

Constitutional Rights in Brazil: A Legal Fiction?

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“Today Brazil has one of the most beautiful Constitutions in its history in all it says with respect to fundamental human rights... Moreover, there is nothing to complain about in relation to our laws in this area. The problem is in the disturbing distance that separates the rights inscribed on paper from their effective exercise, and above all in the guarantee of their exercise in practical life.”

Editorial: *Veja Magazine* (Brazil's 'Time' Magazine), 15 February 1989, p. 23.¹

1. First Considerations

Brazil is a country under a constitutional order that formally protects a vast array of 'fundamental' human rights. Under the Brazilian Constitution its citizens possess basic rights to life, liberty, formal equality, security, and numerous other 'fundamental' rights. According to Keith S. Rosenn, Article 5, alone, 'impressively appears to protect virtually every form of known human right'.² He says that the concept of human rights in Brazil is more thoroughly protected in legislation than in any other country in the world.³

But in practice, the reality on the ground demonstrates how rights ensconced in theory can considerably differ from rights in practice. Despite its rights-based written constitution and apparently sophisticated system of judicial enforcement, in Brazil, human rights are frequently violated with impunity. This article seeks therefore to reveal how the protection of constitutional rights in Brazil is far from exemplary.

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¹ Quoted from Rosenn, Keith, *Judicial Review in Brazil: Developments under the 1988 Constitution* (2002) 7 *Southwestern Journal of Law and Trade in the Americas* 291, at 318.

² Rosenn, *Brazil's New Constitution: An Exercise in Transient Constitutionalism for a Transitional Society*, 38 *American Journal of Comparative Law* 773, at 778.

³ Rosenn, *Judicial Review in Brazil: Developments under the 1988 Constitution*, 7 *Southwestern Journal of Law and Trade in the Americas* 291, at 315.

2. Brazilian Constitutional Rights

While this article attempts to explain the reality of constitutional rights in Brazil, a better understanding of the issue may be achieved by observing the historical development of the whole ideal of human rights. According to the late Karel Vasak, Unesco's Director of Human Rights and founder of the *International Institute of Human Rights* (Strasbourg), human rights can be divided into three generations of rights. The division follows the three watchwords of the French Revolution: 'liberty, equality and fraternity'.⁴ While this is only an oversimplification of the matter, the model is nonetheless useful for the purposes of this article.

First-generation rights epitomize the ideal of individual liberty against governmental oppression. They are basic rights such as were advocated during the 1688 Glorious Revolution (Great Britain), and afterwards by American and French revolutionaries in the eighteenth century. The content of first-generation rights is revealed especially in the Bill of Rights of the U.S. Constitution.

The U.S. Bill of Rights, one of the first human-rights declarations in modern history, was conceived on the basis of Lord Acton's aphorism that political power corrupts and absolute power corrupts absolutely. It declares the supremacy of the citizen over the state, and accordingly enumerates our most basic rights to life, security, property, free speech, free association, religious freedom, fair and public trial, and so forth. A constant refrain demonstrated by the enumeration of these rights is the preoccupation with preserving human life and liberty, thereby ensuring the means of civil resistance against political oppression.

After the historical consolidation of these first-generation rights, there appeared in the late nineteenth century a new generation of rights which demanded more governmental intervention in order to guarantee that everyone should be satisfied in their needs for shelter, clothing, food, health, and education. Second-generation rights also encompass the rights to work, rest, social security, public education, and leisure.

Finally, a third generation of rights has emerged in more recent years, covering a new range of human rights, such as those to a healthy environment, self-determination, and preservation of cultural traditions. Some of these rights are actually legal privileges set aside only for certain ethnic, religious, or gender groups, on the grounds that they are, or have been, somehow discriminated against in society.

In reality, the Constitution fully recognizes all these generations of rights. Its preamble explicitly states that the document's major objective is to 'institute a democratic state for the purpose of ensuring the exercise of social and individual rights, liberty, security, well-being, development, equality and justice

⁴ See Vasak, Karel, *International Dimensions of Human Rights*, Westport: Unesco, 1982.

as supreme values of a fraternal, pluralist and unprejudiced society, founded on social harmony and committed, in the internal and international orders, to the peaceful settlement of disputes’.

The Brazilian Constitution also states in its first article that ‘the dignity of the human person’ and ‘the primacy of human rights’ comprise ‘fundamental principles’ on which the state must sustain its power as a democratic government under the rule of law (*Estado Democrático de Direito*).⁵ This article also declares that all power emanates from the people, who must exercise this power through their elected representatives in parliament, and also by means of popular plebiscite, referendum, and proposed laws directly introduced by them.⁶

Undoubtedly the Constitution’s most impressive article is found in Article 5. This article provides for the equality of legal status between men and women as well as rights to free speech and association, private property, due process of law, etc. Its fourth paragraph states that all human-rights treaties entered into shall have the force of constitutional amendment upon approval by a three-fifths majority of both houses of the National Congress. This provision is quite pertinent because, in the words of the U.N. Human Rights Commission, the country has ‘a comprehensive national policy for the promotion of human rights’, including ‘the ratification of most key international and regional human rights treaties’.⁷

The Constitution grants Brazilian citizens basic rights to education, health, work, and leisure.⁸ It also assures protection of motherhood and childhood as well as public assistance for the needy and disadvantaged. In relation to working rights, the list of rights includes protection against arbitrary dismissal, social security, minimal wage, the right to strike, the right to free union association, paid weekly leave, maternity leave, prohibition of difference in wages between men and women, and so forth.⁹

As for third-generation rights, the Constitution contains, among other several provisions, the constitutional right to an ‘ecologically balanced environment’.¹⁰ To ensure the application of this rather abstract right, the basic law also stipulates the duty of every government to provide for the treatment of the

⁵ Braz. Const., Art.1.

⁶ Braz. Const., Articles 1 and 14, I to III, and Article 61, Paragraph 2: ‘The initiative of the people may be exercised by means of the presentation to the Chamber of Deputies of a bill of law subscribed by at least one percent of the national electorate, distributed throughout at least five states, with not less than three-tenths of one percent of the voters in each of them’.

⁷ UN Human Rights Commission, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions in Brazil (Asma Jahangir)*, 28 January 2004, p.6, at: [http://193.194.138.190/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/2c5ea570c1663aacc1256e5200338ca9/\\$FILE/G0410598.doc](http://193.194.138.190/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/2c5ea570c1663aacc1256e5200338ca9/$FILE/G0410598.doc)

⁸ Braz. Const., Art.6.

⁹ Braz. Const., Art.7, and Braz. Const., Art.9.

¹⁰ Braz. Const., Art.225.

nation's eco-system, preserving its eco-diversity against any form of practice that might endanger the species or subject animals to cruel treatment.¹¹

The Constitution also guarantees cultural rights. So the government needs by law to support and foster the appreciation and diffusion of cultural expressions, particularly expressions of popular, Indian and Afro-Brazilian cultures, or of any significative group within society.¹²

In case the Brazilian Constitution had 'forgotten' to mention any 'fundamental' right, Article 5 adds that rights explicitly mentioned therein do not preclude others derived from the ideal of 'democratic state under the rule of law' (*Estado Democrático de Direito*), or from any international conventions entered into by the government. Finally, there is a *cláusula pétrea* ('stone clause') in Article 60 which explicitly forbids any amendment to the Constitution aimed at abolishing: the federative form of State; the direct, secret, universal and periodic vote; the doctrine of separation of powers; and the individual rights and guarantees of the citizen, as they go implicitly or implicitly mentioned in the constitutional text.

As can be seen, the Brazilian Constitution is strongly committed to the idea of human rights. It contains a lengthy list of 'fundamental rights', although the scope of this article does not allow for a detailed observation of all of them. This article focuses attention only on those rights which are more broadly regarded as really important. These are: the right to life and security of the person; prisoners' rights; children's rights; women's rights; workers' rights; Indian rights; freedom of expression and freedom of the press.

2.1. The Right to Life and Security of the Person

The Brazilian Constitution states, in Article 5, that everyone residing in the country must be ensured the right to life. This Article also informs that no-one living in the country shall be subject to capital punishment nor to the penalties of life imprisonment, hard labour, banishment, and cruel punishment.¹³ For purposes of comparison, the U.S. Constitution, for instance, only insures that nobody will lose his or her life without due process of law, through formal proceedings taken by the regular courts. One may infer from this that the constitution in the United States provides considerably less protection than Brazil's.

In reality, however, the right to stay alive in Brazil is not as guaranteed as it may appear from the basic law. While today's democratic period was initially hailed as the commencement of a new era of human rights and freedoms, the country has been facing an explosion of violence and criminality over the last few years, cheapening human life in spite of the status the law ascribes to it.

¹¹ Braz. Const., Art.225.

¹² Braz. Const., Art.215

¹³ Braz. Const., Art.5, XLVII.

Homicide is currently the major cause (58%) of early death for people in the country.¹⁴ In today's Brazil, notes Joseph A. Page:

Violent crime can strike at any time and in any place. Crowded city streets offer no refuge, as muggers prey on pedestrians and occupants of motor vehicles while onlookers go silently about their business. Those not wealthy enough to convert their dwellings into fortresses can never be certain that one day intruders might not force their way in and commit violence against them.¹⁵

A report from the United Nations reveals that while Brazil has only 2.8% of the world's population, it is nonetheless responsible for more than 11% of all registered homicides. According to the IBGE (Brazilian Institute of Geography and Statistics), more than 600,000 people were killed in Brazil between 1980 and 2000, an average of 30,000 a year.¹⁶ For purposes of comparison, the thirty-year civil war which devastated Angola killed 'only' 350,000 people.¹⁷ Thus Timothy Cahill, an investigating leader for Amnesty International, explains that the number of deaths in the country falls easily within the U.N. parameters for a situation of civil war.¹⁸

Once known as '*Cidade Maravilhosa*' ('Marvellous City'), Rio de Janeiro is now better called a 'powder keg' and 'city under siege'.¹⁹ More people die every year in Rio as victims of violence than did all US soldiers during the Vietnam War.²⁰ In its shantytowns drug-lords 'have moved to a position of total dominance over community institutions'.²¹ The arm of the law is not applied in these regions because criminals have established what people properly describe as 'parallel government'.²² These are areas that have become exempt from the normal process of law and order. There is a strong feeling that such no-go areas are spreading. In fact, public authorities at Rio de Janeiro openly recognise that the state has lost control over numerous areas of the city. In May 2004, state security secretary, Anthony Garotinho, classified the situation as being 'out of control', and that 'to say the opposite would be to ignore the reality'.²³ A vivid description of this quite dramatic

¹⁴ Smith, William C. and Messari, Nizar, *Democracy and Reform in Cardoso's Brazil: Caught Between Clientelism and Global Markets?* (1998) 33 *The North-South Agenda*, University of Miami 1, at 8.

¹⁵ Page, Joseph A., *The Brazilians*. Reading/MA: Addison-Wesley, 1995, at 243.

¹⁶ Gasparotto, Rafael, *In Brazil, 82 Murders a Day, for 20 Years*, *Brazzil Magazine*, Los Angeles, April 2004, at: <http://www.brazzil.com/content/view/1742/52/>

¹⁷ Teixeira, Ib, *Dissonância*, *O Globo*, Rio de Janeiro, 4 April 2002.

¹⁸ See Marcus, Alan, *Brazilians, Those Barbarians!* *Brazzil Magazine*, Los Angeles, 12 April 2004, at: <http://www.brazzillog.com/2004/html/articles/apr04/p115apr04.htm>

¹⁹ Zobel, Gibby, *Lawless Rio: Chief Police Admits defeat as Criminal Rampage*. *The Guardian*, London, 19 May 2003.

²⁰ Teixeira, op. cit.

²¹ Chetwynd, Gareth, *Deadly Setback for a Model Favela*, *The Guardian*, London, 17 April 2004, at: <http://www.guardian.co.uk/brazil/story/0,12462,1193763,00.html>

²² Cristaldo, Janer, *In Brazil, Criminals are our Heroes and Saints*. *Brazzil Magazine*, Los Angeles, 11 May 2004, at: <http://www.brazzil.com/content/view/1774/59/>

²³ *Sunday Herald Sun*, *Massacre in Rio: Rogue Police Kill 30*, Melbourne, 3 April 2005, at 44. Similarly, José Vicente da Silva, a former federal security secretary, says 'things are getting each day worse' and regards as 'precarious' the control of the authorities over many parts of the city.

reality is provided by this May 2003 article published in London daily *The Guardian*:

Heavily armed drug gangs launched a series of audacious attacks that have shocked the city's residents. Homemade bombs were thrown at the luxury Hotel Le Meridian on Copacabana beachfront and at a hotel and restaurant in nearby Leblon... Shots were fired at the up-market Hotel Glória. A grenade was thrown at one shopping centre and another was machine-gunned. Scores of buses [were] burned out and gun battles close the city's main roads.²⁴

From 1985 – the last year of Brazil's twenty-year military regime – to 2005, the number of people murdered in Brazil grew 237 percent.²⁵ Critics of that regime blame the current malady on that period of authoritarianism. They argue it has promoted a culture of violence, arbitrariness and impunity.

On the other hand, one of the hypotheses to at least partially explain the explosion of criminality in Brazil over the last two decades is that left-wing radicals, who resorted to terrorist activities during the military regime and subsequently served time in prison, passed on to criminals their radical ideology and, above all, the skills they have developed.²⁶ They did so in the belief that 'social injustices' somehow justify criminal behaviour. They would have embraced a Marxian theory that presents the common criminal as a 'rebellious victim' of capitalism, seeing the illegal behaviour as a means of political activism or, in other words, an instrument of the oppressed against the capitalist system.²⁷ According to Joseph A. Page:

There is evidence that political prisoners were held together with common convicts... in the late 1960s and early 1970s, and that the latter learned from the former not only how to organize and defend their rights within the penitentiary but also some of subtleties involved in planning and executing bank robberies and kidnappings. Moreover, this was the period when inmates founded the 'Red Command', a network that enable organized crime to take virtual control of major prisons in the state of Rio de Janeiro and eventually to draw into its ranks some of the major traffickers in the region... Many of the new drug lords... have learned their trade... behind prison bars, where they have come into contact with the 'Red Command'. They do not hesitate to use violence or even to engage the police in an occasional gun battle.²⁸

Although the above argument is only hypothetical, there is no doubt that impunity constitutes a major contributor to the explosion in crime. The sense of impunity is widespread despite the fact that Article 144 to the Constitution says that public security is the state's primary obligation. However, state authorities have shown a disturbing lack of ability to effectively protect this most basic right. In 2003, the United Nations revealed that only 7.9% of the

²⁴ Zobel, op. cit.

²⁵ Ituassu, Arthur, *Organized Crime Shows the World Who's the Boss in Brazil*, Brazzil Magazine, Los Angeles, 17 May 2006, at: <http://www.brazzil.com/content/view/9602/78/>

²⁶ See Carvalho, Olavo de, *A Nova Era e a Revolução Cultural*, Rio de Janeiro: Instituto de Artes Liberais/Stella Caymmi Editora, 1994.

²⁷ See Kelsen, Hans, *The Communist Theory of Law*, London: Stevens & Sons, 1955, at 45 & 102.

²⁸ Op. cit., at 244.

49,000 cases of murder officially reported in that year were successfully prosecuted.²⁹

This reflects the fact that the police rarely catch dangerous criminals. Cases are often not investigated diligently, even when they involve serious offences such as rape, torture and first-degree murder. Instead, police investigations are often conducted in a very superficial and incomplete manner, if not performed with clear bad-faith. As a result, even notorious cases of first-degree murder might not produce enough evidence to even initiate the trial of perpetrators. Brazilian courts actually condemn only 1% of all suspects for first-degree murder. As an explanation for this, judges argue that inquiries transferred to them by the public prosecution are so poorly elaborated that they might apparently find no evidence to condemn even a notorious serial killer.³⁰ As for the few who are convicted of crimes such as first-degree murder, sentences are so lenient that they are freed after a few years in prison.

In all modern societies young people account for by far the majority of all crimes, and notably serious crimes, including homicide, rape, assault, and robbery.³¹ Even so, a well-known Brazilian criminologist points to the anomaly of a 17-year-old being able to vote for President but being criminally ineligible and thereby not accountable for his or her criminal acts.³² Rather, juvenile delinquents may face no more than a three-year internment in an 'educational establishment'. In such 'educational' places, however, dangerous youngsters are not properly segregated from those who are socially deprived. As a result, socially disadvantaged children have been brutally tortured, murdered and sexually abused by depraved teenagers, with the complicity of the authorities themselves.³³

But it is also important to consider that crime is normally interpreted by the Brazilian elite as being merely the result of a deprived social environment. Although this interpretation is rather understandable in light of their guilt feelings and shame over their own responsibility for the state of the nation, it fails to properly consider that crime can also be the result of individual choice.³⁴ While there is truth in suggesting that some criminals have emerged

²⁹ Unger, Brooke, *Not-so-swift Justice: How to Reform Brazil's Justice*, *The Economist*, 25 March 2004, at 30.

³⁰ See Pinter, Silvia, *O Alto Preço da Violência Brasileira*, Interview with Ib Teixeira, *A Notícia*, Joinville, 3 February 2002, at: <http://www.an.com.br/2002/fev/03/1ger.htm>

³¹ Dahrendorf, Ralf, *Law and Order*, London: Stevens & Sons, 1985, at 30.

³² Pinter, op. cit.

³³ Organization of American States (OAS), *Report on the Situation of Human Rights in Brazil. Inter-American Commission on Human Rights* (1997), at: <http://www.cidh.oas.org/countryrep/brazil-eng/index%20-%20brazil.htm>

³⁴ As evidence that crime is also a moral problem, Peter Hitchens demonstrates in his interesting *The Abolition of Liberty* that the highest levels of crime in his native England have occurred at a time of unheard-of prosperity, public healthcare, and social welfare. In 1931, a time of economic crisis, he shows that the annual crime figure was only 159,000, whereas the population stood at 39,948,000. In 2001, however, the 'wealthy' England saw its population rising to just 53,137,000 and the crime rate to astounding 5,200,000. – Hitchens, Peter, *The Abolition of Liberty: The Decline of Order and Justice in England*, London: Atlantic Books, 2003, at 14.

from a background of social deprivation, this sort of determinism is proved particularly inadequate by the many exceptions to the rule. It is actually an unfair slur on the millions of poor Brazilians who have grown up in utterly deprived socio-economic conditions but who are honest citizens who have never resorted to crime. By way of contrast, many crimes in Brazil are committed by members the elite. Their main motivation is not need, but greed. They know that the *lei da impunidade* ('law of impunity') is the 'law' most commonly applied to people like them.

Naturally, the undesirable combination of poor education, poor work habits, and a difficult socio-economic environment, can make some people find in crime an alternative form of 'employment'. In the context of impunity and lack of legal incentives for the development of honest economic activity, the option of crime can eventually appear rather attractive. It is surely more attractive in the present circumstances than if there were a real fear of punishment.

Unfortunately, the easiest target of dangerous criminals is obviously the ordinary citizen who cannot pay for 'special protection' and has had his or her right to public security violated by the state. Indeed, a lawyer with a PhD from the prestigious University of São Paulo (USP), Dr Candido Mendes Prunes, says that policies regarding public security in Brazil are tantamount to 'invitation to criminality'. He also comments that the state provides a whole 'package of incentives' to dangerous criminals such as no honest citizen can possibly access to develop lawful economic activities. As part of this 'package' Prunes highlights the lack of preventive policing, the lack of ability to investigate cases diligently, and judicial delay.³⁵ The last 'incentive' happens because long police enquiries allow offenders to benefit from the statute of limitations that sets up a limit of time for the trial of suspects.

Not surprisingly, people are inclined to believe that criminals have not so much to fear about punishment from the state. This sense of impunity explains why so many of them have resorted to taking justice into their hands. And despite how primitive do-it-yourself justice may seem, mob executions and lynchings have become a daily occurrence throughout the country. According to the Organization of American States (OAS), these actions constitute a natural solution to 'the lack of a functional and effective police system, and the fact that the public does not believe in the effectiveness of the justice system'.³⁶ Indeed, as Katherine Hite and Leonardo Morlino point out:

The majority of Brazilians attribute high levels of crime and everyday violence to weak authority. Yet citizens also perceive the... police as corrupt, unjust, and above the law. Thus, while there is indifference and even support for harsh treatment of alleged criminals, there is also a strong sense that 'justice is a joke' and 'impunity is widespread'.³⁷

³⁵ Prunes, Cândido Mendes, *Frouxos de Riso*, Rio de Janeiro: APPADI, August 2004, at: <http://www.midiasemmascara.org/artigo.php?sid=2452>

³⁶ op. cit.

³⁷ Hite, Katherine and Morlino, Leonardo, *Problematizing the Links Between Authoritarian Legacies and 'Good' Democracy*. From K. Hite and P. Cesarini (eds), 'Authoritarian Legacies and Democracy in Latin America and Southern Europe', Notre Dame: University of Notre Dame Press, 2004, at 59.

In Brazil, police officers are in general unqualified, unprepared, corrupt and poorly paid. An ancillary body to the armed forces, the state police have been accused of treating suspects as 'military enemies who are to be destroyed'.³⁸ In some states the salary of police officers begins at just a few dollars above the minimum wage fixed by legislation.³⁹ For a career demanding courage, discipline, and sensitivity, the state provides low salary and inadequate training. Due to visibly poor wages, honest officers have to live with their families in very poor areas, normally under the control of drug gangs.⁴⁰

But it is also the case that policemen have been involved in extortions, kidnappings, the torturing of suspects, arbitrary detentions, trafficking of narcotics and execution by death squads.⁴¹ Rather than expelling such officers, some state authorities have actually decorated them.⁴² In 1997, the governor of São Paulo promoted a policeman responsible for at least 40 extra-legal executions⁴³. Likewise, in 1995, the state government of Rio de Janeiro established 'salary bonuses' for police officers engaged in 'acts of bravery'. In practice, however, the Human Rights Watch argued that those 'acts of bravery' were frequently confused with the summary execution of suspects.⁴⁴

When the police in Rio executed a record 100 hundred people, in April 2003, its public-security secretary, Anthony Garotinho, went on television to praise the killings as a very 'positive development'. He assured that the police had limited the killing 'only' to criminals.⁴⁵ The explanation seemed quite relevant as it is not always that the police kill 'only' criminals. On 2 April 2005, for example, the police in Rio massacred 30 people in a shantytown in reprisal for the arrest by the state government of three policemen who were filmed by residents of that area lobbing the heads of their victims over the wall of a house.⁴⁶

2.2. Prisoners' Rights

The Brazilian Constitution declares that no punishment can be cruel or lead to the offender's death. It also states that nobody can be subject to any form of

³⁸ Goetz, Paul A., *Is Brazil Complying with the U.N. Convention on the Rights of the Child?* (1996) 10 Temple International and Comparative Law Journal 147, at 148.

³⁹ U.S. Department of State, *1999 Country Reports on Human Rights Practices – Brazil*, Bureau of Democracy, Human Rights, and Labour, February 2000, at: <http://lanic.utexas.edu/lance/courses/jacobi/las310/resources/human%20rights-%20brazil.htm>

⁴⁰ Kanitz, Stephen, *Polícia e Segurança*, Revista Veja, ed.1714, Year 34, n.33, 22 August 2001, at 15.

⁴¹ U.S. Department of State, *2004 Country Reports on Human Rights Practices – Brazil*, Bureau of Democracy, Human Rights, and Labour, February 25, 2004, at: <http://www.state.gov/g/drl/rls/hrrpt/2003/27888.htm>

⁴² Chevigny, Paul, *Defining the Role of the Police in Latin America*. From J.E. Méndez, G. O'Donnell and P.S. Pinheiro, 'The (un)Rule of Law and the Underprivileged in Latin America', University of Notre Dame, 1999, at 53.

⁴³ Human Rights Watch; *Police Brutality in Brazil*, April 1997, at: <http://www.hrw.org/reports/1997/brazil/>

⁴⁴ Id.

⁴⁵ Herald Sun, *Justice in Brazil*, Melbourne, 18 November 2003.

⁴⁶ Herald Sun, *Massacre in Rio*, op. cit.

torture or inhumane or degrading treatment.⁴⁷ Moreover, torture is treated as a heinous crime, not subject to bail or any other form of grace or amnesty whatsoever.⁴⁸ In order to abide by constitutional law and international obligations assumed upon the nation's ratification of the 1989 *International Convention Against Torture*, federal parliament passed in 1997 a legislation against torture.

In practice, however, the dramatic reality of prisoners' rights differs radically from what is written in the law. Prisons in Brazil are often overcrowded and totally unfit for human habitation. Many prisoners and suspects have been killed, tortured, and beaten while in prisons and police stations, although such cruelty perpetrated against criminal suspects and prisoners cannot be ascribed merely to meagre financial resources.⁴⁹ The problem seems to be that police officers have simply got used to operating in such a violent, extra-legal manner.⁵⁰ As a well-known report from Amnesty International (AI) explains:

Torture and ill-treatment continue to be used by elements within all Brazil's police forces as a means of investigation and to extract confessions... Torture was also used to extort money and serve the criminal interests of corrupt officials. Although the federal government launched a campaign to combat torture in 2001, prosecution figures under the 1997 Torture Law continue to be extremely low given the endemic practice of the crime.⁵¹

Brazilian police use torture of criminal suspects as a common method of investigation. In acting as the U.N. special *rappporteur* on the problem of torture in Brazil, Sir Nigel Rodley commented that the torture of criminal suspects takes place at initial hearings, temporary detentions and long-term detentions.⁵² This was confirmed by a former police chief in Rio de Janeiro, who says torture is indeed a 'normal practice' in prisons and police stations. But he justified it by alleging that Brazilians would consider torture 'a just punishment for common criminals, as a legitimate means of obtaining information'.⁵³

This may explain why a considerable number of police precincts in Brazil include a torture room. A common technique of torture is the *pau de arara* (parrot's perch). As described by Human Rights Watch (HRW), the parrot's perch is a bar on which the victim is suspended from the back of his knees with his hands tied to his ankles. Once on the perch, the victim, usually stripped naked, is subjected to severe beatings, electric shocks, and near-

⁴⁷ Braz. Const., Art.5, III

⁴⁸ Braz. Const., Art.5, XLIII.

⁴⁹ Human Rights Watch; *Behind Bars in Brazil*. 01 December 1999, at: <http://www.hrw.org/reports98/brazil/>

⁵⁰ Id.

⁵¹ op. cit.

⁵² U.S. Department of State (2004), op. cit.

⁵³ Karatnycky, Adrian et al, *Freedom in the World: The Annual Survey of Political Rights & Civil Liberties*, New York: Freedom House, 2003, at 108.

drowning. Near-drowning is a torture technique where the victim's head is submerged in a tank of water, or water is forced into his mouth and nostrils.⁵⁴

The Constitution also stipulates that the place where convicts serve their prison term must correspond to the nature of their offence as well as the age, sex, and other characteristics.⁵⁵ Moreover, dangerous inmates must be segregated from less-dangerous ones. In practice, however, non-violent criminals are normally crowded together with dangerous criminals, who sometimes kill them. Such killings have been encouraged by impunity the killers enjoy, safe in the knowledge that few such incidents are ever properly investigated.

Whereas prisoners are entitled by law to free access to medical care, legal aid, and social services, these benefits are very rarely provided. The fact is that most prisoners do not receive even basic medical care, including prescription for the treatment of diseases like tuberculosis and HIV/AIDS, both of them which have now reached epidemic levels among inmates. In some police lockups 'severely ill and even dying prisoners remain crowded with other inmates'.⁵⁶

Also reported is the fact that female prisoners also do not have their basic rights respected. A common form of abuse visited on female prisoners is extortion for sexual favours.⁵⁷ While the Constitution states that female detainees can stay with their babies during the nursing period, they are often taken away from them after they have been delivered.⁵⁸ Moreover, female detainees inform that torture is not limited to male inmates. One female prisoner told HRW investigators that she had once been stripped naked, wet, placed on a perch, and severely beaten by four male officers who administered electric shocks to her whole body, including the vagina.⁵⁹

But undeniably, one of the most atrocious acts ever perpetrated by the police was the massacre of 111 inmates at the Carandirú prison, São Paulo, in 1992. Ironically, people elected the officer who commanded the whole operation, Colonel Ubiratan Guimarães, to the State Legislative Assembly.⁶⁰ His election granted him parliamentary immunity from the judicial decision sentencing him to jail.⁶¹ He remained free and serving as an elected member of parliament. Those who voted Colonel Guimarães into the state legislature believe the police have the right to sometimes behave in a violent, extra-legal manner. Such approval is shown in an opinion poll carried out a few days after the prison massacre. It revealed that 60% of all those surveyed approved those extra-legal killings. The survey also found that 56% of them

⁵⁴ *Behind Bars*, op. cit.

⁵⁵ Braz. Const., Art.5, XLVIII.

⁵⁶ *Behind Bars*, op. cit.

⁵⁷ U.S. Department of State (2004), op. cit.

⁵⁸ Human Rights Watch, *Behind Bars in Brazil*, op. cit.

⁵⁹ *Id.*

⁶⁰ U.S. Department of State (2004), op. cit.

⁶¹ Unger, op. cit.

thought that protection of human rights should not be extended to some criminals, particularly murderers and rapists.⁶²

2.3. Children's Rights

People in Brazil are bound by law to ensure basic rights to children. Article 277 of Brazil's Constitution states: 'It is the duty of the family, of society, and the state to ensure to children and adolescents, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, family and community life, as well as to protect them from all forms of neglect, discrimination, exploitation, violence, cruelty and oppression'.

There are several other legal provisions related to protection of children against all forms of abuse, violence, and sexual exploitation. Some international lawyers hail the country's constitutional and statutory protections as a model to the world in all it says about children's rights. UNICEF, for instance, describes Brazil's *Child and Adolescent Statute* (ECA), a legislation created to implement constitutional provisions regarding the protection of children's rights, as one of the world's most advanced.⁶³ Likewise, jurists from the Inter-American Commission on Human Rights praise the ECA for its embracing of a 'special concept' of children's rights; for 'introducing innovations in the policy of promotion and defence of their rights in every dimension: physical (health and food); intellectual (the right to education, professional training, and protection in the workplace), emotional, moral, spiritual and social (the right to liberty, to respect, to dignity, to harmonious family and community relationships)'.⁶⁴

Despite these formal provisions, the main problem in Brazil is the huge gap separating children's rights as legally inscribed in law from their effective exercise or guarantee in practice. For, although the Constitution and the ECA grant children with numerous 'fundamental' rights, such rights frequently do not meet with compliance. For Page, 'nowhere does the gap separating rhetoric and reality emerge more starkly than in the contrast between the guarantees afforded children by the 1988 Constitution and the cold-blooded assassination of boys and girls who live on city streets. If there is anything that most vividly symbolizes the perversity of the contemporary wave of violence in Brazil, it is the way it has victimized children'.⁶⁵

One of the ECA authors suggests that this law is not properly enforced because people in Brazil are not 'aware of the fact that... parents are supposed to protect their children, local authorities should assist parents and, finally, the right place for a child is in school'.⁶⁶ In reality, however, the ECA and constitutional provisions on children's rights are actually very far from

⁶² See Prillaman, William C., *The Judiciary and Democratic Decay in Latin America: Declining Confidence in the Rule of Law*, Westport/London: Praeger, 2000, at 96.

⁶³ Vasconcelos Luciana, *Kids in Brazil: Great Law is not Enough*, Brazzil, Los Angeles, July 2004, at: <http://www.brazzil.com/content/view/1993/51/>

⁶⁴ op. cit.

⁶⁵ op. cit.

⁶⁶ op. cit., at 258.

being 'good' law. For example, whereas teenagers are allowed to vote at the age of 16, they are not criminally liable until 18 years of age. Minors under 18 years of age cannot be held criminally liable and must be subject to provisions of the special legislation.⁶⁷ As a result, every 17-year-old murderer, even a notorious serial killer, can just be interned, over a period no longer than three years, in an 'education establishment'.⁶⁸ Such status of impunity, however, has led many thousands of children to work (and risk their lives) in criminal organizations. In Brazil, writes J.O. de Meira Penna,

Minors often form the backbone of criminal gangs, feeling secure against police enforcement on account of legal impunity... The absurd situation that has brought disrepute to Brazil results from the legal and intellectual pretence of classifying murderous teenagers as 'abandoned children'. As they cannot be legally incriminated or kept out of trouble by legal means, the easy way out for brutal and ignorant police officers is simply to kill them right away, whenever possible.⁶⁹

Ever since the ECA was enacted as Federal legislation in 1990, the number of homicides committed against children and teenagers rose dramatically, growing 77% between 1994 and 2004.⁷⁰ In 2003, 72% of all deaths of teenagers between the ages of 15 and 19 happened due to violent causes related to homicide, suicide and traffic accidents. Homicide is currently the major cause of death for children aged 10 to 14, although less than 2% of their murderers serve prison sentences.⁷¹

It is notable that both the Brazilian Constitution and the ECA stipulate that teenagers between the ages of fourteen and seventeen cannot work in hazardous, unhealthy, nocturnal, or morally harmful environments. In practice, however, even small children have been working in activities such as drug trafficking and prostitution. A 2002 report from the International Labor Organization (ILO) shows that about 3,000 girls from the sparsely populated state of Rondonia were subject to conditions of forced labour and prostitution.⁷²

Working children are vulnerable to all sorts of accidents in the workplace. There are reports of children working at charcoal, sugarcane, and footwear industries. Some have suffered illness and accidents which include 'dismemberment, gastro-intestinal disease, lacerations, blindness, and burns caused by applying pesticides with inadequate protection'.⁷³

The law also says children can only travel with parental permission. It is common knowledge, however, that children are currently trafficked for

⁶⁷ Braz. Const., Art.228.

⁶⁸ Pinter, op. cit.

⁶⁹ Penna, J.O. de Meira, *From and Age of War to an Age of Crime: The Case of Brazil*, Bulletin of the Institute for Strategic Studies of the University of Pretoria, South Africa, 1997, at:

http://www.meirapenna.org/en/publications/from_the_age_of_war_to_an_ager_of_crime.htm

⁷⁰ UN-Habitat; *State of the World's Cities: Trends in Latin America & the Caribbean* – 2004. at: <http://www.unhabitat.org/mediacentre/documents/sowc/RegionalLAC.pdf>

⁷¹ U.S. Department of State (2004), op. cit.

⁷² Id.

⁷³ Id.

prostitution. Girls from rural areas are recruited in the major cities as prostitutes by strip clubs and modelling agencies, and through 'wanted' advertisements. In places along the coast sexual tourism involves child prostitution organised by stakeholders in the industry, including travel agents, hotel workers and taxi drivers. The United Nations estimates that now at least 500,000 children are victims of sexual exploitation in Brazil.⁷⁴ In some parts of the country, particularly in the northern and north-eastern regions, 'most sexual crimes against children and adolescents are not investigated, and in some cases representatives of the judiciary are involved in those cases'.⁷⁵

In attempt to counter the significant problem of child prostitution, the National Congress once set up a Special Parliamentary Commission to investigate the problem. Among many other things, the commission discovered the involvement of police officers, judges and politicians with child prostitution.⁷⁶ And in August 2003, the police caught six Porto Ferreira (São Paulo) city councillors and six businessmen having group-sex activities with minors between the ages of 10 and 16 over a period of two years. The minors were paid with drugs and/or \$11 to \$18 dollar for each encounter.⁷⁷ According to a report from a non-governmental organization:

At least 12 girls were involved, all of them were very poor. Official city cars and motor-taxis picked the young girls (10-16 years old) two blocks away from their school. Luiz Gonzaga Borceda, one of the men condemned... was the principal of the girls' school.

The 'parties' were always on Mondays and began around 10:00 a.m. and ended in the early evening. The girls received payment of approximately US\$12 and were forced to have violent sexual relations with various men. According to the testimony of the girls, many went to... get something to eat.

They were also forced to pose nude for photographs. This was affirmed by one of the assistants to the city council... The girls were given alcohol and crack cocaine during the parties.⁷⁸

In spite of being judicially condemned for corruption of minors, drug-trafficking, and the formation of a criminal gang, all but one of the criminals are free (2007) after spending less than 3 years in prison. The only person who is still in jail is a city councillor who ran again from the jail and was elected with the third highest number of votes. City councillors made an agreement that he can assume his mandate while serving jail sentence, although this has not yet occurred due to the fear of international repercussion.

⁷⁴ The Guardian, *Child Abuse Report Names Brazil Elite*. London, 10 July 2004, at: <http://www.guardian.co.uk/brazil/story/0,12462,1258071,00.html>

⁷⁵ United Nations, *United Nations Expert Concerned About Lack of Access to Justice in Brazil*, United Nations Press Release, 1 November 2004, at: <http://unhchr.ch/hurricane.nsf/0/B6518C5EA42005ABC1256F00386FBF?opendocument>

⁷⁶ OAS, op. cit.

⁷⁷ U.S. Department of State (2004), op. cit.

⁷⁸ Blaney, Joanne, *Condemned City Council Members and Businessmen Freed in Porto Ferreira*. Brazil Justice Net, 20 June 2006, at: http://www.braziljustice.org/recent_newsletters.htm

Another detailed investigation conducted by Congress in July 2004 discovered politicians, judges, and businesspeople participating in the sexual exploitation of minors, including the appalling sexual abuse of nursing babies. It was found that the Vice-Governor of Amazonas was seeking sexual services from a prostitution network that recruited 16-year-old girls.⁷⁹ Even so, the congressional committee's coordinator, Patricia Saboya, 'accused the government of doing practically nothing to investigate or punish those involved'.⁸⁰

Figures show seven million children living on the streets of Brazilian cities.⁸¹ In contrast to what is so often believed, the testimony of those children themselves reveals several other pressures beyond the need to money. They are homeless mainly because of parental neglect, speaking of episodes of sexual abuse and many other forms of extreme violence. Of course, they would not be there were it not for the lack of government action as well as the actions of civil society.

Street children are utterly deprived of their most basic material and affectionate needs. They do not have a home, school, adequate food, or medical care. They often become victims of death squads or other forms of violence born of their precarious situation. Since they often resort to theft to survive, some people pay death squads to 'clean up the streets' of this 'inconvenience'. Unfortunately, many people believe that their extra-legal killing is a valid measure to combat crime and violence. Page asserts:

What rackets up public outrage against street urchins even higher is the cloak of impunity that protects children who kill, assault, and rob. The legal system does not brand them criminals but instead uses the more euphemistic term infratores (lawbreakers) and does not subject them to punishment. Under a statute enacted in 1990 [i.e., the ECA], a lawbreaker under twelve years of age is generally released into the custody of his family or surrogate family. A lawbreaker over twelve will be sent to a state institution specially designed for adolescents. These facilities are so antiquated and overcrowded that there is constant pressure to release the wrongdoers as soon as possible, and children escape from them regularly.⁸²

Crimes against street children are characterized by extreme brutality. It includes torture and dismemberment. Often the corpses of these children are left behind on the streets 'to serve as example for others'.⁸³ Children who manage to survive another day will have to worry about the next meal and in finding a safe place to sleep for the night. These children are therefore subject to a process of 'natural selection' where 'the weak die early from disease and violence and only the strong survive to adulthood'.⁸⁴

⁷⁹ The Guardian, op. cit.

⁸⁰ Id.

⁸¹ Goetz, op. cit.

⁸² op. cit., at 262.

⁸³ Rizzini, Irene, *Children in the City of Violence: The Case of Brazil*. From: K. Rupesighe and M. Rubio (eds.), 'The Culture of Violence', Tokyo: United Nations University Press, 1994, at 269.

⁸⁴ Page, op. cit., at 266.

The incidence of violence against children is so high that a quotation attributed by the press to Amnesty International in the 1990s declared: 'Brazil already knows how to resolve the problem of its children – kill them'.⁸⁵ This is not far removed from reality. In fact, when the Government of Rio de Janeiro installed a 'hot line' seeking information on the killing of eight street children in Rio's downtown, the service had soon to be discontinued because thousands of calls flooded the hot line to support their execution.⁸⁶

2.4. Women's Rights

Women are granted by the Brazilian Constitution with an impressive number of 'fundamental rights'. The Constitution fully recognises the equal value of both sexes, advocating equality of rights and obligations before the law⁸⁷. This law also recognises that men and women in a marriage have equal rights and duties⁸⁸. In Article 5, provision XLI, it states the governmental obligation to promote the welfare of everyone without sexual discrimination. In relation to labour law, it is quite appropriate to infer that women have actually more rights than men, since Article 7 specifies certain rights only for women, including earlier retirement and protection in the job market.

While the Constitution says that everybody has equal rights, ordinary legislation provides prison penalties and fines for any situation of sexist behaviour, including the use of pejorative terms against women. The law also provides special police stations for women. According to the Inter-American Commission on Human Rights, Brazil's legal protection of women's rights, particularly with regard to its 'gender-specific police stations', is 'unprecedented' and, accordingly, an 'influential model' to be imitated by all nations.⁸⁹

Despite the written law, however, it is common knowledge that violence against women is a frequent occurrence. According to the United Nations, women in Brazil are 'frequently exposed' to sexual victimization. A 2004 UN-Habitat document reveals that Brazil has one of the world's highest levels of incidents against women described as rape, attempted rape, and indecent assault. Such violent crimes would be usually under-reported and their perpetrators unlikely to be punished.⁹⁰

A 2001 study of 61.5 million women carried out by the Perseu Abramo Foundation found that, every year, 2.1 million Brazilian women are victims of physical violence. This means that every 15 seconds a woman is beaten in Brazil.⁹¹ It also reveals that 6.8 million Brazilian women have suffered from

⁸⁵ Rizzini, op. cit., at 269.

⁸⁶ See Prillaman, op. cit., at 96.

⁸⁷ Braz. Const., Art.5.

⁸⁸ Braz. Const., Art.226.

⁸⁹ OAS, op. cit.

⁹⁰ op. cit.

⁹¹ Lôbo, Irene, *A Woman is Beaten Every 15 Seconds in Brazil*, Agência Radiobrás, Brasília, 25 November 2005, at:

http://internacional.radiobras.gov.br/ingles/materia_i_2004.php?materia=248261&q=1&idioma=IG

beatings by their partners, relatives, and other acquaintances⁹². According to Health Minister Saraiva Felipe, in 2004 alone, 189,000 women over the age of 10 were admitted to hospitals with fractures, dislocations, and traumas to various parts of the body, including the skull.⁹³

Nevertheless, the vast majority of criminal complaints regarding violence against women are suspended without final conclusion. According to the World Organization Against Torture (WOAT), only 2% of all complaints of violence against women leads to conviction. As for the few cases resulting in conviction, the WOAT argues that the punishment for first-degree murder and rape are 'very light'.⁹⁴ According to Norma Kyriakos, former attorney-general of São Paulo state:

Instead of giving him [i.e., the offender] community service [or jail sentence], judges propose he pays for a basket of food or other goods for a charitable institution. And so the man keeps doing it because he knows that's all he'll have to pay... Women today are still afraid to go to the police because they are afraid of their attackers... They know that when they are finished here with the *delegada* [i.e.; female chief police] or judge they are on their own again.⁹⁵

A case that serves to illustrate the current situation occurred in 1983. The case concerns a woman who was left paraplegic after suffering several murder attempts by her husband. After waiting more than 15 years for any judicial decision, she then filed a lawsuit against the country with the Inter-American Human Rights Commission. The outcome was that, in 2001, members of this commission judged the government of Brazil guilty of negligence, omission, and tolerance with respect to domestic violence against women.⁹⁶

In relation to the working rights of women, the Constitution explicitly forbids any salary differentiation between the sexes. In fact, the basic law actually provides 'positive discrimination' in favour of women, granting them special constitutional rights such as three months' paid maternity leave and protection against dismissal for pregnancy.⁹⁷

In practice, however, the Organization of American States (OAS) reports that pregnant women are dismissed in Brazil regardless of legislation to the contrary. The report suggests that employers have illegally required 'proof of sterilization' as a pre-condition for employment.⁹⁸ Finally, the OAS maintains that even the government itself recognizes the average salary of women is

⁹² Jorge, Cecília, *Inauguration of Telephone Exchange for Complaints of Violence Against Women*, Agência Radiobrás, Brasília, 25 November 2005, at:

http://internacional.radiobras.gov.br/ingles/materia_i_2004.php?materia=248252&q=1&idioma=IG

⁹³ Ibid.

⁹⁴ U.S. Department of State (2004), op. cit.

⁹⁵ Downie, Andrew, *A Police Station of their Own*. The Christian Science Monitor, 20 July 2005, at: <http://www.csmonitor.com/2005/0720/p15s02-woam.html>

⁹⁶ Lôbo, op. cit.

⁹⁷ Braz. Const., Art.7.

⁹⁸ op. cit.

54% below what is normally paid to male counterparts possessing similar levels of education and qualification.⁹⁹

This constant violation of women's rights highlights the prevalence of a 'macho' culture where men are expected to 'prove' their 'masculinity' by treating women as sexual objects. A major problem is therefore the sociological fact that, in Brazil, 'many men believe they have the right to physically dominate their partners, and many women accept a submissive role'.¹⁰⁰ This 'macho' culture explains the proliferation of sexual violence, unstable unions, adultery, and illegitimacy as factors contributing to the widespread violation of women's rights.

2.5. Workers' Rights

In relation to the rights of working people, Brazil has enacted a constitution requiring, among other things, that a minimum wage must provide all the basic needs of workers and their families: housing, food, education, health, leisure, clothing, hygiene, transportation and social security.¹⁰¹ To accommodate this, the minimum wage must be periodically adjusted in order to maintain the worker's purchasing power.

The current minimum wage fixed by federal law is around US\$200 per month. It is a salary that certainly does not cover all the needs required by the Constitution. In fact, a 2000 study of the DIEESE concluded that the minimum wage was one-fifth of that necessary to support a family of four in São Paulo city.¹⁰² And yet, research conducted in 2002 by the IBGE National Household Survey revealed that 40% of workers did not receive even this lowly amount. Their average salary was more than 50% below what the law called for.¹⁰³ This meant that 55 million workers were surviving on half the minimum wage.¹⁰⁴

Under the Brazilian Constitution any form of forced labour is forbidden. The Criminal Code punishes those guilty of it with at least eight years jail. However, cases have been reported of forced labour in northern and central-western regions. In such areas, forced labour involves the exploitation of children in activities such as agriculture and the raising of livestock.¹⁰⁵ Moreover, illegal immigrants from neighbouring Bolivia, Peru, and Paraguay work in the big cities under conditions the International Labor Organization (ILO) describes as 'analogous to slavery'.¹⁰⁶ According to the U.S. State Department,

⁹⁹ Id.

¹⁰⁰ Downie, op. cit.

¹⁰¹ Braz. Const., Art.7, IV.

¹⁰² U.S. Department of State (2004), op. cit.

¹⁰³ See Neves, Francesco, *Five Million Kids Still Working in Brazil*. Brazzil Magazine, Los Angeles, October 2003, at: <http://www.brazzil.com/content/view/1077/27/>

¹⁰⁴ Chagas, op. cit.

¹⁰⁵ Brown, Paul, *Shame of Slavery Blights Brazil's Interior*, The Guardian, London, 19 July

2004, at: <http://www.guardian.co.uk/international/story/0,3604,1264080,00.html>

¹⁰⁶ Ibid.

The abolition of forced labor [in Brazil] has been hindered by failure to impose effective penalties, the impunity of those responsible, delays in judicial procedure, and the absence of coordination between the various governmental bodies.¹⁰⁷

In the Amazonian region, alone, the ILO estimates that 25,000 people are working as slaves in a range of activities; from the clearing of jungle for ranchers to the production of pit iron for charcoal smelters. The ILO argues that these labourers have been treated 'worse than animals', living under plastic sheeting with no sanitation, and eat from tin cans previously used to hold pesticides.¹⁰⁸ Their workday is from dawn to dusk and gunmen are hired to ensure order and prevent any of them from escaping. Disgracefully, some congressmen have been discovered benefiting from the slave activity on their own ranches.¹⁰⁹

On the issue of employment, Article 170 of the Brazilian Constitution states that the country's economic order shall have as its most 'fundamental' goal the 'pursuit of full employment'. In August 2003, however, about 13 million workers were unemployed, and millions of others were simply unable to afford even a decent daily meal.¹¹⁰ In today's Brazil, real interest rates are the highest in the world, taxation is overwhelming, and the amount of red tape confronted at all levels of government is enormous.¹¹¹

In a document released by the World Bank entitled *2005 Doing Business*, Brazil is listed as one of the worst countries in the world for entrepreneurs to open a business, hire employees, or enforce contracts, due to excessive taxes and government regulation.¹¹² In the 2006 Index of Economic Freedom, an important document published jointly by The Heritage Foundation and the Wall Street Journal, Brazil's regulatory structure is considered 'burdensome and not entirely transparent'.¹¹³

2.5. Rights of the Indigenous People

The Constitution of Brazil is very generous in terms of what it says about the rights of indigenous communities. These rights include the protection of indigenous culture and the right of every indigenous community to freely determine the way its land will be used. According to the Inter-American Commission on Human Rights:

¹⁰⁷ U.S. Department of State (2004), op. cit.

¹⁰⁸ See Kingstone, Steve, *Brazil Slavery Damned by Report*. BBC News. July 19, 2004, at: <http://news.bbc.co.uk/2/hi/americas/3908271.stm>

¹⁰⁹ Brown, op. cit.

¹¹⁰ Chagas, op. cit.

¹¹¹ See Hayes, Richard, *Red Tape is Choking Brazil*. Brazzil Magazine, Los Angeles, 21 February 2005, at: <http://brazzil.com/content/view/8949/76/>

¹¹² See Oppenheimer, Andres, *Too Much Red Tape Leaves Brazil's Economy Lagging*, HACER – Hispanic American Center for Economic Research, September 2005, at: <http://www.hacer.org/current/Brazil053.php>

¹¹³ Miles, Marc A. et al, *2006 Index of Economic Freedom*, The Heritage Foundation & The Wall Street Journal, 2006, at 120.

The Chapter [on indigenous rights] of the Brazilian Constitution of 1988 is devoted to one of the most advanced normative positions in comparative legislation. Its provisions relate directly to the Indians' rights, surpassing the doctrine of 'natural assimilation', and grant permanent recognition to the inherent original rights of the indigenous people, predicated on their status as the initial historical and permanent occupants of their lands.¹¹⁴

Indigenous lands are defined by the Brazilian Constitution as those traditionally occupied by indigenous people on a permanent basis as well as 'those used for their productive activities, those indispensable to the preservation of the environmental resources necessary for their well-being and for their physical and cultural reproduction, according to their uses, customs and traditions'.¹¹⁵ This description of 'lands traditionally occupied by Indians' is so broad that an eminent constitutional lawyer, Manoel G. Ferreira Filho, quipped that it would be easier for the legislators to state which lands non-Indians *could* occupy.¹¹⁶

The 280,000 Brazilians who are Indian have by law the right to occupy 946,000 square kilometres of the national territory. This means that 0,5% of Brazil's total population has the right to occupy 12% of all its territory. The amount of land classified as belonging to indigenous communities is far larger than the territory of any European country except for the Russian Federation. France, for instance, has 59,000,000 people but less than 544,000 square kilometres.¹¹⁷

Indigenous lands are also considered to be the permanent possession of the Indians. They have control over all the riches of their soil, rivers, and lakes¹¹⁸. Moreover, Brazil's highest court, the Federal Supreme Court, has already decided on the unconstitutionality of any legislation or public contract resulting in the reduction or alienation of these indigenous lands¹¹⁹. Only the elected members of National Congress can authorize the exploitation of hydroelectric resources and mineral riches in indigenous lands. In such cases, a share of the profit is to be transferred to the indigenous community, which cannot be removed from the land it occupies except by the approval of congressmen, or in the extraordinary cases of catastrophe or epidemic. Even so, Indians will preserve the right to return to the land as soon as the risk ceases, because indigenous lands are inalienable and not subject to limitation.

All this sounds very impressive if it were not for the fact that public authorities have not been capable of maintaining the integrity of those indigenous lands, which are constantly invaded by non-indigenous persons for the purposes of mining, logging, and agriculture.¹²⁰ These invasions 'have destroyed the

¹¹⁴ OAS, op. cit.

¹¹⁵ Braz. Const., Art.231.

¹¹⁶ Ferreira Filho, Manoel Gonçalves, *Curso de Direito Constitucional*, São Paulo: Saraiva, 1999, at 367.

¹¹⁷ Isaacs, Allan (ed.); *Dictionary of World History*. Oxford: Oxford University Press, 2000, at 221.

¹¹⁸ Braz. Const., Article 231, Paragraph 2.

¹¹⁹ Barroso, Luis Roberto Barroso, *The Saga of Indigenous People in Brazil: Constitution, Law and Policies* (1995), 7 St. Thomas Law Review 645, at 660.

¹²⁰ U.S. Department of State (2004), op. cit.

environment and wildlife, spread disease and provoked violent confrontations', comments the U.S. State Department.¹²¹

To protect the rights and culture of its indigenous people, Brazil has established a special federal agency known as the National Indian Foundation (Funai). Their role includes protection of the right of every indigenous person to obtain free public education, health care and legal aid; although, the reality is that Indians suffer from epidemic disease, forced labour, violent death, and marginalisation. According to Lisa Valenta, a specialist in Brazilian indigenous rights:

Rule of law problems, political pressures on the executive as well as on the judiciary, and societal attitudes have contributed to a hostile environment for indigenous peoples. In order to assert their civil, political, and property rights, these indigenous peoples must deal... with intense cultural discrimination and what over the past five hundred years can only be deemed as epidemiological disaster.

Disease, little to no enforcement of already demarcated land borders, the lack of viable sustainable development projects to encourage ranchers and farmers to stop cutting further into the rainforest, along with waxing and waning military support have all led to a constant wave of invasions, epidemics, and massacres, especially within the northern reaches of Brazil. These activities have resulted in little to no fear of legal reprisal for the invaders and, correspondingly, demoralization for the Indians who are left without reliable domestic legal remedies.¹²²

Regardless of legal provisions, half of Brazil's indigenous population currently live under conditions of extreme poverty, completely reliant on a federal program of basic food baskets to survive.¹²³ They also face extremely poor health care. Funai's medical department estimates that around 60% of all members of the Brazilian indigenous community suffer from chronic diseases such as tuberculosis, malaria and hepatitis.¹²⁴ According to a recent publication on an indigenous tribe located in central Brazil:

A common factor that unites them [i.e., indigenous tribes] is their marginalisation within Brazilian society, reflected in poor health and economic conditions and the difficulty they experience to obtain access to health care, education, and other social services... What can be generally stated... is that for the great majority of indigenous peoples in Brazil morbidity and mortality rates are unequivocally higher than overall national rates, while life expectancy at birth is disturbingly low.¹²⁵

¹²¹ Id.

¹²² Valenta, Lisa, *Disconnect: The 1988 Brazilian Constitution, Customary International Law, and Indigenous Land Rights in Northern Brazil* (2003), 38 *Texas International Law* 643, at 658.

¹²³ U.S. Department of State (2004), op. cit.

¹²⁴ Valenta, op. cit., at 658.

¹²⁵ Coimbra Jr., Carlos E. et al, *The Xavánte in Transition: Health, Ecology, and Bioanthropology in Central Brazil*, Ann Arbor: The University of Michigan Press, 2002, at 2.

2.6. Freedom of Expression

The Brazilian Constitution provides formal protection to freedom of expression for intellectual, artistic, scientific, and media activities. It states in Article 220 that every manifestation of thought, expression, and information shall not be subjected to any form of governmental restriction for political, ideological, or artistic reasons.

Yet, despite what the law suggests, the federal government attempted in 2004 to enact a controversial bill on 'Audiovisual Affairs'. If approved, the Bill would establish a 'National Agency of Movies and Audiovisual Affairs', or Ancinav, with powers to exercise full control over radio and television stations, communication services with audiovisual content (including telephony and the Internet), as well as the production, distribution, and the showing of movies (including television films and news reports). The President of the Republic would be entirely free to nominate the board members of such a powerful state agency to a four-year term.¹²⁶

Ancinav would be invested with powers to investigate and restructure the strategic plans of cinematographic and audiovisual companies. The Bill called for the planning, regulation, administration, and monitoring of cinematographic and audiovisual companies in their production, programming, distribution, exhibition, and advertising.¹²⁷ It also stated that this governmental agency would preserve the 'confidentiality' of every technical, operational, even financial records, requested from these companies. This indirectly means that this sort of agency could force companies to provide strategic and financial information to the government.

Ancinav would be financed by financial resources obtained from new taxes on advertisements, the rent and/or purchase of VCRs and DVDs, and a 10% increase in the price of movie tickets. Such increase would undermine the constitutional right of access to culture, because tickets are already too expensive for most Brazilians, and so would transform cinema into an even more elitist form of entertainment. Besides, it would make prohibitive for theatres to exhibit movies with small public demand, such as those produced by more specialised film companies.¹²⁸ In this sense the Bill violated Article 215 of the Constitution, which declares that the state must support, not curtail, the diffusion of cultural expressions.¹²⁹

Although the media's strong reaction against the bill frustrated the governmental effort to have it approved in parliament, other attempts toward undue control over freedom of expression have been successfully carried out. Since January 2003, state companies advise that they can only sponsor

¹²⁶ See Martins, Ives Gandra da Silva, *O Retrocesso Democrático*. Jornal do Brasil, Rio de Janeiro 26 August 2004, p. A13.

¹²⁷ Veja, *Um Desastre de Lei*, São Paulo, 13 October 2004, at 34.

¹²⁸ Id.

¹²⁹ For more information about the Ancinav Bill, see Mesquita, Fernão Lara de; *O Golpe da Ancinav*. Boletim da APADDI, São Paulo, 19 September 2004. See also Kramer, Dora, *A Persistência do Arbítrio*, Jornal do Brasil, Rio de Janeiro, 15 August 2004, at A2.

social and cultural projects that correspond with the ideological values of those in power. For instance, the state oil company informs that the 'social views' of the Government must be taken into account when funding social and cultural projects. Other state companies have communicated that similar conditions are placed on them for the sponsorship of social and cultural activities.¹³⁰

Another serious impediment facing the constitutional right to freedom of expression is the distribution by Brazil's Human Rights Secretariat of 5,000 booklets entitled *Politicamente Correto e Direitos Humanos* ('Politically Correct and Human Rights'). Distributed in May 2005 to state schools, the publication contains 96 terms, expressions, and jokes considered offensive, which the booklet says should be avoided. It includes words like 'clown', which it cautions might offend professional comedians, and 'drunk', which it advises is disrespectful of alcoholics¹³¹. The booklet also warns it is offensive or defaming to label as communist someone who may actually be one but who does not want to be regarded as such. Following are a few examples of what the booklet contains:

Communist: against them many calumnies and insults were invented to justify campaigns of persecution against them, which resulted in mass murder and genocide during the Nazi regime in Germany.

The situation is black: strong racist connotation against the Afro-Brazilian people. It associates the colour black with a bad situation.

Public officer: after systematic campaigns against the public service, workers of public agencies and public companies prefer to be called public servants, in order to emphasise that they serve the public more than the State.

Lesbian: used to discriminate against homosexual women. The appropriate term is *entendida* ('learned').¹³²

This booklet could be dismissed as too silly to be taken seriously were it not for the fact that the legislature introduced Federal Law No.9,459, a 'hate crime' legislation that punishes with three years imprisonment any comment that might be considered offensive to a person's ethnicity, religion, gender, or nationality. Thus many think the booklet is actually a form of censorship through which numerous rules are imposed on the words that citizens may use. The idea appears to rest on the premise that our basic rights to write and speak are mere concessions of the state, not basic rights fully guaranteed by the Constitution.¹³³

¹³⁰ American TFP, *Lula Watch*, Vol.1, N.10, 6 June 2003, at 13.

¹³¹ Downie, Andrew, *In un-P.C. Brazil, a List of 96 Offensive Terms Causes Offence*, USA Today, 16 May 2005, at: http://www.usatoday.com/news/world/2005-05-16-un-pc-brazil_x.htm

¹³² Secretaria Especial de Direitos Humanos, *Politicamente Correto & Direitos Humanos*, Brasília, May 2005.

¹³³ Ribeiro, João Ubaldo, *Brazilians, Raise Up and Swear with Me!* Brazzil Magazine, Los Angeles, 05 May 2005, at: <http://brazzil.com/content/view/9052/76/>

2.7. Freedom of the Press

The Constitution of Brazil explicitly prohibits all forms of censorship or any hindrance being placed on the freedom of the press¹³⁴. Freedom of the press, an important right for every democratic society, was severely violated in Brazil's past, such as during the populist dictatorship of Getúlio Vargas (1937-45), and later by a two-decade-long military regime that began in 1964.

While the right to a free press has come to be quite respected since the last days of military government in 1985, it seems that freedom of the press is now undergoing renewed attacks, particularly from the federal government. Since he took office as the country's president, Lula da Silva has often complained that journalists give too much negative information about his government. He constantly reiterates that the media ought to 'learn' how to develop a 'loyal relationship' with the government.¹³⁵

Reacting against this sort of intimidation, journalists delivered, in March 2004, their *Manifesto Pela Liberdade de Informação* (Manifesto for the Freedom of Information). The document states that the current administration has been creating 'serious obstacles' to the freedom of the press.¹³⁶ It also reveals that the journalists are no longer allowed to report official meetings that the press had thus far been able to attend, even during the worst days of Brazil's military dictatorship.¹³⁷

Another indication of the decline in freedom of the press can be seen in the attempt that was made by the federal government to expel a correspondent from the *New York Times* (NYT). On 6 May 2004, the Justice Ministry announced that journalist Larry Rohter's visa had been cancelled because he had dared write an article airing public concerns over the President's drinking habits. A few days after the decision, President Lula huffed: 'It's not for a president to reply to an idiocy such as this. It doesn't deserve any reply. It deserves action. I think he should be much more worried than I am'.¹³⁸ He further declared:

This journalist will no longer stay in this country. This will serve as an example to others. If I didn't take this measure, any other journalist, from any other country, could do the same without any fear of punishment.¹³⁹

In offering reasons for the journalist's expulsion, Foreign Minister Celso Amorim said that this was due to the fact that no foreigner could offend 'the

¹³⁴ Braz. Const., Art.5, IV and IX.

¹³⁵ Leitão, Miriam, *Sem Explicação*. O Globo, Rio de Janeiro, 19 July 2005, at 2.

¹³⁶ Kramer, Dora; *Onda de Obscurantismo*. Jornal do Brasil, Rio de Janeiro, 11 August 2004, at A2.

¹³⁷ Kramer, Dora; *Bocas Fechadas em Order Unida*. O Estado de S. Paulo, São Paulo, 21 January 2003, at A2.

¹³⁸ Human Rights Watch, *Brazil: Journalist's Expulsion Undermines Free Expression*, Press Release, 12 May 2004, at: <http://hrw.org/english/docs/2004/05/12/brazil8575.htm>

¹³⁹ Neves, Francesco, *Brazil: Times Affair Fractures Lula Administration*. Brazzil Magazine, Los Angeles, May 2004, at: <http://www.brazzil.com/content/view/1792/59/>

honour of the chief of state'.¹⁴⁰ Agreeing with him, sociology professor Paulo Delgado, a PT congressman, declared that any foreigner who criticises the President of the Republic should automatically become a *persona non grata* in the country. In his opinion, 'the Presidency of the Republic belongs to all Brazilians and cannot be the object of unbecoming consideration by a foreigner who works in our country'.¹⁴¹

The law that was opportunistically applied to expel the journalist (Rohter) was enacted in 1980, that is, during the military dictatorship. Its article 7 states that 'no visa will be granted to any foreigner considered harmful to the public order or the national interest'. Since this law does not specify which situations constitute violation of public order and national interest, any government of an authoritarian bent can manipulate the meaning of such abstract phrases. According to Mario Gonçalves Jr., a public prosecutor, 'a law such as this could only have sprung from times in which freedom of expression was suffocated in scandalous fashion in Brazil under the heavy hand of high-ranking military coup leaders'.¹⁴²

But the reality is that the government not just applied the arbitrary legislation but also went far beyond its proper limits, since this law in question clearly forbids the expulsion of foreigners who have a Brazilian wife and/or children. Rohter has not only lived for many years in the city of São Paulo, he is married to a Brazilian woman and has two Brazilian children. But the Government totally ignored this fact and distorted the statute in order to authorize the Justice Ministry's suspension of Rohter's visa without judicial hearing.¹⁴³

As a result of receiving strong, widespread criticism from the media both nationally and internationally, President Lula, stubbornly sticking to his guns, saw it fit to end the imbroglio with a farce.¹⁴⁴ Unable to retreat from his own radical stance without losing face, he decided to interpret as a 'retraction' a letter in which the American journalist actually confirms what he wrote in the article. Thus, the whole situation was solved not as a result of respect to legality, but rather out of the apparent magnanimity of the President.

The President's kind-hearted generosity notwithstanding, freedom of the press would be substantially diminished should a government-sponsored bill introduced in August 2004 by the ruling party be approved in the federal parliament.¹⁴⁵ The purpose of this highly controversial bill is the creation of an

¹⁴⁰ Chetwynd, *Brazil Expels New York Times Reporter for Offensive Story*, op. cit.

¹⁴¹ Nascimento, Elma-Lia, *Brazil's Lula from Victim to Villain*. Brazzil Magazine, Los Angeles, May 2004, at: <http://www.brazzil.com/content/view/1787/59/>

¹⁴² Gonçalves Jr., Mário, *Lula's Authoritarian Faux Pas: A Legal Perspective*, Info Brazil, 15 May 2004, at: http://jusvi.com/doutrinas_e_pecas/ver/169

¹⁴³ Reporters Without Borders, *Reporters Without Borders Protests against the Expulsion of New York Times Correspondent*, 13 May 2004, at: http://www.rsf.org/article.php3?id_article=10377

¹⁴⁴ Id.

¹⁴⁵ Ironically, any deliberation on this proposed law has been postponed *ad infinitum* thanks to the numerous corruption scandals that have shaken the current administration of President Lula da Silva, including a vote-buying scheme for parliamentary approval of this and other

entity called the Federal Council of Journalism (CFJ), with powers to 'orient, discipline, and monitor' all journalists working in Brazil. Journalists would be obliged to register with this entity in order to work in the country.

The CFJ bill was understandably likened by numerous journalists to a series of decrees enacted during the 1930s by dictator Vargas to control the press. Among those acts was a 1932 decree which determined the issuance of identification cards, and a 1934 decree that regulated the renewal of registrations for newspapers, periodicals, and printers.¹⁴⁶ For Alberto Dines, a well-known professor of journalism at the prestigious University of Campinas (Unicamp), the CFJ bill would certainly institute a very similar form of 'journalist patronage', utterly undermining 'the indispensable separation between government and press'.¹⁴⁷ He thus maintains that this bill, introduced by the federal administration, constitutes 'the most inept and bewildering action in the area of the press that any government has produced since the return of democracy in 1985'.¹⁴⁸

An essential element of the democratic system adopted by the rights-based Brazilian Constitution is the provision of almost unlimited freedom to the press. So any attempt to control the press under the pretext of disciplining journalists is absolutely unconstitutional. And yet the federal press secretary, Ricardo Kotscho, declared that the intention of the Government was exactly 'to guarantee society the completeness of freedom of the press, not the freedom of some professionals and companies to publish what they feel like in the service of their own interests'.¹⁴⁹ But the press secretary is certainly wrong when he supposed, as he seems to do, that the law in Brazil permits journalists to publish whatever they wish, because this country already has defamation laws curbing excesses committed by bad? recalcitrant? rogue? questionable? journalists. Those laws allow any person to file a judicial complaint against any journalist for the abuse of his or her professional freedom.¹⁵⁰

Although the Government suggested that the CFJ bill was actually drafted by a union of journalists called the National Federation of Journalists (Fenaj), it is noted that Fenaj does not represent the real interests of journalists as more than 70% of all journalists in Brazil do not belong to any trade association. Moreover, it is highly significant that not a single, major news organization backed the proposal.¹⁵¹ Rather, they all immediately regarded it as 'the most

controversial bills. For more information, see Zimmermann, Augusto, *Corruption: That's the Way Things are Done in Brazil*, HACER (The Hispanic-American Center for Economic Research), Arlington/VA, September 2005, at: <http://www.hacer.org/current/Brazil083.php>

¹⁴⁶ See Haussen, Doris Fagundes, *Radio and Populism in Brazil – The 1930s and 1940s*. Television & New Media, Vol.6, No.3, August 2005, at 256-57.

¹⁴⁷ Dines, Alberto, *Press Too Cozy to Power in Brazil*. Brazzil Magazine, May 2004, at: <http://www.brazzil.com/2004/html/articles/may04/p.138may04.htm>

¹⁴⁸ Rohter, Larry; *Plan to Tame Journalists just stir them up in Brazil*. The New York Times, New York, September 6, 2004, at A6.

¹⁴⁹ Id.

¹⁵⁰ Martins, op. cit.

¹⁵¹ See Gaspar, Malu, *O Fantasma do Autoritarismo*, Revista Veja, São Paulo, 18 August 2004, at 49.

serious attack on freedom of expression since the end of the military regime', and have steadfastly opposed it.¹⁵²

It seems quite relevant also to note that Fenaj is a union controlled by CUT (Central Única dos Trabalhadores), a group of trade unions under the direct control of the governing Workers' Party (PT). None of Fenaj's seven directors is an authentic journalist but rather a special advisor for state-owned companies and/or PT politicians; five of its seven directors are affiliated with the ruling party, and most of its affiliated members are government-communications staffers. Thus, well-known journalist Fernando Gabeira, a former PT congressman, has suggested that the CFJ 'sounds like something they have in Cuba or other socialist countries where the media is organized by the parties'.¹⁵³

Finally, we have also to consider here that the Brazilian government, on 23 July 2003, supported the request from Cuba and Libya to suspend the consultative status of the *Reporters Without Borders* (RWB) within the U.N. Commission on Human Rights.¹⁵⁴ Brazil supported the suspension because the RWB had fairly criticised the controversial election of Libya as the chair of that international agency.¹⁵⁵ In joining with Libya and several other countries with an extensive record of human-rights violations such as China, Cuba, Qatar, and Saudi Arabia, Brazil voted for the suspension of one of the few organizations representing freedom of the press to have consultative status within this important branch of the U.N. Economic and Social Council (ECOSOC).¹⁵⁶ Arguably, it may have done so because the RWB 'dared' criticise President Lula's close friends Colonel Gadhafi and Fidel Castro for severely suppressing all forms of freedom of the press in their respective countries.¹⁵⁷

Additionally, the Lula administration has abstained from condemning the assassination of Cuban journalists and political dissidents at the U.N. Human Rights Committee, even though Article 4 of the Brazilian Constitution explicitly states that the participation of the country in the international community must be guided by the 'fundamental principle' of 'respect for the prevalence of

¹⁵² *Id.*

¹⁵³ Hall, Kevin G., *Proposal to License Journalists in Brazil Sparks Outcry*, The Kansas City Star, Kansas City, 15 September 2004, at: <http://the-daily-planet.ca/content.php?id=134>

¹⁵⁴ Reporters Without Borders, *Reporters Without Borders Suspended for One Year from UN Commission on Human Rights*, United Nations, 24 July 2003, at: http://www.rsf.org/article.php3?id_article=7619

¹⁵⁵ See Buhrer, Jean-Claude; *Wheeling and Dealing – UN Commission on Human Rights Loses All Credibility*. Reporters Without Borders, July 2003.

¹⁵⁶ By contrast, the decision was opposed by countries like Australia, France, Germany, Ireland, Sweden, United Kingdom, and United States.

¹⁵⁷ In 2003, President Lula visited Cuba to lend his unconditional support to dictator Fidel Castro, a communist leader whose ideological affinities with many members of the ruling party is a well-known fact in Brazil. Lula has also visited Libya in December 2003. In revealing the reasons for that visit he described Colonel Gadhafi as his close friend whose 'good advises' he greatly appreciates. See Rosenfield, Denis L., *Princípios e Produtos*, O Estado de S. Paulo, São Paulo, 15 December 2003, at A9.

human rights'.¹⁵⁸ Speaking on behalf of the Brazilian government, the ambassador to Cuba, Tilden Santiago, approved the execution of Cuban dissidents, calling them traitors in the service of US imperialism.¹⁵⁹ While the Brazilian Constitution explicitly forbids the death penalty for opposition to the government, Ambassador Santiago, who also says Brazil's political system 'should be based on the Cuban régime', has made this sinister statement: 'Likewise, if they try to de-stabilise Lula, we will also have to take the same measures here.'¹⁶⁰

3. Conclusion

In describing the situation regarding constitutional rights in Brazil, it is not difficult to observe the vivid contrast between rights on paper and how these very rights work in practice. The great paradox is that, despite its rights-based constitution, legal rights in Brazil are not necessarily respected. Clearly, law may deem a human right 'fundamental', but it does not follow that such a right will be guaranteed. Indeed, it may simply be abused or ignored by authorities, and even the common citizen.

It would seem, in Brazil, that some rights described in law are 'honoured' more in their breach than in their effective application. However, the main problem with the implementation of these rights is correlated not only with the content of positive laws, even though some of them are indeed too unrealistic to bear any satisfactory results, but also resides in the widespread sense of lawlessness that pervades Brazilian society as a whole. In fact, the reality of constitutional rights in Brazil provides strong evidence that rights-based constitutions by themselves might be insufficient to protect the basic rights of the citizen.

¹⁵⁸ See: O Estado de S. Paulo; *NYT Critica Posição do Brasil*, São Paulo, 19 April 2003, at: <http://observatorio.ultimosegundo.ig.com.br/artigos/asp230420036.htm> See also: Seabra, Catia and Cruvinel, Tereza; *Lula: Não vou dar Palpite na Política de Cuba*. O Globo, Rio de Janeiro, 26 September 2003, at:

<http://clipping.planejamento.gov.br/Noticias.asp?NOTCod=82080>

¹⁵⁹ Nunes, Augusto; *Samba ou Salsa?* Jornal do Brasil, Rio de Janeiro, 23 April 2005, at:

<http://jbonline.terra.com.br/jb/papel.colunas/augusto/2005/04/23/jorcolaug20050423002.html>

¹⁶⁰ Da Silva, Roberto Romano; *PT Über Alles e Homem Cueca*, Correio Popular, Campinas, 12 July 2005, p.4.