads by 51 thousand hectares in MS), 31/08/07.

⁴⁴ Correio do Estado, Cana inflaciona preço de terras no Mato Grosso do Sul (Cane inflates land prices in Mato Grosso do Sul), 04/06/07.

⁴⁵ Diário do MS, 23/08/08.

tons. With this increase, the state becomes the second biggest producer of the country, with a planted area of 467 thousand hectares. The production of ethanol in Minas Gerais should be around 2.2 billion liters this year. According to the Union for the Sugar and Ethanol Industry, there are 36 plants functioning in the state. By 2012, the prediction is that there will be 52 plants with a production of 5.5 billion liters of ethanol.⁴⁶ The Secretary of Agriculture and Environment of the municipality of Luz, Dario Paulineli, describes the other impacts on the region: "Sugarcane has expanded rapidly in the last few years. Companies make contracts with farmers to rent their land, and the environmental impact is enormous. They apply toxins from planes which affects the populations of the cities. They destroy protected species of trees, plant sugarcane next to natural springs which feed the rivers, and they do not respect environmental impact studies. Many animals are dying with the devastation of the vegetation."

Pará: According to the Luiz de Queiroz Higher School of Agriculture (Esalq) of the University of São Paulo, Pará may dedicate 9 million hectares to the production of sugarcane, which would mean an increase of 136% in the production of ethanol in Brazil. CONAB estimates that Pará will harvest nearly 736,000 tons of sugarcane in the 2007/2008 harvest. The biggest part of the production (648.3 thousand tons) will be used for the production of ethanol, and only 36.8 thousand for the production of sugar. The Pagrisa plant, located in the municipality of Ulianópolis, has the biggest plantation in the state, with 11.6 thousand hectares, and produces 50 million liters of ethanol per year.⁴⁷ According to a communication from the Ministry of Foreign Relations, "It is with good reason that the era of biofuels has arrived full-force in Legal Amazonia. We have no doubts that Pará will have Brazil's most competitive platform for the exportation of ethanol, providing for huge profits for the investors."⁴⁸

Rondônia: There are two projects for ethanol distilleries in the municipalities of Cerejeiras and Santa Luzia d'Oeste. There is another plant in the municipality of São Felipe, 530 kilometers from Porto Velho. According to Cléber Calixto, the mayor of Cerejeiras, "the city has extremely fertile land and will have an ethanol factory by April of 2009."⁴⁹

Roraima: There are two plant projects underway, with a prediction of cultivating sugarcane in an area of 90 square kilometers by 2009, with the first harvest being 3 million tons.⁵⁰ The governor of Roraima is giving incentives to this sector by offering

⁴⁶ Agência Safras, *Minas Gerais colhe safra recorde em 2008* (Minas Gerais reaps record harvest in 2008), 11/09/08 16:10, http://ultimosegundo.ig.com.br/economia/safra/2008/09/11/cana_de_acucar_minas_gerais_colhe_safra_recorde_em_2008_1768933.html

⁴⁷ http://www.parangocios.com.br/anterior_cont.asp?id=1670

⁴⁸ Ministério das Relações Exteriores: *Seleção Diária de Notícias Nacionais* (Foreign Relations Ministry: Daily Selection of National News), http://www.mre.gov.br/portugues/noticiario/nacional/selecao_detalhe3.asp?ID_SELECAO=361026

⁴⁹ *Correio Brasiliense*, *Governo estuda limite para plantio da cana* (Government studies limit for cane planting), 27/8/07.

⁵⁰ *Folha de São Paulo*, 1/6/08.

exemption from the Tax on Circulation of Merchandise (ICMS) until 2018.⁵¹ The Ministry of Industry and Commercial Development indicates that the eastern part of Roraima would be one of the principal areas for the expansion of sugarcane plantations.⁵² Local politicians are pressuring the federal government to transfer public lands to come under the authority of the state. Congressman Francisco Rodrigues (DEM) said, "We are demanding from the Federal Government nearly 5 million hectares to implement development in Roraima."⁵³ The Biocapital company began to plant seedlings and hopes to produce 6 million tons of sugarcane by 2014, which would serve as a base to process 530,000 liters of ethanol. The Camaçari Agroindustrial Company cultivated 200 hectares of seedlings on the São Sebastião farm, and plans to expand its production of seedlings by 1,000 hectares by August of 2009. The company was able to obtain 100% tax exemption, and anticipates producing 3 million tons of sugarcane by 2009.⁵⁴

Tocantins: The Secretary of Agriculture, Cattle-raising and Provisions (Seagro) affirms that there are plans for 16 new plants to be installed in the state. According to the governor of Tocantins, the state would be able to use 650,000 hectares for the cultivation of sugarcane. The Bioenergética Brasileira Company has cleared an area for seedlings occupying 150 hectares, which will supply seedlings for a 10-year production. For the 2008 harvest, the area of cultivation reached 2.4 thousand hectares and the company plans to occupy 5,000 planted hectares. The prediction is to produce 2 million tons of sugarcane by 2014. Grupo Cucaú acquired an area of 1,300 hectares when it began production in 2006, with a harvest of 250,000 tons, and hopes to expand this to 500,000 tons.⁵⁵ Maity Bionergia is planning the construction of three ethanol distilleries, each with a process capacity of 2.4 million tons of sugarcane.⁵⁶ According to CONAB, there was an increase of almost 16% in the production of sugarcane in Tocantins, between 2007 and 2008. The harvest increased from 252,100 tons to 291,100 tons in the state.⁵⁷ In the harvest between 2006 and 2007, the biggest regional expansion was in Tocantins, where there was a 68.9% increase.⁵⁸

⁵¹ Radiobrás, *Roraima pode virar nova fronteira agrícola da cana-de-açúcar* (*Roraima may become new sugar cane frontier*), 11/09/2007 – 02h48min. <http://www.radiobras.gov.br>

⁵² Ministério do Desenvolvimento (*Ministry of Development*), *Governo incentiva plantio de cana na Amazônia* (*Government offers incentives for cane planting in Amazonia*), 28/09/07. Exteriores http://www.amazonia.desenvolvimento.gov.br/index.php?option=com_content&task=blogcategory&id=1&Itemid=59&limit=9&limitstart=9

⁵³ <http://deputados.democratas.org.br/noticias/?nid=974>

⁵⁴ Jornal Folha de Boa Vista, *65% do lavourado roraimense têm potencial para a cana-de-açúcar*, (*65% of Roraimense land has potential for sugar cane*), 28/01/08 http://www.folhabr.com.br/noticia.php?pageNum_editorias=28&editoria=cidades&id=34765

⁵⁵ Government of Tocantins: *Usina de cana-de-açúcar fará primeira colheita em maio* (*Sugar cane factory will make its first harvest in May*) 10/4/06, article by Kelly Costa

⁵⁶ Grupo sucoalcoleiro pode instalar destilaria no Tocantins (*Sugar-Alcohol Group may set up distillery in Tocantins*), 28/06/2006, <http://www.portaldoagronegocio.com.br/conteudo.php?id=14403>

⁵⁷ http://www.paranegocios.com.br/anterior_cont.asp?id=1670

⁵⁸ SECOM TO, *Tocantins comprova vocação para a produção de cana-de-açúcar* (*Tocantins shows a vocation for sugar cane production*), 13/7/06. <http://portalamazonia.globo.com/noticias.php?idN=37147&idLingua=1>

The False Concept of “Degraded” Lands

According to the government, the expansion of sugarcane plantations happens on land that is “degraded,” and there are no impacts on the environment or on food production. The data given to justify this theory tries to support the idea that in Brazil there are millions of hectares of land that are simply “abandoned” or “marginal.” However, the government has yet to explain what exactly it means by “degraded land”. If there really is such a thing, it would not make sense for companies and public banks to heavily invest in a sector in which there is no possibility to plant on level ground, of good quality land, with access to water and infrastructure.

Even when sugarcane production replaces other agricultural activities, or even cattle-raising, there is a much greater degree of devastation because large-scale sugarcane plantations do not thrive with other types of vegetation. If there really were so much land available in Brazil, there would not be the necessity for the size of the destruction of the Amazon Rainforest. Therefore, there is no logical reason to say that the expansion of sugarcane production does not exert additional pressure on preservation areas.

Official data indicates that there has been a great increase in cattle-raising in the Amazon, pushing for the expansion of the agricultural borders. According to IBGE, cattle-raising in the Amazon has practically doubled in the last ten years. The 2006 Farming Census showed that since 1996 the increase in agricultural expansion in the Northern Region was 275.5%. Between 1990 and 2006, there was an annual increase in soybean plantations of 18%, and an 11% increase in cattle-raising in the Amazon.⁵⁹ Between 2006 and 2007, the soy harvest in the Northern Region had a 20% increase.⁶⁰

The strong pressures to push forward agricultural borders have created doubts about the ability to monitor the zoning laws for sugarcane production and the implementation of efficient punishment mechanisms in cases where the laws are broken. Sérgio Leitão, coordinator of Greenpeace in Brazil, explains that only 2% of those convicted of illegal cutting in the Amazon receive fines.⁶¹

Professor Antônio Thomaz Júnior of the Geography Department from the State University of São Paulo (Unesp) states that “No one has technical authority to say that there will not be impacts. Up until now, not one thorough study has been done concerning the consequences of expanding sugarcane plantations.”⁶²

⁵⁹ Adital – 15/02/08, *Amazônia devastada (Amazonia Derastated)*, article by Frei Betto.

⁶⁰ Radioagencia Notícias do Planalto, 5/5/08.

⁶¹ Agência Brasil. *Cana e rebanho borino impulsioneam desmatamento na Amazônia (Cane and cattle push deforestation in Amazonia)*. http://www.malima.com.br/amazonia/blog_commento.asp?blog_id=55

⁶² Cana pode prejudicar meio ambiente e produção de alimentos (*Cane may harm the environment and food supply*), 03/04/2007. <http://www.reporterbrasil.com.br/exibe.php?id=984>

Congresswoman Rose de Freitas (PMDB-ES) is proposing a bill (number 2323/07) which plans to end financing and tax incentives for the production of ethanol in the Amazon, including the states of Acre, Amapá, Amazonas, Pará, Rondônia, Roraima and part of Mato Grosso, Tocantins and Maranhão. According to her, “The cultivation of sugarcane is extremely harmful because of the deforestation it can promote, and also through the practice of monocropping which, even in degraded areas, results in serious environmental damage.” For her, the zoning project proposed by the government, “not only will permit but also give incentives for planting sugarcane.”⁶³

Health Risks for Workers and the Local Population

There is also a series of studies concerning the increase of environmental pollution in regions where there is the burning of sugarcane. One technical opinion from the Public Ministry of Labor of Mato Grosso do Sul, published on May 6, 2008, (REF:OF/PRT24^a/GAB-HISN/Nº134/2008) concluded that the burning of sugarcane “results in the formation of potentially toxic substances, like carbon dioxide, ammonia, and methane, among others, with the fine material, containing particles smaller or equal to 10 micrometers (PM10) (particles that are able to be inhaled), being the pollutant that has the greatest toxicity and has been the most studied. The majority of it (94%) is made up of fine and ultrafine particles, that is, particles that affect the deepest portions of the respiratory system, crossing the epithelial barrier, reaching the pulmonary interstitium, and are responsible for the triggering of serious illnesses.”

The document sites diverse scientific studies, like those from Dr. Marcos Abdo Arbex, which “revealed that atmospheric pollution generated from burning sugarcane created a significant increase in hospital treatments for asthma.” Also other heart, artery and cerebrovascular illnesses were cited, both acute cases (increase in hospital stays and deaths due to arrhythmia, cerebral and myocardial ischaemia illness), and chronic cases due to long-term exposure (increase of mortality due to cerebrovascular and cardiac illness).”

In relation to social problems, the report highlights “the disregarding of worker legislation, and the intoxications of the workers through chemical products; workers’ deaths through the inhalation of carcinogenic gases; the indices of respiratory problems, as the burning releases carbon gas, ozone, nitrogen, and sulfur (responsible for acid rain); and also undesirable soot released from burning dried sugarcane leafs (which contains carcinogenic substances).” The study concludes that “the data above shows evidence that exposing sugarcane cutters to particulate material generated from the process of burning sugarcane constituted an important risk factor to be considered in the analysis

⁶³ Tribuna do Juruá, Projeto proíbe incentivo à cana-de-açúcar na Amazônia (Plan prohibits incentives for sugar cane in Amazonia), 29/7/2008 http://www.tribunadojurua.com/index.php?option=com_content&task=view&id=561&Itemid=40

and association of the possible causes of sudden death of some of these workers.” And it adds, “The work conditions expose sugarcane cutters to pollutants that increase the potential risk of illnesses, principally, respiratory problems and lung cancer.”⁶⁴

Conclusion

A change in the energy source that may really look to preserve life of the planet would have to mean also a profound transformation in the current standards of consumption, in the concept of “development,” and in the very organization of our societies. To discuss new sources of energy, in the first place, is to think about whom these new energy sources will serve.

The agricultural model should be based on ecological systems and on diversification of production. It is urgent to rescue and increase the experiences of small, traditional farmers, beginning from respecting the diversity of the ecosystems. These are not simple solutions. Neither is it sufficient to only have changes in individual habits of consumers, like to buy another type of car, to change light bulbs, etc. The greatest responsibility for global warming lies exactly with large corporations that destroy the forests and pollute the environment—the same oil, automotive and agricultural companies, among others, who plan to profit from agroenergy. It is necessary to guarantee subsidy policies for the production of food that comes from small farms, and to strengthen rural social organizations that uphold a new model based on diversified production, in order to achieve food sovereignty.

⁶⁴ Ministério Públco do Trabalho, Parecer técnico, Ref.:OF/PRT24^a/GAB-HISN/No. 134/2008. Authors: Sônia Corina Hess, Professor at the Federal University of Mato Grosso do Sul, and Heiler Irens de Souza Natali, attorney in the Public Ministry of Labor of Mato Grosso do Sul, 06/05/2008.

Between January and September of 2008, there were 179 denunciations of agricultural companies exploiting slave labour, with 5,203 workers involved. Of these 179 denunciations, 128 were a result of the Comissão Pastoral da Terra (CPT) Campaign. Between 2003 and September of 2008, during the Lula government, there were 1,446 denunciations, and of these, 821 thanks to the CPT. But of the 821 denunciations by the CPT, only 289 were investigated, meaning a drop in the average percentage of investigated denunciations to 35%. In the same period, the number of potentially enslaved people was 42,526 and, of these, 26,318 were freed. The majority of the workers who were liberated, 20,386, came from CPT denunciations. The “champion” region in slavery has been the state of Pará. Other states that appear with regularity in last the six years are Mato Grosso, Maranhão, Tocantins and Goiás.

Enslaved by debt: Debates on an Old Problem

Ricardo Rezende Figueira¹ and Adonia Antunes Prado²

Slavery in its contemporary form is well debated, linked as it is to new forms of agricultural exploitation, environmental destruction, migration, and trafficking in people. It presents challenges to those who work in the legal field, those who defend human rights and, indeed, to the wide variety of people dedicated to solving this problem.

Four decades have already passed since the then recently installed, Spanish-born Bishop of São Félix do Araguaia (Mato Grosso), Don Pedro Casaldáliga (1970, 1972, 1977), first made his forceful denunciations of slavery in the Amazon. This problem,

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grave at the time, still persists, though not in exactly the same way. Some of the actors have changed, the political conjuncture is different, and reactions have evolved. Slavery became worse during the years of the military dictatorship, when it was even financed by the State—several companies denounced for practicing slavery had received tax incentives and financial support through the Amazon Development Agency (Superintendência do Desenvolvimento da Amazônia, or SUDAM).

While the problem is not new, the mode of its denunciation and its repercussions certainly is. In the middle of the 19th century, prior to abolition, Thomaz Davatz protested that Swiss workers were forced to work off debts at a coffee plantation in Ibiúna, São Paulo. Ironically, the employer was the liberal, abolitionist Senator Nicolau Vergueiro. There were repercussions both in Europe and Brazil. Beginning in the second decade of the following century, two extraordinary writers, Euclides de Cunha³ (1922) and, some years later, Ferreira de Castro (1945), identified a similar problem faced by rubber workers in the Amazon, a “prison without walls”, where workers were chained by debt. Two years after the military coup Goianian author Bernardo Elis (1987)⁴ wrote about an indebted agricultural worker named Supriano who not only did not own the means of production, but didn’t even have any tools.

Pedro Casaldáliga’s vehement denunciation of slavery is itself a reminder of the work of the French Dominican monk José Audrin, who wrote of the treatment of Indians in Araguaia in the postwar period. He condemned “(T)he inhuman actions in the Amazonian forests,” in which Indians are “enslaved for many months.” The Indians returned, Audrin continued, “overwhelmed and affected by various illnesses (...) leaving their bones among the waterfalls (...)” (1946: p 88). Given the form of his protests and the fact that he is a Bishop, Casaldáliga’s writing has reverberated more widely and generated bigger reactions than has the work of Audrin. In his writing Casaldáliga identified the reasons for slavery—the concentration of lands and the policies of the government—as well denouncing the large economic interests that profit from slavery.

There were many problems, including the lack of a social conscience that contemporary slavery is even in fact a crime. The spectrum of society involved in this type of issue, among them the unions and social organizations, were not in general opposed to this form of slavery because they did not perceive what Esterci (1994) called the “immobilization” of the workers and Martins (1995) called the “coercion” exerted on the worker. Moreover, since the end of the 1960s the state promoted the increase in the number of workers who would come to be involved in these practices. In the predominant form of land occupation, companies which were financed with

³ “It is man who works to become enslaved.”

⁴ On this story, see Corrêa (2008).

public money and which were free of any supervision lured tens of thousands of people north and gave them the very temporary work of opening farms. This was a repetition of prior state involvement in the same practices, which took place during the Second World War under the government of Getulio Vargas. Thousands of Brazilians, known as the “rubber soldiers”, were driven to the Amazon. There, during the rubber harvest and under the regime of the company trading post, more Brazilians died of illness and violence than the Brazilian soldiers who were at the same time stationed in Italy fighting the Germans. (O Povo, 1998; Forline, 2005; Guillen, 2001; Neces, 2004).

The Response Changes: Civil Society and the State

What changed? In the 1970s, during the military dictatorship, civil society was disjointed and gagged, and one certainly could not count on the government. With the end of the dictatorship and the re-emergence of civil and political liberties, civil society organized itself and the State became more sensitive to social pressures. Many heretofore uninvolved organizations and individuals, including the National Association of Labour Judges, labour lawyers, federal judges and attorneys general, the Brazilian section of the International Labour Organization, and the Brazilian Bar Association -, started to prioritize slavery and support the Pastoral Land Commission (Comissão Pastoral da Terra, or CPT). Dozens of meetings were held in order to debate responses to the crime in Congress, the Ministries and other places, promoted by the State, Church, working class organizations and other bodies of civil society.

In 1995 the Mobile Verification Groups (Grupos Especiais de Fiscalização Móvel or GEFM) were created. The GEFM were put under the supervision of the Ministry of Labor and Employment (Ministério do Trabalho e Emprego or MTE), rather than the Regional Labor Offices⁵, which were more vulnerable to the influence of powerful local interests. The GEFM regularly investigated properties that had been suspected of being in contravention of Article 149 of the Brazilian Criminal Code, which makes it illegal “to reduce a person to any condition analogous to slavery”. The National Commission for the Eradication of Slavery (Comissão Nacional para a Erradicação do Trabalho Escravo) was created, which then elaborated the second National Plan for the Eradication of Slavery. As in the 1st Plan, the second National Plan carefully identified necessary actions, responsible groups, involved partners and time periods for implementation. Among the “actions of reintegration and prevention”, articles 32, 33, and the

⁵ On 04/01/2008, O Diário Oficial da União published a decree by virtue of which the Regional Labor Offices (Delegacias Regionais do Trabalho or DRT's) would thereafter be called the Regional Superintendencies of Labor and Employment (Superintendências Regionais do Trabalho e Emprego).

“specific actions of economic repression”, articles 65 and 66, are seen as responses to “agrarian reform”.

If initially slavery was denounced and the liberation of several workers occasionally achieved, now workers are frequently liberated in joint operations of various ministries coordinated by the GEFM.

However, the CPT has shown that not all denounced cases are actually investigated.⁶ The rate of investigation of all denunciations received by the government is, on average, 62%, with last year the highest ever, at 72%.

Between January and September of 2008, there were 179 denunciations of agricultural operations exploiting slaves, with 5,203 workers involved. Of these 179 denunciations, 128 were a result of the CPT Campaign. Between 2003 and September of 2008, during the Lula government, there were 1,446 denunciations, 821 of these thanks to the CPT. But of the 821 denunciations by the CPT, only 289 were investigated, meaning a drop in the average percentage of investigated denunciations to 35%. In the same period, the number of potentially enslaved people was 42,526 and, of these, 26,318 were freed. The majority of the liberated, 20,386, came from CPT denunciations.

The state considered the “champion” in slavery has been Pará. Other states that appear with regularity in last the six years are Mato Grosso, Maranhão, Tocantins and Goiás. In 2008, by the end of September, the only region of the country without any denunciations of slavery was the Southeast. The region with the highest percentage of cases was the Center-West (31.6%).

Since the creation of the GEFM in 1995 and up until September of 2008, 32,405 people have been freed, according to the data of the CPT. The year with the highest number of liberations was 2007, with 5,968 (Diagram 1). In the same period, however, the number of people working on denounced properties was 55,830. In the eight years of the Cardoso government, the annual average of liberated people was 760 people. In the seven years and nine months of the Lula government, the annual average has been 4,386 people. The year with the highest number of involved workers was 2007, with 8,651 cases and 5,968 releases.

The correlation of enslaved work to specific economic sectors in 2008 is also telling: 41% of enslaved workers were in the sugar cane trade, with 27% in cattle and 14% in the charcoal trade. In the preceding year, the breakdown was much the same: 41% in sugar cane, 33% in cattle and 6% in coal. When we look at a longer period, between

⁶ The numerical data and percentages are taken from the document “The CPT Campaign Against Slavery—statistics, 03/10/08” (“Campanha da CPT contra o trabalho escravo – estatísticas em 03/10/08”), presented by one of the national directors of the CPT, José Batista Gonçalves Afonso, at the Second Scientific Study Meeting on Contemporary Slavery and Related Questions, organized by the GPTEC between 22 and 24/10/2008 at the UFRJ.

2003 and 2008, the results are somewhat different, with 44% in cattle, 18% in sugar cane 18% and 8% in coal (Diagram 2). The cane sector has gradually supplanted the cattle trade—the former being precisely the sector with a high concentration of wealth and land, which is praised by the government, and which has had significant economic success due to the production and commercialization of ethanol and sugar. Meanwhile, the rhythm of production has intensified. If in 1970 the average amount of cane cut by each worker per day was 3.5 tons (according to a text by Economics Professor Robert Novaes⁷), by 1990 it increased to 6.10 tons. In the most recent decade it reached between 9 and 10 tons per day.

Academic Reflection

For a long time the academic world, with a few exceptions, such as José de Souza Martins (1994), Neide Esterci (1994) and Alfredo Wagner Almeida (1988), researched in other areas related to slavery, generally to do with aboriginal peoples. In their rigorous studies of the phenomenon they frequently used terms like “lodgings” (morada) with respect to the north-east and “peonage” or “barracks” (barracão) for the Amazon. In the 1970's some academics, such as Otávio Ianni (1978), Fernando Henrique Cardoso and Geraldo Muller (1977), moved beyond the term “peon” to discuss “semi-slavery.”⁸ Earlier than this, however, the term “slavery” had already appeared in literature, the visual arts and music, in news articles and in the denunciations of organizations and individuals concerned with human rights. As one can see the injustice of slavery, therefore, can be protested with the most diverse expressions of human ingenuity.

In these respects there were significant changes within academia. Recently, the Contemporary Slavery Research Group (Grupo de Pesquisa Trabalho Escravo Contemporâneo, or GPTEC) from the Centre for the Study of Public Policy in Human Rights (Núcleo de Estudos de Políticas Públicas em Direitos Humanos, or NEPP-DH) organized the Second Scientific Study Meeting on Contemporary Slavery and Related Questions. As in the first meeting held in 2007, numerous academic research projects on the theme of contemporary slavery or on topics related to this theme, either concluded or in process, were presented and discussed. The work of 18 researchers was presented at the first meeting, while at the second conference this increased to 22. The authors of these works came from many different Brazilian states as well as from two foreign

⁷ Exhibit of photos by Flávio Conde with text by Roberto Novaes, titled: *No eito da Cana: Saúde, Direito, Trabalho* (Cane eito: Health, Rights, Work) [An eito is the area worked by a given cane cutter].

⁸ Cardoso and Muller write that: “On the plantations, in the mines, and in the deforestation work to make way for farms, working conditions prevail that are not only adverse, they are sometimes compulsory. The ‘system’ – which is as old as the initial occupation of Amazonia – became generalized as a prerequisite for economically viable exploitation of the area” (1977:183). On the same page an article from the press is reproduced using the term “semi-slavery” and on p. 185, the authors repeat the term.

universities: a doctoral student from the Universidad de Sevilla and a professor from the National Autonomous University of Mexico.

An interesting survey was carried out by Emmanuel Oguri Freitas and Guilherme Silva Ferreira on contemporary slavery using the key words slave labor, slave-like work, degrading labor and debt slavery based on information from CAPES and the CNPq (Diagram 3). The first research works, which were defended in specialized masters and doctoral courses, only appeared after 1992. From this point until October of 2008 32 monographs, dissertations and theses on the subject have been defended. Even if this number is indicative, it does not represent the total number of works. It is possible, after all, that not all the research has been duly registered with academic institutions and that the categories used for the survey have not been wide enough to accumulate all of the relevant data. Of the 32 projects the majority (25) are masters theses, along with 5 doctoral theses and 2 specialized monographs. The majority of works were defended in 2006 (Diagram 3).

The works were defended in 14 states, broken down as follows: São Paulo has the most with 7, then Rio De Janeiro with 6, followed by Rio Grande Do Sul with 4 and Maranhão, the Federal District, Santa Catarina and Paraná with 2 each, and, finally Minas Gerais, Espírito Santo, Ceará, Piauí, Pará, Mato Grosso and Paraíba with one (Diagram 4).

The survey shows, given the thematic areas, that the research is distributed irregularly with respect to academic specialization. Most is in the area of law, with 17 works (53.1%), followed by social sciences/sociology with 4 (12.5%), and social and public policy with 3 (9.4%). The other areas—education, agricultural development, production engineering, geography, history, psychology, sustainable development, development, agriculture and society—have one each (Diagram 5). The highest frequency of studies carried out by professionals and students in law focuses on the practical results of struggles against contemporary slave labour and on the judicial debates regarding article 149 of the Brazilian Criminal Code and related legislative changes now in process.

The production of books reflects the increase of interest in this subject. According to the GPTEC collection, there were 34 publications between 1987 and 2008 and, of these, 15 were collective projects that are in general the fruit of meetings promoted by the state, the university or civil society (Diagram 6).

Final Considerations

It is important to observe the development of attempts to grapple with the problem of slave labour in its material and intellectual expressions, as it appears in practice and as it is considered in studies on the theme. There have been important changes in the form and the frequency of treatments of this subject by various social citizens, in which the

role of the State and its increasing even if sometimes inefficient and inefficacious commitment stand out. There is also much evidence that agents in civil society are giving increasing attention to the problem, either in the form of work by organized groups that act to prevent and combat slave labor—The Pastoral Land Commission in some Brazilian states, the Center for the Defense of Life and the Rights of Human Beings of Açaílândia (Maranhão) and Brazil Reporter (São Paulo), for example—as well as the notable concern of professionals and students in the academic sphere.

The isolated and courageous voices that produced the first denunciations and studies of slave labour during the military dictatorship continue today, echoing in Brazilian society and the State, maturing their reflections and justifying the cry for justice.

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Diagram 1. National Data on Slavery

Year	Workers involved in Slave Labour Claims	Liberated Workers
2007	8.651	5.968
2008	5.203	3.906

Fonte: CPT/MTE

Diagram 2. Percentage of enslaved workers relative to sector of production.

By activity	Percentage of Workers Involved 2003-2008	Percentage of Workers Involved 2007
Sugar Cane	18%	41%
Cattle	44%	33%
Coal	8%	6%

Fonte: CPT

Diagram 3. Monographs, Dissertations and These defended by year

Year	specialized	masters	doctoral	total
1992	-	1	-	1
1999	-	1	-	1
2000	-	-	1	1
2002	-	1	-	1
2003	-	2	2	4
2004	-	3	-	3
2005	1	3	1	5
2006	-	8	-	8
2007	1	5	1	7
2008	-	1	-	1
Total	2	25	5	32

Source organizations: CAPES and CNPQ. Data organized by Emmanuel Oguri Freitas and Guilherme Silva Ferreira

Diagram 4. Monographs, Dissertations and Theses by State

	State	Specialized	Masters	Doctoral	Total
SOUTH EAST	RJ	2	2	2	6
	MG	-	1	-	1
	SP	1	5	1	7
	ES	-	1	-	1
NORTH EAST	PB	-	1	-	1
	PI	-	1	-	1
	CE	-	1	-	1
	MA	-	2	-	2
CENTRAL EAST	DF	-	2	-	2
NORTH	MT	-	1	-	1
	PA	-	1	-	1
SOUTH	SC	-	2	-	2
	RS	-	4	-	4
	PR	-	1	1	2
	Total	3	25	4	32

Source organizations: CAPES and CNPQ. Data organized by Emmanuel Oguri Freitas and Guilherme Silva Ferreira

Diagram 5. Monographs, Theses and Dissertations by Area of Specialization

Thematic Areas	f	%
Law	17	53,1
Social Sciences, Sociology	4	12,5
Public and Social Policy	3	9,4
Education	1	3,1
Agricultural Development	1	3,1
Production Engineering	1	3,1
Geography	1	3,1
History	1	3,1
Psychology	1	3,1
Sustainable Development	1	3,1
Agri+ Social Development	1	3,1
Total	32	100

Source organizations: CAPES and CNPQ. Data organized by Emmanuel Oguri Freitas and Guilherme Silva Ferreira

Diagram 6. Books Published per the GPTEC

Ano	Livro individual	Livro coletivo	Total
1987	1		1
1993	1		1
1994	1		1
1995	3		3
1996	1		1
1997		1	1
1999	2	1	3
2000	2		2
2001		1	1
2002	1	1	2
2003		1	1
2004	2	1	3
2005		1	1
2006	2	2	4
2007	2	3	5
2008	1	3	4
Total	19	15	34

Since the Constitutional Congress of 1988, Brazil has not suffered from such a virulent anti-indigenous racist wave throughout the country. With its nationalist façade, this wave managed to garner support, or at least the complicit silence, of traditional sectors engaged in fighting in defense of indigenous peoples. Based on a local situation, that of the private interests of those invading State lands (such as indigenous lands), in 2008 part of Brazilian society came to look at indigenous peoples as enemies, and at those allied with indigenous peoples as criminals. The constitutional rights of indigenous peoples came to be seen as privileges that should be urgently reviewed by the National Congress; the UN came to be seen as an imperialist threat and neighboring countries as potential enemies.

Indigenous Peoples: from Rights Won to Rights Contested¹

Paulo Maldos²

“**Article 231.** The social organization, customs, languages, beliefs, and traditions of Indians are recognized, and their native rights to the lands that they traditionally occupy, it being the State’s responsibility to demarcate and protect them, and see that all their assets are respected.

Article 232. Indians, their communities and organizations are legitimate parties that may enter into legal proceedings in defense of their rights and interests, with the Public Prosecutor involved in all acts of the process.”

Constitution of the Federal Republic of Brazil – 1988.

¹ With thanks for the contributions made by colleagues in the National CIMI Secretariat, Marcy Picanço, Leda Bosi Magalhães, and Aida Marise Cruz, whose suggestions and information made the present report possible.

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1. Recognition of Rights in the Federal Constitution and Anti-Indigenous Reactions

On October 5, 2008, the Federal Constitution celebrated its 20th anniversary. The social rights and indigenous rights recognized therein were the fruit of many years of mobilization and fighting by social and indigenous peoples' movements during the military dictatorship (1964-1985), and the result of intense indigenous and popular participation in the Constitutional Assembly (1987-1988).

The constitutional text signified a victory of democratic sectors as it contemplates a transformational national project from the point of view of relations between the State and Brazilian society; recognition of our cultural diversity; the sociocultural plurality of indigenous peoples and traditional communities; affirmation of native territorial rights, among others.

After this document was enacted by the National Congress, little by little indigenous peoples and grassroots sectors began to mobilize with a view to solidifying their recognized rights, pressuring state powers to put such rights into practice.

Indigenous peoples began to mobilize themselves with greater force and determination so that their lands could be demarcated and homologated throughout the country. In regions where public power did not hold sway, the communities retook lands and demarcated it themselves, forced out invaders, built villages, reconstituted the social fabric which had been violently

torn apart with their expulsion from their lands, recovered rituals, religions, and languages, strengthened their identities and plans for the future.

In order to meet the challenges of dialogue and partnership with national society, indigenous peoples created various tools during this period: indigenous organizations, which arose people by people, region by region, state by state, category by category (teachers, health agents, etc.). Such organizations were charged with carrying out the demands of the communities with regard to demarcation of lands, health, education, self-sufficiency, and others.

With the various indigenous organizations, the different peoples began to participate directly in public policy-making that affected them, seeking to exercise social control over them, suggesting practices, furnishing basic information for planning efforts and evaluations by government entities, intermediating the latter's contact with indigenous communities.

Over the years, indigenous organizations multiplied alongside the bases, while at the same time indigenous peoples sought to create joint mobilizations in order to make their constitutional rights visible and build permanent linkages at the national level.

Relatively often, indigenous mobilizations were present at the National Congress and sought meetings with the Executive and Judicial powers, in order to put forth demands and proposals in the name of the indigenous peoples of Brazil. Among these

we note the proposal for a new Statute on Indigenous Peoples, in keeping with the new constitutional text. Enactment of the Statute has been held up in Congress for 16 years.

First Anti-Indigenous Reactions

The anti-indigenous sectors of Brazilian society, however, were not passive during this period. Seeing themselves to be the losers in the Constitutional Congress, they waited sufficiently long to react to the conquests by indigenous peoples. The moment arrived during the time of demarcation of Yanomami Indigenous Territory, in 1992.

Linked within and without the State, mining enterprises, large landholders, lumber, military, juridic, and conservative journalistic interests undertook a vast campaign to prevent the indigenous land from being demarcated.

In spite of the restraints of the era, with denouncement of the massacres carried out by garimpeiros (miners) against Yanomami communities, such sectors made accusations against recognizing indigenous territorial rights as being “threats to national security.” Even with all their connections, those sectors were not successful and the Yanomami people had their territory demarcated by President Fernando Collor de Mello, in May 1992.

In various regions of Brazil invaders of indigenous lands reacted with violence to the recognition of constitutional rights: assassinations of leaders, racist defamations through the media, intimidating invasions of indigenous communities, aggressive statements by military entities, linking of local power against indigenous mobilizations and organizations.

All these actions were attempts aimed at counteracting and inhibiting growing recognition of indigenous rights by society and by the Brazilian State, starting with the new constitutional framework. This was an attempt to build a negative image of indigenous communities through the media and, by means of lobbying the Executive, Legislative, and Judicial branches, turn Articles 231 and 232 of the Federal Constitution, referring to indigenous rights, into dead letter legislation.

2. Raposo Serra do Sol: Racist Violence and History

Raposo Serra do Sol is an indigenous territory located in the State of Roraima, where the Macuxi, Wapichana, Ingaricó, Taurepang, and Patamona peoples have lived for more than three thousand years.

These peoples suffered all the violence of the colonizing process and, later, in the 20th century, were the victims of predatory actions by adventurers who came to the Amazon region in search of gold, diamonds, and easy profit from limitless exploitation of native labor.

Large landholders spread out cattle on indigenous land, marked the Indians themselves with brands and thus “took possession” of the land; garimpeiros (miners) enslaved Indians; everyone distributed alcohol as a strategy for social breakdown and ethnic,

social, and economic domination. The indigenous people who submitted were considered to be “caboclos” and “acculturated.”

Anyone who tried to defend the communities against such violence was threatened with death, segregated, persecuted. This happened with the Capuchin monks whose Order denounced, at the beginning of the 20th century, the enslaving practices of the Roraima landholders.

During the 1970s, under the military dictatorship, however, as occurred in other parts of Brazil, the religious and pastoral community of the Catholic Church maintained solidarity with the indigenous peoples of Raposa Serra do Sol and began to fight, together with them, to strengthen the communities, combat alcoholism, throw out the invaders, build proper public policies on health, education, and economic self-sufficiency.

Other support, both national and international, was added to that of the Catholic Church, throughout the last 34 years, transforming the Raposa Serra do Sol Indigenous Land into a worldwide-known symbol of indigenous struggles in Brazil. Politically and economically strengthened in their communities and local organizations, the indigenous peoples began to exercise increasing control over their territory, participating in public policy making and reformulating same to better serve the communities.

During the Fernando Henrique Cardoso administration, at the end of 2002, Raposa Serra do Sol was finally demarcated, after much going back and forth, and after many attempts to reduce the territory and efforts to demarcate the territory in “islands.” At the beginning of the Lula administration the demarcation began again to be analyzed, submitted to political negotiation, criticized by military sectors, and, once again, almost revised. The indigenous land came close to being broken up, due to the strong pressure exerted by the invaders and their allies.

Finally, in 2005, Raposa Serra do Sol was homologated and recorded by the Luiz Inácio Lula da Silva government, an historic fact considered to be a victory for all the indigenous peoples of Brazil. It entailed granting a legal term of one year for withdrawal of the last invaders. The National Colonization and Agrarian Reform Institute (INCRA) drew up a plan for resettlement of those invaders, guaranteeing them land in the State of Roraima and indemnification for improvements.

That's where the coordinated actions of large landholders and their allies began, aimed at de facto disempowerment of demarcation of the indigenous land.

This hostile attitude on the part of rice growers and the military quickly gave rise to violent actions, beginning, as early as 2005, with the destruction of a Indigenous Educational Center in the region. More than 150 men, hooded and heavily armed, attacked a school at dawn, shooting at teachers and students, setting on fire a church, a small hospital, cars, student facilities and housing, sheds, computers, completely destroying

the Indigenous Center. During the same period, religious were held hostage and threatened with death.

With the end of the most violent manifestations, the federal government again attempted to remove the invaders. After several attempts, aborted due to the immediate leak of information to the invaders, in 2008 the federal government planned Operation Upatakon 3, using only Federal Police and in a secretive manner, with the purpose of definitively removing the invaders from Raposa Serra do Sol.

Anti-Indigenous Violence on the Part of Invaders: Local and National

The great majority of the invaders of indigenous land have been indemnified and transferred to another region of Roraima. There is left on the land a group of 5 large rice planter invaders and some medium-sized holdings associated with them.

This small group, supported by state politicians and military and by local and national communication media, has put into action a chain of hostile actions toward the Federal Police and the indigenous communities: they burned bridges, attacked communities, assaulted leaders, threw incendiary bombs at huts and at federal agents, mined roads, attempted to explode a car bomb in front of Federal Police headquarters, etc.

Through the national media the old “analyses” have been trotted out again, such as the indigenous peoples being a threat to national sovereignty, a dead weight against development, enervating to the state, causing delay and unemployment, attempting to create another nation with the help of the UN, etc. They attack international treaties to which Brazil is a signatory, such as Convention 169 of the International Labor Organization and the UN’s Declaration of the Rights of Indigenous Peoples.

The military, including generals, began to act as the spokesperson for the invaders, making their viewpoints heard by means of aggressive manifestations on the part of the active and reserve sectors, against the Lula government itself. Their discourses came close to a proposal for a coup d’etat, keeping in mind the fact that they considered the federal government to be a gang, they proposed creation of a “monolithic power nucleus,” in “defense of sovereignty” and convoked “concrete action” rather than by legal means.

Television networks, led by Rede Globo, publicized the “producers’ acts of resistance” and put forth “analyses of the situation at Raposa Serra do Sol, with their “analyst,” with rights to being interviewed live on the national networks, being the main leader of the rice farmers, who was responsible for the most violent actions of the invaders.

By means of the national media, anti-indigenous prejudice was being spread throughout the country, through the immense capillary of communication media in national territory. Any claim, covering health or education, by any indigenous community

ended up on the front pages of the newspapers, and was treated as a crime. In various regions of the country, indigenous communities came to be seen as suspect and threatening to public security; throughout the frontier region Indians came to be seen as dangerous elements of foreign infiltration, probably creators of separatist states.

By means of the internet, blogs, and websites, lies began to surface with respect to indigenous peoples and their rights; deliberately constructed and false “depositions,” by supposed “travelers in Roraima,” spread lies about the state and indigenous peoples. More recently, elaborate messages, with a lot of images and supposedly scientific data on the mineral question in Roraima, have been distributed via computer networks, with flagrantly racist affirmations.

Based on a local situation, that of the private interests of those invading State lands (such as indigenous lands), part of Brazilian society, in 2008, came to look at indigenous peoples as enemies and at those allied with indigenous peoples as criminals. The constitutional rights of indigenous peoples came to be seen as privileges that should be urgently reviewed by the National Congress; the UN came to be seen as an imperialist threat and neighboring countries as potential enemies.

Since the Constitutional Congress of 1988, Brazil has not suffered from such a virulent anti-indigenous racist wave throughout the country. With its nationalist façade, such a wave managed to garner support, or at least the complicit silence of traditional sectors engaged in fighting in defense of indigenous peoples.

Overwhelmed by the view, imposed by the invaders and their allies, that the situation in Raposa Serra do Sul would result in large-scale social upheaval and insecurity along the frontier, the judicial action that questioned the demarcation of Raposa Serra do Sol was put before the Federal Supreme Court (STF). The STF should decide this year about the constitutionality of the demarcation and homologation.

3. The Pataxó Hã-Hã-Hãe and Guarani-Kaiowá Cases

The Pataxó Hã-Hã-Hãe people of the State of Bahia, had their lands demarcated by the old Indian Protection Service (SPI) in 1936. In the following decades their territory was successively invaded by cacao and other agricultural interests, with the collusion of civil servants. Starting in the 1970s, State governors handed out title to the invaders for properties that impacted on indigenous land.

Attempts by the Pataxó Hã-Hã-Hãe to recover or to remain on their lands were always violently suppressed by the Military Police and by the militias of the large landholding interests. At the beginning of the 1980s, the indigenous people organized and retook part of the land. In 1982, the National Indian Foundation (Funai) brought

before the Federal Courts a request to nullify the titles given to indigenous land. That same year, the case came before the Federal Supreme Court.

Since then, the people have fought to recover all their land. In this period, more than 20 leaders were assassinated, and the crimes remain unpunished. Galdino dos Santos, the indigenous person burned in Brasília in 1997, was in the city to make claims regarding the Pataxó Hã-Hã-Hãe lands.

The suit made by Funai, after 26 years, began to be judged and discussed, focuses on the legality or otherwise of the titles given to invaders, was analyzed by the Federal Supreme Court Plenary in September of this year, shortly after beginning judgment on the Raposa Serra do Sol case, in the same Federal Supreme Court. As happened with the latter, discussion was suspended due to a visa application by Minister Carlos Menezes Direito.

The Guarani Kaiowá people, in the State of Mato Grosso do Sul, lived in a territory of about four million hectares up to the middle of the 20th century. With the arrival of ranches, principally cattle ranches, the communities began to be divided, separated, isolated, and the Guarani territory was broken into islands. The demarcations made, in general, transformed the communities into small overpopulated ghettos, and included a mixture of ethnicities. In recent years, the overpowering entry of agribusiness has aggravated the situation even more. The results can be seen in the annual reports of the Network for Social Justice and Human Rights: alarming indices of suicide, assassinations, death threats, alcoholism, shootings and rapes in the interior and against the indigenous communities.

In 2007, after years of claims made by the Guarani, Funai signed a Pact for Adjustment of Conduct (TAC) with the Federal Public Prosecutor (MPF/MS), which promises that by 2010 it will deal with part of the demand for demarcation of land by the 40,000 Guarani in Mato Grosso do Sul. In July 2008, Funai published decrees setting up technician groups to carry out anthropological and land studies to identify the tekoha (traditional lands) which should be demarcated.

Even at the beginning of the work, the ranchers, with the support of the State's politicians, including the Governor, began an intense campaign in the local and national press, putting forth false information about the studies, claiming, for example, that a third of the state would be transformed into indigenous land. The objective of the campaign was to convince the people of the state and the nation to oppose realization of the Guarani-Kaiowá's constitutional right to their lands.

In both the Pataxó Hã-Hã-Hãe case and the Guarani-Kaiowá case, in 2008 local racism connected with nationally constructed racism, giving rise to a grave situation of stigmatization of indigenous peoples by national society. In the case of the Guarani Kaiowá, the invaders constructed a discourse identical to that of the invaders of Raposa

Serra do Sol, accusing the indigenous people of “threatening national sovereignty,” “impeding development,” “nullifying the State,” “invading municipalities” and so forth.

In both cases, the invaders of indigenous lands and their allies seek, this year, to influence the Federal Supreme Court so that the decisions made thereby relating to Raposa Serra do Sol and to the Pataxó Hâ-Hâ-Hãe contain a restrictive interpretation of the constitutional concept of “lands traditionally occupied” by indigenous peoples and that this restrictive interpretation can serve as a parameter for future demarcations, thus releasing the indigenous lands to the market.

4. Data on Anti-Indigenous Violence in 2008

Data concerning violence against indigenous peoples in Brazil in 2008 reveal the same pattern observed in previous years, where there was a large concentration of cases and victims in the State of Mato Grosso do Sul and, specifically among the Guarani Kaiowá people.

In the entire country, as of October of this year, 27 cases of indigenous suicide were recorded, all among the Guarani Kaiowá people of Mato Grosso do Sul. Of these, a third of the victims were under 18 years of age, with 2 victims being barely 13. As in prior years, the acts of suicide occurred under apparently commonplace circumstances. This year, for example, a 14 year old asked his father for money to buy school supplies; when he discovered his father did not have money to give him, he committed suicide. The father, seeing his son dead, killed himself as well.

In the entire country, 43 murders of indigenous people were recorded, 32 of these in Mato Grosso do Sul. Also, 28 attempted murders were record, 18 of which were in Mato Grosso do Sul. In other words, between murders and attempted murders, there were 71 incidents, 50 of which being in Mato Grosso do Sul. From the high rate of occurrence of murders and attempted murders involving members of the Guarani Kaiowá communities of Mato Grosso do Sul, it is clear that social and individual breakdown, due to evident lack of land to live, continues to profoundly affect that indigenous people.

In the entire country, we had 19 cases denounced and published by the press regarding ownership invasions, illegal exploitation of natural resources, environmental damage, biological damage, and various other damages to the patrimony of the indigenous communities. Such acts are committed by lumber workers, garimpeiros (miners), and other invaders who, not uncommonly, also commit acts of physical aggression against the communities.

This general picture, in spite of being succinct, reveals the need for special attention on the part of the State to the situation of Guarani Kaiowá indigenous lands in Mato

Grosso do Sul. It also shows the need to implement the creation of the National Indigenous Policy Council as a public space, with indigenous, indigenist, and government participation, to draw up articulate, and implement indigenous policy in Brazil.

5. The Federal Constitution's 20 Years

The Federal Constitution of 1988 recognized the Indians “social organization, customs, languages, beliefs, and traditions, and rights to the lands they traditionally occupy.” Such recognition signified a more elevated base for indigenous struggles in our country, marking the end of the integrationist perspective of the Brazilian State and the beginning of a new historical period, in which indigenous peoples would be considered protagonists with assured territorial rights and fundamental subjects for the drawing up of all public policies concerning them.

Based on this new standard, indigenous peoples sought to recover their invaded territories, fought for demarcation, homologation, and recording of these State lands intended for their exclusive enjoyment and that had been constituting institutional spaces, where the communities and leaders could realize theoretical and practical advances in areas such as health, education, and economic self-sufficiency.

The frame of reference of the 1988 Constitution, which created the bases for a more democratic and culturally pluralistic country, joined with the political will and practical action of the indigenous peoples, engaged in transforming this new country into reality, created a social dynamic that was intolerable for the defenders of the established order.

The invaders of indigenous lands, under the direction of agri-business enterprises, tied to the military, authoritarian, and extreme-right sectors, and with the strategic support of large scale means of communication, both concentrated and prejudiced, set in motion a process restoring intolerance and racism on a large scale, such as has hardly ever been seen in Brazil.

Under the pretense of “the defense of national territory and development,” what it really intended was that no land would be outside the market. If today it’s the Raposa Serra do Sol, the Pataxó Hã-Hã-Hãe, and Guarani Kaiowá lands, tomorrow it will be those of the quilombolas, traditional communities, coconut harvesters, river dwellers, mining reserves, environmental preserves, biological preserves, and so forth.

What is in play are differing visions of the country and different paradigms for development. On the one hand, there are visions that seek to make the Federal Constitution real, building in practice a country that is democratic, economically egalitarian, and culturally pluralistic, where land is seen as a collective patrimony and one that should be respected. On the other hand, there are visions that seek to return to our colonial past, one that is politically autocratic, culturally hierarchical, economically exclusionary,

and concentrates wealth and land; a view with only a single private means of production.

6. Conclusion

We are coming to the end of the first decade of the 21st century. At this juncture, both in Brazil and throughout Latin America, indigenous peoples, traditional communities, and grassroots sectors are giving signs of their desire to exercise the protagonist's role in all political spheres. However, this same juncture is seeing the devastating actions of agribusiness associated with financial capital on a global scale. For financial capital, laws exist to be taken apart, public institutions exist to be molded to their interests, and the authorities exist to be biddable to their plans.

In several Latin American countries, indigenous peoples have become stronger in their struggle for a more egalitarian, democratic, and culturally pluralistic society. In these countries, the old oligarchies seek by any means possible to halt and annul such democratizing processes. In Brazil, indigenous peoples show the same desire to build an egalitarian and culturally pluralistic country.

The New Normative Rule (IN) 49/2008 was published, but quilombolas did not have sufficient time to formulate their questions: there was a lack of agreement or consent with regard to alteration of the majority of the points discussed and backsliding with regard to the concept of territory, self-identification, and curtailment of INCRA's jurisdiction as provided for in Dec. 4,887/2003.

Building Consensus and Consultation with Quilombola Peoples in Brazil, International Labor Organization Convention 169

Cíntia Beatriz Müller¹

In October 2008 I am revisiting this article written at the beginning of July 2008.² The Normative Rule which was the purpose of the “consultation” has already been published as Number 49, having been sent off by the National Institute for Colonization and Agrarian Reform (INCRA). Thus, the text will present ILO Convention 169 and what that document proposes regarding realization of consultations; the manner in which quilombola communities, through the National Coordination of Black Quilombola Communities (CONAQ) proposed the April 2008 consultation; how, in fact, it came to be, once I had the opportunity to follow the entire procedure in Luziânia/GO, together with other consultants³; and on the scenario for the announcement of IN 49/2008.

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² Published in http://www.loinonia.org.br/tpdigital/detalhes.asp?cod_artigo=211&cod_boletim=12&tipo=Artigo

³ The consultants following the consultation were: Lúcia Andrade (Commission for the Indian of São Paulo); Rosa Peralta (Koinonia); Letícia Osório (Centre on House Rights and Evictions); Cíntia Beatriz Müller (researcher from the Anthropology and Citizenship Nucleus/UFRGS); Roberto Rainha (Network for Social Justice and Human Rights); Fernando Priote (Terra de Direitos); Gustavo Magnata (Dignitatis); Onir Araújo (United Negro Movement of Rio Grande Do Sul); Gilsely Barreto; Aniceto Castanheira (Maranhão Center for Black Culture); Rosane Muniz (Board of Directors/UFES); and André Araripe (Luís Freire Cultural Center of Pernambuco). Jerônimo Treccani and Luciana Garcia (Global Justice), although invited, could not attend.

1. ILO Convention 169 and Consensus

International Labor Organization (ILO) Convention 169 was approved by the Brazilian National Congress by means of Legislative Decree No. 143 of June 20, 2002. The Brazilian government's ratifying instrument was deposited, or delivered, to the ILO Executive Director on July 25, 2002, with effect in the international domain, as pertains to Brazil, as of July 25, 2003. Effectively, ILO Convention 169 entered into international effect on September 5, 1991, that is, it acquired the status of an international document in the 1990s, having been promulgated on June 27, 1989. However, for the document to have internal effect within the various countries, for some more conservative jurists, the Convention would have to be ratified and formally go through a process of internalization, which, in formal terms within Brazil, meant by means of promulgation of the text of ILO Convention 169 by means of a Presidential Decree.

ILO Convention 169 was promulgated on April 19, 2004. In accordance with Article 1 of the presidential decree that internalized the text of the Convention vis-à-vis the national juridic sphere, the same must be "executed and complied with" as provided for in the copy attached to Presidential Decree 5,051/2004. We must consider, however, that ILO Convention 169 deals with fundamental human rights, as it carries in its text guarantees and obligations with regard to rights such as self-identification, specific conditions for appropriation of natural resources that respect the peculiarities of traditional peoples, and various other human rights. The rights protected by ILO Convention 169 are essential to the respect for the life and human dignity of traditional peoples. With a view to these specifications, we agree with Flávia Piovesan⁴ who affirms that international documents dealing with human rights take immediate effect within the realm of internal law as of their ratification by the country, which in Brazil's case was 2002.⁵

Some considerations contained in ILO Convention 169 pervade the entire document, such as the right to self-identification, protection and respect for the culture and identity of the peoples, self-government, and consultation. The right to self-identification is defined in Article 1.2 which assures the people that their consciousness of their identity is a basic criterion that defines their same. The right to have their identities and cultures protected and respected is assured to the peoples under the Convention, in situations pertaining both to working conditions and to living conditions (Art. 5 a, b, c). The right

⁴ Piovesan, Flávia. *Direitos Humanos e direito constitucional internacional* (Human Rights and International Constitutional Law), 7th ed. Revised and expanded. São Paulo: Saraiva, 2006.

⁵ Müller, Cíntia Beatriz; *A Convenção 169 da Organização Internacional do Trabalho e a garantia dos povos quilombolas ao Direito Humano Fundamental ao território: o caso das comunidades dos quilombos no Brasil* (ILO Convention 169 and the guaranteeing to quilombola peoples of the basic human right to territory: the case of quilombo communities in Brazil).

Human Rights Monograph. Advisor: Dr. Marcelo Veiga Beckhausen. Higher Institute of the Federal Prosecutor's Office and the Federal University of Rio Grande do Sul. Fls. 102.

to self-government is assured in Article 7 (1) of ILO Convention 169 with the following text, which is worth being set forth here: “Interested peoples shall have the right to choose their own priorities with respect to the development process, to the extant that such affects their lives, beliefs, institutions, and spiritual well-being, as well as the lands they occupy or use in any way, and to control, insofar as possible, their own economic, social, and cultural development. In addition, these peoples shall participate in the formulation, application, and evaluation of national and regional development plans and programs that may affect them directly.”

Interconnected with the right to self-government is the right to consultation. I would like to stress that the entire first part of ILO Convention 169, from Article 1 through Article 12, offer general parameters for its application. Thus the document composes a true Code of Ethnic Rights which obliges those implementing the Convention to respect it systematically and not to only implement isolated provisions as if they were autonomous. With respect to the right of consultation, ILO Convention 169 defines quite specific parameters for its realization: 1. the consultation instrument must be appropriate; 2. may be realized by means of representative institutions (which does not imply the existence of a single representational entity); 3. may be realized whenever administrative or legislative changes affect the peoples under the Convention (art. 6, 1, a); 4. shall be applied in good faith and in an appropriate manner appropriate to the circumstances; 5. have the purpose of reaching an agreement and acquiring consent (Art. 6, 2); 6. on adopting special measures for protection and safekeeping of persons, institutions, assets, cultures, and the environment of the peoples under the Convention, the same shall not be contrary to the freely expressed desires of the peoples (Art. 4, a and 2); 7. in addition, the instruments anticipated in the Convention may not be used to prejudice the rights and advantages therein guaranteed to the peoples, by virtue of: conventions and recommendations, international instruments, treaties, laws, awards, customs, or national accords (Art. 35). (Attachment I).

Thus, there is a series of requirements and parameters necessary for the implementation of a consultation, as found throughout the text of ILO Convention 169 and which must be observed so that in fact there is consultation with the traditional peoples in accordance with the Convention. In short, I would like to point out that to realize an efficient consultation in a country with the regional diversity, population, and specifics regarding understanding the purpose of the consultation, such as Brazil, requires a large-scale effort and a methodology which has been thought through and discussed between the population to be consulted, civil society, and federal government entities. The consultation, as assured under ILO Convention 169, must be in good faith. This covers an objective and subjective scope; i.e. the peoples consulted should not be offered only the material resources for realizing [such consultation], but also the resources that will

furnish them with an understanding of the subject of the consultation, its technical terms, and its objectives. Thusly, the actors involved in the process should collaborate with a view to the proper functioning of the procedure and the comprehension of the object of same.

I should likewise like to stress that Article 35 of ILO Convention 169 is sufficiently objective to impose and not hold up the rights assured to tribal and indigenous peoples. Such rights, as established by the text of the Convention, can ensue from instruments concerning international law (conventions and treaties), national law (rules in the widest sense), as well as agreements, the customs of the peoples, and reports, that is, studies specifically related to the peoples under the Convention. This points out that, upon being consulted about a determined legislative or administrative modification, for example, the base text of the rule to be modified cannot be changed to the detriment of the rights assured to the peoples. Thus, if the consultation does not produce an agreement or consent, the previous unmodified text will prevail. The discussions pertaining to the consultation require, therefore, a careful clarification by the parties interested in altering normative texts which is usually the government (this does not, however, mean that the peoples themselves cannot suggest normative alterations in the administrative and legislative domain), giving the foundation for the relevancy of the proposed changes for the building of agreement and consensus. Should there not be due clarification of the relevancy and tenor of the change in provisions to be targeted under the consultation, such consultation runs the risk of falling into a vacuum, without the comprehension of the peoples, as does also any sort of consent about the changes, including compliance with the requirements under the Convention, among them good-faith.

2. The proposal for Consultation Sent by the National Coordination of Black Rural Quilombolas (CONAQ) to the Brazilian Government

In February 2008 the National Coordination of Black Rural Quilombolas (CONAQ) sent a “pre-proposal by the quilombola movement for the purpose of consulting regarding the changes in IN 20.”⁶ The text of the proposal begins with some important considerations, among them the claim for recognition, by the state, of the quilombola group as “individuals with rights and citizens belonging to a society;” the demand that the Brazilian state actually implement the set of standards that it specifically drew up for the quilombola people with regard to the guaranteeing of their ethnic rights;

⁶ Text of the proposal sent by Ronald Santos, Executive Coordinator of CONAQ and quilombola leader in the State of Rio de Janeiro, by means of the Marombaia Livre Campaign on 19 Feb 2008 in an email entitled “CONAQ/AGU – Consultation”

comprehension on the part of Brazilian society of the nature of the quilombola group's distinct territoriality; the demand that the Brazilian development model be revised in appreciation of the cultural diversity of the various peoples, environmental preservation, and maintaining people in their ancestral spaces (Attachment II).

In accordance with information passed on by CONAQ in its proposal, the constitution of a Working Group (GT), composed of representatives of the federal government, to draft changes to Normative Rule 20 was announced by the General Advocacy Office of the Union (AGU) in September 2007. In December 2007 the quilombolas stopped participating in an attempt at a consultation made by the federal government about the alterations of INCRA's IN 20, because they understood that such would be injurious to ILO Convention 169. In a meeting with AGU an agreement was reached by which CONAQ would present a proposal for a consultation regarding IN 20. In this proposal CONAQ proposed the following steps:

- 1. Setting up a Working Group involving members of the government and quilombolas on the basis of which the group would be defined that would coordinate the consultation process;*
- 2. A full national seminar would be held, with the participation of the government, quilombos, and civil society to discuss the principals hindering realization of public policies regarding the quilombola people;*
- 3. Preparation of a pre-proposal in a Working Group composed of representatives of the government and members of CONAQ;*
- 4. Facilitating debates of the pre-proposal in the various states;*
- 5. Provision of an opportunity for two regional plenary [meetings] (North/Northeast and South/Southeast/Center-West) for new debate on the pre-proposal;*
- 6. Systematization of discussions and proposals from the regional plenary meetings;*
- 7. Public hearing with the quilombolas and representatives of the government; and*
- 8. Second public hearing with quilombolas, government, partner entities and invited parties.*

Two factors are evident in the methodology proposed by CONAQ: constant dialogue with the government and the decentralized nature of the consultation. The consultation methodology put forward by CONAQ envisions the participation of government and quilombola representatives, in discussion, that is, it provides for a space where debate and outreach could occur in the direction of agreement between the movement and the government and toward consensus. The government would have a more discrete role in the plenary meetings, but that would be the time when the social movement would construct its position vis-à-vis the tenor of the process. On the other hand, there was also concern about holding debates in the states and two plenary meetings per region. This would make possible more intense participation in the debate by the

quilombolas of the country, as well as provide opportunity for the due length of time for the movement to mature its position and effectively evaluate the pros and cons of the proposal presented by the government.

3. Consultation and the Search for Consensus or an Attempt to Dominate by Method

The “consultation” seeking the consensus of the quilombolas with regard to changes in INCRA’s IN 20, which regulates the way in which the entity can proceed with furnishing title to quilombola communities in Brazil, took place in Luziânia/GO between the 14th and 16th of April. In principle several structural problems hindered the realization of the discussion in a suitable manner: many quilombolas didn’t know if they would have money to cover their daily costs for lodging and food and some, not knowing if they would have the means to return to their cities of origin, although they came to the consultation “financed” by the federal government. These setbacks meant that the discussions were interrupted for the collection of lists of names, for example, and involved leaders whose participation was of strategic importance for mobilization of the consultation, in questions of logistics. The site itself, although it offered good food and lodging, did not offer internet facilities, which hindered news regarding the consultation being sent to specialized movement and partner sites and networks, and was far from the banking network. As the financed per diems had not been deposited beforehand, quilombolas concerned themselves with going to the bank to verify whether they did or did not have resources to pay for housing and the return home.

Another thing that came to our attention was the fact that the federal government had provided the text with the proposed alterations to the social movement without explanations of same. That is, there was no basis presented for the why behind the announced procedural changes. In one sense we are talking about changes to the text of ICRA IN 20, but also about the drafting of a new, more complex normative rule, with the insertion of administrative remedy with regard to procedure and to the definition of the AGU and staff of the Presidency of the Republic as entities capable of solving conflicts between government bodies, for example. However, the text of the changes was simply sent to the quilombolas, without any explanation or justification for this type of modification to the IN text. There was no chance for full discussion among the quilombolas prior to the consultation hearing that might have allowed them to formulate positions and question vis-à-vis the government’s text, as the methodology used for the consultation made no provision for same.

In methodological terms what happened in Luziânia/GO and what was styled as a consultation was a three-phase procedure. In the first, the federal government presented

the principal point of alteration of IN 20, and it was only at that time that the quilombolas became aware of the reasons and motives that occasioned the government's altering each of the parts of the normative text. Generically, the representatives of the federal government merely affirmed that the alterations would allow for furnishing title to quilombola territories in less time and with fewer pleas, as by means of the normative revision there would also be a response to the groups opposing titling of the territories. A large part of the first day was dedicated to discussion of nine points considered as principles by the federal government: 1. utilization of the term "occupied lands;" 2. the requirement for a certificate issued by the Palmares Cultural Foundation to start the titling process for the communities' territory; 3. resolution of claims involving overlapping of areas among state entities by means of AGU intervention or by the staff of the Presidency of the Republic; 4. the need for objectivity and technical impartiality in preparing the Technical Report on Identification and Delimitation of the territories; 5. publicity; 6. obligatory consultation for all organs and entities listed in Decree 4,887/2003 throughout the administrative procedure for titling; 7. institution of a double degree of administrative jurisdiction within the scope of the procedure; 8. seeking conciliation of interests between organs, government entities; and 9. term and effective date of the new Rule.

On the second day the partners and advisors of the movement who attended the consultation, for the most part invited by CONAQ, organized to explain to the quilombolas present (about 300) the meaning and implications of the principal alterations proposed by the government. This required that the team of advisors meet and systematize information to be passed on to the quilombolas, as well as organize an exposition on the tenor and implications of such changes with regard to the titling procedure, right on the first day of the consultation. The activity with the quilombolas would require two entire days of discussion at a minimum, with adequate methodology in teaching about the law to laymen. To perform this work in one day prejudiced the quality of the discussion; thus, within the methodological scheme for the "consultation," comprehension of the meaning of the changes was prejudiced. The second phase of the procedure consisted of an attempt to explain the implications of the text presented by the government to quilombolas coming from various parts of the country and involved in different parts of the movement. Given this picture, CONAQ took a firm position for retaining the text of INCRA's IN 20, which position is protected in Article 35 of ILO Convention 169, as previously shown.

The third stage of the procedure was given over to reading, article by article, the new text of the Normative Rule. There was not, at this time, any possibility of agreement,⁷ only "consultation" by representatives of the federal government with regard to the consent or

⁷ Only one copy of the text was furnished to social movements and advisors.

lack thereof by the quilombolas to the proposed changes. ILO Convention 169 provides in its text that agreement and consensus be sought, however, there was no space for that. An agreement is something arising out of a mediation procedure that results in conciliation between the disputing parties by means of the participation of a neutral facilitator who seeks a solution to the problem.⁸ In the consultation process there was no participation by a neutral mediator, who would buoy up the discussion between the federal government and the quilombolas. On the part of the quilombolas, there was an understanding that the text to be maintained would be that of the INCRA In 20 in force and not a totally modified text. On the other hand, it was obvious that, on the government's part, the persons there did not have autonomy to make modifications to the base text presented without consulting other technical personnel from their respective organizations. On this third day the quilombolas were asked to immediately take a position—yes or no—regarding a text which was technical in nature, written in legal language, and which dealt with the titling of their territories, which represented their livelihood and means of maintaining their culture and identity.

In the face of this methodological “consultation” proposal, we cannot speak of there being an appropriate length of time for consent and much less for an opportune moment for producing consensus or agreement on the normative text. What is quite incomprehensible in this scenario is why the quilombolas were given three days to “consent” regarding the “alteration of the IN,” while the government’s working group, put together in September 2007, only published the text of the replacement IN on October 1, 2008. It is understandable that even among the federal government’s technicians, there may be differences of opinion and position regarding the text of the alterations, however, this same length of time for discussion was not granted to the quilombolas to whom the “opportunity” was given to participate in a consultation process in the name of ILO Convention 169—that is, with a view to the duty of the Brazilian state to hold a consultation. I emphasize that the method used to build the consultation process is far from being the best and, as it turned out, ended in being a way to control the quilombola peoples through not furnishing sufficient time for understanding the matter about which they were to be “consulted” nor time for discussion between the quilombolas themselves.

4. IN 49 of September 29, 2008, and the Opposition of Social Movements

About one year after the government began work, a new Normative Rule was produced, No. 49. Published in the *Diário Oficial da União* (Official Daily of the Union) on October 1, 2008⁹, it was signed by INCRA President Rolf Hackbarth. The published

⁸ Conley, John and O’Barr, William. *Just Words. Law, Language, and Power*. Chicago:UChicago, 1998.

⁹ Source: http://cr6.pgr.mpf.gov.br/legislacao/legislacao-docs/instrucoes-normativas/IN_INCRA_N49_29_09_2008.pdf, accessed on 30/10/2008 at 9:39 am (Dourados/MS time).

text is that with which the quilombolas did not agree, in large part. Aside from this, incomprehension lingers: if the quilombolas themselves felt more confident with regard to the text and criteria established in IN 20 as pertains to the titling of their territories, why should it be modified? It is the text of IN 20 that should be maintained in cases of the absence of agreement or consensus between the parties. Furthermore, ILO Convention 169 anticipates the following:

“35. A application of the provisions of the present Convention shall not prejudice the rights and advantages guaranteed to the interested peoples, by virtue of other conventions and recommendations, international instruments, treaties, or laws, reports, customs, or national agreements.”¹⁰

Thusly, the text of the Convention cannot be sued to prejudice the rights and advantages guaranteed to the interested peoples by virtue of, as in the case before us, the drafting of another rule. Keeping in sight the determinations of Decree 4,887/2003 which does not consider issuance of a certificate by the Palmares Cultural Foundation to be obligatory for beginning the titling process, IN/49/2008 is a true regression in the guarantees given to the quilombolas. In addition, making the administrative procedure for titling more complex, principally with regard to preparing an historical and anthropological report, will make the territorial delimiting phase even slower.

On October 10, 2008, the quiombola social movement and supporting entities put out a “Letter of Repudiation”¹¹ in which they point out, in their evaluation, the main problems with the new IN/49/2008 and the consultation procedure. It points out that the consultation methodology did not give the quilombolas sufficient time to formulate their questions; the lack of agreement or consensus on altering the majority of the points discussed; and backsliding with regard to the concept of territory, self-identification, and curtailment of INCRA’s jurisdiction, as provided for in Dec. 4,887/2003. I have some comments regarding two of these factors which I understand to be directly related to ILO Convention 169:

a) Non-incorporation of the concept of territory in the normative text: ILO Convention 169 establishes that “13.2.a the use of the term ‘lands’ in Articles 15 and 16 shall include the concept of territories, which covers the entire habitat of the regions that the interested peoples occupy or utilize in some other way.”¹² Thus, for IN/49/2008 to safeguard the quiombola guarantees assured under the ILO Convention and the right

¹⁰ Source: http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/decreto/d5051.htm, accessed on 30/10/2008 at 9:50 am (Dourados/MS time).

¹¹ Source: http://www.koinonia.org.br/oq/noticias_detalhes.asp?cod_noticia=5009&tit=Not%EDcias, accessed on 31/10/2008 at 10:09 am (Dourados/MS time).

¹² Source: http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/decreto/d5051.htm, accessed on 30/10/2008 at 11 am (Dourados/MS time).

to property assured to the quilombola people under the constitution, the following shall not be enforceable: "Art. 4. All land utilized for guaranteeing their physical, social, economic, and cultural reproduction are considered to be lands occupied by the remainders of quilombo communities."¹³ This is a point which Brazil could advance and put the IN text in tune with international Human Rights instruments.

b) Bureaucratization of self-identification of the quilombola people: Decree 4,887/2003 itself establishes that: "the following are considered to be remainders of the quilombo communities, for purposes of this Decree: the ethnic-racial groups according to self-attribution criteria, with their own historical path, endowed with specific territorial relations, with presumption of black ancestry related to resistance against historically suffered historically oppression. For purposes of this Decree, characterization of the remainders of quilombo communities will be attested to by means of self-definition by the community itself."¹⁴ The self-identification registration certificate is only an administrative recourse as anticipated in Art. 3, Paragraph 4 of Decree 4,887/2003, it does not signify conditioning the start of titling work as set forth in IN/49/2008/ INCRA in Article 7, Paragraph 3: "the procedures dealt with in Articles 8 (on Identification and Delimitation) and following shall only begin after submittal of the certificate anticipated in the Sole Paragraph of Article 6 (Certificate of Registration in the General Register of Remainders of Quilombo Communities)."¹⁵ We are reminded that ILO Convention 169 assures that: "Consciousnes of its indigenous or tribal identity shall be considered as a fundamental criterion for determining the groups to which the provisions of the present Convention apply."¹⁶ In this text there is nothing that speaks about authentication by state entities to attest to self-identification as a condition for implementing government policies.

¹³ Source: http://cr6.pgr.mpf.gov.br/legislacao/legislacao-docs/instrucoes-normativas/IN_INCRA_N49_29_09_2008.pdf, accessed on 30/10/2008 at 10:59 am (Dourados/MS time).

¹⁴ Source: http://www.planalto.gov.br/ccivil_03/Decreto/2003/D4887.htm, accessed on 30/10/2008 at 10:20 am (Dourados/ MS time).

¹⁵ Source: http://cr6.pgr.mpf.gov.br/legislacao/legislacao-docs/instrucoes-normativas/IN_INCRA_N49_29_09_2008.pdf, accessed on 30/10/2008 at 10 :33 am (Dourados/MS time).

¹⁶ Source: http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/decreto/d5051.htm, accessed on 30/10/2008 at 10:38 am (Dourados/MS time).

The Brazilian State deserves credit for having ratified Convention 160 of the International Labor Organization (ILO), making it one of the most important legal tools of the struggle of the quilombola people in exercising their rights. However, with a brief reading of Brazilian reality, as in the case analyzed in this article, the State itself stands out as one of the main violators of these rights.

Quilombola rights violated by the Brazilian State

Roberto Rainha¹

Initial considerations

This brief article describes the effect of Convention 169 of the International Labor Organization (ILO) on indigenous peoples and tribes, its ratification by the Brazilian State, as well as its applicability to the descendants of slaves (quilombolas). It shows that the Brazilian State itself, when it signed the agreement and commercial treaty with Ukraine for commercial exploitation of the Space Base of Alcântara, Maranhão (MA), allowed the rulings of the Convention to be violated, especially the right that requires the quilombola peoples to be consulted whenever public or private administrative proceedings threaten them directly or indirectly.

The choice of the topic is a result of the author's participation in a non-governmental project coordinated by the Network for Social Justice and Human Rights, which is seeking to educate and train the quilombola communities around their national and international rights. I had the opportunity in February 2008 to visit the communities affected by the implementation of the project to launch the Cyclone-4 Space Vehicle in Alcântara/MA.

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The quilombolas, the Federal Constitution of 1988, and Convention 169 of the ILO

Before speaking about the quilombolas, we need to note that the slavery of the African populations in American resulted in 15 million enslaved men and women, violently uprooted from the lands where they were born, of which approximately 40% were brought to Brazil to serve as manual labor during the colonial period on farms and plantations, in cities and in mines.²

Besides the fact that the labor force of these peoples was a major factor for the Brazilian economy, we should also note the important contribution that slaves gave to many aspects of the country's social life, helping to form the culture and national identity.

Brazil was the last nation to remove the chains from the feet of the Blacks who had been submitted to the slave regime. Abolition came in 1888 with the advent of the Golden Law.

Prior to this date, however, the slaves already showed their dissatisfaction with the regime to which they were submitted. Some fled, others gave support to the fugitives, others, captured, underwent cruel punishments where even death was preferable.

Those who succeeded in fleeing constituted nuclei of resistance to the regime. Slaves who had been freed joined these nuclei, Indians, and mestizos, etc. This was the composition of the quilombos. In this aspect, to think that the quilombos were just hiding places for the slaves who had fled, as it is commonly stated, is wrong.

It should be emphasized that even with the Golden Law, the quilombos that resisted and the ones that still existed were not dissolved. Abolition freed the slaves, but did not confer on them any support for their survival, much less land to work.

Stretching out history, 100 years passed and the descendants of the slaves saw no directives that referred to them, specifically as subjects with a right to land. The recognition of the right to land came only with the passing of the Federal Constitution of October 5, 1988, in article 68 of the Temporary Constitutional Provisions Act.

That article states that: "to the remainders of the quilombo communities that may be occupying their lands, definitive ownership is recognized, with a duty of the State to grant them their respective titles to land".

Although legally provided the right to land, little or nothing was done in the sense of giving title to the lands in the areas of the quilombolas. Notwithstanding the lack of need for a regulatory rule of Article 68 of the Temporary Constitutional Provisions Act, Decree 3912/2001 was published, which was revoked by Decree 4887/2003. The latter gave the Institute of Colonization and Agrarian Reform (INCRA) the responsibility of granting land titles to the remainders of the quilombo communities.

² http://www.cohre.org/view_page.php?page_id=203, accessed on October 28, 2008.

Enriching even more the rights of the quilombolas, the Brazilian State adhered to Convention 169 of the ILO, on indigenous peoples and tribal peoples on June 27, 1989 (in Geneva). This convention was approved by the National Congress by means of the Legislative Decree nº 143, of June 20, 2002.

On July 25, 2002, the Brazilian Government handed over the instrument of ratification to the Executive Director of the ILO so that once the span of *vacatio legis* stipulated in article 38 nº 3 of that Convention had passed, it would become part of Brazilian law.

Convention 169 of the ILO applies to members of communities that remain of the quilombos, based on the meaning that Article 1º, nº 1 established “to the tribal peoples in independent countries, whose social, cultural, and economic conditions distinguish them from other sectors of the national collective and that they be governed, totally or partially, by their own customs or traditions or by special legislation.”

Even in the same Article 1º, in its paragraph nº 2, it establishes that self-consciousness is the fundamental criteria of applicability of the recognition of ethnic quilombola identity.

Quilombos, it has been said and is worth repeating, are geographic spaces formed by slaves who fled or were freed, Indians, mulatos, etc. whose work was done in a collective way. With a more current concept it can be stated that they are traditional communities, with cultures, customs, forms of production, and in some cases, their own internal rules, which makes it imperative to understand that the applicability of Article 1º, nº 1, “a” of Convention 169 of the ILO is directed “to the tribal peoples in independent countries, whose social, cultural, and economic conditions distinguish them from other sectors of the national collective and that they be governed, totally or partially, by their own customs or traditions or by special legislation.”

In this sense, the Judiciary Branch, when urged to rule on a demand involving quilombolas and the ethnic territory, understood Convention 169 of the ILO to be:

(...) fully applicable to the quilombolas, because these are included in the ruling of article 1.1.” a” as “tribal peoples”, in the sense of being those who, “in all the independent countries, whose social, cultural, and economic conditions distinguish them from other sectors of the national collectivity, and who may be governed, totally or partially, by their own customs or traditions or special legislation”. Furthermore, it anticipated that a) the governments must “adopt the measures that are necessary to determine the lands that the interested people traditionally occupy and ensure the effective protection of their rights of ownership and possession” (art. 14, 2); b) must “institute adequate proceedings in the scope of the national court system to solve the demands of land formulated by the interested peoples” (art. 14, 3 c/ art. 1.3, concerning the understanding of “peoples” in the Convention).” TRF4, drawn up by Des. Rel. MARIA LÚCIA LUZ LEIRIA in interlocutory appeal nº 2008.04.00.010160-5/PR.

The right to land for the quilombolas was established in the Constitution of 1988, and the directives of Convention 169 of the ILO also unquestionably applied to them. So the quilombolas must be under the mantle of all the rights that the Magna Carta and the celebrated Convention grant them.

So the way it will be analyzed going forward, the Brazilian government must, by the principles that sustain the Democratic Rule of Law, ensure the effectiveness of the guarantees that the Constitution and the Convention confer on the quilombolas. But instead it begins to attack them, as happened in the signing of the Agreement and the commercial Treaty with Ukraine.

About the agreement and the commercial treaty between Brazil and Ukraine that were signed without observing Convention 169 of the ILO

Relations between Brazil and Ukraine for cooperation on the peaceful use of space initiated in 1999, and the National Congress by means of Legislative Decree n° 766 of October 16, 2003 approved the text of the “Agreement between the Government of the Federal Republic of Brazil and the Government of the Ukraine about Technological Safeguards related to the Participation of Ukraine in Launches at the Launch Center of Alcântara, celebrated in Kiev on January 16, 2002, promulgated by Presidential Decree n° 5.266, of November 8, 2004.

Still in the year 2004, the “Treaty between the Federal Republic of Brazil and Ukraine on Long-Term Cooperation in the use of the Launch Vehicle Cyclone-4 at the Launch Center of Alcântara, celebrated in Brasilia on October 21, 2003”, was approved by the National Congress by means of Legislative Decree n° 776 of September 17, 2004 and promulgated by Presidential Decree n° 5.436 of April 28, 2005.

However, from June 25, 2003, the terms of the Convention 169 of the ILO over indigenous and tribal peoples were already in effect in Brazilian law, since it was a question of human rights, its preamble respecting the terms of the Universal Declaration of Human Rights, the International Pact on Civil and Political Rights, and even more, by dealing with the protection of the Economic, Social, Cultural, and Environmental Rights – all these instruments, ratified by the Brazilian State – their incorporation was given automatic form in the law in the terms of Article 5º, § 2º of the Constitution.

In this sense, Professor Flavia Piovesan teaches that “relative to the international treaties on the protection of human rights, the Brazilian Constitution of 1988, in the terms of article. 5º, paragraph 1º, accepts the system of automatic incorporation of the treaties, which reflects the adoption of the monistic conception” (PIOVESAN, 1997, p. 111).

It follows from there that once Convention 169 of the ILO went into effect in Brazilian law, it must be concluded that the Agreement, as well as the Treaty between Brazil and Ukraine, were signed with a lack of observance as to what the Brazilian State must fulfill when it ratifies a UN Convention.

The agreement and the treaty aim to explore Brazilian air space, using the Launch Center of Alcântara/MA and, on its own terms, it is evident that the quilombola communities would be directly affected when these treaties are carried out. So even before signing them it would have been necessary to consult the quilombola communities, according to the terms of article 6º and 15 of Convention 169 of the ILO.

Article 6º of Convention 169 of the ILO requires that whenever there are legislative or administrative measures that may affect the life of the communities, the people living there have the right to be consulted through the appropriate proceedings, such that these consultations will be made in good faith.

Such a right to consultation is also established in article 15, nº 2 of the same Convention.

But the duty to consult has not been respected, meaning the Brazilian State considers Convention 169 of the ILO to be a dead letter, denying the rights of the quilombolas in favor of commercial interests.

The ethnic quilombola territory of Alcântara and the current consequences stemming from the agreement and commercial treaty between Brazil and Ukraine

There are 153 quilombola communities in the ethnic quilombola territory of Alcântara/MA. The members of these communities (around 3500), have for a long time been carrying out a difficult struggle for respect and guarantee of the exercise of their basic human rights. This is because in the 1980s, the Brazilian state began the Launch Center of Alcântara and since then 312 families belonging to 32 traditional communities have been moved and resettled in agro-villas.

These agro-villas are totally inadequate, lacking basic necessities for survival of these populations, since the soil is not fertile and the communities have been moved from the coast, the main source of fishing for these populations.

The quilombolas of Alcântara/MA have already expressed their ethnic identity, with the Palmares Cultural Foundation having expedited and published the certificate, which makes it indisputable that this group of people constitutes a quilombola under the terms of Article 1º, nº 2 of Convention 169 of the ILO.

Currently there is resistance against the enlarging of the Space Launch Center, which when done, will dislocate other communities, since the Launch Center is located in quilombola territory.

The threat of new dislocations and much upheaval is evident, since with the negotiations between Brazil and Ukraine, goals were laid out for the launch at the Center of the Cyclone-4 Launch Vehicle, anticipated for 2010.

In these negotiations, the Brazilian state ceded the space and infrastructure for the launch. On its part, Ukraine took responsibility for developing the technology, mounting the Cyclone-4 Launch Vehicle, and launching it into space.

To manage the work, the bi-national Alcântara Cyclone Space (ACS) Company was created, an international entity of an economic and technical nature, originated by the Treaty between Brazil and Ukraine for the operation and launches of the Cyclone-4 Launch Vehicle from the Launch Center of Alcântara (Art. 3º of the Treaty).

To begin with, the installations of the Alcântara Cyclone Space are anticipated to be situated between the quilombola communities of Mamuna and Baracatatiua, ethnic communities that are part of the denominated ethnic territory of Alcântara/MA.³

The ACS Company, for its part, contracted with Brazilian companies to begin the work of scientific studies of the soil, air, site, geography, vegetation, etc. These studies came to an end in the beginning of 2008 with a real attack on the rights of the quilombola communities referred to above. Everything in the name of the Cyclone-4 project but once again without the required consultation with the quilombola communities.

Even in the absence of consultation and the consent of the community, the ACS and its contractors began incursions into the territory of the quilombola community of Mamuna and Baracatatiua, leaving there a track of destruction of essential natural resources and the survival of the people who live in that community, destroying plots of land, trees, palms, rivers, all of it documented in Occurrence nº 0147/2008 of the Police Station of Alcântara/MA on February 25, 2008.⁴

As has been seen, the violations of Convention 169 of the ILO were promoted by the Brazilian State when, with the signing of the agreement and the treaty with Ukraine, it allowed illegality to radiate out from the initial work of the operation of the Cyclone-4 project in that ethnic territory.

Having carried out the activities under the command of the ACS, begun without the required consultation with the people living in the quilombola communities, such attitudes were indicative of true disrespect for article 6º and 15 of Convention 169 of the ILO, since a person, whether a legal person or a physical person, can do everything except what the law prohibits. Carrying out studies, no matter of what nature, in a quilombola community without consultation with, and the consent of the community, is legally prohibited.

³ According to Ofício nº 02/2008, of the ACS awaiting a request for clarification by the Federal Attorney General's Office of M.A.

⁴ Police Inquiry registered by João da Mata Sales, president of the Association of People Living in the Quilombola Community of Mamuna.

But this is not all; in Federal Constitution Art. 225 one reads that to all is conferred “the right to an ecologically balanced environment, for common use of the people and essential for a healthy quality of life, which imposes on Public Power and on collectivity the requirement to defend it and preserve it for present and future generations.”

Convention 169 of the ILO, for its part, in Article 4°, n° 1, determined that the State should adopt special measures that are needed to safeguard people, institutions, goods, cultures, and the environment of traditional peoples with a goal of preserving, among other things, the culture of these peoples.

It is also not only certain that article 68 of the Temporary Constitutional Provisions Act recognized that the quilombolas have the right to ownership of the lands that they occupy; it is also certain that in reaffirming these rights, Article 215 of the Constitution anticipates that the State will guarantee to all the full exercise of their cultural rights and access to the sources of national culture and will support and foster the valorization and diffusion of cultural manifestations.

However, for the full and effective reach of what Article 215 anticipates, the State must “protect the manifestations of popular, indigenous, and Afro-Brazilian cultures and those of other groups who participate in the national civilizing process”. (art. 215 § 1º)

And in Article 216 of the Magna Carta, the Legislator understood that “goods of a material and immaterial nature, taken individually or together, carriers of reference to identity, action, to the memory of the different groups that formed Brazilian society, are included” constitute the Brazilian cultural patrimony.

With § 5º of the same Article 216 guaranteed the recording of “all the documents and the places that hold historical remainders of the old quilombos.”

One emphasizes this despite the fact that Convention 169 of the ILO, in its Art. 5°, “a” and “b”, determines that “social, cultural, religious, and spiritual values and practices of peoples, must be recognized and protected and the nature of the problems that they face must be taken into consideration collectively as well as individually “and even “the integrity of the values, practices, and institutions of these peoples”.

However, starting with the reading of these legal rulings, it is necessary to understand that the scope of Article 68 of the Temporary Constitutional Provisions Act includes the protection of the historic cultural patrimony and cultural manifestations, giving great importance to the cultural identity of the groups that helped to form Brazilian society.

From the articles of the laws cited, it can be seen that not only was the ownership of the land conferred on the descendants of the quilombo communities that occupied them, but the relation that constitutes the identity among these communities and the territory that they traditionally occupy was recognized. This constituted a differentiating and characterizing element of these ethnic minorities, synonymous with a relevant

contribution for national retraction of the practice of slavery against Black people, which determined the recognition of equality and dignity of this people before law and society, making it possible for them to enjoy all the inherent rights of a human person.

So besides experiencing violence to the areas where they make a living, their plots of land, and rivers, the people who live in the quilombola communities of Alcântara/MA, experience the threat of destruction of their spiritual cultural patrimony.

In the same way that the constitutional mandates (215 and 216 of the Federal Constitution, Art. 68 of the Temporary Constitutional Provisions Act) that Afro-descendant manifestations belong to the historic-cultural, material and spiritual patrimony and helped to form the civilization process of the country, and moreover its protection is in the interest of the whole nation; Convention 169 of the ILO (art. 4º e 15), requires that social, cultural, religious, and spiritual practices of the quilombola peoples must be protected, the long-term treaty of cooperation between Brazil and Ukraine and the preparatory studies for the launch of the Cyclone-4 Space Vehicle threaten the preservation of the historic and cultural afro-Brazilian patrimony and promote major disrespect for the rights that these same peoples, throughout history, gave their blood to win.

It should be noted that in September 2008, the Federal Attorney General's Office of Maranhão, in a court action (Proc. nº 2008.37.00.003691/5) handed down a preliminary ruling that prohibited the Brazilian Space Agency and the ACS from carrying out any work, installations, and service that would affect the possession of the ethnic territory of Alcântara until the title to the land had been definitively granted. Such a decision, although praiseworthy, does not mean that the quilombolas of Alcântara are free of threats caused by the project to launch the Cyclone-4 Space Vehicle.

Final considerations

It has been shown above that the Federal Constitution ensured that the quilombolas must have the title of ownership of the lands that they traditionally occupy and that Convention 169 of the ILO about indigenous and tribal peoples applies to the peoples of the quilombolas.

It was shown that the Agreement and Treaty between Brazil and Ukraine were accompanied by acts in opposition to the rulings contained in Convention 169 of the ILO about indigenous and tribal peoples, mainly to the right of consultation that these peoples always have when enterprises threaten their rights.

In the same way, it was shown that as a result of the non-observance of the rulings of Convention 169 of the ILO, the initial studies to fulfill the agreement and treaty between Brazil and Ukraine, the bi-national Alcântara Cyclone Space company and its subcontractors also allowed Convention 169 of the ILO to be violated and moreover,

allowed attacks on the rights of the quilombola communities of Alcântara/MA and on the environment, and threatened the historical and cultural patrimony of these communities.

The author has arrived at the end of what he intended to conclude—that the Brazilian State deserves credit for having ratified Convention 169 of the ILO, making it one of the most important legal tools of struggle of the quilombola communities attempting to exercise their rights. However, with a brief reading of Brazilian reality, as in the case that is analyzed here, it is the State itself that stands out as one of the main violators of these rights.

An important issue throughout the Northeast region is the implementation of water services for the urban population of about 1,300 municipalities. The National Water Agency (ANA) has carried out an initial investigation that involved mapping the projected demands for urban water in the entire region, in addition to an “Atlas of the Northeast”, which maps the water services in the entire region. A total of 530 projects would provide water security to approximately 34 million people. In all of Brazil’s history, there has never been an analysis so important in the region. This Atlas examines each municipality and makes suggestions for specific projects that would provide potable water to the entire urban population.

Social Equity in the Use of Water

Roberto Mahezzi¹

For several decades, civil society in the Northeast, most of whom are located in the ASA (Semi-Arid Articulation), made an important effort to turn water into a right that is accessible to the population that most needs it. This effort is not just about developing technologies, or enhancing knowledge about the climate of the region, but instead about a real, concrete effort to construct grassroots initiatives that make this right become a reality. Behind this struggle is the precarious reality of so many people who do not have regular access to clean water, particularly in rural areas.

Projects such as “One Million Cisterns” (P1MC) and “One Land and Two Waters” (P1+2), have made great advances largely due to the commitment of grassroots organizations. This means that a challenge which seemed impossible to some people is becoming a positive reality. The construction of approximately three hundred thousand

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cisterns to store water for human consumption, and the launch of new technologies to trap rainwater for farming, proves that we are moving in the right direction. The statistics even show that this reality is changing - there are fewer emergency hunger situations that once evidenced the awful social and humanitarian chaos that was so common in previous decades. Policies for social compensation such as the Bolsa Família (Family Stipend) and even the acknowledgement of the rural population's right to retirement has had a decisive influence on improvement of the regional social inequalities. It is now rare to hear news of tragedies caused by drought, and migration has significantly decreased. There are some situations in which people from the Northeast have returned to their native lands. While we are far from a satisfactory solution to this problem, what once seemed impossible is now becoming more visible than what was once thought.

One of the most important goals of these projects is to offer water security to the rural population of the Northeast region, a population that is distributed over approximately one million square kilometers. Providing this population with clean water is an enormous challenge, given that traditional pipelines are unable to transport water for families that live far apart, and underground water, when found, is often salty. The means that this population has used to date is a barrier method, which creates small reservoirs dug directly in the earth to store rainwater during the dry season. One problem with this method is that the water is subject to excessive evaporation, leaving behind poor quality water, often inappropriate even for animal consumption. This is one of the reasons (in addition to food insecurity) for infant mortality in this region.

Besides building these cisterns for human consumption, together with the construction of other technologies for food production, the underlying goal was to provide quality water on a regular basis to these populations, acknowledging water as a basic human right. The goal was to end the manipulation of human thirst as a way for the Northeastern oligarchy to maintain power over a virtually defenseless populations. Manipulation of human thirst, as well as hunger and health, is a true aberration.

Many times, while we were constructing these popular initiatives, we wondered about the reaction of the Northeast oligarchy. This is an oligarchy that is used to having these groups in the palm of their hand, especially during election season. We were concerned about how they would perceive this fundamental change in the lives of these people, and how they would react to this change.

At the beginning their reactions were varied, yet at times grotesque. One mayor from the municipality of Pilão Arcado, a municipality just north of Bahia, explicitly prohibited a community from receiving approximately 30 cisterns that were going to be constructed by the local church. The community still wanted the cisterns, he then ordered them destroyed. This attempt to destroy the project was also unsuccessful. On another

occasion when the municipality realized that this reaction was dangerous for its interests, they decided to build the cisterns themselves. The result was that cisterns were constructed far from homes, which meant that the cisterns could not collect rainwater from a family's roof - the municipality was able to keep the communities dependent on municipal water sources. This practice, as astonishing as it was, shows that the mayor was only trying to keep people in a state of need in order to benefit his own electoral interests.

The slow evolution of this popular initiative came into question when President Lula came to power. Those of us who had set out to build one million cisterns in five years were unable to reach our goals. This was first and foremost because civil society did not have their hands mixed up in the State, of course, because otherwise they would not be civil society. Another thing that slowed us down was that in our minds, we were not just building cisterns, but also constructing an educational process that would allow communities to understand the climate in the region so that they could more effectively adapt to it. Furthermore, the inconvenient interruption of public funds also slowed down the project. Even so, all indicators showed that this was the best way to proceed – step by step until these small water projects were increased to millions of projects, one house at a time, that will form a vast network of decentralized water resources throughout the semi-arid region.

The surprise that we had at the end of 2007 was the federal government's change in strategy for operational funding through the OSCIPs (civil society organizations in the public interest). The government cut back on the budget and redirected the money, particularly to the state governments. This would be a logical decision in a country in which institutions function democratically.

At this point we realize that the old and the new political leaders of the Northeast were mobilizing to destroy the program put into place by civil society, in order to free up its budget for state governments, municipalities, and city councils. ASA's procedures did not allow for electoral political manipulation in the construction of cisterns. In this context, water is treated as a fundamental human right, and any manipulation of its use must be openly criticized. Politicians that manipulate human needs for their own benefit should be denounced for violating human rights.

This debate about water as a right, about the possibility of having community organizing projects without municipalities or city councils getting involved, demolishes one of the basic pillars of Northeast politics – the use of human thirst as a way of conquering and maintaining power. The surprise was not the reaction of the traditional oligarchies, but rather the involvement of the current federal government in this harmful practice.

An important issue throughout the Northeast region is the implementation of water services for the urban population of about 1,300 municipalities. The National Water

Agency (ANA) has carried out an initial investigation that involved mapping the projected demands for urban water in the entire region, in addition to an “Atlas of the Northeast”, which maps the water services in the entire region. A total of 530 projects would provide water security to approximately 34 million people. In all of Brazil’s history, there has never been an analysis so important in the region. This Atlas examines each municipality and makes suggestions for specific projects that would provide potable water to the entire urban population.

We have worked to support the idea that these types of projects should be implemented in the entire region, so that the entire population has water security. At the same time, we are working to defend simple technologies that trap rainwater – both for drinking and for food production – so that these technologies expand to several million small projects. These projects can solve the problem of the most isolated rural populations.

HUMAN RIGHTS IN URBAN AREAS



According to data from ISP-RJ, in Rio de Janeiro, the police killed 810 people in the first seven months of 2008, an increase of 8% in relation to the 744 deaths in the same period of the previous year.

Security, Rights, and Violence in Rio de Janeiro

Atila Roque¹

The current system of recording deaths as acts of resistance is a “blank check” for the deaths inflicted by the police.²

Reading the data about police violence gives us an approximation of the totalitarian abyss that patrols public security institutions in Brazil. The police, responsible in the first instance for repression of criminal activities and executors of the state monopoly on the use of force, is today one of the chief violators of human rights.

In spite of the struggle for building democratic institutions since the end of the military dictatorship in the 1980s, the sphere of public security is still marked by human rights violations. The shocking increase in violence and deaths caused by police actions confronts us with an emergency situation. A significant portion of Brazilian people still have their lives circumscribed by violence and fear.

As demonstrated by the exhaustive studies³, nearly 50,000 persons are murdered each year in Brazil. This homicide rate is among the highest in the world. In 2004, there were 26.9 deaths for each 100,000 inhabitants, compared to 11.7 deaths in 1980. In

¹ Atila Roque is a Historian and member of the Institute of Socio-Economic Studies (INESC).

² Report by the Special Rapporteur of the UN on extrajudicial, summary, or arbitrary executions, Dr. Philip Alston. 29 August 2008.

³ This article is based on data and analyses by Sílvia Ramos of the CESeC/UCAM (Center for Studies on Security and Citizenship of Cândido Mendes University) and by Luiz Eduardo Soares, former Secretary of Public Security and currently Secretary for Social Welfare and Prevention of Violence of the Municipality of Novo Iguaçu, in the State of Rio de Janeiro.

European countries, these rates are as low as 3 deaths for each 100,000 persons. In the United States (considered one of the most violent of the developed countries) there are about 5 to 6 deaths for each 100,000 inhabitants.

In Brazil, studies also show a relation of this type of repression with race, gender and income. The principal victims are young, low-income, black men (from 15 to 24 years old). As Sílvia Ramos shows, in some regions (especially in favelas) the homicide rate for young men exceeds 200 per 100,000 inhabitants.⁴

In Rio de Janeiro, in 2007, on duty police were responsible for nearly 18% of the total number of deaths, killing an average of three persons per day.⁵ In the United States, which is considered one of the most brutal of the developed countries, the police kill, on average, 350 persons per year, in a country with 300 million inhabitants. The police in the state of Rio de Janeiro killed nearly 1,000 people per year, over the last ten years.⁶

It is important to stress that the police are also victims of violent death, but the majority of such deaths occur while off duty. In Rio de Janeiro, in 2007, the number of police deaths while off duty was four times greater than while on duty, 119 and 32 police, respectively.⁷

The data already published for 2008 indicate a growth trend, fed by the open confrontation policy promoted by the state government. According to ISP-RJ data, the police in Rio de Janeiro killed 810 people in the first seven months of 2008, an increase of 8% in relation to the 744 deaths in the same period of the previous year.

These studies show that the variables of age, gender, race, and social class are a risk factor to be considered suspect by the police. Low-income, young men, predominantly black, living in the favelas, are the police's preferred suspects.⁸ According to researchers Sílvia Ramos and Leonarda Musumeci, in 2006, Rio police officers killed 357 people in favelas and 34 people in high income areas of the city.

This situation is aggravated by the degree of linkage between criminal activities and politicians. In Rio de Janeiro, during the 2008 elections, several candidates for mayor and

⁴ RAMOS, Sílvia. *Direito à segurança, um desafio para o Brasil* (The Right to Security, a Challenge for Brazil). In: INESC. Pensando uma agenda para o Brasil: desafios e perspectivas (Thinking about an agenda for Brazil: challenges and perspectives). Brasília: INESC, 2007, pp. 68-87.

⁵ According to statistics from the Institute of Public Security of Rio de Janeiro, total homicides (6,133) added to deaths caused by police (1,330) in 2007, was 7,463 persons.

⁶ Lecture given by Luiz Eduardo Soares at a seminar on public security policies organized by Observatório da Cidadania/Social Watch, in Rio de Janeiro, in 2008, to be published in the 2009 report.

⁷ Data from the Institute of Public Security of the State of Rio de Janeiro.

⁸ Research by CESEC/Ucam, in the city of Rio de Janeiro, in 2002, revealed that 57.9% of persons stopped by police, on foot, were between the ages of 15 and 29. In turn, considering persons stopped in all police apprehensions, blacks were subject to searches in 55% of the cases, against 32.6% of those in which whites were apprehended. See: RAMOS, Sílvia; MUSUMECI, Leonarda. *Elemento suspeito: abordagem policial e discriminação na cidade do Rio de Janeiro* (Likely Suspects: police apprehensions and discrimination in the city of Rio de Janeiro). Rio de Janeiro: Civilização Brasileira, 2005.

councilmen were accused of ties to organized crime, to private militia and extermination groups. We also followed the enthusiastic applause of a middle class trapped by fear, which prefer “cleansing” the city at any price rather than meeting the greater challenge of restructuring the public security system and guaranteeing equal rights to all. This fear strengthens stereotypes and consolidates prejudices. The recurring images of police invasions of favelas, imposing terror in the name of “order”, cause practically no commotion in society or the media, as if we were in conformance with the idea that these are areas excluded from the framework of democratic, legality, and in a permanent state of exception.

The appearance of militias – to a great extent formed by members of the police, as well as fire fighters and the military – represent one more level in the submission of these populations to terror.⁹ The links that the militias maintain with the State, by ties to the police, the legislature, and the judiciary, create a network of complicity and corruption.

Even after the 1988 Constitution, the Brazilian security apparatus basically kept the same structures and practices designed by the military regime. In order to change this, there is a need for structural changes. The government needs to invest in training police forces, implementing an efficient system for social control, and punishment of those who commit crimes. As the mother of João Roberto (a 3 year old boy shot by police¹⁰ in Rio de Janeiro) said, apologies should not be accepted unless they are accompanied by actions aiming at reforming public security policies.

⁹ In the second half of 2007, the newspaper O Globo published a series of reports entitled “Os brasileiros que ainda vivem sob a ditadura” (The Brazilians who still live under the Dictatorship), relating dramatic situations of repression in the favelas and peripheral communities.

¹⁰ See O Globo item at: http://oglobo.com/rio/mat/2008/07/07/morre_menino_baleado_na_tijuca-547126165.asp

Compared with the same period in 2007, the number of deaths caused by police in the first half of 2008 increased by 21.9%, rising from 201 deaths in 2007 to 245 deaths in 2008. On the other hand, the number of police killed in these confrontations went down from 15 to 14. The proportion of deaths was 11.4 civilians for every police death. Following a downward trend, the number of murders in the state fell 13% in the first half of 2008 compared to the same period in 2007.

Actions and Omissions in Public Safety: an Analysis of São Paulo state

Adriana Loche and Leandro Siqueira¹

The number of people killed by police officers in Brazil is one of the highest in the world. According to UN Special Rapporteur Philip Alston, the Brazilian police are responsible for a significant percent of the number of homicides recorded throughout the country, which shows that the police resort to lethal force in the majority of conflict cases.

The purpose of this article is not to provide an exhaustive analysis of security policies in Brazil, but rather focuses in particular on two phenomena that are directly related to the actions of the Santo Dias Center for Human Rights, which are: the lethality of police actions and summary executions.

Official statistics, published quarterly by the Secretary of Public Safety, point to an increase in police violence in the state of São Paulo in 2007 and 2008, revealing that occurrences in 2006, after the attacks in May, did not constitute isolated cases of violent actions by the police. In spite of the change in the Police Command and at the Secretary of Public Safety, with the election of José Serra (PSDB) as governor of the State of São

¹ Social scientists and team members of the Santo Dias Center for Human Rights of the Archdiocese of São Paulo.

Paulo in 2006, there was little progress in reducing the number of deaths caused by police, as was verified in the administration of his predecessor, Geraldo Alckmin, also from PSDB.

It is known that the official numbers for resistance followed by death—which are cases of homicides during a police action—can be underestimated, because many cases are omitted, such as the ones that involve off-duty police or murders caused by police, but not classified as “resistance.”² An example is the case of Carlos Rodrigues Júnior, whose death occurred in December 2007 in the municipality of Bauru (SP)³, as a result of torture by military police. This case is not included in the deaths caused by police, because it didn’t fall under the classification of resistance followed by death. Other cases of omission are the death of MP Coronel José Hermínio Rodrigues, executed in January 2008⁴ by a military policeman, and the case of seven people who died, on the same morning, victims of a massacre in which police officers participated. These cases were recorded as occurrences of murder in general, although all of them involved police agents. Even with underestimation of the number of deaths caused by police officers, the official statistics reveal the excessive use of lethal force.

Lethality of Police Action

In 2007, the Secretary of Public Safety of the State of São Paulo counted 444 deaths of civilians caused by the state’s police forces, whether on duty or off duty. Thirty-three police died in these actions, which correspond to an average of 13.5 dead civilians for each dead policeman. The police use lethal force in a manner out of proportion with the argument of “protecting life in emergencies.”⁵

These deaths, classified as resistance followed by death, correspond to 9% of all murders in the state, which in 2007 came to 5,420 deaths. In North American cities, the police are responsible for less than 4% of murders, while in São Paulo the figure is 9%. When the numbers are analyzed for the state capital, the figure rises to 13.5%. This year, police forces killed, in the municipality of São Paulo, a total of 232 persons, and the number of homicides recorded in the capital was 1,713.

² According to the claim made by *Folha de S. Paulo* on the subject of “Public Safety omits part of the deaths by MP,” 12/03/2008.

³ According to the coroner’s report issued by the Legal Medical Institute of São Paulo, 15-year-old Carlos Rodrigues Júnior, deceased after being seized by military police at his home, for suspicion of stealing a motorcycle, received 30 electric shocks on his body. Two of them were on the left side of his chest and reached his heart, causing cardio-respiratory arrest. Source: *Folha de S. Paulo*, 19/12/2007.

⁴ O Estado de São Paulo, 16/01/2008

⁵ Chevigny, Paul. “Police Deadly Force as Social Control: Jamaica, Brazil, and Argentina,” Série Dossié NEV, no. 2, 1991, p. 10, Center for Studies on Violence, USP, São Paulo.

It is important to stress that, among the homicide cases for the population in general, we are also counting deaths caused by massacres and summary executions, which in 2007 corresponded to 190 deaths, some of them with the proven participation of agents of the police forces.⁶

The number of civilians wounded by police agents in the State of São Paulo in 2007 was 416, that is, less than the number of deaths. In the same period, 602 police agents were wounded. Internationally, the parameter adopted to indicate the level of legitimacy for the use of force in police actions is that the number of civilians wounded should be greater than the number of deaths. Therefore, we can conclude that there is violence out of proportion in São Paulo, given that for each dead civilian there are 0.9 wounded.

When we look at different police departments, lethality is much greater in the Military Police, responsible for 93.6% of the deaths of civilians, increasing even further the proportion between dead civilians and police agents, which is about 15 dead civilians for each dead police agent.

In the first half of 2008, 245 persons were killed by state police forces in acts of resistance followed by death, where 14 police were also killed, of which 12 were Military Police. This proportion equals about 17.5 dead civilians for each dead police agent. In these actions, 209 civilians and 200 police were wounded, which equals 1.1 wounded police agent for each wounded civilian. The proportion of dead and wounded civilians in the police actions was once again greater (1.2 dead civilians for each wounded civilian).

The cases of resistance followed by death in the first half of 2008 correspond to 10% of the total number of murders in the state, raising the contribution of police action to the magnitude of homicides in general.

Compared with the same period in 2007, the number of deaths caused by police in the first half of 2008 increased by 21.9%, rising from 201 deaths in 2007 to 245 deaths in 2008. On the other hand, the number of police killed in these confrontations went down from 15 to 14. The proportion of deaths was 11.4 civilians for every police death. Following a downward trend, the number of murders in the state fell 13% in the first half of 2008 compared to the same period in 2007. What we see in São Paulo is the continuity of a repressive security policy, whose “efficiency” is accounted for by the number of people killed in police actions.

Summary Executions: the Return of an Old Habit

Aside from directly promoting violence, by means of the “resistances followed by death,” the police forces were not successful in restricting homicides by extermination

⁶ Data from the Annual Report of the Ouvidoria das Polícias of the State of São Paulo.

groups.⁷ From May 2006 until December 2007, the Ouvidoria de Polícia (Police Ombudsman's Office) recorded 166 massacres, which victimized 355 persons throughout the state, and in many of which agents from the police forces participated. It is important to stress that the Secretary of Public Safety (SSP/SP), responsible for criminal statistics, affirms it does not have up to date data on this type of crime, accounting for them only as homicides, in spite of their being part of phenomena that are very distinct from homicides in general.⁸

In 2007, the Police Ombudsman's Office tracked 80 actions of unknown responsibility, among massacres and summary executions.⁹ There were 30 actions in the capital, 33 in the São Paulo metropolitan region, and 17 in the interior and coastal areas of the state.

When the areas of occurrence are analyzed, a large concentration is seen in the peripheral areas of large cities. For example, in the municipality of São Paulo such cases are concentrated in the Northern and Eastern Zones, which border on the city of Guarulhos, where 20% of the cases were recorded.

Final Considerations

In these last years, in spite of the reduction in violence in society—the homicide rates have been decreasing since 2000—police violence has not diminished, and the number of massacres has increased. The statistics show that police violence has increased while violence in society has decreased. Likewise, the number of death attempts against police remained stable. Therefore, we see a greater arbitrariness in police actions. The situation of São Paulo is not an isolated one, but can also be seen in other states, such as Rio de Janeiro and Pernambuco. It's the result of a policy that ignores basic rights to physical integrity and to life, particularly against people who live in the peripheries of large urban centers, where they also don't have access to economic, social, cultural, and environmental rights.

In spite of the innumerable claims made regarding this reality, there has not been any structural change, which allows the police to act in defiance of the law, since the mechanisms for control and investigation of these cases are largely inefficient. Cases of homicides resulting from the so-called “resistance followed by death” are considered “normal.” External control of the police remains within a single entity –

⁷ As defined by the Ouvidoria da Polícia of the State of São Paulo multiple homicides with the simultaneous execution of three or more persons are considered to be massacres. Summary executions are those cases of single or double homicide in which the victim was executed in ways characteristic of the actions of extermination groups.

⁸ <http://gl.globo.com/Noticias/SaoPaulo/0,,MUL105660-5605,00.html>

⁹ Data extracted from the comparative chart on cases of unknown responsibility: massacres and executions, prepared by the Police Ombudsman of the State of São Paulo.

the Police Ombudsman's Office – which, despite its importance, has been systematically weakened by lack of funds.

Effective and articulated responses to such problems, which include the promotion of social policies that reduce inequalities, are essential for the production of changes. The Santo Dias Center for Human Rights points to one of the possible routes for transforming this reality: immediate application of Federal Law 10.446/2002, which provides for the possibility of action by the Federal Police in the investigation and follow-up of these cases of human rights violations.

The characteristics of incarcerated women in Brazil today show that they are young, of African descent, and in the majority serving prison time for drug trafficking. The women who are serving prison time experience lack of family support, with no guarantee of partner visitation or remaining with any children born during their prison term, which demonstrates the double (multiple) punishment of the woman by both the penal system and society. In São Paulo, about half of the incarcerated women, or 49%, wait more than a year to move to a prison location, compared to 36.9% of men in the same situation¹. It is common for the women to opt for staying in a crowded jail in order to stay close to their family and children.

Incarcerated female: the women's prison system of Brazil

Lívia Gimenes Dias da Fonseca² and Luciana de Souza Ramos³

In following the subtleties of a perverse prison system that disrespect the incarcerated male, what is the portion of the incarcerated woman when she must wear the same uniform as the incarcerated male? She wears long pants, always. Never skirts! The incarcerated woman when looking in the mirror does not see a woman, much less allows herself to feel desire. She does not follow any female "stereotype." She does not

¹ SURVEY "Perfil do preso no Estado de São Paulo" (Prisoner profile in the State of São Paulo), November, 2002.

There is a large gap in the official data on the nation's prison system situation, a fact also criticized in the Final Report from the Interministry Working Group (GTI), ob. cit.

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—O Direito do Trabalho como forma de dignificar o trabalho encarcerado feminino" (From housecleaners to housecleaning – The right to work as a way to dignify female work during incarceration," and today she is Technical Advisor at the Amnesty Commission of the Ministry of Justice, Lattes: <http://lattes.cnpq.br/2130398996439619>

³ Luciana de Souza Ramos, graduate from the Catholic University of Salvador – UCSAL. She is a researcher at the UNB Society, Penal Control, and the Justice System Research Group, under the supervision of Professor Ela Wiecko. She is also member of the Interministry Working Group "Incarcerated Women." Lattes: <http://lattes.cnpq.br/1023148491666492>

have dreams or self-knowledge of what is to be a woman. (Dora Martins, judge for the State of São Paulo)

Introduction

There is little research work done on female criminalization, given the frequent exclusion of women, either as an object or subject of criminology and the criminal justice system, research, and debates on criminalization (socio-economic and political aspects). Although the number of incarcerated women⁴ in Brazil is minuscule in comparison to the total of 308,786, the fact is that from 2001 to 2006 there was a 135% increase in the number of incarcerated women⁵.

The Brazilian penitentiary system houses approximately 14,058 women (4.55% of the total)⁶, and 6,522 (25%) are serving time in jails located at police stations⁷, compared with 13% of the male incarcerated population, which illustrates the lack of a policy that is specific to the case of incarcerated women.⁸

In São Paulo about half of the incarcerated women, or 49%, wait more than a year to move to a prison location compared to 36.9% of men in the same situation.⁹ It is common for the women to opt for staying in a crowded jail in order to stay close to their family and children, which shows the lack of a policy to build adequate prisons.¹⁰

The characteristics of incarcerated women in Brazil today show that they are young, of African descent, and in the majority serving prison time for drug trafficking. The women who are serving prison time experience lack of family support, with no guarantee of partner visitation or remaining with any children born during their prison time, which demonstrates the double (multiple) punishment of the woman by both the penal system and society.

In this regard, the majority of the women were, prior to incarceration, single and living alone. It has been verified that in the city of São Paulo 36.3% of all incarcerated

⁴*It is important to highlight the difficulty in gathering data on female incarceration, as the data furnished by DEPEN does not include all the facets of female penal process. For this reason in this article we will work with data furnished by the Interministry Working Group on the Female Prison System (Incarcerated Women GTI) and by the Institute for Land, Work, and Citizenship (ITTC), which offered us data specific to the case of the city of São Paulo, which contains the largest incarcerated female population in the country.*

⁵ 2006 data presented in the Interministry Working Group (GTI) Final Report on “Reorganização e Reformulação do Sistema Prisional Feminino” (Reorganization and reform of the female prison system), Brasília: December/2007

⁶ The incarcerated male population comprises 94% of the total incarcerated population. Report GTI, *op. cit.*, p. 10.

⁷ The Public Safety System includes police stations and police districts. There has been a significant increase in women incarcerated between 2000 and 2006. The total percentage increased from 7.81% to 11.05%, or an increase of 33.75% in the entire country. *Ibid.*, p. 10. Perhaps this data justifies the media focus on the cases of incarcerating women with men, under the reasoning that there is a lack of space.

⁸ *Id., ib.*, p.17.

⁹ LEVANTAMENTO ‘Perfil do preso no Estado de São Paulo’ (Prisoner Profile in the State of São Paulo), November 2002. There is a large gap in the official data on nation’s prison system situation, a fact also criticized in the Final Report from the Interministry Working Group (GTI), *ob. Cit.*

¹⁰ At present there are a total of 55 female prison units in the country, compared to 1,042 for men. *Id., ib.* p. 31.

women do not receive any visitors, compared to 29.2% of their male counterparts, and 39.9% of males incarcerated in the Differentiated Disciplinary Regimen (RDD) receive visitors, even in view of the increased difficulties offered by the system in their case. This differentiation demonstrates the abandonment that incarcerated women experience.

Even though the women are incarcerated, they remember to include family members within the recipients of the income that they earn in prison, and because it is constant, it ends up being the main income for many families. The main cause for these remittances may be their children, since the majority of women lived with their children prior to incarceration. Most of the time their children stay in the care of their maternal grandmothers. In comparison, most of the males lived with their mother or spouse prior to incarceration, reaffirming that the burden of raising a child is still in the mother's hands¹¹.

Thus, the incarceration of women offers consequences of a diverse order. It not only affects the incarcerated woman's life, it extends to the entire family, community, and society; it particularly affects their offspring, both younger children and adolescents.

The consequences of female criminalization in prison

Women are treated in a harsher manner than men, and are doubly condemned: legally for breaking a law, and socially for being considered biologically and sexually abnormal. The biological reasoning behind the idea of low female criminality is related to the "natural" docility and passivity that women display, which is a direct consequence of the "immobile egg."¹² When women commit a crime, their behavior is equated to "men's behavior," that is "the women not only break the sanctioned penal laws, but also offend the construct of gender roles as such."¹³

Baratta observed that female delinquency is always associated with the roles imposed on women, or "crimes typical of women," like abortion and infanticide. In contrast, they found a penal code that privileged them.¹⁴

In this way, when infractions are committed that fall outside predicted female roles, the violators are treated more severely than their male counterparts.¹⁵

In view of such discrepancy, we can safely conclude that the prison system was not conceived with women in mind, and the reason for this is believed to lie in the system of controlling women's behavior in private, by the hands of a patriarchal male, which

¹¹Felippe, Kenarik Boujikian, *ob. cit.*

¹²LEMGRUBER, Julita. *Cemitério dos vivos: análise sociológica de uma prisão de mulheres* (Cemetery of the Living: Sociological Analysis of a Women's Prison) Rio de Janeiro: Achiamé, 1983, p. 12

¹³CAMPOS, Carmen Hein de (org) *Criminologia e feminismo* (Criminology and Feminism) Porto Alegre: Sulina, 1999, p. 52

¹⁴BARATTA, Alessandro. *Paradigma do gênero: da questão criminal à questão humana* (Gender Paradigm: from the criminal question to the human question). In: *Criminologia e feminismo*. Porto Alegre: Sulina, 1999, p. 51.

¹⁵Id., ib., p. 51.

views violence against women as a means of guaranteeing male control¹⁶. Penal law was composed with a view to men as the “players of roles in the (public) sphere of material production.”¹⁷ The penal laws that were created address gender specific issues such as abortion, infanticide, abandonment of minor children, and function to maintain gendered societal rules,¹⁸ that is, the reproductive role serves also to maintain patriarchal domination insofar as it guarantees “a regimen of male dominated property inheritance and accumulation.”¹⁹

The profile of the female incarceration described above, clearly shows a prevalent gender inequality, not only in the forms of sentencing (in all stages of penal execution), but also in the denial of the basic rights of imprisoned women.

Labor perspectives within the prison

The differentiation in the culturally created spheres and roles of men and women can be more clearly seen in the social division of labor, which operates within a social construction of gender roles, where material production has been reserved, throughout patriarchal society, for men, and the reproductive sphere was reserved for women.”²⁰ The event of women entering the labor market signaled an increase in criminality, as Julita Lemgruberr explains: “The statistical data on criminality rates show a correlation between increased female participation in the labor force and increased gender equality, and so female participation in criminal statistics also increases.”²¹

The pioneer works of Georg Rusche and Otto Kirscheimer, have demonstrated that there is a correlation between an increase in incarceration and the corrosion of the labor market, as the punitive system functions in this case to neutralize the population defying this new economic order according to a gendered division of labor.²² The prison system addresses the male population, while the welfare system addresses women and children.²³ When women enter the penal system, “the modalities of treatment” that address this population focus specifically on education and professional training aimed

¹⁶“The difference between public and private that supports the functioning of a ‘general economy of power’ is in the ‘public areas where the most prestigious fields of action are centered, or those that assure a material reproduction,’ which address specifically economy and politics. In contrast, the private sphere, is the one reserved for the world of life.” Campos, Carmen Hein de (org), ob. cit. p.48-49

¹⁷ *Ibid* p. 46

¹⁸“The penal code is a specific system of productive labor, and consequently of property relations, work ethics, as well as the public sphere that guarantees its functioning. The reproductive area, the sexual exchanges a couple has in creation of a family, procreation, family, and primary socialization, in other words, the private sphere, is not the object of the criminal justice, or the public punitive system” *Ibid* p. 45

¹⁹ *Ibid* p. 49

²⁰ *Ibid* p. 45

²¹LEMGRUBER, Julita, ob. ccit. p. 14

²²WACQUANT, Loïc. *As prisões da miséria*. Trad. de André Telles. Rio de Janeiro: Zahar, 2001, p.106

²³ *Ibid* p.100

at reproduce and assure, in case of female workers, the double subordination “both in gender relations and in production.”²⁴

Looking at women's activities while in prison, these do not differentiate from the activities performed prior to incarceration and are in keeping with the common expectations for female roles.

For this reason there is greater entrepreneurial interest in establishing themselves within women's prisons,²⁵ based on the belief that women are more disciplined, obedient, fragile, and gentle. However, the work women perform does not differentiate greatly from that of their male counterparts, as these activities are manual, in assembly line, and low-skilled labor that does not require technical qualifications.

This signifies that “the woman in prison is the same woman who, outside of prison, is subjected to the socio-historical and political subordination practices that the feminist movements have sought to break to allow women to exercise their rights.”²⁶

Reproductive and Sexual Rights

The debate on sexual and reproductive rights not only addresses the right to decide when to have a child, but also the right to choose with whom to have sexual relations, and when. The application of these rights is in the realm of the guarantee of access to health care services for women.

Gender inequality appears in prisons perversely in the forms of sexual deprivation, which is imposed more injuriously and more inflexibly than in the case of their male counterparts. Very few female prison units allow partner visitation,²⁷ under the pretext of avoiding pregnancy – which generates more work for the prison workers and the need for adequate facilities – and due to the low visitation level from male partners.

The violation of women's sexual rights appears in two forms: individually, as it restricts freedom, privacy, intimacy, and autonomy, in other words, the free exercise of sexuality and reproduction, without discrimination, coercion, and violence. Collectively, in the absence of public policies that assure their rights, such as access

²⁴“The prison system does not prepare women for an autonomous life, but places them in the role of faithful wives and proletariat,” CAMPOS, Carmen Hein de (org), ob. Cit, p. 50

²⁵For females the index is of 6.6%, data from FUNAP (four times higher than for males); and 45.6% are companies (for male prisoners the figure is 30%). Data from FUNAP, November 2002.

²⁶WOLFF, Maria Palma (coord) ob. Cit p.17

²⁷FELIPPE , Kenarik Boujikian, “Indulto de 2004, uma nova história para as mulheres encarceradas” (Pardons for 2004: a new history for imprisoned women). Text from the public hearing held in September 2004, at the National Council on Criminal and Prison Policies, Ministério da Justiça, http://www.mj.d.gov.br/ler_noticiad.php?idNoticia=60, Acess 16/10/2008.

to information regarding sexual and reproductive education, the discussion and dispensing of methods of contraception, and gender violence prevention.

Many women prison units maintain a policy of punishing prisoners who engage in homosexual relations. The denial of partner visitation, and the sanctioning of sexual relation in prison represent a peculiar form of gender discrimination.

The debate on gender equality allows for a reflection on the effectiveness of sexual and reproductive rights, which must be part of a public policy that focuses on woman's health as a whole.

The denial to partner visitation makes it impossible the woman to exercise her right to choose getting pregnant or not, to be a mother, and we see here other consequences of the violation of the right to maternity, since children are taken from their mothers at the age of four months. The questions then are: "What is the situation of the children of the women serving prison time? Do they loose the link to family and community when serving prison time?"²²⁸

The penal system duplicates the experience of violence for incarcerated women through the institutional violence that reproduces the structural violence of patriarchal social relations and sexist oppression.

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²²⁸ SANTA RITA, Rosângela Peixoto. *Mães e crianças atrás das grades: em questão o princípio da dignidade da pessoa humana (Mothers and children behind bars: in question, the principle of the dignity of the human being)*. CNPCP/MJ. Brasília/DF; p. 64.

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The number of abortions performed annually in Brazil is estimated at 1,054,243.¹ In addition, there are about 250,000 hospitalizations per year due to abortion complications. Its illegality comes at a high price for the public health system, costing the country around 35 million Reais per year.² Unsafe abortion is one of the main avoidable causes of maternal death in Brazil, and it reveals a pattern of inequality and social injustice. Maternal death due to unsafe abortion practices and the health complications that they generate exacerbate the unequal access to health care, due to socioeconomic reasons, ethnicity, and racial discrimination.

Prosecution of Women for Abortion in Mato Grosso do Sul: a Question of Human and Reproductive rights

Beatriz Galli³ and Carmen Hein Campos⁴

Summary

The threat of criminal prosecution against 10,000 women in the city of Campo Grande, Mato Grosso do Sul, for supposedly practicing illegal abortion, makes this case symbolic for a discussion of women's human and reproductive rights. This case points up the urgency in debating the currency and efficiency of the 1940 law rendering abortion

¹ Adesse, Leila and Monteiro, Mario. 2007. *Magnitude do aborto no Brasil: aspectos epidemiológicos e sócio-culturais* (Magnitude of abortion in Brazil: epidemiological and sociocultural aspects). IPAS Brasil/IMS/UERJ.

² INTERNATIONAL PLANNED PARENTHOOD FEDERATION, *Morte e Negação: Abortamento Inseguro e Pobreza* (Death and Denial: Unsafe Abortion and Poverty), 2006.

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⁴ Carmen Hein Campos, attorney, received her Master in Law from the Federal University de Santa Catarina and from the University of Toronto, she specialized in Criminal Sciences at PUC-Rio Grande do Sul, and is a consultant in the areas of violence against women, sexual, and reproductive rights. She is counsel and director of THEMIS – Juridical Assistance and Research on Gender, and of the Latin American and Caribbean Committee on the Defense of Women's Rights – CLADEM Brasil.

illegal. On bursting into the 20-year old Family Planning Clinic and seizing medical records, the city authorities violated several fundamental human rights. Moreover, the absence of legal abortion services, in addition to maintaining a law prohibiting abortion, demonstrates that the Brazilian state violated equality in access to health care. This article discusses the Brazilian authorities' actions and omissions with regard to the countless human rights violations, questioning the role of the State in protecting and guaranteeing women's human rights, when dealing with issues of autonomy in reproduction, in enforcing non-discriminatory health access, and the right to privacy, information, and due legal process.

1. Unsafe Abortion: a public health and human rights issue

Research has pointed out the direct correlation between legal restrictions on abortion, the high number of maternal deaths, and the health consequences resulting from the practice of unsafe abortion, as the illegality of abortion prompts women to seek unsafe abortion. In this regard, after legalization of abortion in South Africa in 1996, the indices of maternal death dropped 91% in just five years, 91%.⁵ In Romania when abortion was made illegal, deaths due to unsafe abortion increased. When the legal restrictions were lifted, the country experienced a drastic reduction in the number of deaths resulting from abortion.⁶

In Brazil abortion is considered a crime, with the exception of cases of rape and where the mother's life is at risk.⁷

The number of abortions performed annually in Brazil is estimated at 1,054,243.⁸ In addition, there are about 250,000 hospitalizations per year due to abortion complications. Its illegality comes at a high price for the public health system, costing the country around 35 million Reais per year.⁹ Unsafe abortion is one of the main avoidable causes of maternal death in Brazil and it reveals a pattern of inequality and social injustice. Maternal death due to unsafe abortion practices and the health complications that they generate exacerbate the unequal access to health care, due to socioeconomic reasons, ethnicity, and racial discrimination.

⁵ Jewkes R. & Rees H., *Dramatic Decline in abortion mortality due to the Choice Termination of Pregnancy Act*; *South African Medical Journal*. April 2005; 95 (4): 250.

⁶ Stephenson P. et al, *Commentary: The public health consequences of restricted induced abortion – Lessons from Romania*; *American Journal of Public Health*. October 1992; 82(10):1328-1331.

⁷ *The Brazilian Penal Code*, in article 128, anticipates two circumstances in which an abortion procedure by a physician is not punishable: in cases of the pregnancy risking the mother's life and when the pregnancy resulted from rape.

⁸ Adesse, Leila and Monteiro, Mario. 2007. *Magnitude do aborto no Brasil: aspectos epidemiológicos e sócio-culturais*. IPAS Brasil/IMS/UERJ.

⁹ INTERNATIONAL PLANNED PARENTHOOD FEDERATION, *Morte e Negação: Abortamento Inseguro e Pobreza*, 2006.

It is the women living in the worst socioeconomic conditions, and consequently experiencing a high social vulnerability, who are at the highest risk of mortality and who are the principal victims of the penal prohibition. The right to health does not mean only physical health, or the healthy body, but it also includes the right to mental health, which extends to reproductive health, and imposes on the State the obligation of ensuring access to quality and free health care services to all women.

The criminalization of, or the threat of sanctions for the practice of abortion, violates women's right to life and health, blocking access to health care services, putting their lives at unnecessary risk, and violating the women's right to decide free from any form of coercion and violence. Moreover, criminalization of abortion violates the right to self-respect because it blocks the exercise of free decision making regarding reproduction, the autonomy to make decisions regarding one's own health, the right to be or not a mother, the right to personal identity, and sovereignty over one's own sexuality.

The legal criminalization of abortion reproduces gender discrimination, as it criminalizes a health procedure that only pertains to women. The United Nations Committee to End Discrimination Against Women (CEDAW), expressed in its General Recommendation Number 24 that to deny access to health care services exclusively dedicated to women is a form of discrimination: "Other barriers to proper health care services for women include laws that criminalize medical procedures dedicated to women, and that punish women for undergoing such procedures;" and it says that "whenever possible, legislation that criminalizes abortion should be revised to remove the punitive provisions imposed on any woman who undergoes abortion."¹⁰

The Brazilian penal code in effect today discriminates and violates the constitutional precepts of equality between men and women (Article 5 of the Federal Constitution). Moreover, it impacts women differently in its practice, as the most vulnerable group of women – the poor, those with low-income, and with a low educational level – are the ones who suffer the most criminal prosecution.

The abortion debate should be based on the provisions of the constitution¹¹ and on those contained in international treaties and human rights conferences.¹² The 1994 Cairo International Conference on Population and Development, and the 1995 Beijing Fourth

¹⁰ CEDAW, General Recommendation N° 24, 1999, Paragraphs 14 and 31.

¹¹ The 1988 Federal Constitution is based on the fundamental principles of equality, human dignity, privacy, and liberty, and it defines the state as secular and democratic. In addition, it guarantees the right to life and the right to access to health care and family planning, among others.

¹² The Brazilian government ratified, without restrictions, the main international human rights treaties that guarantee the respect of sexual and reproductive rights, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Interamerican Convention on Prevention, Sanction, and Eradicating Violence Against Women (Belém do Pará Convention), the Convention on Children's Rights, the International Pact on Civil and Political Rights, and the International Pact on Economic, Social, and Cultural Rights.

World Conference on Women, for example, have declared women's sexual and reproductive rights as human rights. The international documents originating from these conferences, The Cairo Plan of Action and the Beijing Proposal for Action, are directives for governmental actions and policies in the areas of sexual and reproductive health. On signing such documents, the Brazilian government agreed to implementing public policies to achieve the goals expressed in these documents. Paragraph 106 K of the 1995 Beijing Proposal for Action states that "governments should consider revising their laws that endorse punitive measures against women who undergo illegal abortion procedures".

On July 2007 CEDAW recommended that the Brazilian government "continue with efforts to improve women's access to sexual and reproductive health care services" and "accelerate revision of the legislation that criminalizes abortion, with a focus on removing the punitive sanctions imposed on women who undergo abortion, all in conformity with General Recommendation 24 on women's health, and the Peking Manifesto and Proposal."¹³ It is well known that legal restriction on abortion does not reduce its practice, and it is a determinant factor in the clandestine practice, generally performed in unsafe and unsanitary conditions, with high risks for the health and lives of women.¹⁴

2. Mato Grosso do Sul Case¹⁵

After a news story shown on the Jornal da Globo, on 04/10/2007, at TV Morena (affiliated to Rede Globo) on the abortions performed at the Family Planning Clinic at Campo Grande, the state Public Prosecutor denounced the physician owner of the clinic, and six employees for committing the crime of abortion, and of forming a gang. While carrying out the order for search and seizure, 9,862 medical files were seized constituting evidence of the crime of abortion against 70 women who are being prosecuted at this moment. These seized files were handled by the police and attached to the criminal process as evidence that these abortions were performed at the clinic. This attitude, as regards the penal process, is illegal and violates the right to privacy of the women in the case, and the right to medical confidentiality.

¹³ (CEDAW/C/BRA/CO/6 - <http://www.un.org/womenwatch/daw/cedaw>)

¹⁴ CEDAW, Doc. UN Cedaw/C/1998/II/L.1/Add. 7, paragraph 6, 1998. To classify abortion as crime does not encourage women not to undergo the procedure, on the contrary, it fosters risky practices, as stated by the United Nations Committee to End Discrimination Against Women (CEDAW), in its Conclusive Observations for the Peruvian Government of July 8, 1998.

¹⁵ The information on this case is based on the Technical Commission Report of May 2008. The Commission was composed of representatives of the Citizenship and Reproduction Center (CCR), Health, Reproductive, and Sexual Rights Feminist Network, Brazilian Movement for the Right to Legal and Safe Abortion, Antígona, Cfemea, and Themis. The report is based on research, interviews with local authorities, women being prosecuted, and representatives of local women's movements, in addition to official documents and news articles.

· Violations of the right to privacy and to health care: breaking medical confidentiality and secrecy

The medical files that form the basis for the criminal process ongoing in the city of Campo Grande were attached to the criminal process and were made accessible to the general public for almost three months, explicitly violating the constitutional principles of the right to privacy and intimacy of the prosecuted women.¹⁶

The handling of the medical files by non-physician professionals constitutes a violation of these fundamental rights, as well as the right to confidentiality and medical secrecy. According to Cook¹⁷ (2004), this confidentiality is an obligation that these professionals and others must observe in order to keep secret medical information received during their practice. In addition, Resolution 1,065/2000 of the Federal Medical Council determines that there should be an expert (physician) nominated by the court to examine the medical information and to report his or her findings to the court and police authorities. Thus, the handling of the medical files and the information contained therein can only be performed by a medical doctor [in this case an expert nominated by the judicial system].

· Violations of due process

The handling of medical files by the police proves the illegality of the evidence, as they did not abide by the legislation concerning nomination of a medical expert for such purpose, in addition to violating the intimacy and privacy of the women in the case.

On the other hand, in view of such illegal handling of said files, the confessions obtained at the police station, in some cases without the presence of an attorney or public defender, should be considered null, as they were obtained illegally, compromising the entire criminal process, violating the right to a full defense and to judicial guarantees. For compromising the criminal process, the conditional sentencing imposed by the Judiciary cannot be considered valid on the grounds of the same arguments mentioned above.

The conditions imposed by the judge regarding alternative sentences, such as providing services to the community in daycare centers and pre-schools, as a condition for suspending the criminal process, are “pedagogical” in nature and can be considered akin to psychological torture and inhumane treatment of the accused women¹⁸. Thus, the countless irregularities noted compromise the efficiency of the process and establish its absolute nullity.

¹⁶ In addition to the Medical Ethics Code, Article 102, addressing the secrecy of medical service, article 154 of the Penal Code establishes professional secrecy with the objective of preserving patients' privacy and intimacy.¹⁷ Rebecca Cook. Mahmoud Fathalla. *Saúde reprodutiva e direitos humanos: integrando medicina, ética e direito* (Reproductive health and human rights: integrating medicine, ethics, and law). Rio de Janeiro: Cepia, 2004.

¹⁸ Juliana Arini, Punidas por Abortar (Punished for Abortion), Revista Época, May 2008.

3. Final Considerations

The case in Mato Grosso do Sul has generated debates, news articles, public hearings at the State Bar Association, at the Human Rights Commission of the State Assembly, in addition to public manifestations by human rights organizations and social movements in solidarity with the women being prosecuted. In fact, until now no actions had been taken by the federal and state authorities to stop the human rights violations from continuing, or to correct those already committed.

The mass criminalization of the women in Campo Grande for abortion reveals that the public authorities responsible for safeguarding principles, guarantees, and fundamental rights, such as the Public Prosecutor and the Judiciary, not only agree with the violations, but are themselves violators of human rights. This serious situation can provide an opportunity in the future for the international community to hold the Brazilian State accountable for not fulfilling its international commitments in the area of human rights.

Although fed by dreams and with intent to better their lives, on crossing the border many of the prejudices regarding gender become even more relevant. Migrant women are the victims of much violence, including domestic violence. Their illegal status and language make it more difficult for them to access support services. This also makes it difficult to determine the indices pertaining to this reality. Migrant women, besides being confronted with gender inequality, also encounter ethnic and racial barriers to protection. In seeking a dream, slave-like labor is only one of the many difficulties faced by Bolivian women in Brazil.

Migrant Women in Brazil

Luciane Udovic¹ and Luiz Bassegio²

The migration of thousands of women from poor countries to rich ones, or even within Latin America, is intimately connected with the macro-economic policies imposed by multilateral financial institutions. Payment of external debts, besides impoverishing the countries, hinders their development in a sustainable manner and obliges thousands of people, both men and women, to seek better living conditions in other countries. This is an unjust economic system that particularly affects women.

For every cent paid against debt, there are fewer funds for education, health, and food security for women and their families. Thousands are condemned to unsteady and poorly paid—or often unpaid—work, eviction from their lands, as well as privatization of public services. Women are the creditors of an enormous historic, ecological, social,

¹ Luciane Udovic is one of the coordinators of *Cry of the Excluded*.

² Luiz Bassegio is a coordinator of the *Continental Cry of the Excluded*.

ethical, and financial debt that has accumulated throughout the history of patriarchal colonization and exploitation of resources from our countries.

As a consequence, people migrate in search of a better life. The case of Bolivian migrants in Brazil is a typical example. Deceived by false promises of work that is worthwhile and well paid, men, women and children arrive in Brazil every day to encounter a hard routine working on sewing machines, confined in tight, dark, and unhealthy quarters in several neighborhoods of São Paulo. “I was working in Bolivia and the work wasn’t going well. My wife and I heard on the radio that they needed people to work in Brazil. They told us they would pay well, that we would earn US\$200 per month, but on arriving here we found it wasn’t true. The days passed, and the owner of the factory no longer let us go out on the street. He closed us in and I didn’t know what to do because I had my wife and my cousin. If I went to the owner he would treat us badly, and out of fear I preferred to keep quiet. My wife was one-month pregnant and even so kept working to pay what we owed. The factory owner who had loaned us the money to cross the border made us work until one or two in the morning, to pay him that damned money.” (Pedro M.L.)

This is one of thousands of claims received by CAMI (Migrant Support Center), located in the Pari neighborhood of São Paulo. However, there is a need to debate the specific situation of immigrant Bolivian women. They face difficulties regarding documentation, work (many cases of unhealthy circumstances, illness, and not being paid for work at the sweatshops), as well as cases of domestic violence. Usually, migrant women are seen with the function of only following their husbands in the great adventure of fighting for better days. Although women are the ones who usually facilitate socialization of their families in the destination country, they suffer a lot in this process.

On crossing the border, many women suffer from prejudices and violence, including domestic violence. Their illegal status and language make it more difficult for them to access support services. This also makes it difficult to determine the indices pertaining to this reality. Migrant women, besides being confronted with gender inequality, also encounter ethnic and racial barriers to protection. In seeking a dream, slave-like labor is only one of the many difficulties faced by Bolivian women in Brazil.

Many companies in Brazil recruit cheap labor in Bolivia (close to 1200 to 1500 arrive every month to work in São Paulo). The majority work in small clandestine sweatshops located in 18 neighborhoods of São Paulo that supply products to large stores such as Marisa, Riachuelo, Renner e C&A, among others.

These immigrants work shifts much longer than what the law allows, earn pennies for each piece produced, and live at the work site. Several men, women, and children are housed in a single room, often without ventilation, presenting many health risks,

especially tuberculosis. The right to come and go is denied, since in general migrant workers have a “debt” with their employers for the transportation to Brazil. Thus, although they are not in “chains,” super-exploitation and lack of freedom can be characterized as practices analogous to slave labor.

Deceived, humiliated, and without hope, many migrants turn to drink as a kind of anesthetic to survive the situation. The even more disastrous result falls on the shoulders of women. The frustration of their husbands often translates into acts of violence.

A recent case attended by CAMI was that of Zilda, a 22 year old Bolivian women. According to her, “We arrived from Bolivia—I, my husband, and three children. The factory owner brought us here. In the beginning we lived in a favela near Wal-Mart, but after a time we were taken to a sewing factory that was hidden. We were locked in, only today the owner opened the door for me to go out and turn around. We stayed there about eight months. We worked the day through and into the night. We received fifty Reais per month and no more. In the morning we ate bread. There was one piece for my husband, one for me, and I cut the other piece into three for my children to share. While we were sewing, my children were kept locked in the room or were tied so as to not put their hands in the machine, and not slow up the work. The owner was angry when the children bothered him. He also had children, they tormented mine and nobody said anything. Sunday I found my husband in bed with the factory owner’s niece. After what I saw, he assaulted me, dragging me by my hair, and I cried out for help, but there was no one there. My husband sent me away, and I said I am a woman with children and also pregnant; nobody is going to give me work. I spoke with the owner and he gave me the key to leave that prison. I was on the street, with the children. A Brazilian lady passed who gave me ten Reais to buy food. Some Bolivians who saw my situation took me to their house and let me stay the night. I spent one night and left without eating anything, and without a change of clothes. I had nowhere to ask for help. Some Bolivians took me to the Migrant Support Center where they gave me water and food, and where I could take a bath. Afterward I went to a shelter (AVIM-House of the Migrant). Now I want to go back to Bolivia.”

Paulo Illes, CAMI Coordinator, told us that the Center attorney took charge of the case. The aggressor and the factory owner will be investigated. Illes remembers that the practice of leaving children tied is very common in factories where there is slave labor. In the larger factories, the children are locked up for several hours, with no contact with their parents. Where the spaces are smaller, the mothers usually leave the children tied to the leg of a chair, so they don’t interfere with the machinery. The result of this barbarity can be seen upon contact with the children. When they leave the factory they don’t play, don’t talk, they keep very quiet near their mother.

The Migrant Support Center receives several complaints like this. Seeing the living conditions of migrant women can attest to an enormous vacuum in public policies to address the needs of this segment of society. Migrant women need access to basic services in the areas of health, education, and income generation. We need to achieve full protection and promotion of civil, political, economic, social and cultural rights for all people, in all countries.

The Observatório de Favelas (Favela Watch) recently conducted a study of 230 children, adolescents and youth (11-24 year-olds) employed by armed drug-dealing gangs in 34 poor areas located in the city of Rio de Janeiro. A group of 10 interviewers systematically followed 152 of the youth. Towards the end of the study, it became evident that job attrition was high: the number of youth who died was 45 and only 97 remained employed. The findings are also very troubling because they reveal the high percentage of youth not attending school, as high as 93%, and those using drugs (89%). The study also showed how young the youth are when they first join the gangs – 46% were between the ages of 11 and 14. Despite the fact that the majority of the youth interviewed said their biggest dream was to make a lot of money, data show that 57% earn an average wage of from one to three minimum salaries (\$192 to \$578 reais a month). There is a lot of exploitation, and 60% of the young men said they work more than 10 hours each day, in shifts of 12 to 24 hours without breaks. 57% said they worked 7 days a week. Only 24% of the youth thought their lives were satisfying, and 40% decided to leave the gang voluntarily.

Violations of Human Rights of Children and Adolescents in Brazil

Maria Helena Zamora¹

Despite some gains that guarantee the human rights of children and adolescents, our country still has to overcome critical issues that demand urgent solutions. I would like to point out that even though the issues can be presented separately, they are interconnected in a complex way that can only be addressed by integrated action.

¹ Maria Helena Zamora is a professor at the Psychology Department of PUC-Rio de Janeiro (Pontifical Catholic University).

² According to Waiselisz² (2004), 72% of youth deaths are caused by external means and of those, 39.9% are homicides.

Child labor is one such issue, and even though it is on the decrease, change is coming slowly. A National Household Sample Survey (PNAD) in 2007 showed that there were still 2,500,842 children aged 5 to 15 who worked, a number representing 6.6% of the population in that age bracket. For some analysts, (Institute for Applied Economic Research - IPEA, 2008) the social programs intended to help families in extreme poverty are not able to keep children from working. Even though 65% of the children who work do not receive wages, the money offered through such programs (in the case of the Family Stipend as much as R\$112.00 (US\$48) per family unit) cannot compete with the money earned by children who do get paid for their work. The children who work and do not attend school earn an average of R\$226.00 (US\$97). Even though there is an immediate economic gain, the fact that these children do not go to school is a threat to those boys and girls, especially in a job market with increasing demands for better skills. Proliferation of the cycle of poverty is the true end result of child labor.

It is important to note that the labor activities in which these children and adolescents are involved are routinely labeled “the worst form of child labor” (International Labor Organization, 1999). They are, briefly, slavery or similar practices, various forms of sexual exploitation, illicit activities related to drug dealing, and work that by its nature or the conditions under which it takes place is harmful to the health, safety or moral well-being of the children.

Drug dealing ranks among the worst jobs performed by the youth. The children, who are motivated by poverty and/or the desire to acquire goods, to help their families, to be respected and feel important, or simply because they cannot see a future for themselves in the formal workplace, join established drug-dealing groups who operate most visibly in the poorest areas of the big cities. Their living conditions are deplorable, subjecting them to great violence and causing them to drop out of school partially or completely. In fact, these conditions are analogous to those faced by child soldiers participating in armed conflicts in other parts of the world (Dowdney, 2003). In spite of the serious risk inherent in this situation, the demand for this type of work is constant and the local drug dealers do not need to put a lot of effort into recruiting for these jobs (Pires and Branco, 2008).

Favela Watch recently conducted a study of 230 children, adolescents and youth (11-24 year-olds) employed by armed drug-dealing gangs in 34 poor areas located in the city of Rio de Janeiro. A group of 10 interviewers systematically followed 152 of the youth. Towards the end of the study, it became evident that job attrition was high: the number of youth who died was 45 and only 97 remained employed by the drug dealers. The findings are also very troubling because they reveal the high percentage of youth not attending school, as high as 93%, and those using drugs (89%). The study also

showed how young the youth are when they first join the gangs – 46% were between the ages of 11 and 14.

Despite the fact that the majority of the youth interviewed said their biggest dream was to make a lot of money, data show that 57% earn an average wage of from one to three minimum salaries (\$192 to \$578 reais a month). There is a lot of exploitation and 60% of the young men said they work more than 10 hours each day, in shifts of 12 to 24 hours without a break, and 57% said they worked 7 days a week. Only 24% of the youth thought their lives were satisfying and 40% decided to leave the gang voluntarily. However, many times the decision to leave does not happen in time to avoid fatal consequences.

Each youth who engages in this type of child labor puts his/her life in the line of fire. However, drug trafficking is not seen, fought or treated by authorities or society as a mortal threat. Each kid becomes, in the general sense, the feared figure of the “drug dealer”, public enemy # 1, an ideological category that conceals an entire universe of oppression, but concretely generally represents offenses that cause little harm.

Most of the kids heard in the aforementioned research worked in activities that did not require weapons: the “pushers” (sellers) made up 33% of those interviewed and usually earned very little money. They are part of a group called “shareholders in nothingness” – a term used by the Norwegian criminologist Christie and adapted to the Brazilian context by Zaccione (2007). They do not carry guns, do not use violence and have no support from their factions. They pack and run drugs and are frequently criminalized, losing their freedom, making their lives and that of their families poorer and marginalized. They are routinely killed².

The adoption of new policies that reduced the social state in most of the world caused uncertainty, demoralization and the break up of social relations (Castel, 2005). Poor countries were the most affected, and within them, the poorest individuals and families who were dependent on job programs and welfare, creating a human contingent that cannot produce or consume much – a world of “disposable” people, a world made up of human debris (Bauman, 2004). Wacquant (2001) shows the relation between a minuscule social state and a massive penal one: the tendency to imprison people, even for minor offenses, is a way to achieve social control, to manage life, perhaps the only public policy that many will ever experience. This inclination to imprison continues to grow: More than 300 years after its creation and despite its failure to rehabilitate anyone, the correctional system is experiencing great expansion.

The trend toward the criminalizing of poverty (Wacquant, 2000, 2001) does not spare Brazilian youth. The significant numbers of poor young people who are in the Brazilian social-educational system easily verify this. In theory, the system is supposed to

educate youth offenders aged 12-18. Of the young men and women who were serving time in the aforementioned system in 2003, 12.7% were from families who had no income at all, and 66% from families who earned up to two monthly minimum wages (Silva e Gueresi, 2003) – these are prisons for destitute youth. These facilities are not operating under satisfactory conditions: despite the efforts of SINASE (National System of Social-Educational Service, 2006) to ensure proper social-educational measures, physical abuse is still a reality in many of the institutions.

A good way to gauge the breadth of the process of criminalizing youth is the fact that the number of adolescents in confinement increased by 363% in 10 years. However, national statistics show that the percentage of homicides remained the same, staying around 19% of offenses committed by youth. Most of the crimes committed by adolescents are against property, and not against life (Rizzini, Zamora and Klein, 2008).

A large number of these youths, whom the Justice system holds responsible for their offenses, have no stable frame of reference (we are deliberately avoiding using the term “unstructured families” and others that place a moral judgment on parents and relatives), live in abject poverty and are virtually invisible in their family units and socially. They have earned very little space in the world of the polis, a world that, after all, should belong to all of us.

How can young people find their identity without acknowledgement from the other? Is committing offenses the only way to be acknowledged? It is possible to see certain types of offenses – such as disobeying detention centers rules – with a different gaze, a gaze that avoids the pathologization, predictability and the ideological explanations originating in large part from the media. Many times, destructive acts are a way for young people to demand something, even if only their visibility and the expression of their rebellion (Vicentin, 2005).

The approach towards social inequality and the marginalization of children in Brazil's modernity has been one of punitive, backwards, even medieval measures that are above all, ineffectual. We rely on studies that refer to profiles and tendencies that never consider the youth's potential and never point to new solutions. We rely on biologism; a theory that tends to naturalize the danger posed by the poor and ignores complex factors that cause criminal activity. Let us remember that youth from the privileged classes have been increasingly involved in these same activities (Zamora, 2008).

We reject proposed legislation that offers only “more of the same” - there is already too much violence in the lives of poor youth. We believe in the power of the Child and Adolescent Statute (Brazil, 1991) which calls for the protection of the human rights of youth, as these rights are “an extraordinary and fragile triumph. We should protect them fiercely against those who wish to defeat the immense victory of Brazilian civil society

that was able to, for the first time, envision a future in which Brazilian children and adolescents enjoy full rights as citizens (Endo, 2007).

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ECONOMIC, SOCIAL, AND CULTURAL RIGHTS



In Brazil, very poor access to work still creates an enormous, historical debt. Any consideration of the right to work must start with analysis of the unemployment rate and developments in levels of work—]the different categories of the employed and unemployed. Moreover, it is essential to understand the key indicators of union activity, collective bargaining and strikes.

The Right to Work in Brazil

Clemente Ganz Lúcio¹ and Joana Cabete Biava²

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

(Article 23. Universal Declaration of Human Rights)

The *Universal Declaration of Human Rights* proclaimed by the United Nations, which this year celebrates its 60th anniversary, identifies in its 23rd Article that the right to work

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is one of the fundamental rights of all human beings. Descending from the tradition of the French Revolution, the UN Declaration practically reproduces the same article from the revolutionary French *Universal Declaration of the Rights of Man and Citizen* (1789), which deals with access to and quality of work, just remuneration, social security and the right to organize.

The right to work, understood not only as *access to* but also as *quality of work*, is affirmed by what the International Labour Organization (ILO) calls *decent work*. The ILO mandates that decent work “is productive and adequately remunerated, exercised in conditions of freedom, equality and security, without any forms of discrimination, and capable of guaranteeing a worthy life to all those who live from their work.” This principle generates four axes of decent work: creation of quality jobs, social security, the promotion of social dialogue and respect for the principles and rights of workers (freedom of association and organization, elimination of forced work and child labour, and the elimination of discrimination with respect to occupation and income).

In Brazil, very poor access to work still creates an enormous, historical debt. Any consideration of the right to work here must start with analysis of the unemployment rate and developments in *levels of work*—the different categories of the employed and unemployed. Moreover, it is essential to understand the key indicators of *union activity*, *collective bargaining* and *strikes*.

The Development of Work and Income

Information about access to work in Brazil has been gathered by several household research projects which are unique not only in the data gathered, but also in the methodologies they use to classify specific kinds of involvement in the labor market. One such study is the Work and Unemployment Research Project (Pesquisa de Emprego e Desemprego, or PED), carried out by the Inter-Union Department of Statistics and Socioeconomic Study (Departamento Intersindical de Estatística e Estudos Socioeconômicos or DIEESE), in partnership with the SSDA Foundation (Sistema Estadual de Análise de Dados or Fundação SEADE), the Ministry of Work and Employment (Ministério do Trabalho e Emprego or MTE) and with various regional organizations. The PED introduces specific methodologies which are interesting for the analysis of qualitative aspects of work and unemployment and that are fundamental for a wider conception of the right to work in Brazil.

The PED recognizes that beyond those Brazilians who are *openly unemployed*, there is a portion of the unemployed population which is *hidden* from sight. This research project thus considers laid-off workers who have occasionally been self-employed or who did non-remunerated work for relatives, but who had nonetheless looked for work in the previous 12 months (this is called *hidden unemployment* due to the *precarious* job market).

The research also considered those individuals who had given up looking for work due to an inactive job market but who had nonetheless looked for work in the previous 12 months (this is called *hidden unemployment* due to *despondency*).³³ The PED was carried out in the Metropolitan Regions of São Paulo, Porto Alegre, Belo Horizonte, Recife, Salvador and Brasilia.

Table 1
Unemployment Rate, by Type
Metropolitan Regions⁽¹⁾ - 1998-2007

Levels of Unemployment	1998	2006	2007	(in%)	
				Variations 1998/2007	Variations 2006/2007
Total	18.7	16.8	15.5	-17.1	-7.7
Open	11.7	11.0	10.5	-10.3	-4.5
Hidden	6.9	5.7	5.0	-27.5	-12.3
Precarious Work	4.6	3.9	3.4	-26.1	-12.8
Despondency	2.3	1.9	1.6	-30.4	-15.8

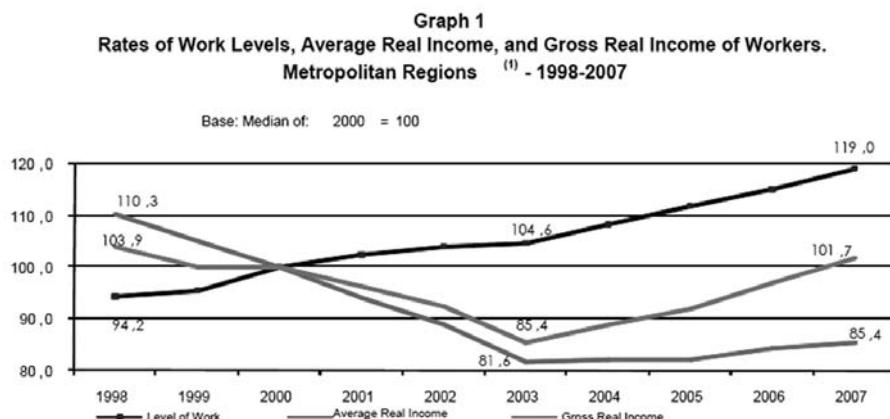
Source: Seade-DIEESE, MTE/FAT and regional input

Note: (1) Corresponding to the Metropolitan Regions of Belo Horizonte, Porto Alegre, Recife, Salvador, São Paulo and Brasilia

Analysis of unemployment indicators between 1998 and 2007 considers, therefore, the real spectrum of ways people can be without work. More than two thirds of the total metropolitan unemployment rate in 2007 (which continued to be high while diminishing from 18.7% to 15.5% in the analyzed period) was *open unemployment* and one third *hidden unemployment* (Table 1). It is interesting to note that the 17.1% drop in total unemployment in this period is very differentiated with respect to open versus hidden unemployment. While open unemployment diminished 10.3%, hidden unemployment was reduced by 27.5%. Moreover, *hidden despondent* unemployment fell most (30.4%), followed by *hidden precarious* unemployment (26.1%).

The level of total work registered very positive performance, growing 26.3% between 1998 and 2007, demonstrating a rhythm of relatively constant growth (11% between 1998 and 2003 and 13.8% between 2003 and 2007, or an increasing annual average rate of 2.6%). In absolute numbers, this means that 3.4 million people began working, reaching a total of 16.4 million in the regions studied by the PED in 2007⁴ (Graph 1).

⁴ In 2007 the PLA (Active Age Population, which corresponds to the total of persons 10 years of age or more) in the metropolitan regions researched came to 31.9 million people and the PEA (Economically Active Population), that portion of the PLA that is in the job market, either working or not) corresponds to 19.4 million. For the same year, 3 million unemployed are estimated.



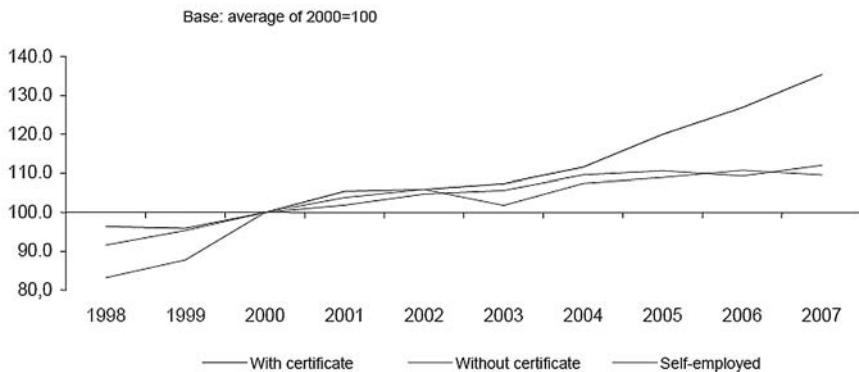
Source: Seade-DIEESE, MTE/FAT and regional input.

Note: (1) Corresponding to the Metropolitan Regions of Belo Horizonte, Porto Alegre, Recife, Salvador, São Paulo and Brasília.

Gross incomes (the total of income paid or received by all workers) is differentiated into two very distinct features. Between 1998 and 2003, gross real incomes fell 17.9%, but then increased 19.1% in the subsequent period. Average real income, in turn, diminished 26.0% in the first analyzed period, and grew only 4.7% between 2003 and 2007. One thus notes that gross income improved more than average income. On the other hand, neither gross nor average income recouped their 1997 levels.

Once employed, the worker is subject to different conditions of work and social security. One way of measuring these differences is to calculate the ratio of wage-earners with work certificates to the total number of workers. In 2007, about 10% of total workers (or 20% of the wage-earners in the private sector) were without certificates while 19% were self-employed in the metropolitan regions being researched (Graph 2). Despite the increase of more precarious forms of participation in the labour market between 1998 and 2007, individuals with work certificates grew more quickly, mainly in 2003 (26.1%), while those without work certificates increased 7.5%, while self-employed work increased 6.0%, between 2003 and 2007.

Graph 2
Rate of Levels of Work, by Positions of Work
Metropolitan Regions⁽¹⁾ - 1998-2007



Source: Seade-DIEESE, MTE/FAT and regional input.

Note: (1) Corresponding to the Metropolitan Areas of Belo Horizonte, Porto Alegre, Recife, Salvador, São Paulo and Brasília

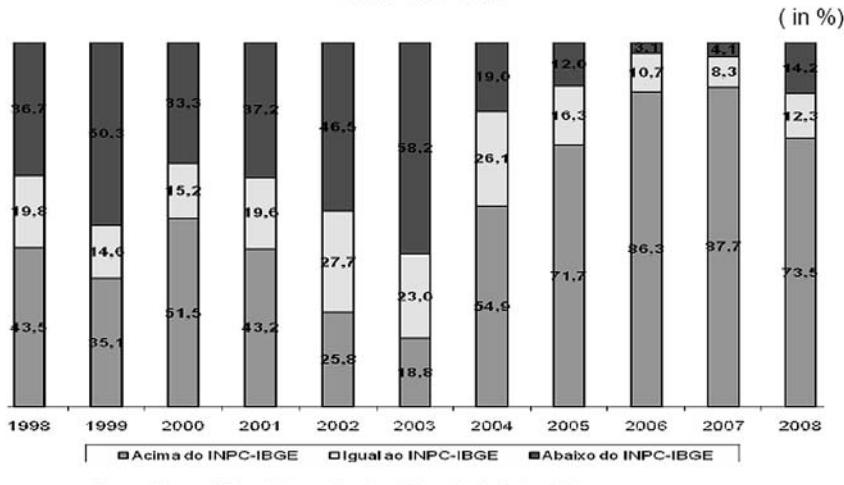
Developments in Wage Settlements and Strikes

The relative improvement in labour market indicators can also be observed in the results of collective bargaining. As the SAS/DIEESE (Income Tracking System) data show, wage settlements in Brazil between 1998 and the first half of 2008 indicate that a new standard of wage negotiation emerged, marked by the achievement of real gains in the great majority of collective agreements tracked by SAS.⁵

Just as was the case with gross and average real incomes, the results of wage settlements demonstrate the existence of two distinct features (Graph 3). Between 1998 and 2003, with the exception of 2000, settlements achieved above the level of the Consumer Price Index were always below 50% of the total and were declining year by year, reaching the worst point in 2003 (18.8% of settlements). Since 2003, on the other hand, settlements resulting in real gains have grown each year, reaching 87.7% of the total in 2007. This became possible because of some positive factors that strengthened the claims of workers: economic growth, low inflation and reduced unemployment rates.

⁵ The Income Tracking System records the results of collective bargaining from the middle of the 1990s. As we are dealing with a statistical sample, we are here using annual results with different bargaining units in each year.

Graph 3
Distribution of Wage Settlements Against the Consumer Price Index
Brazil 1998-2008⁽¹⁾



Green: Above CPI Yellow: Equal to CPI Red: Below CPI

Source: DIEESE. SAS

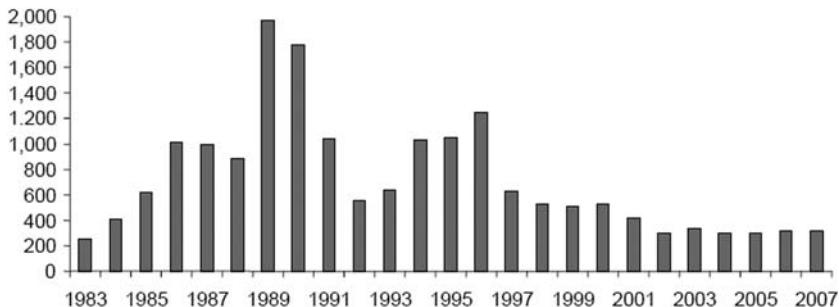
Note: (1) Information for 2008 refers to the first six months of the year.

In the first half of 2008, with new increases in the rate of inflation, the results of negotiations worsened in relation to the two previous years: 73.5% obtained real gains, 12.3% only kept up to inflation and 14.2% settled for increases below the Consumer Price Index.

Beyond the trend of real gains in wage settlements, this new standard of negotiation is generalized across differences in various data-bases, geographic regions and employment sectors. There was also a small though steady emergence of alternative clauses in wage payments, typical of more difficult negotiations, such as wage scheduling and bonuses. On the other hand, the results of negotiations between 2004 and 2007 indicate that the real gains of the minimum wage had not been incorporated to the same degree for negotiated low wage earners, which had come to concentrate more in the range of between 1 and 1.5 minimum wages.

In the same period, strikes registered by the SAG/DIEESE (Strike Tracking System) declined between 1998 and 2002 and then became relatively stable between 2003 and 2007, with close to 300 annual strikes. It is interesting to notice that this stabilized rate is much lower than the norm before 1998, when, for example, there were 1,972 strikes in 1989 and 1,782 in 1990 (Graph 4).

Graph 4
Number of Strikes
Brazil 1983 - 2007



Source: DIEESE, SAG
Preliminary data

Between 1998 and 2007 there were not only significant changes in the number of strikes but also in their character: a reduction in the number of work stoppages due to grievances (due to the transgression of rights and the maintenance or renewal of valid conditions of contracts) and a clear increase in union demands that made new kinds of proposals. To analyze the development of the two types of claims corresponding to these positions, we can see that salary arrears were a key reason for strikes in 1998 (demanded in 43% of strikes). This motivation diminished thereafter, declining to 11% in 2007. Demands for salary increases, present in only 20% of the strikes in 1998, were already the main reason for strikes even in 2000 (37%) but continued increasing to 49% in 2007.

Although the databases of the SAS and the SAG do not correspond to the same sectors, we perceive a similar trend in their results: improvement in the conditions of the economy and of the labor market starting in 2003 had a positive impact on the bargaining power of the workers, who began to prioritize and in fact achieve more and more significant wage increases.

Conclusion

The persistence of a very high contingent of unemployed people is still one of the most marked features of the Brazilian labour market in 2007. In the metropolitan regions researched by the PED there are 3 million unemployed people, of which 2 million are openly unemployed, 663,000 fall in the category of precarious hidden unemployment and 308,000 in despondent hidden unemployment.

But the failure to guarantee access to work is not the only transgression of the right to work in Brazil. Inequalities of remuneration in relation to race, gender and region are well-known, even for identical jobs. In 2007, men in the Federal District (Brasília) had an average wage 3.2 times that of women from Recife (R\$ 1,787.00 and R\$ 548.00) and the non-blacks of the Federal Capital received, on average, 3.4 times more than women in Recife (R\$ 1,987 and R\$ 591, respectively). Moreover, even though the increase in value of the minimum wage in recent years has brought it somewhat closer to average remuneration and defined wage floors from collective bargaining, it is not yet compatible with what the Federal Constitution requires. In September of 2008, the DIEESE, on the basis of Article 7 of the Constitution of 1988, calculated that the official minimum wage (R\$ 415.00) corresponded to about 20% of the truly necessary minimum wage (R\$ 1,971.55), which is what is required to care for the basic needs of a family of two adults and two children.⁶

Moreover, national data show that in 2007 the persistence of child labour (1.6 million children from 10 to 14 years of age), enslaved labour (six thousand workers were freed by the Ministry of Labour and Employment) and a large contingent of workers that are outside the reach of social security (88.2 million workers do not contribute to social welfare and 15.7 million did not have a work certificate). This shows that Brazil is still a long way distant from guaranteeing the right to work, whether from the point of view of rights expressed in the 18th century or currently from the standpoint of the concept of 'decent work' promulgated by the International Labour Organization.

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⁶ The minimum wage according to the Constitution is "a nationally consistent minimum wage fixed in law which is capable of meeting the basic, vital needs of both worker and family, including housing, food, education, health care, clothing, hygiene, leisure, transportation and social security, periodically readjusted to ensure purchasing power."

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The efforts by social movements and the Black Movement to achieve human rights and justice for the black population allowed us to advance and realize some important victories with regard to the drafting of public policies.

Human Rights of the Black Population: 120 years later

Douglas E. Belchior¹

On May 13th we celebrated the 120th anniversary of the formal abolition of slavery in Brazil. October 2008 marks the anniversary of the Brazilian Constitution, enacted on the 5th day of that month in 1988. “It is not a perfect Constitution, but it will be useful, pioneering, and exploratory. It will shine a light, even if a little one, on the dark of our wretched,” said Ulisses Guimarães, president of the Constitutional Assembly, in the act of promulgation of the new constitution. Now, into the 21st century, we still don’t have our rights guaranteed.

In this short space for reflection, we will revisit the questions relative to the ethnic-racial theme, which seems extremely important to us, on the 120th anniversary of the establishment of formal and generalized liberty for all citizens, independent of their origin or ethnicity. In spite of this long period of “liberty,” ethnic-racial discrimination, economic inequality and poverty still affect black people in Brazil.

The efforts by social movements and the Black Movement to achieve human rights and justice for the black population allowed us to advance and realize some important victories with regard to the drafting of public policies. An analysis of the results of these public policies is important in order to be able to understand the situation of black people in Brazil.

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It is important to remember that the social situation of the Brazilian black population was always used to justify racism. Economic and social inequalities have had a strong ethnic-racial dimension. A simple reading on the evolution of the living conditions of blacks and whites in the last decades, based on demographic, educational, and labor market studies, evidences the permanence of conditions of poverty, in addition to the crystallization of ethnic-racial inequalities.

Racial ideology

The process of constructing “our” Portuguese colony was based on direct utilization of a widely recognized subjective principle, with practical purposes: racism. However, it was not on the basis of systematized racist thinking that the valorization of the white man and his culture was established.

Possessors of a hierarchical and private vision of society, the defenders of slavery carried a set of negative stereotypes with regard to Black people. The tendency to see a natural inferiority in black persons contributed to and justified the defense of slavery.

Slavery was the seed that gave birth to Brazilian racism. However, it was in the post-abolition period that the theses regarding the biological inferiority of black men and women gained strength. “Scientific racism” as a racial differentiation thesis gained recognition among the Brazilian elites starting in the 1870s. It was widely accepted in the decades between 1880 and 1920. Natural inequalities then defended would be the chief differentiating element among races. The black population would then be marked by the negative stereotype and by ethnic prejudice.

Such social concepts interfered with the definition of individual potential and carried over into political and social spaces with the preconceived idea that participation by black men and women in our society could not be accepted without the existence of restrictions. Difficulties were accentuated with regard to participation of black men and women in public spaces, and discriminatory mechanisms were refined. The whitening of the population, reconciling the belief in white superiority with the attempt to lose “being black”, influenced State policies.

The absence of public policies for free and ex-slave black men and women is the principal landmark of this period. To the contrary, there were initiatives that were fundamental in order for integration of black people to be restricted to spaces that were not valued by society. By way of example of this type of condemnation, we are reminded of the incentive policy for European immigration, an intense practice—not just by coincidence—during the same period in which racist ideas became more effective.

The large scale entry by European immigrants into our country is an explicit element, as already widely considered in our historiography, of the practice of the whitening

ideology, which placed the black population in the substrata of the flourishing free, salaried labor market. Even before, several government measures made clear the option for eliminating the black population from the social context. Law No. 601/1850, known as the Land Law, approved in the same year in which the slave trade was prohibited (Euzébio de Queiroz Law), it was an important restriction on the possibilities for access to land by the black population.

The post-abolition period was marked by economic development linked to urbanization and attempts at development of industry and commerce, especially in the southeastern region of Brazil. However, the opportunities generated by this development process were still restricted to the non-black population. The prejudices rooted in white society after nearly 400 years of slavery ended in constructing an awareness that made the black worker inferior, which increased expectations with regard to the arrival of European workers.

The effects of the racial supremacy theses, recognized until the end of the 1920s, followed by support for another thesis—this one built around cordial and peaceful relations between European and African ethnicities and consecrated by Gilberto Freire's racial democracy ideas—ended up, to the contrary, serving as fuel for the organization of black resistance, by means of the experimental black theatre of Rio de Janeiro, the Brazilian Black Front, and other organizations. Organized black resistance continued until the advent of the dictatorship in the 1960s, when the military prohibited and persecuted our entities and protests.

The ethnic-racial issue only returned to the national public debate after redemocratization and reached its pinnacle at the end of the 1980s, when the 100th anniversary of the abolition of slavery was commemorated in 1988. This is also the year of the Citizen Constitution, which included among its advances the formalization of the right to titling of the lands of traditional indigenous and quilombola communities, in addition to making racism a crime without bail. Thereafter, discussions about the creation of mechanisms to effectively combat racial discrimination, accompanied by a concern for achieving real means for social inclusion of this population, took shape and gained strength.

Brazil: the country of camouflaged Apartheid

One hundred and twenty years after formal abolition of slavery in Brazil, the fruit of the resistance feeds the hope of the black Brazilian population. Contrary to what the national elites planned, in particular post-abolition, when various actions were implemented to eliminate or reduce the black presence in Brazil, we can see, in projections by IPEA (Applied Economics Research Institute) published in May 2008, that this year the black

population will be greater than the white population. After 2010 Brazil will be, therefore, a country with an absolute majority of black men and women.

According to IPEA projections, in research performed based on data from the IBGE (Brazilian Institute of Geography and Statistics), the average income of the black population will only equal that of the white population by the year 2040, should there be no change in the public policies currently in effect.

Thus, the incomes of black men and women will only be equal to that of the white population 32 years from now. Today blacks earn, on average, 53% of the income of whites. The unemployment rate for blacks is 9.3%, while for whites it is 7.5%. In the more poorly paid sectors the majority of the workers are black: in agriculture (60.3%), civil construction (57.9%), and domestic service (59.1%).

There is a common perception that there is ethnic selection in job opportunities at the mid- and high-prestige job level. Rarely are the bosses or other important positions held by black men and women. The presence of blacks at the executive level in the largest Brazilian companies is only 3.5%, according to research by Ibope/Ethos Institute. The situation of black women is even worse, as they are victimized by double prejudices. Research by Ibope/Ethos Institute in 2005 shows that black women occupy less than 0.5% of executive positions.

As serious research directed towards the social situation is divulged, the importance is confirmed of racism and ethnic prejudice as fundamental elements in the division of social classes in Brazil. The richest 10% of Brazilians hold 75% of that richness, says IPEA (Folha de SP 15/05/08). At the same time, research entitled "Portrait of Inequalities," also by IPEA and UNIFEM, shows that among the poorest 10%, 71% are black. "There is a whitening of the population as one goes up the social pyramid," says Luana Pinheiro, coordinator of the IPEA research.

How is it possible to ignore the discrepancies and effects of racism directed toward a potentially majority population in our country? How can it be accepted that, in spite of social and economic advances in our country during the entire 20th century, the black population has not been attended to with regard to demands as basic as those for education?

Thirty-two years ago, 5% of whites finished college. Graduated blacks were little more than 0%. In 2006, nearly 5% of blacks graduated from upper division courses. However, the discrepancy has been maintained, as 18% of whites reached this educational level. Today, the lack of access by blacks to higher education is one of the main reasons for social immobility. In spite of some advances in affirmative action policies for blacks, and quotas at some universities, there is still strong resistance against these policies.

There is still a dominant "white ideology" in our country. In the words of Florestan Fernandes,

“Prejudice and racial discrimination are prisoners of a web of exploitation of man by man and the bombardment of racial identity is the prelude or prerequisite for formation of a surplus population destined, en masse, to dirty and ill-paid work. (Florestan, 1989, p. 28)

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Besides establishing the curriculum, the State Secretary of Education implemented measures that intervene directly in the everyday work of teachers. Financially rewarding the school teams based on student performance was one of them, thus stimulating competition. Those tied to the business community defended the logic of the marketplace, which provides for rewarding the best professionals.

Education, the Market and Human Rights

Mariângela Graciano¹ e Sérgio Haddad²

Global financial capitalism entered a crisis in 2008. Nevertheless, the logic of the market maintains its power and influence in the majority of human relations and their symbolic universe. Education, a universal human right, is gradually being disputed by commercial interests.

In spite of recognition by the government of the universal nature of primary education—Brazil has nearly 98% of 7 to 14 year old children in school, 90% studying in public schools—the idea has gained strength that private enterprises have as much to offer as public education, with regard to both expanding access to early childhood, secondary and higher education (still not yet universal). Today, private universities are already responsible for 60% of higher education.

The logic of the marketplace enters public education as an example to be followed for management or as a way to appropriate budgetary resources. The situation of secondary education is a good example. According to the 2006 National Education Plan (PNAD), access to secondary education is profoundly unequal. For persons between the ages of 15 and 17 years, among the 20% poorest only 24.9% were enrolled, while

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of the 20% richest, 76.3% attended this level of education. In spite of the constant increase in the number of people enrolled in schools the Northeast, and the reduction in the Southeast, for the same age group the indexes are, respectively, 33.1% and 76.3%. Looking at these statistics from an ethno-racial standpoint demonstrates that only 37.4% of black youth accessed secondary education in contrast to 58.5% of whites. Of those living in rural areas, only 27% attend secondary schools, compared to 52% of those living in urban areas.

The quality of education, assessed by looking at exams, is also marked by inequalities. The index for the Development of Basic Education (IDEM/2005) was 3.4 for secondary education nationally. For students of the private system it was 5.6 and for the public system 3.1. Considering that the scale is from 0 to 10, note that the level of learning is unsatisfactory for all, but it is noticeably inferior for public schools, which have 89.8% of the enrollment, 0.82% being the responsibility of the federal government, 86.5% that of the state, and 1.96% that of municipalities.

In the absence of proposals for public policies, alternatives are gaining ground, such as that introduced by the Institute of Joint Responsibility for Education, of Pernambuco, whose proposal has already been implemented in that state and is being introduced in others in the Northeast. This proposal aims at establishing partnerships between governments, private companies, and business foundations for the management of the education system. Financing for the schools, now year-round, stays with the State, which gives funds to the private sector through investments in physical facilities, consultancy on new technologies in content, method, and administration.

The initiative, developed and introduced by an intense marketing strategy, has been pointed out as an alternative to be introduced throughout the entire country, with the argument of improving student's performance.

With a strong selective process and control over teachers and students, this initiative constitutes "islands" within the system, creating particular conditions that are not universal. The strongest idea contained in this proposal is that the problems of education are fundamentally linked to the quality of public administration, not the financing of education or the definition of its social function, or even the perverse inequalities that mark Brazilian society and determine who stays in school and how they stay in school.

The Impact on Teaching

The government reduced policies for improving the quality of education to only adjustments in administration, and this has a great impact on teaching. In this perspective, the highlight of 2008 goes to the set of measures implemented in São Paulo state's education network.

In an attempt to standardize learning across the system, and disregarding the autonomy of the teaching teams in the schools, the State Secretary of Education (SEE) developed orientation manuals on curricular content and how it should be used in the classroom. Teachers have to implement a centralized curriculum, dehumanizing the knowledge and creativity of the teaching staff.

Besides establishing the curriculum, the State Secretary of Education implemented measures that intervene directly in their everyday work. Financially rewarding the school teams based on student performance was one of them, thus stimulating competition. Those tied to the business community defended the logic of the marketplace which provides for rewarding the best professionals.

It called attention to the absence of reliable information about the efficacy of these initiatives to improve the quality of education, especially when not accompanied by actions like satisfactory salary policies, reorganization of the teaching career in order to give greater value to teachers' work in the classroom than to their bureaucratic functions, organization of mechanisms for allocating lessons, in addition to redeeming their social image, depreciated by socioeconomic and symbolic devaluation of the profession.

Also very significant in this context was the resistance shown by the administrators of the richest states, notably São Paulo and Rio Grande do Sul, to the implementation of the Piso Salarial Nacional do Magisterio (National Wage Floor for Teachers). The problem was not the initial value established, but the fact that the legislation presupposes the extension of remunerated time dedicated to pedagogical work. Clearly the choice of a corporate management model takes all the intellectual nature of teaching away, reducing teaching to the repetition of tasks developed outside the context of the classroom. Thus, the teacher is obliged to maintain a high number of classes for survival.

Testing, Textbooks and the Declaration of 1948

The evaluation goals to be reached are based on pre-established content. So, evaluations and teaching materials gradually leave the sphere of teaching and enter the hands of so-called specialists, almost all from outside the education system and its daily work.

In order to establish this form of organization, public management encourages an approach based on private enterprises and the textbook market. In their eagerness to make their students achieve the scores pre-established by the evaluations, administrators are contracting private companies that specialize in the production of textbooks and educational administration.

Besides the gradual model of privatization, such procedures risk reducing education to training only for exams, at odds with the purposes of education, as pertains to the dimensions of access and quality set forth in the Declaration of Human Rights of 1948.

That document, celebrating its 60th year, establishes that education has to be orientated toward the complete development of the human personality of teachers and students, strengthening respect for the rights of all persons and the promotion of peace. With respect to quality, it affirms the right of participation in the cultural and scientific assets socially produced by humanity.

And, more importantly, the logic of the marketplace is antagonistic to the universality of the right to education. Embracing market logic means deepening the inequalities that structure Brazilian society. Expecting private enterprise to equip school units is to condemn traditional populations in the countryside to lack of schools or, at best, to uncertain access, as there is no market interest in such units. Changing teaching into alienated work, with repetitive content defined outside of the everyday activities of the school, and emptied of its creative work, is to transform teaching into a piece of machinery that only produces technical results, whose logic is competition and not concerned with human rights. To measure students only by their performance on tests that are defined outside of the school is to exclude those who, for various reasons, do not develop the skills required in manuals, as the logic of the market cannot waste time with “poorly made pieces.”

In short, the logic of the marketplace is opposed to universal, public, free education that is geared toward the production of knowledge, and the peaceful and just coexistence of all people. It is this logic that we see being gradually implemented in the Brazilian educational system.

The agenda of the Brazilian government to expand the production of agrofuels has created impacts on the ability of rural communities to access the right of adequate food. This is proven by the fact that the concentration and price of land is increasing in different regions of the country, displacing traditional populations from their native land.

The Human Right to Adequate Food in Brazil

Enéias da Rosa¹ and Sofía Monsalve²

The Human Right to Adequate Food (DHAA): a legal and conceptual landmark

According to General Observation #12 from the United Nations Economic, Social and Cultural Rights Committee (CDESC), DHAA is fulfilled “when every man, woman, and child, alone or in a community, has physical and economic access at any moment to adequate food or the means to obtain it.” The CDESC identifies the basic elements that make up the DHAA as the following:

1. **Availability of food:** directly, exploiting productive land or other natural resources.
2. **Availability of food:** through distribution, processing, and market systems that have the capacity to transport food from the place of production to where there is demand and need.
3. **Economic accessibility to food:** this implies that the financial cost associated with the acquisition of food should not surpass a determined cost limit, which also guarantees that other basic necessities are satisfied and are not threatened. Economic accessibility should be applied to any standard of food acquisition.

¹ Enéias da Rosa is the Secretary General of FLAN Brasil.

² Sofía Monsalve is the Land Program Coordinator of FLAN International. Cf. also FLAN/TNI. 2008. *Agrocombustibles y derecho a la alimentación en América Latina. Realidad y amenazas. (Agrofuels and the right to food in Latin America. Reality and threats)*. Amsterdam. <http://www.fian.org/recursos/publicaciones/documentos/agrocombustibles-y-derecho-a-la-alimentacion-en-america-latina>.

4. Physical accessibility to food: this implies that food should be accessible to everyone, including physically vulnerable people, those who have difficulty feeding themselves, victims of natural disasters, and other groups that depend on a connection with a specific territory for their sustenance (indigenous people, shepherds, and others).

5. Sustainability of availability and access to food: food security in the long term:- Sustainable use of natural resources which are necessary for food production.- Economic sustainability: income and price of food.

6. Adequacy: this does not refer only to quantity but also to quality, which should be in keeping with human physiological necessities at the different stages of life. Food should be culturally adequate and acceptable.

7. Principles of human rights: universality, indivisibility, interdependence, equality and non discrimination, priority attention to vulnerable groups, participation and inclusion, transparency, and accountability.

The right to adequate food, like any other human right, imposes three types or levels of obligation on nation-states at the national level: the obligations to respect, protect, and carry it out. The obligation to respect existing access to adequate food requires nation-states to avoid adopting any measures that destroy or make access more difficult. The obligation to protect requires the State to guard against companies or private institutions from depriving people of access to adequate food. The obligation to carry out means the State should actively strengthen the population's access to, as well as utilization of, resources and means. This way, the State has obligations outside its borders for which they must adopt measures to respect and protect the enjoyment of the right to food security in other countries.

Due to the growing influence of transnational corporations in the economy of the majority of countries and international economic relations, the United Nations' human rights protection system began to discuss the responsibility of these companies regarding human rights. The norms for the responsibility of transnational corporations and other commercial companies in the sphere of human rights adopted by the UN Sub-commission on Promotion and Protection of Human Rights establish that States have a primary responsibility to guarantee human rights established in international and national legislation, including assuring that transnational corporations and other commercial companies respect human rights within their respective spheres of activity and influence. They have the obligation to promote and protect human rights established in international rights and national legislation, including the rights and interests of indigenous people and other vulnerable groups. The norms explicitly stipulate that transnational corporations must respect economic, social, and cultural rights, as well as civil and political rights, and should be active in fulfilling the rights to adequate food, health, and housing, among

others, and should abstain from any act that prevents the fulfillment of these rights.

In the scope of legal and conceptual landmarks, it is worth mentioning that Brazil is a signatory of all international Human Rights treaties. This presumes that the State of Brazil should take all precautions and measures to preserve and carry forward the commitments assumed, be they in general, relating to Human Rights, or be they related to the specifics of these pacts which refer to different rights. In the case of the Human Right to Adequate Food, the commitments assumed by Brazil are very clear and, therefore, it is worth attempting a brief analysis of some aspects of the food security crisis, its relation to the expansion of agrofuels production in Brazil, and the risks that these aspects pose to the guarantee of this right.

The food crisis

The year 2008 merely confirmed what many estimates predicted about the risks to food security, and the guarantee of the human right to adequate food on a global level, with specific reflections in different countries, and this phenomenon was titled the food security crisis. In the center of the so-called food security crisis there are different aspects that should be taken into consideration. Among these is the reduction of the capacity of national governments to regulate their agricultural policies, and the lack of support for local peasant agriculture. Many times this happens because of the strong influence of large international conglomerates in the food sector.

In the case of Brazil, there was no significant progress on agrarian reform. The government has prioritized incentives for large companies, such as lines of credit for production, industrialization, and commercialization. The way to address hunger and food insecurity, which still affect a significant portion of the population, has been based on programs such as the “Family Stipend” (Bolsa Família), which do not solve structural inequalities. It is still important to emphasize that there is one positive inter-institutional action by the Brazilian government, which is the National Council on Food and Nutrition Security.

On the other hand, agribusinesses continue to be strong and growing in the country, relying on the availability of public and private credit as has never been seen before, which has increased the control, expansion, and appropriation of productive and cultivatable land resources. As a result, we have witnessed many situations of displacement of traditional populations and peasant communities, with violent evictions, criminalization of grassroots and human rights movements, destruction of local production, and growing dependence on food imports. These elements contribute to the food crisis.

The expansion agrofuel production is at the center of this crisis. This scenario gained attention in 2008 because of the challenges that have arisen regarding energy generation and food production at the global level. Some of the issues discussed were the growth

of energy demand, the reduction in fossil fuel reserves, and the high financial and political cost of extraction and control, primarily of petroleum and its derivatives; and the agenda surrounding the debate over the climate crisis and global warming, which is not a new issue at all.

In Brazil's case what we have seen in recent years is the vast expansion of monocropping (mainly soy and sugarcane) in response to the global energy crisis, and this creates clear contradictions. The government has increased support for national and international private companies for the massive expansion of agrofuels. The Brazilian government's agenda is based on large-scale production of ethanol and agrodiesel.

The agenda of the Brazilian government to expand the production of agrofuels has created impacts on the ability of rural communities to access the right of adequate food. This is proven by the fact that the concentration and price of land is increasing in different regions of the country, displacing traditional populations from their native land. We also see a high degree of labor violations connected to the difficulty on accessing the right to food. The use of grains and raw materials to produce agroenergy generated an increase in the price of foods that make up the basic diet of the population, especially in the poorest communities³³ Cf. FIAN, et al. 2008. Os Agrocombustíveis no Brasil (Agrofuels in Brazil). Report of the Investigative Mission on the impact of the public policy on agrofuel incentives on the enjoyment of the human rights to nutrition, work, and the environment, of the farming and indigenous communities and rural laborers in Brazil.

Heidelberg. http://www.fian.org/recursos/publicaciones/documentos/os-agrocombustiveis-no-brasil/view?set_language=es

Challenges to the Human Right to Adequate Food (DHAA)

The production of agroenergy is based on crops that were traditionally used as food. In Brazil, the expansion of agrofuel production is advancing very rapidly. This requires large amounts of land and water, and creates direct competition for necessary resources to feed people. Low-income communities in rural and urban don't have adequate access to food. They also lack an adequate sewage system in order to live healthy lives.

Brazil is a member of the International Covenant on Economic, Social, and Cultural Rights, and has legally binding obligations to carry out the DHAA. Thus, secure access and control of land and other natural resources to produce food should be guaranteed to poor rural communities and populations. Likewise, urban populations should be guaranteed access to income—above all through the guarantee of work opportunities—to guarantee their DHAA. Furthermore, Brazil, like other nations, should

implement policies that promote adequate and sufficient availability of foods at the local and national level, and it should guarantee that food be economically accessible to the entire population.

Brazil, like all other nations, should regulate its economy and markets in accordance with these obligations, and should not create incentives that put fulfillment of DHAA or any other human right at risk. Effective fulfillment of DHAA cannot be compromised by the interests of large corporations.

Keeping in mind State obligations outside Brazil, these criteria should also be applied in the case of incentives for such projects abroad, to avoid having public Brazilian resources contribute to the violations of human rights in other countries.

In 2008, the populations of Caetité (46,192 inhabitants) and Lagoa Real (13,795 inhabitants) faced a tragic reality, as a consequence of the harmful socio-environmental impacts caused by uranium extraction. It was the year in which the publishing of research reinforced the position of workers who, since 2001, have been calling for an Independent Auditor's Office to inspect the operations of Brazilian Nuclear Industries (INB).

The Dangers of Uranium Extraction

Zoraide Villasboas¹

The eighth anniversary of the establishment of the Uranium Concentrate Unit (URA/Caetité), located at 750 km from Salvador, the capital of Bahia, also known as the Lagoa Real Project, will never be forgotten. Not because of the customary celebration by the leadership of Brazilian Nuclear Industries (INB), but because of one more overflow of radioactive liquid, highly dangerous for human life and the environment, which soaked the soil in the industrial area in June of that year.

INB considers this type of accidents to be routine operational events. This was true in the case of the leak of nearly 5,000 m³ of uranium liquor in 2000, when the tailings pond isolation blankets broke. The company tried to hide this accident, and even talked about sabotage. The accident was only admitted to three years later, when the National Nuclear Energy Commission (CNEN), responsible for promotion and supervision of nuclear and radioactive activities in Brazil, claimed that the damages were insignificant. In other words, the release into the soil of 5,000 m³ of radioactive liquor was characterized as a “mere operational event.”

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The same was true in 2004, when the particulate retention basin of the mine pit overflowed seven times, releasing liquid containing concentrates of uranium-238, thorium-232, and radium-226. In this case, the CNEN inspectors suggested suspension of operations and non-renewal of the Initial Operating Authorization² CNEN did not accept this recommendation in order to avoid financial damages, maintaining INB in operation in spite of the noted risk. This recommendation resulted in the dismissal of two radioprotection inspectors.

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Brazil has the sixth largest reserve of uranium in the world. In Bahia, the mine is located between the municipalities of Caetité and Lagoa Real. It comprises the São Francisco and Rio de Contas Hydrographic Basins, which include 63 municipalities, and drains into the ecological region of Atlantic Forest at Itacaré, on the coast.

The uranium is exported to Canada and Europe (Germany, Holland, and the United Kingdom). Since 2005, INB has requested a license from IBAMA to access underground mines with the goal of doubling its production. But this would mean doubling the impacts of nuclear waste.

Among the problems threatening the population and the environment is pollution by radioactive substances and water contamination. The Study of Environmental Contamination by Uranium in the Municipality of Caetité concluded that the local population were facing environmental and health problems arising from the activities of the uranium mining company. The average for incorporation of radionuclides (atoms that emit radiation) for the Caetité residents is 52.3 ppb (particles per billion). This index is 100 times greater than that of Igaporã (neighboring municipality). The study determined that the population of Caetité "are subject to radiobiological risks, which are much greater than those of the populations in other regions, both elsewhere in the nation and in the rest of the world. This circumstance can lead to serious health problems, such as cancer."³

In 2008, Greenpeace released the publication "Ciclo do Perigo – Impactos da Produção de Combustível Nuclear no Brasil" (Cycle of Danger – Impacts of the Production

² Report of the Commission on the Environment and Sustainable Development of the Chamber of Deputies regarding Nuclear Inspection and Security, Brasília (03/2006).

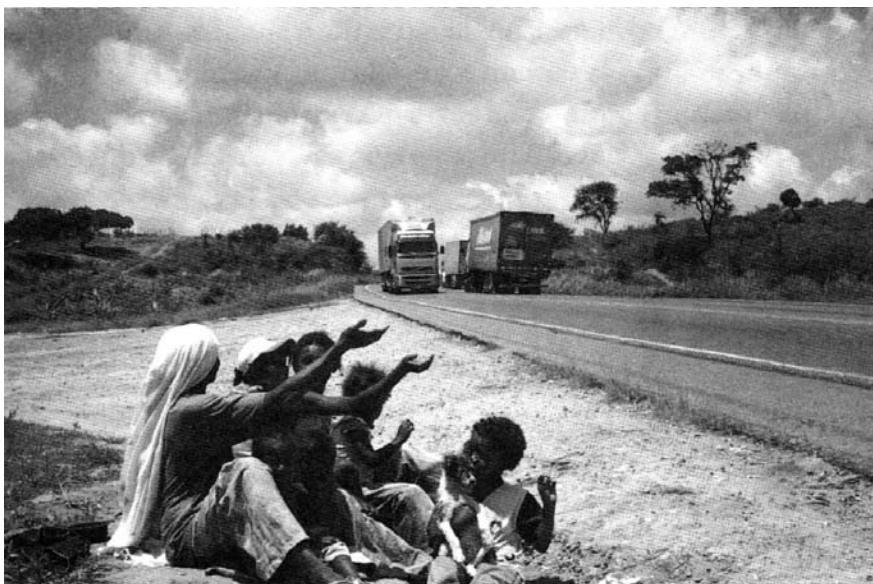
³ "Estudo de Contaminação Ambiental por Urânia no Município de Caetité-Ba, Utilizando Dentes Humanos como Bioindicadores" (Study of Environmental Contamination by Uranium in the Municipality of Caetité, Bahia, Using Human Teeth as Bio-Indicators), Geórgia R. Prado, State University of Santa Cruz – UESC (2007).

of Nuclear Fuel in Brazil), which denounced radioactive contamination in soil and water in the region. Samples of water used for human and animal consumption were analyzed by an independent laboratory contracted by Greenpeace Research Laboratory at Exeter University in the United Kingdom, which found isotopes¹ of uranium, torium, and lead, due to the uranium mining activities. Two samples showed contamination well above the maximum indices suggested by the World Health Organization (0.015 mg/L) and by the National Council on the Environment (CONAMA) (0.02 mg/L).⁴ Water collected from an artesian well about 8 km from the mine showed uranium concentrations seven times greater than the maximum limits indicated by WHO, and five times greater than those indicated by CONAMA. Another sample, collected from a faucet that pumps water from the artesian wells in the area of direct influence of INB, had twice the limit established by WHO.

Another problem is the lack of transparency of INB, which does not maintain a dialogue with local communities. INB violates the UN's International Covenant on Economic, Social, and Cultural Rights. In order to denounce this situation, grassroots organizations are promoting discussions with local communities impacted by the uranium mine. Their main recommendations included an independent inspection of INB, and that IBAMA does not issue a License for Expansion of URA Operations. They demanded the inclusion of an epidemiological study in the region by the State Secretary of Health of Bahia – SESAB. In addition, they submitted a proposal to the Attorney General for the creation of a Working Group to review the Brazilian Nuclear Program.

⁴ Ciclo de Perigo-Impacts da Produção de Combustível Nuclear no Brasil – Denúncia: Contaminação da Água por Urânio em Caetité , Bahia (Cycle of Danger-Impacts of Nuclear Fuel Production in Brazil – Claim: Water Contamination by Uranium in Caetité, Bahia), Greenpeace (16/10/08).

INTERNATIONAL POLICY AND HUMAN RIGHTS



In Latin America, the United States resumed military activities, such as the so-called UNITAS Operation – a naval training in the coastal territory of Brazil and Argentina. This mega operation included the nuclear carrier George Washington, with a transport capacity of up to 10 nuclear bombs. Starting July 1, 2008, the Fourth Fleet was reactivated, a naval unit of the United States that will act in the Caribbean, Central America, and South America, in a region that covers more than 30 countries.

The Last Year of the Bush Era

Maria Luisa Mendonça¹

The election of Barack Obama to the presidency of the United States generated great hope, in the direction of a possible shift in the overseas policy of that country. It cannot be foreseen whether the content of his speeches will be translated into concrete changes. However, for the first time since the Cold War period, a U.S. presidential candidate (Republican or Democrat) has not used the ideology of an external enemy as a central arm of the campaign. This symbolism is extremely important, as it was used to justify the militaristic policy that the country has exercised for many decades.

We can cite the occupation of Korea, which set the politics of the post war period in 1945, followed by support to a succession of military coups in Latin America, beginning in 1954 in Guatemala, the Bay of Pigs Invasion in Cuba (1961), the Vietnam War (1964-1973), the military coup in Indonesia (1965), the invasion of Grenada (1983), the bombing in Syria (1986), the invasion of Panama (1989), the occupation of Haiti (1994), the war in Somalia (1994), the Gulf War (1991), through

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the more recent invasions of Afghanistan (2001) and Iraq (2003), just to cite some examples. This list is in truth much longer and can be translated into millions of dead or injured.

In his nomination speech, during the Democratic Party's Convention, on August 28, Barack Obama repeated the phrase of Martin Luther King: "We cannot walk alone," and affirmed that the country's internal security depends on a transformation in its foreign relations. During the campaign, Obama declared that "Iraq has nothing to do with the attempts of September 11th," and proposed that the United States should stop depending on oil from the Middle East.

Other proposals presented by Obama are to guarantee social security (health and welfare) and education (from pre-school through university) for all the population, increasing taxes on large companies and lowering taxes on workers. Symbolically, he has redeemed the idea of the "American Dream," but in a different form. In the liberal conception, this ideology serves to stimulate individualism and the mentality of the "self-made man," where what counts is force of personal will, since the economic system is perfect and there is no inequality. According to this concept, if you are unemployed, ill, or homeless, the problem is yours.

In his speeches, Obama recognizes the economic inequalities that exist in the United States, and proposes another type of "American dream," where the State is responsible for providing conditions for all people to live with dignity. Remembering his childhood in Chicago, Obama cites unemployed workers as "heroes." He also defends equal pay and equitable job opportunities for men and women.

Only time will tell if these proposals will be realized, because there are objective obstacles, such as very economic dependency of the war industry, besides the conservative ideology that remains in Obama's own discourse, principally when the theme is the "security" of Israel. There are also objective limits to the "inheritance" left by Bush, which guaranteed an increase of 70 billion dollars in the military budget to finance actions in Iraq and Afghanistan during the fiscal year which began October 1, 2008. Since 2001, the military expenditures of the United States in those countries are estimated to be close to 800 billion dollars.

Naval Militarization

In Latin America, the United States resumed military activities, such as the so-called UNITAS Operation – a naval training in the coastal territory of Brazil and Argentina. This mega operation, begun on May 5th, included the nuclear carrier George Washington, with a transport capacity of up to 10 nuclear bombs.

Starting July 1, 2008, the Fourth Fleet was reactivated, a naval unit of the United States that will act in the Caribbean, Central America, and South America, in a region that covers more than 30 countries. Several squadrons may act on the seas, along the coastline, in coastal or river regions.

The Fourth Fleet was created in 1943, during the Second World War, to patrol the South Atlantic, and was deactivated in 1950. The current version will have large scale military equipment, including nuclear weapons. The operations, directed from Florida, will be under the command of the North American Navy and of the Southern Command, a unit of the Pentagon that acts in Latin America and the Caribbean. According to official Pentagon communiqués, the objective is “to combat terrorism and illicit activities such as narcotics traffic,” besides “sending a message to Venezuela and the rest of the region.”

These actions are political in nature, as they seek to destabilize the governments of Venezuela, Ecuador, and Bolivia, but principally they seek to guarantee control of energy resources, such as petroleum and natural gas. In Brazil, the recent discoveries of enormous oil reserves in the Pre-Salt layer represent a significant element in this scenario.

The strategy of mapping natural resources extends to territories that are, geopolitically, “without importance.” In Africa, the Pentagon intends to form the African Command—the new version of the Central Command, created by former President Ronald Reagan in the 1980s, to guarantee control of oil in the Persian Gulf. One of those responsible for the operation, Admiral Robert Moeller, stated that “Africa is of increasing geostrategic importance.”

At the same time, traditionally controlled regions, such as the North Atlantic, the Mediterranean, and the Northeast of the Pacific Ocean, should gain military reinforcement. In February, the Bush government asked Congress for approval of an additional budget for the construction of new naval nuclear arms, warships, and submarines.

The new face of the National Security Doctrine of the United States had two characteristics: expansion of operations that guarantee “maritime security,” with the objective of controlling strategic commercial routes, and territorial monitoring. These actions are aimed at guaranteeing security for U.S. companies, in addition to mega infrastructure projects, with the objective of monopolizing territories and natural assets.

Plan Colombia

Plan Colombia was constructed to serve as a regional military platform and, at times, the U.S. government tried to involve the Southern Cone countries in this conflict. In March 2008, the government of Álvaro Uribe violated Ecuadorian territory in order

to justify the escalation of armed conflicts in his own country, since his “combating terrorism” jargon served to reinforce a policy of repression, as well as the military presence of the United States in the region.

The beginning of Plan Colombia, in August 2000, coincided with increased violence against the civil population, particularly the leadership of social movements. In January 2001 alone, there were at least 27 massacres, in which nearly 200 civilians were killed. The organization Washington Office on Latin America, estimates that, since the beginning of Plan Colombia, the average number of deaths in combat and political assassinations has increased, amounting to 14 persons a day. At least 78% of the massacres that have occurred since 1999 have been carried out by paramilitary groups.

The supposed “war against drugs” also served to force indigenous peoples and peasants from their lands. More than a million hectares of Colombian forest have already been contaminated by chemical agents used in fumigation by the Colombian army, with the pretext of combating cocaine cultivation. The result has been a massive migration of peasant and indigenous communities. It is estimated that the number of internal refugees in Colombia exceeds three million persons. One of the modifications in the legislation proposed by Uribe establishes that the lands from which peasants are displaced can be transferred, which serves as justification for legalizing forced evictions and transferring land to large companies.

The government utilizes the war to restrict civil rights. The Colombian constitution is the fruit of social movements’ struggles that took place in 1991, and preserves collective rights, such as those of indigenous peoples. The reform proposed by Uribe would eliminate the action of guardianship for collective rights, besides giving judicial functions to the Army, such as orders for search and seizure, prisons, and powers to intercept communications. It is also aimed at restricting the right of habeas corpus and increasing prison time without justification, in order to hide frequent cases of torture and disappearance.

The war in Colombia has been supported by the United States for decades. In the Cold War era, the US identified Colombia as a strategic country, due to its geographic location and its natural resources. This period is known as “The Violence,” in the 1950s, when nearly 200,000 persons were killed. Since then, the actions of death squads have helped to keep conservative governments in power.

In 1962, during the presidency of John Kennedy, General William Pelham Yarborough, Army Commander of the United States at the Special Warfare School, began to train foreign troops in “unconventional tactics.” On returning from a mission in Colombia, he affirmed in a report that his purpose was “to select civil and military personnel for clandestine operations, to act as counter-insurgents, execute counter-pro-

paganda tasks, and, if necessary, perform paramilitary activities of sabotage and terrorism against candidates known to be communists.”

From the beginning of Plan Colombia, the country has received 4 billion dollars in “military aid.” The largest contingent of foreign officials trained in the United States, including at the School of the Americas, has been Colombian. At the same time, drug trafficking has increased in the United States, stimulated by prices lower than what they were prior to Plan Colombia.

Beginning in 2002, Colin Powell guaranteed an additional appropriation of 731 million dollars to finance the participation of Ecuador, Bolivia, and Peru in Plan Colombia. The role of Ecuador was central, principally because the United States used the structure of the Manta Base, with capability of controlling the air space of the Amazon region, the Panama Canal, and Central America.

The election of President Rafael Correia interrupted Ecuador’s support for Plan Colombia, as one of his chief measures was to announce that he would not renew the agreement with United States for control of the Manta Base. The election of President Evo Morales in Bolivia and the shift in foreign policy of that country meant an additional problem for the U.S. government, which began to stir up a campaign by the separatist right to overthrow the Bolivian government.

The Role of Brazil

The Brazilian government, as well as all of the countries of Latin America, condemned the invasions of Ecuadorian territory by Colombia, which was likewise officially censured at a meeting of the OAS (Organization of American States).

However, it is difficult to explain the position of the governments of Brazil and Argentina, which participated in the UNITAS operation and authorized military training by the United States in their territorial waters. There is no question of naivety in these agreements; the repressive nature of this policy is clear. Additionally, there are other fronts of military collaboration with the United States, such as in the occupation of Haiti. This year, the Brazilian government asked for approval by the National Congress to increase its military infrastructure in Haiti.

In Brazil, the idea of “development” based on large energy and mining projects generates violence against rural communities. National and transnational corporations advance rapidly, both in the Amazon region and in areas previously thought of as “inhospitable,” such as the cerrado and the semi-arid regions. The government’s insistence on a mega-project to alter the course of the São Francisco River is an example of this policy because, contrary to what the official propaganda says, the semi-arid region is rich in minerals, biodiversity, and water.

The expansion of agro-energy production imposes ever greater pressure for control of natural assets, such as land and water. This scenario aggravates economic instability, and leads to a growing increase in the prices of essential products, such as foodstuffs. In this context, the risk increases for repression of social movements fighting for self-determination and control of their territories.

The concept of IIRSA is to ensure maximum speed in the circulation of agricultural and mineral products in order to fully enjoy the “comparative advantages” of the South American region¹. It’s not a project of true integration that reinforces contacts and exchanges among peoples, but rather the installation of immense corridors to drain away raw materials for Europe, North America, and Asia.

IIRSA and the financial Crisis: a Chance for Reflection, Discussion and Resistance

Igor Fuser²

At a time of uncommon sincerity among the manipulators of the delicate connection between politics and money on an international scale, the Uruguayan Enrique Iglesias, president of the Interamerican Development Bank for 17 years, stated that the decisive factor for the financing of projects that are grouped in the Initiative for Integration of the South American Regional Infrastructure (IIRSA) was the “excessive liquidity” in the capital markets – and not evidently the Boliviarian dream of regional integration like that which, even today, government administrations of diverse ideologies are preaching. In other words, the massive construction of roads, ports, gas-lines, hydroelectric plants and dams would constitute an attractive destination for a share of the fabulous quantity of money in the hands of multinational corporations and financial institutions, if there were no equivalent stock of business investment opportunities with immediate returns.

¹ Herbas Camacho, Gabriel, and Molina, Silvia, “IIRSA y La Integración Regional” (IIRSA and Regional Integration), in *Observatorio Social de América Latina*, Year VI, nº 17, May-August 2005, pp. 307-316. Buenos Aires: Clacso.

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Now that the bubble of liquidity has burst, the future of IIRSA will remain uncertain until the twists and turns of the world crisis of capitalism and of the economic recession that will accompany it become clearer. The large-scale works that are already under way will certainly continue, perhaps at a slower pace, in accordance with the availability of credit of their sponsoring organizations: the National Economic Development Bank (BNDES), the Andean Promotion Corporation (CAF), and the River Plata Basin Development Fund (FONPLATA). In the last instance, everything will depend on the dimensions of the global collapse and its impact in Latin America. Thus, we are entering an opportune phase for discussion about which integration model best serves the needs of the kind of development that improves living standards, advances toward a more just society, and preserves the environment.

The survival of IIRSA, absolutely unchanged, in the midst of all the changes on the South American political scene in this decade is a paradox that illustrates the contradictions and the limits of the progressive forces in the region. The project was launched in 2002, in a meeting of all the South American presidents in Brasília at the invitation of Fernando Henrique Cardoso. Its stated goal was the integration of transportation, energy, and communications. Since then, IIRSA has implemented a strategy that makes it possible for South America to be integrated into the globalized economy in a way that is absolutely consistent with neo-liberal logic.

The region is viewed as furnishing farm products, raw materials, and energy resources for the dynamic centers of capitalism. According to IIRSA's web site, the purpose is “to promote infrastructure development based on a regional vision, attempting to physically integrate the South American countries and to achieve equitable and sustainable territorial development”³. More than 300 projects are planned in the next 20 years, with an investment of around \$38 billion. These projects are grouped around ten “axes of integration” – in essence, corridors aimed at facilitating the export of primary goods for the markets of developed countries.

The concept of IIRSA is to ensure maximum speed in the circulation of agricultural and mineral products in order to fully enjoy the “comparative advantages” of the South American region⁴. It’s not a project of true integration that reinforces contacts and exchanges among peoples, but rather the installation of immense corridors to drain away raw materials for Europe, North America, and Asia.

Everything is happening exactly as the Marxist geographer David Harvey describes in his study on “accumulation by plunder” – the incessant process by which capitalism

³ www.iirsa.org

⁴ Herbas Camacho, Gabriel, and Molina, Silvia, “IIRSA y La Integración Regional” (IIRSA and Regional Integration), in *Observatorio Social de América Latina*, Year VI, nº 17, May-August 2005, pp. 307-316. Buenos Aires: Clacso.

incorporates territories that were previously not income-producing, as sources for the generation and appropriation of wealth⁵.

With the rise of progressive governments in South America, the partisans of IIRSA have substituted the rhetoric of “open regionalism” – the password for the neoliberal opening up of the region’s economies – with a discourse about development. So the real need to improve the physical connections among the countries has turned into the usual argument for IIRSA, without any change in the content of the projects or in the methods adopted for their implementation. In many cases, the exchange of neoliberal authorities for others, more identified with the forces of the left, contributed only to diluting resistance. Even so, a large number of social movements, political groups, and NGOs have remained firm in their resistance. Besides denouncing the strategy that permeates the whole undertaking, they denounce the social, economic, and environmental impact of the IIRSA projects, which have been designed without taking into account the needs of the populations affected by the projects.

The developmentalist rhetoric does not succeed in hiding the fact that IIRSA is part of the same logic of the last two decades, of privatization and of opening up to trade. Its projects will increase the dependence of South America in relation to imperialism, will worsen the imbalance among the South American countries and in the interior of each country – and in this process will speed up the draining away of valuable natural resources to the detriment of future generations. The majority of the projects are located in regions of rich biodiversity, fragile ecosystems, and with populations that are extremely vulnerable to environmental changes. However much the projects are called “sustainable”, the environmental impact is undeniable, and in some cases, devastating. The hydroelectric plants and dams change the system of waters in the rivers, affecting fish and threatening the extinction of a large number of aquatic species. The roads inevitably lead to deforestation of areas that go beyond the margins of the roads, not to speak of the collateral effects such as uncontrolled immigration and environmental pollution. It’s symptomatic in this picture that since 2006, the Inter-oceanic Highway has been approved, financed, and is being built without first carrying out an environmental impact study. According to a study by the Work Group of Peruvian Civil Society⁶, in 10 years the region – one of the richest in the world in terms of biodiversity and until recently in a good state of preservation – will confront all the sore spots that customarily accompany the building of highways. With one thing worse: the road will cross an area where

⁵ Harvey, David. *O Novo Imperialismo* (*The New Imperialism*). Translation by Adail Sobral e Maria Stela Gonçalves. São Paulo: Edições Loyola, 2004.

⁶ Dourjeanni, Marc, “A Estrada Interoceânica no Peru” (*The Inter-oceanic Highway in Peru*), in *O Eco*, 30/6/2006, <http://arruda.rits.org.br/oeco/>

various groups of indigenous people live in voluntary isolation, which will be especially affected by the degradation of their surroundings.

In the technocratic language of the IIRSA planners, geographical accidents like the Andes and the Amazon Forest are seen as “barriers”, natural impediments to be “overcome” in the name of progress⁷. As for the natural resources, they are transformed into “stocks”, reserves of commodities to be negotiated on the futures market. In the Brazilian Amazon region, which has its territory included in four of the “axes of integration”, the influence of the projects will be extended by 2.5 million hectares, reaching 107 indigenous lands, whose residents represent 22% of the indigenous population of Brazil. Another 484 priority areas for the conservation of biodiversity will also be affected.

The title of a recent study by the NGO International Conservation gives an idea of what is at stake: “A Perfect Storm in the Amazon Jungle: Development and Conservation in the Context of IIRSA”⁸. Its author, the North-American scientist Tim Killeen, director of the National Center for Atmospheric Research, evaluated the impact of the new transportation, energy, and telecommunications projects and concluded that they may destroy a large part of the Amazon’s tropical forest in the next few decades. Killeen relates the projects planned in IIRSA to the growth in pressures on the ecosystem in Amazonia and its traditional communities. Among these pressures are lumber industry exploitation and deforestation—problems associated with the uncontrolled expansion of agriculture, with cattle raising and mineral exploration, as well as with the rapid growth in planting for biofuels, such as sugar-cane. “The lack of perception of the full impact of the IIRSA investments, especially in the context of climate change and global markets, is capable of producing a perfect storm of environmental destruction”, writes Killeen. “The largest area of tropical forest on the planet and the multiple benefits that it provides is threatened”. The challenge, according to the researcher, is to mediate the legitimate expectations of development with the need to conserve the ecosystem in Amazonia. But this concern, which should be at the center of IIRSA’s decision-making process, appears in a superficial way. Environmental and social sustainability is seen, basically, as a question of public relations (how to “sell” the project to the public) and of conflict management (how to turn around the eventual resistance of civil society).

Now we are facing a new fact. The current financial crisis, at the same time that it worsens the living conditions of great masses of workers and marginalized populations in the developing countries, will be able to provide a temporary reduction of political and economic pressure from the interests of capital over the frontier regions of economic

⁷ Zibechi, Raúl, “IIRSA: la integración a la medida de los mercados” (IIRSA: integration in stride with the market). Programa de las Américas, International Relations Center, June 13, 2006. Silver City, EUA. <http://www.ircamericas.org/esp/3314>

⁸ IIRSA pode colocar em risco floresta amazônica” (IIRSA may put Amazon forest at risk), in Conservação Internacional Notícias, 10/1/2007, <http://www.conservation.org.br/noticias/>

accumulation. This can be a favorable moment to strengthen the tools of resistance and to widen the discussion about the development model and the integration of South America—a moment that enhances the words of Ana Esther Ceceña, Paula Aguiar, and Carlos Motto in their booklet about the subject⁹: “We are facing a battle of ideas, of territories, of ways of life and of conceptions of the world. Nothing is guaranteed for IIRSA. Nothing is guaranteed either for the future of the peoples. This is a history that is waiting to be written.”

⁹ Ceceña, Ana Esther; Aguiar, Paula, and Motto Carlos, *Territorialidad de la dominación: La Integración de la Infraestructura Regional*(Territoriality of domination: the Integration of Regional Infrastructure). Observatorio Latinoamericano de Geopolítica. Buenos Aires, 2007.

The rich region of Sepetiba Bay – one of the most important tourist spots and an ecological paradise in the State of Rio de Janeiro – may turn into a large industrial open air dump, supported by public funds and at the cost of the daily sustenance of thousands of families that make their living from fishing and tourism.

Transnational corporations and Human Rights Violations: the Case of Atlântico Steel Company in Sepetiba Bay

Karina Kato and Sandra Quintela¹

What is the cost of “development” policies in Brazil today? How do they impact traditional populations, such as artisan fisherman, quilombolas, seaside inhabitants, river dwellers, and others? How does the Plan for Accelerated Growth (PAC) is having a great impact in these communities? The establishment of a steel consortium composed of Vale corporation and the German company ThyssenKrupp answers these questions, with a scenario of desolation that spreads across Sepetiba Bay.

Sepetiba Bay interconnects with Ilha Grande Bay, and is one of the most important tourist spots and an ecological paradise in Rio de Janeiro. This rich region in natural resources may turn into a large industrial open air dump, supported by public funds at the cost of the daily sustenance of thousands of families that make their living from fishing and tourism.

Sepetiba Bay covers the municipalities of Rio de Janeiro, Iraguáí, and Mangaratiba, and is a very diversified region from the environmental and socioeconomic points of

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view. Notwithstanding its natural riches and biological patrimony, Sepetiba Bay is an important industrial center in the state, such that there is in this area intense coexistence between industrialization, urbanization, areas of Atlantic forest, and ecosystems of great environmental importance, transforming the region into a stage for innumerable environmental conflicts.

There are important ecosystems preserved in the region, such as remains of the Atlantic forest, sand bars, and mangroves. The bay also plays an important role in sheltering native, endemic, and endangered bird species, as a refuge for coastal birds, and as a rest area for flocks of birds seeking shelter in its vegetation. The region's estuaries, in turn, possess an immense biological richness typical of transition environments—locales where fresh river water meets the ocean water. This situation is repeated underwater where young fish seek protection from predators in the submerged roots of the mangrove vegetation, which forms one of the most important aquatic ecosystems in the state of Rio de Janeiro.

Because of its natural resources, the Western Zone of Sepetiba Bay is facing environmental and social conflicts. Industrial activity in the region began in the 1960s, with the building of Highway BR-101 and the Port of Itaguaí. Thus, from the 1980s on, the region began to evidence high demographic growth rates, as a result of two factors: activities related to the region's port and growth in tourism. More recently, the region has been the stage for installation of large scale enterprises in the chemical, mining, and steel sectors. However, the local population depends on fishing activities. Among them, there are quilombola and indigenous communities.

The steel complex will be made up of Companhia Siderúrgica do Atlântico – TKCSA, already under construction and with plans to be the largest steelworks in Latin America; Companhia Siderúrgica Nacional – CSN, which will be increasing its production capacity; and Gerdau, which will expand the production capacity of Gerdau Cosigua, with the construction of a new mill for special steels – Gerdau Aços Especiais Rio. For distribution of iron ore and steel products, eight ports will be built, in all, belonging to TKCSA, CSN, Usiminas, Gerdau, BHP Billington, Brazore, the Southeastern Port of LLX Logística, as well as the expansion of the Port of Itaguaí.

All these undertakings, which enjoy the economic and political support of the Brazilian municipal, state, and federal governments, through tax exemptions and direct financing, chiefly from BNDES, have enormous economic, social, environmental, and cultural impacts on the region.

The damages involved in these mega-projects are not restricted to local impacts. They have a wide scope and place the entire population of Rio de Janeiro at risk. These mega-undertakings destroy the environment and ecosystems that are of major importance

for maintaining the state's biodiversity. They also contribute to air pollution and represent an enormous risk to public health.

Due to its large energy intensity, the steel sector increases air pollution based on emission of pollutants such as sulphur oxides (SO_x), hydrogen sulphide (H₂S), nitrogen oxides (NO_x), carbon monoxide (CO), carbon dioxide (CO₂), methane, ethane, and various organic hydrocarbons, such as benzene. Another major problem connected with the steel industry is exposure to benzene, a byproduct of coke production, which is a colorless, volatile and highly flammable liquid, exposure to which affects the human nervous, endocrine, and immunological systems.

Studies indicate that, if a population of 30,000 is exposed to 1 ppm of benzene in the atmosphere, 60 new cases of cancer can be expected. It is important to stress that in 1990 the average occupational exposure at CSN at Volta Redonda-RJ was 4 ppm. The complex planned at Sepetiba Bay includes a plant which will be the largest steel mill in Latin America. These impacts on the health of the population are ignored in the company's planning, and in the government's discourse.

The Atlântico Steel Company (TKCSA)

The TKCSA industrial-steel-port conglomerate is a joint venture formed by the German company ThyssenKrupp Steel, with 90% of the stock, and by Vale Corporation. The complex is formed by a steel mill with a production capacity of 10 million tons of steel plate, a thermoelectric plant for energy generation, and a 4km access bridge for two port terminals. The enterprise, which will begin operation in December of 2009, plans to produce 5.5 million tons of steel plate, all for export to the United States and Germany. Total investment in this mega-project is 4.5 billion Euros, which represents the largest German investment in Brazil, and a central piece in ThyssenKrupp's strategy for expansion in the world economy for the next ten years.

A large part of this investment is financed with public Brazilian money, whether by means of numerous tax exemptions or by direct financing by BNDES (National Economic and Social Development Bank), which will also finance part of the company's activities pertaining to social responsibility in the region. The land on which the complex is being built was granted by the federal government, even though to do so it had to remove entire rural communities from the area. The tax exemptions pertaining to payment of the ISS (Taxes on Services) for five years are estimated at more than US\$ 150 million per year, without counting the exemption from ICMS (Tax on Circulation of Merchandise and Services) for ten years. Additionally, BNDES approved financing of R\$ 1.48 billion for acquisition of machinery and equipment.

The nature of this project follows the economic policies based on exporting agricultural and mineral commodities, which requires intensive use of natural

resources and labor exploitation. In the other hand, the countries for which these commodities are destined specialize in the production of special steel products with greater aggregate value.

In addition, TKCSA ignored Brazilian legislation regarding the protection of costal mangrove areas, considered to be Areas of Environmental Preservation (APA), subject to protection in accordance with the Brazilian Forest Code. The license for this project was supposed to be granted by IBAMA (Brazilian Institute for the Environment and Renewable Natural Resources). However, TKCSA has only received a license from FEEMA (State Foundation of Environmental Engineering), contrary to what is provided for by law.

In December 2007, IBAMA inspectors denounced that TKCSA was destroying a wide area of mangrove without legal authorization. At that time, the company had to pay a compensation of R\$100,000.00, and IBAMA opened a criminal investigation. In April 2008, TKCSA was accused of violating labor laws and causing accidents at the jobsite. The Public Labor Ministry (MPT) notified the company for irregularities at the work environment, such as lack of appropriate safety equipment for the workers.

The company also violated the rights of local fishermen. Since its construction started, the fishermen have been prevented from working, because TKCSA created zones where fishing is prohibited. In addition, in order to reduce labor costs, the company has been hiring immigrants (from the Northeast of Brazil and also Chinese). The Chinese workers fall under an agreement that TKCSA signed with the International Cooperation of Brazil Project Consulting. According to inspector from MPT, Chinese immigrants didn't receive working documents or labor contracts. The fact that these workers are undocumented makes it more difficult for them to denounce poor working conditions.

Another serious problem in the region is water contamination by heavy metals and chemical waste such as lead, cadmium, and zinc. According to the State Environmental Engineering Foundation (FEEMA), Sepetiba Bay received in its waters, over several years, nearly one hundred tons of heavy metals each year. The contaminated mud extracted from the bottom of the bay by TKCSA presents another serious issue. The nearly 21,810,000 m³ of contaminated mud have been taken from the bottom of the Bay in order to increase its depth and allow access for large ships.

The responsibility of Vale Mining Company

Vale Mining Company holds 10% of the shares in this consortium. Recently, the company gained control of MBR and Ferteco corporations, combining practically all iron ore production in the country. The MRS logistical railroad and the FCA (Center Atlantic Railway) guarantee that all this iron ore production arrives at the ports of Tuba-

rão (controlled by Vale), Ubu (property of the mining company Samarco), Sepetiba (Gerdau, TKCSA, LLX, and Vale), and Santos (public port with private terminals, among these the steel company Cosigua).

This ore arrives at the ports via the MRS logistic and FCA railroads, which belong to Vale do Rio Doce, Companhia Siderúrgica Nacional (CSN), Minerações Brasileiras Reunidas (MBR) and Gerdau. The entire productive chain for the steel exported by these ports, beginning with the iron ore producers, are in the hands of large companies that seek to reduce production costs. In addition, the partnership of this consortium with Vale guarantees that foreign companies have access to public funds, particularly through BNDES.

The strategy of these corporations is to increase their infrastructure to export mineral and agricultural commodities, including pipelines, railways, and ports. With public funding from BNDES and other governmental agencies, these companies contribute to a “development” model that deepens economic and social inequalities in Brazil.

More than 300 thousand rural residents migrate to the United States each year; just in the effective period of the Free Trade Agreement between the United States, Canada, and Mexico (NAFTA), more than 4,000 Mexicans were murdered trying to cross the border. In addition, in recent years, Europe became a new destination for migrants, forced out of their countries due to the impossibility of surviving under the current conditions of exclusion. It is estimated that in Spain (one of the chief destinations) there are more than a million Ecuadorians, as well as thousands of Bolivians, Peruvians, and Colombians.

Our Cries, Our Voices, for a World without Walls

Migration: a view from Latin America

Document of the Cry of the Excluded
Presented at the Third World Social Forum on Migration
Luciane Udovic¹ and Luiz Bassegio²

In spite of the fact that migrations always happened, today they occur on a larger scale and their causes are more complex than in prior periods. We live today under the process of capitalist modernization on a global scale, producing enormous economic inequalities. This process increasingly contributes to large scale migrations.

One of the most important aspects of current migrations is the destructuralization of the rural world in Asia, Africa, Latin America, and the Caribbean. In the 1950s, we saw the birth of the so-called “Green Revolution,” which made possible the

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industrialization of the countryside, and had disastrous effects for peasants. In an accelerated manner, large scale plantations replaced small productive units. Thousands of peasants migrated to urban areas, in deplorable conditions and, with time, migratory flows began to industrialized countries that attracted migrants with their economic dynamism.

In order to understand the impacts of these processes, it is crucial to explain the magnitude that the migratory phenomenon has at the present time. The 1980s and 1990s brought with them further damage to local and small scale agriculture, with the implementation of free trade agreements sought to favor the interests of agro-industrial cartels.

In Latin America, these policies had a great impact on rural communities. For example, in Mexico, where since the 1960s there has been a permanent growth in migration to the United States, more than 2 million agricultural jobs were lost between 1994 and 2006, and 70 percent of the rural population lives in conditions of poverty.

As a result, more than 300,000 rural residents migrate to the United States each year. Since the implementation of the Free Trade Agreement between the United States, Canada, and Mexico (NAFTA), more than 4,000 Mexicans were murdered trying to cross the border. In addition, in recent years, Europe became a new destination for migrants, forced out of their countries due to the impossibility of surviving under the current conditions of exclusion. It is estimated that in Spain (one of the chief destinations) there are more than a million Ecuadorians, as well as thousands of Bolivians, Peruvians, and Colombians, and the same is happening in other countries such as Germany.

Migration is increasing as a result of the destruction of local economies in Latin American and Caribbean countries. The “Structural Adjustment Programs” imposed by international financial institutions had an effect not only on rural populations, but also on urban communities, with the privatization of strategic sectors, which eliminated jobs and social services.

The number of migrants doubled in the world since 1975. Currently 200 million people live in countries other than their country of origin. The United Nations anticipates that this number will increase to 280 million in the next 40 years.

One of the major problems faced by migrant workers is a lack of labor laws to protect their rights. They play a fundamental role in economic development, but suffer all types of human rights violations. Migrants are criminalized especially in Europe and the United States.

Although these countries need migrant workers, they deny access to basic to them.

On June 18, 2008, the European Union approved the “Return Directive,” popularly known as the “Shame Directive.” This new law establishes rules for deporting

undocumented migrants, extending time of prison for migrants to up to 18 months (even children can be detained).

However, in the past, large number of workers and peasants from Europe had to migrate to Latin America. Today, European countries implement repressive laws against immigrants, as scapegoats of the new economic crisis. Although they are necessary for the most difficult and heaviest work, which European people don't want to perform, immigrants suffer from prejudice and humiliation. The Cry of the Excluded demands immediate annulment of the "Return Directive," and asks the European Parliament to develop migration policies based on full respect for human rights.

The Alternatives

The Cry of the Excluded proposed a policy of Universal Citizenship, including a process of integration based on principles of solidarity and respect for human dignity. Migration should be a free choice for people, and not an economic imposition for lack of work opportunities in our countries. We define Universal Citizenship as a policy that recognizes human rights for people of all origins. It includes:

- Full access and enjoyment of human rights, guaranteed by international and national laws, including the right to vote. All governments should ratify and put into practice the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- Non-criminalization and general amnesty for migrants. We condemn the "Return Directive" policy in Europe, and "Walls of Shame" between Mexico and the United States. All immigrants should be guaranteed their right to move about freely, without having to hide like criminals.

