



**HUMAN RIGHTS:
BRAZIL AT THE UN**

2009/10

Yearbook
Executive Summary



CONECTAS HUMAN RIGHTS

HUMAN RIGHTS: BRAZIL AT THE UN

2009/10

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About Conectas

Conectas Human Rights is an international non-governmental, not-for-profit organization. Its mission is to promote the realization of human rights and the consolidation of the Rule of Law, especially in Latin America, Asia and Africa.

Conectas' Foreign Policy and Human Rights Project carries out activities that aim to empower civil society organizations from the Global South to work with regional and international human rights mechanisms, particularly with the United Nations, and to promote the accountability of Brazil's and other governments' foreign policies.

Conectas was accorded consultative status with the ECOSOC (Economic and Social Council) of the United Nations in January 2006, and observer status with the African Commission on Human and Peoples' Rights in May 2009.

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Conectas Human Rights is composed of two sister entities that work under the same name and develop interrelated activities.

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Conectas also has a team of volunteers for each of its projects and receives students for non-remunerated internships from Brazil and from abroad.

Introduction

Dear readers,

This is the third edition of the Yearbook **“Human Rights: Brazil at the UN.”** As in previous editions, the 2009/10 Yearbook is dedicated to monitoring Brazil’s role in the human rights system of the United Nations (UN) focusing on the General Assembly, the Human Rights Council and the Treaty Bodies. This edition covers the period from January 2009 to January 2010. It also features cases in which Brazil was analyzed by UN human rights mechanisms which process started in 2009 and was finished in the first semester of 2010.

Brazil, as one of the founder-members of the UN, has been playing an important role in the international arena, including in the field of human rights.

In this context, it is important to remember that human rights must prevail in Brazil’s international relations, as established by article 4, paragraph 2, of the Federal Constitution. More than mere semantic courtliness, the use of the verb “to prevail” establishes a legal and moral obligation to guide our international relations. Part of this obligation is represented by Brazil’s duty to strengthen the UN human rights system.

What type of subjects does Brazil bring to debates in the Human Rights Council and the General Assembly? What is its attitude towards recommendations made by experts in the human rights system? What is its position before countries that are notorious human rights violators?

We can only answer these questions with transparency and access to information. These are essential conditions to analyze the impact of Brazilian actions on human rights in other countries and of the UN on the establishment of these rights in Brazil.

Another critical issue must be discussed: how can civil society monitor and influence the decision-making process and execution of Brazil’s foreign policy?

This Yearbook aims at contributing to the clarification of these questions.

In its third year of publication, we can say for sure that the way society perceives and approaches foreign policy is changing. Though it is still the primary competence of the Executive Branch, the administration of foreign policy must be submitted to the participation and control of the Legislative Branch and, eventually, the Judiciary. For instance, the Brazilian National Congress has been publicly debating topics on human rights and foreign policy, and also requesting information about decisions made by the Ministry of Foreign Affairs, among others.

Civil society organizations have been increasing their engagement by directly accessing UN human rights mechanisms, besides monitoring and influencing decisions of the Brazilian government.

Nevertheless, there is much to improve. Most records of the Brazilian participation in human rights agencies of the UN are still fragmented, hard to access and not translated into Portuguese. We hope that, in the future, transparency, organization and publication of data will become a priority for the Brazilian government.

The lack of official and organized information is still one of the biggest obstacles jeopardizing greater participation of other society segments in Brazilian foreign policy.

Thus, this Yearbook seeks to contribute to this increased participation of civil society and other government agencies, by organizing and publishing data referring to the Brazilian performance in the international human rights system.

Enjoy your reading!

Methodology

This 2009/10 edition of the Yearbook “*Human Rights: Brazil at the UN*” is the result of research conducted by Conectas Human Rights.

As in previous editions, the 2009/10 Yearbook deals with Brazil’s performance and relationship with the following UN bodies: General Assembly (Third Committee and Plenary), Human Rights Council and Treaty Bodies. Information is objectively presented in chapters, in order to facilitate analysis of Brazilian foreign policy related to human rights.

Thus, the objective of this Yearbook is to provide the reader with a general outlook on the Brazilian participation in the UN human rights system through data obtained from the United Nations and, when available, from Brazilian government agencies. It does not intend exhaustingly to describe Brazil’s participation in this system.

In addition to information on Brazil’s participation in the UN human rights system, it also describes national and international activities of Conectas Human Rights, as well as activities of the Brazilian Committee on Human Rights and Foreign Policy, of which Conectas is part, activities that aim at assuring the prevalence of human rights in Brazilian foreign policy.

The primary sources of information presented in this report are official public documents of the UN (www.un.org) and the Office of the United Nations High Commissioner for Human Rights (www.ohchr.org), obtained from the Internet and/or direct request to employees of the organization. When available, we referred to documents in Web pages of the Brazilian government, especially the Ministry of Foreign Affairs (www.itamaraty.gov.br).

When necessary, pieces of information of UN documents were unofficially translated from English to Portuguese.

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Human Rights: Brazil at the UN in 2009/10

This Yearbook presents Brazil's participation in the UN's main multilateral forums on human rights. It focuses on the General Assembly (GA), the Human Rights Council (HRC) and the Treaty Bodies. All topics briefly mentioned in this executive summary are described in details in this publication.

We hope that information presented herein can help human rights organizations and civil society monitor and influence the Brazilian foreign policy on human rights at the United Nations. This policy must be more transparent and participative; it must be carried out respecting the constitutional principle of the prevalence of human rights in Brazil's international relations.

GENERAL ASSEMBLY AND HUMAN RIGHTS COUNCIL

- Brazil's initiatives and votes**

In 2009, the General Assembly and the Human Rights Council approved resolutions that either establish human rights standards or monitor cases of systematic violations in the world.

The table below briefly describes Brazil's performance in 2009 with reference to the different proposals¹ presented in the UN General Assembly (Third Committee and Plenary) and in the Human Rights Council.

UN General Assembly - 64th session

Brazil's Initiatives and cosponsorships		Brazil's votes in the Third Committee (64 proposals considered)			Brazil's votes in the Third Committee (64 proposals considered)		Brazil's votes in the Plenary (59 proposals considered)		
Submitted proposals	Cosponsored proposals	Joint the consensus	Votes in favor	Votes against	Abstentions	Joint the consensus	Votes in favor	Votes against	Abstentions
2 (resolutions)	25 (resolutions)	42 (resolutions)	13 (11 resolutions, 1 amendment and 1 paragraph)	0	9 (5 resolutions and 4 amendments)	43 (resolutions)	10 (resolutions)	0	6 (5 resolutions and 1 amendment)

Human Rights Council - 10th, 11th and 12th regular sessions

Brazil's Initiatives and cosponsorships		Brazil's votes (131 proposals considered) ²		Brazil's votes (131 proposals considered) ³	
Submitted proposals	Cosponsored proposals	Joint the consensus ⁴	Votes in favor	Votes against	Abstentions
5 (resolutions)	35 (34 resolutions and 1 decision)	105 (54 resolutions and 51 decisions)	20 (16 resolutions, 1 amendment, 1 motion, 1 decision and 1 paragraph voting)	1 (decision)	4 (3 resolutions and 1 amendment)

Human Rights Council - 9th, 10th, 11th and 12th special sessions

Submitted proposals	Cosponsored proposals	Adherence to the consensus	Votes in favor	Votes against	Abstentions
1	1 (resolutions)	1 (decision)	4 (resolutions)	0	1 (no-action motion)

The proposals introduced by Brazil were:

- Resolution introduced in the GA and adopted by consensus regarding preparations for the 12th United Nations Congress on Crime Prevention and Criminal Justice (A/RES/64/180);
- Resolution adopted by consensus in the GA about UN Guidelines for the Alternative Care of Children (A/RES/64/142);
- Draft United Nations Guidelines for the Alternative Care of Children (A/HRC/RES/10/8) and the Council's resolution that adopted them (A/HRC/RES/11/7);
- Resolution introduced in the HRC and adopted by consensus on the access to medications considering the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/HRC/RES/12/24);
- Resolution adopted by consensus in the HRC on protection and promotion of human rights in the context of HIV-AIDS (A/HRC/RES/12/27);
- Resolution introduced together with Egypt and

adopted by consensus on the follow-up to the 10th special session of the HRC on the impact of the global economic and financial crises on the universal realization and effective enjoyment of human rights (A/HRC/RES/12/28).

The proposals supported by Brazil, either through cosponsorship and/or vote in favor or adherence to the consensus, are presented in the chapters about the General Assembly and the Human Rights Council.

In 2009, Brazil voted against only one proposal: the HRC decision on the publication of reports by the Subcommission on the Promotion and Protection of Human Rights (A/HRC/DEC/10/117).

The following table summarizes cases where Brazil abstained. Especially in the cases of Iran and North Korea, on which reports were presented confirming severe and systematic violation of human rights, the abstention is a questionable attitude.

In 2009, four special sessions of the Human Rights Council were also held: (1) "The grave violations of human rights in the Occupied Palestinian Territory including the recent aggression in the occupied Gaza Strip" (9th special session, January); (2) "The impact of the global economic and financial crises on the universal realization and effective enjoyment of human rights" (10th special session, February); (3) "The human rights situation in Sri Lanka" (11th special session, May), and (4) "The human rights situation in the Occupied Palestinian Territory and East Jerusalem" (12th special session, October).

Brazil voted in favor of all resolutions discussed in the special sessions, and joined the consensus in one decision, abstaining on only one no-action motion referring to an amendment presented by the European Union to the resolution approved by the end of the 11th special session on the human rights situation in Sri Lanka (A/HRC/S-11/1).

Brazil cosponsored the summoning request for two of the four special sessions held in 2009: the 9th, on the Occupied Palestinian Territory, and the 10th, on the impact of the financial crises on the realization of human rights.

• **Participation of President Lula in sessions of the Human Rights Council and the General Assembly**

As in previous years, President Luiz Inácio Lula da Silva participated in the opening ceremony of the General Assembly session in 2009, where he made a speech. In the same year, the president attended a regular session of the HRC for the first time, when he spoke to members of the Council.

• **Visit of the President of the Human Rights Council to Brazil**

In 2009, Brazil received the visit of Martin Uhomoibhi, Ambassador of Nigeria at the time President of the Human Rights Council. In his visit, from April 27 to April 29, Uhomoibhi was in Manaus, Rio de Janeiro, Brasília and Salvador, and met President Lula and several ministers, state authorities and some members of civil society organizations.

BRAZIL AND SPECIAL RAPPORTEURS OF THE HUMAN RIGHTS COUNCIL

In October 2009, Olivier De Schutter, Special Rapporteur on the right to food, visited Brazil. During his visit, he met representatives of the Brazilian government, and members of civil society organizations. The rapporteur called attention to improvements of the country as to the right to food, and defined his visit as one of the "most inspiring" he had ever made. However, he remarked that Brazil still has a great number of obstacles to overcome in order to consolidate and expand its policies to fight hunger.

In March 2010, De Schutter presented to the Human Rights Council a report on his visit, with recommendations on many topics such as legal protection of the right to food, government programs to fight hunger, and the impact of the agricultural question on the realization of the right to food, among others. After this presentation, the Brazilian delegation made two critic pronouncements on the report. Although acknowledging the merit of De Schutter's work, it denounced an alleged lack of objectiveness of the rapporteur, and a deviation of his mandate's focus.

In the same session, James Anaya, Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, published the report on his visit to Brazil in August 2008. The 25-page document comprised the following topics: (a) The indigenous peoples of Brazil, (b) Applicable law and indigenous-specific Government policy, (c) Self-determination of indigenous peoples, (d) Indigenous issues within the current political environment, (e) The Raposa Serra do Sol case, (f) Protecting indigenous lands and resources, (g) Process of land delimitation, demarcation and titling, (h) Non-indigenous occupation and invasion of indigenous lands, (i) Large scale development and mining projects, (j) Policy issues, (k) Health and (l) Education. After the presentation of Anaya's report, the Brazilian delegation made an oral statement providing information about improvements on the indigenous rights issue.

Still in the 11th session, Philip Alston, Special Rapporteur on extrajudicial, summary or arbitrary executions, formally presented a report on the visit he made to Brazil in November 2007. Since his official report was published in August 2008, the rapporteur did not emphasize the

Resolutions/No-action Motions/Amendments	Observations
Situation of human rights in the Islamic Republic of Iran (resolutions)	Brazil abstained from voting for resolutions presented in the Third Committee and in the General Assembly Plenary. In both cases, the resolutions were adopted.
Situation of human rights in the Democratic People's Republic of Korea (North Korea) (resolutions)	In 2009, Brazil abstained from voting in the Human Rights Council and the GA, in both the Third Committee and the Plenary. The resolutions were adopted in the three cases.
Human rights situation in Sri Lanka (amendment)	Brazil abstained from voting on the amendments presented by the European Union. The amendments were rejected since they did not achieve the majority of votes.
Situation of human rights in Myanmar (resolutions)	Though Brazil has voted in favor of the Myanmar/Burma resolution in the Human Rights Council, it has abstained from voting in the Third Committee and the Plenary. All resolutions were adopted.
Situation of human rights in the Democratic Republic of Congo and the strengthening of technical cooperation and consultative services (amendment)	Brazil abstained from voting on the amendments presented by Germany to the resolution A/HRC/RES/10/33 in the HRC. The amendment was rejected.
Combating defamation of religions (resolutions)	Brazil abstained from voting in the Third Committee and in the General Assembly Plenary, as well as in the HRC. The resolution was adopted in all cases.
Promoting human rights and fundamental freedom through a better understanding of traditional values of humankind (resolution)	Brazil abstained from voting on this resolution, which was adopted in the Human Rights Council.
Globalization and its impact on the full enjoyment of all human rights (resolutions)	Brazil abstained from voting on this resolution in both the Third Committee and the GA Plenary. The resolution was adopted in both cases.
International Covenants on Human Rights (amendments)	Brazil abstained from voting on the two amendments presented to the draft resolution A/C.3/64/L.22 still in the Third Committee. One of the amendments was approved and the other was rejected. Brazil has also abstained on the amendment presented and approved for this very resolution in the Plenary.
Protection of human rights and fundamental freedoms while countering terrorism (amendments)	Brazil abstained from voting on the two amendments presented in the Third Commission of the GA to the draft resolution A/C.3/64/L.43/Rev.1. Both amendments were adopted.

visit in his oral presentation. Even so, as one of the concerned States, Brazil had the opportunity to make an oral intervention. It commented on the rapporteur's considerations, provided additional information on issues discussed, and complimented the cooperation environment between the rapporteur and the Brazilian State. On the other hand, in the same session the Brazilian delegation made a second oral intervention, as a right of reply, disapproving the Alston's attitude "to silence about Brazil" during the interactive dialogue and "decided to share his own personal views of the world in a press conference," since the rapporteur spoke of Brazil in a press conference, after presenting his report.

In addition to the possibility of visiting countries, the rapporteurs can investigate allegations of human rights violations and communicate to the governments where these violations took place. In 2009, nine special rapporteurs presented reports to the Human Rights Council with notifications sent to Brazil arising from specific denunciations of torture; disrespect of freedom of opinion and expression; violence against women; disrespect of the right to adequate housing and education; threats and attacks against human rights defenders; summary, extrajudicial and arbitrary executions; and violation of the right to independence of lawyers and judges. These reports contain replies of the Brazilian government to only four of the notifications sent by the rapporteurs.

It is important to emphasize that, still in 2009, the Brazilian judge Gabriela Knaul Albuquerque was nominated Special Rapporteur on the independence of judges and lawyers. Gabriela is not the only Brazilian among the UN special rapporteurs. Raquel Rolnik, nominated Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context in 2008, is still exercising her mandate. Though they are Brazilian, the special rapporteurs work on an independent and autonomous basis, not representing the government of Brazil.

The participation of Brazil in the process of establishment, renewal or extinction of special rapporteur's mandates also stands out. Among resolutions about mandates of special rapporteurs, Brazil has abstained in 2009 from voting the resolution "Human Rights Situation in

the Democratic People's Republic of Korea" (A/HRC/RES/10/16), which established, among other things, the extension of the mandate of the Special Rapporteur on the Human Rights Situation in the Democratic People's Republic of Korea for one more year.

BRAZIL IN THE UNIVERSAL PERIODIC REVIEW OF THE HUMAN RIGHTS COUNCIL

During 2009, Brazil participated in the review of other 48 countries, making recommendations to 45 of them. Among the countries reviewed, 14 belonged to the African Group, 8 to the Latin-American and Caribbean Group (GRULAC), 6 to the East European Group, 7 to the West European and Others Groups (WEOG), and 13 to Asiatic Group.

From the 170 Brazilian recommendations in the Universal Periodic Review (UPR), 94 were accepted, 26 were rejected, 22 received general comments and 20 were pending⁵.

Observing Brazilian recommendations made to countries reviewed in 2009, one can notice some tendencies in the topics raised by the country. One is the constant concern with the ratification and implementation of the main international human rights instruments. In addition to that, the recurrent remark that countries enhance the dialogue with the Treaty Bodies and with UN special rapporteurs, and that they grant moratorium to the death penalty, so as to abolish it. Brazil has also made a series of recommendations regarding its own initiatives in HRC, such as the Human Rights Voluntary Goals (A/HRC/RES/9/12) and the United Nations Guidelines for the Appropriate Use and Conditions of Alternative Care for Children (A/HRC/RES/10/8), subjects systematically incorporated into Brazilian recommendations.

It is worth remembering that, in 2008, Brazil was reviewed in the UPR. Back then, the country received and accepted 15 recommendations to improve its human rights situation.

RATIFICATION OF INTERNATIONAL TREATIES AND PARTICIPATION IN TREATY BODIES

In June 2009, Brazil ratified the two optional protocols to the International Covenant on Civil and Political Rights.

The first one, celebrated in 1966, assigns capacity to the corresponding Committee to get individual complaints, and the second, celebrated in 1989, refers to the abolition of the death penalty. Both documents were approved in the Congress (House of Representatives and Senate) on June 2009 and, then, a legislative decree that approved both texts was published in the Brazilian Official Federal Gazette. The international ratification occurred on September 25th 2009, with Brazil depositing the ratification before the UN.

Brazil still did not ratify two important international instruments: the International Convention for the Protection of All Persons from Enforced Disappearance, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Furthermore, Brazil neither signed nor ratified the Optional Protocol on Individual Petitions to the International Covenant on Economic, Social and Cultural Rights, opened for signature in September 2009.

In 2009, Brazil reported to or received notices from the following Treaty Bodies:

- **Committee on Economic, Social and Cultural Rights:** in 2009, Brazil finished its review under the Committee on Economic, Social and Cultural Rights, initiated in 2007, when the country sent its second periodic report to the Committee. The phases of Brazil's participation in the Committee included: report sending, dissemination by the UN, preliminary questionings by the Committee, Brazil's replies to such questionings, Brazil's evaluation session by the Committee in Geneva, and dissemination of concluding observations of the Committee on ESCR. The entire process of Brazilian participation in this agency is featured in the 2008/09 edition of this Yearbook, available in www.conectas.org/anuario2008_2009.
- **Committee against Torture:** in 2009, the Committee published the final report of the inquiry launched to investigate allegations of torture in Brazil. The procedure started in 2005, with the visit of experts to Brazil. The final report, besides the description of the visit, makes a series of recommendations to the Brazilian government. In the same document, the government offers answers to some of the issues raised by the Committee.

Still in 2009, the Committee against Torture sent to the Brazilian government a list of issues to guide the preparation of the next periodic report of Brazil to the Committee, due on October 2010. In the document, the Committee asks several questions on subjects to be mentioned by the country in its report.

- **Committee on the Elimination of Racial Discrimination:** in 2009, Brazil received a notice from this Committee referring to the situation of the demarcation of the indigenous lands Raposa Serra do Sol. The Committee sent two early-warnings to the country: the first one, in September 2009, after receiving with great satisfaction the news about the Federal Supreme Court decision regarding the demarcation of the indigenous lands Raposa Serra do Sol, asking the Brazilian government to send an updated and detailed record of the situation in the indigenous lands. Not getting any reply, the Committee sent a new letter in May 2010.

In 2009, there were two Brazilians among the independent experts members of the Committees: Silvia Pimentel, reelected in 2008 for the Committee on the Elimination of Discrimination against Women, and José Augusto Lindgren Alves, member of the Committee on the Elimination of Racial Discrimination since 2002.

VISIT OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS TO BRAZIL

In November 2009, Navanethem Pillay, UN High Commissioner for Human Rights, visited Brazil. Between November 8th and 13th, the High Commissioner visited Salvador, Rio de Janeiro and Brasília. During her mission, she met authorities of the Brazilian government and representatives of civil society organizations. Besides, she visited poor communities and social projects in these three cities.

During the visit, a Memorandum of Intent was signed between the Office of the United Nations High Commissioner for Human Rights and the Brazilian government, aiming at increasing the cooperation and exchange of good practices in human rights.

ACTION TAKEN BY CONECTAS HUMAN RIGHTS AND THE BRAZILIAN COMMITTEE ON HUMAN RIGHTS AND FOREIGN POLICY

• Highlights of Conectas's Actions

In 2009, Conectas participated of all three regular sessions of the Human Rights Council. During the 10th session, it made oral statements on the human rights situation in both Zimbabwe and Burma. During the 11th session, it released a written statement regarding the visit of President Lula to the Council, made oral statements on the right to health, on the report presented by the Special rapporteur on extrajudicial, summary or arbitrary executions, and on the visit of the HRC President to Brazil. During the 12th session, Conectas made an oral statement about the human rights situation in Honduras after the coup d'état, on the right of people living with HIV-AIDS, and on the report presented by the Special rapporteur on the situation of human rights and fundamental freedoms of indigenous people after his visit to Brazil.

Conectas also made oral statements, in partnership with local organizations, on the adoption of Universal Periodic Review (UPR) outcome reports of the following countries: Cape Verde, Nigeria, Mexico, Uruguay and Chile. It also organized and participated in capacity-building courses on the UPR, which involved organizations from 14 countries of Africa and Latin America.

In 2009, Conectas organized, in partnership with the Brazilian Interdisciplinary AIDS Association (ABIA) and the Sexuality Policy Watch (SPW), a meeting with civil society organizations from South American countries and Anand Grover, Special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Conectas also attended the meeting held in Brasília, during the visit of the United Nations High Commissioner for Human Rights, Navanethem Pillay, providing information on human rights violations in the prison system of Espírito Santo. It also met with the President of the Human Rights Council at the time, the Nigerian ambassador Martin Uhomoibhi, during his official visit to Brazil in 2009.

• Highlights of the Brazilian Committee on Human Rights and Foreign Policy's Actions

In 2009, members of the Brazilian Committee on Human Rights and Foreign Policy took part in a meeting held by the Brazilian government to present the second report sent to the UN Committee on Economic, Social and Cultural Rights. The Brazilian Committee also participated in meetings to discuss the content of the Third National Program for Human Rights (PNDH-3), released in January 2010, focusing on its international aspects.

In addition, the Committee organized two seminars: one on Brazil's priorities and positions at the international human rights system and the second entitled "The Prevalence of Human Rights in Brazilian Foreign Policy: Challenges for Citizen Participation and Democratic Control".

Notes - Executive Summary

1. Proposals are: resolutions, amendments and motions submitted for approval. Referring to the Human Rights Council, decisions and pronouncements of the agency's president were also included, since their procedures are similar.
2. The total number of proposals considered (131) does not represent the sum of Brazil's adherences to the consensus, abstentions, votes in favor and votes against because, in 2009, a statement of the HRC President was adopted without demanding Member States to take a position.
3. Idem.
4. Among these proposals approved by consensus by the HRC in 2009, 48 are decisions referring to the adoption of reports of the Universal Periodic Review. Due to the high number of proposals approved by consensus, these were not listed with proposals approved by voting. However, they are presented in the table with all proposals discussed by the Human Rights Council in 2009 in the respective chapter.
5. The sum total of numbers that refer to the countries' reactions is 162. This numeric difference is explained by the fact that recommendations that Brazil made to Saudi Arabia and Malaysia were not in the UPR outcome report due to lack of time. Therefore, they were not officially recognized by the State under review. Such recommendations are in the table for didactic purposes, and their content was collected from written pronouncements delivered by Brazil. They are available in the Council Extranet (<http://portal.ohchr.org/portal/page/portal/HRCExtranet> - user: hrc extranet password: 1session). Access on July 26th, 2010.

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