

The Latin American and Caribbean Committee for the Defense of Women's Rights  
**CLADEM/Brazil**

**ALTERNATIVE REPORT  
WOMENS ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**Brazil's Second Periodic Report of the International Covenant  
on Economic, Social and Cultural Rights (E/C.12/BRA/2),  
42<sup>nd</sup> Session of ESCR's Committee**

**Brazil, April, 2009**

## INDEX

<b>I. PRESENTATION</b>	<b>04</b>
<b>II. CONTEXT AND ASSUMPTIONS</b>	<b>04</b>
<b>III. MEN AND WOMEN'S EQUALITY (3<sup>rd</sup> article)</b>	
Women prisoners	06
Equality, violence and judiciary	06
Construction of stereotypes	07
The criminalization of volunteer abortion	08
<b>IV. WOMEN'S RIGHT TO WORK (6<sup>th</sup> article)</b>	<b>09</b>
<b>V. WOMEN'S RIGHT TO PAY AND WORKING CONDITIONS FAIR AND SATISFACTORY (7<sup>th</sup> article)</b>	
Conciliation between work and family	10
Domestic workers	13
<b>VI. PROTECTION OF FAMILY, MOTHERHOOD AND CHILDREN (10<sup>th</sup> article)</b>	
Sexual violence against children	14
Domestic violence against pregnant women	14
Domestic and familiar violence law	15
Sexual violence and interruption of pregnancy	16
Women prisoners and maternity	17
<b>VII. HEALTHY ENVIRONMENT, DWELLING AND HEALTH (1<sup>st</sup>, 11<sup>th</sup> and 12<sup>th</sup> articles)</b>	<b>18</b>

**VIII. RIGHT TO ENJOY THE HIGHEST POSSIBLE LEVEL OF PHYSICAL AND METNAL HEALTH (12<sup>th</sup>, 3<sup>rd</sup> and 4<sup>th</sup> articles)**

Recommendation No. 51 of the ICESCR Committee: legislation review, illegal abortion and death Illegal and unsafe abortion .....19

The national parliament, abortion and reproductive rights.....20

Emergency contraception .....21

Parliamentary Committee of Inquiry (CPI) of abortion .....21

Judiciary and abortion .....22

Materna mortality ..... 22

Health, sexual education and sexuality of women prisoners and adolescents. ....23

Health of lesbians, bisexuals and transgender women.....24

**IX. RIGHT TO PARTICIPATION, TO EXPRESSION AND THE RESPECT TO CULTURAL DIVERSITY OF WOMEN (15<sup>th</sup> Article, 3<sup>rd</sup> Article)..... 24**

Gender and law at the university (15.2nd and 3rd article) .....25

## I. PRESENTATION

1. This report has been prepared by The Latin American and Caribbean Committee for the Defense of Women's Rights in Brazil - CLADEM/Brazil<sup>1</sup> and is directed to the review of Brazil's Second Periodic Report of the International Covenant on Economic, Social and Cultural Rights (E/C.12/BRA/2), for the 42<sup>nd</sup> period of the Committee's session, from 4<sup>th</sup> to 22<sup>nd</sup> May, 2009. It has been also guided by the answers given by Brazil to the questions of the ESCR's Committee (E/C.12/BRA/Q/2/Add.1).
2. The Report seeks to monitor the achievement of the Economic, Social and Cultural Rights (ESCR) of Women by the Brazilian state. For that, it develops the 3<sup>rd</sup> article of ICESCR in relation to the rights of women expressed on the following articles of the Covenant, but also civil and political rights when considering the interdependency, indivisibility and universality of these rights.
3. The Report, besides considering the Recommendations of the ICESCR's Committee, which are directed to women, also considers the Recommendations of others Committees, specially the CEDAW Committee (2003 and 2007) about the economic, social and cultural rights of women.
4. The Report has been elaborated by a CLADEM/Brazil<sup>2</sup> staff, and prioritized the points omitted by the Brazilian government's report, and complementary information to the reports of the civil society which has been already presented to the Committee, specially about the followings themes: Equality (3<sup>rd</sup> and 4<sup>th</sup> articles), Labor (6<sup>th</sup> and 7<sup>th</sup> articles), Protection of Family, mothers and children (10<sup>th</sup> article), Health (12<sup>th</sup> article, with emphasis to the sexual and reproductive rights), and Culture (15<sup>th</sup> article).

## II. CONTEXT AND ASSUMPTIONS

5. Brazil is a Democratic State of Law and with the advent of the Federal Constitution of 1988, the international human rights treaties ratified by the country became part of national law. Since the approval of Constitutional Amendment No 45, 2004 (Reform of the Judiciary), international human rights documents has the value of constitutional rule, and integrates the constitutional text in the formal and material aspects.
6. Cladem-Brazil is concerned about how the singularities are treated by the Brazilian state. The aim is to map the features that affect Brazilian women in order to avoid falling so vulnerable in society, a situation conducive to the violation of their human rights. With that in mind, to the team that prepared this Report has been a nonchalant effort to gather information within the available field data, including those of 2007 and 2008, after the Brazilian State's Report.
7. This report addresses the issues with the perspective of gender, race/ethnic and incomes and personal choices as transversal issues that cross the regional singularities, the different states of the federation, and also the groups that suffer more prejudice and violation of rights among women, such as prisoners, children and adolescents, lesbians and the older.

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<sup>1</sup> CLADEM is a non-governmental organization with more than 20 years of operation, whose purpose is to articulate and reinforce the efforts of individuals, groups, movements and organizations in the countries of the region for the promotion, supervision and protection of the interdependent and integral human rights of women in a feminist and socio-legal perspective of gender, with emphasis on issues of discrimination, violence, sexual and reproductive rights in a system that interconnects the national, regional and international spheres. See [www.cladem.org](http://www.cladem.org).

<sup>2</sup> The research, writing and review of the report was under responsibility of Samantha Buglione, Tamara Gonçalves, Thais Lapa and Ingrid Leão. The English version was made by Daniela Rosendo and Altivo de Oliveira Neto. For sending information we thank: Alessandra Benedito, Ângela Freitas, Arlene Martinez Ricoldi, Bia Barbosa, Cristiano Rosas, Beatriz Galli, Rubia Abs da Cruz, Thomaz Gollop, Lurdinha Rodrigues and Roger Ziembowicz; and the organizations IPAS, Liga de Mulheres Lésbicas, Febrasgo, GEA, Instituto Antígona, IPE, Themis, Rede Feminista and Cfemea.

8. To verify the implementation of the ICESCR in Brazil, the document presents information from three areas of the state actions: legislation, court decisions and public policies. With that is possible to observe not only the political processes that innovate the law but also the legal culture and social demands, it means, the conflicts and arrangements that are directed to the judiciary, and not least, the attitude of the State to effect the legal goods and interests through the mechanisms of implementation, in the case, public policy - understood here as the action of the State to ensure the public interest.

9. Besides the efforts, it was not always possible to find data that represent the diversity of women. Admittedly, as it is going to be seen in this report, not all data, policies, legislation or court decisions allow us to know these realities. This highlights the difficulty in ensuring the human rights of women who, on account of its uniqueness, has their human right violated, due to the structural conditions of the policy and national economy. The silence shows one of the cruelest aspects of national policy, which ignores the subject. When the singularities of part of the society are not observed, this makes the national public policies ignore their needs, for example, women riverside, women in forest and indigenous. Then, the policies of environmental preservation are strictly treated as an economic issue and not human rights, as a matter of health or human dignity. The same happens with the analysis of social indicators by racial inequality, the black population (brown and black) even setting about 50% of the Brazilian population, yet receives only specific policies instead of structural ones.

### III. MEN AND WOMEN'S EQUALITY (3<sup>rd</sup> article)

10. The provisions of the 3<sup>rd</sup> article of ICESCR are covered by the Brazilian legislation and international treaties ratified by Brazil. Equality, understood as the equal recognition of different interests, demands protection and guarantee such as formal as material equality between women and men to the exercise of economic, social and cultural rights, as well as civil and political, before institutions and in the access to the services and public policies. However, in practice, women's rights are easily neglected, mainly for economic and moral reasons, in a frontal offense to the 3<sup>rd</sup> article of ICESCR. This situation needs to be promptly reversed, with structural changes in national policies.

11. Part of the complexity of Brazilian inequality can be understood from the data published by the PNUD about the Human Development Index (HDI) through the research "Inequality in Human Development: an empirical determination of rates of 32 countries". Despite the current Brazil's HDI is 0,807, when observing the data from different social groups, such as income, it is possible to verify that the HDI of the poorer Brazilian is similar to the HDI of countries known as poor like Indonesia with index 0,613. Analyzing the HDI from a cut of race, dividing the "white Brazil" and "black Brazil", the "white Brazil" is in the position of the richest countries (47<sup>th</sup> position) and "black Brazil" would be about 50 positions below (92<sup>nd</sup> position)<sup>3</sup>. Besides these data, there are regional inequalities: the states of South and Southeast regions have HDIs that vary between 0,765 and 0,822, which are among the highest in the country, largely opposed to the North and Northeast, where the HDI can reach 0,327<sup>4</sup>.

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<sup>3</sup> Observations made by Marcelo Paixão. See: LOPES, Cristina (org). Cotas raciais: Por que sim? Uma publicação Ibase. 2.ed. Rio de Janeiro: Ibase: Observatório da Cidadania, 2006.

<sup>4</sup> Programa das Nações Unidas para o Desenvolvimento. *Índice de Desenvolvimento Humano Municipal, 1991 e 2000: Todos os Estados do Brasil*. Available at: [http://www.pnud.org.br/atlas/ranking/IDH-M%2091%2000%20Ranking%20decrecente%20de%20Estados%20\(pelos%20dados%20de%202000\).xls](http://www.pnud.org.br/atlas/ranking/IDH-M%2091%2000%20Ranking%20decrecente%20de%20Estados%20(pelos%20dados%20de%202000).xls). Access on August 20<sup>th</sup>, 2008. Also: [http://www.undp.org.br/IDHM-BR%20Atlas%20Webpage/Textos\\_IDH/Novo\\_Atlas-Press\\_release\\_5.doc](http://www.undp.org.br/IDHM-BR%20Atlas%20Webpage/Textos_IDH/Novo_Atlas-Press_release_5.doc). Access on March 30<sup>th</sup>, 2009.

12. Data about the access to job in the country demonstrates high inequalities of gender. Although women compound the majority of the Brazilian population and predominates among the non occupied, they are still less numerous than men on the occupied population. The incomes of women<sup>5</sup> with a college degree are 60% of what men gain with the same degree. Even though, while the perceptual of women with signed book were 37,8%, between men it was already 48,6% in 2008.

### **Women prisoners**

The Brazilian prison population is mostly comprised of men, however the female prison population is significant and it is increasing. The prison structures were produced from a male paradigm, which contributes to the lack of gender policies in the prison system. Of the total of prisoners in police stations and prisons in the country, it is estimated about 420 thousand inmates. Currently there are 25,8 thousand women, with 6,5 thousand prisoners in police stations and 19,3 thousand in prison<sup>6</sup>. The state violates the human rights of male and female prison population – there are no decent housing conditions and overcrowding - but the issue of gender involves singularities such as maternity and sexual and reproductive rights of women incarcerated. It was reported in the Brazilian news a case which shows the neglect of the Brazilian state to protect women and adolescents:

**Detention of a teenager on a male cell:** a young 15 years old young woman was arrested by the police under the accusation of stealing a cell phone, on the state of Pará (North region of the country). Teenagers are not allowed to go to prison, but in this case she went to a cell with around 20 to 30 men. She was rapped during the 24 days she stayed there, many times each day. The teenager had her hair cut to hide the fact that she was a woman. She stood at the cell even after the news got to a judge. The case called the Brazilian society's attention, and the Brazilian authorities declared they would be the vigilants of the teenagers and women's situations when arrested (October, 2007).

### **Equality, Violence and Judiciary**

13. The Law 11.340/06 – known as Maria da Penha Law -, is an example of innovation on the Brazilian law system, by preventing a specific treatment to certain group. The new Law changes the answer the State gives to domestic and familiar violence against women, because it breaks traditional standards of Law; it gives more emphasis to prevention, assistance and protection to women and their dependents in situation of violence, as well as treat the question with the perspective of integrity, multidisciplinary, complexity and specificity, as in fact the problem needs to be treated<sup>7</sup>.

14. Despite the advance Maria da Penha Law represented, the court decisions which declared it unconstitutional were not rare. Among the manifestations around the country, spread by the national media, there is the decision of Sete Lagoas (city in the state of Minas Gerais), in 2007<sup>8</sup>. In order to declare the law unconstitutional, the judge alleged the “world is masculine” and the law is a “devil monster”<sup>9</sup>, affirming gender stereotypes and reinforcing the

<sup>5</sup> The Brazilian Institute of Geography and Statistics (IBGE), 2008, indicates that the wage discrepancies between men and women remains even among more educated women: the average income of women with college degree was R\$ 2.291,80 in January, 2008; while for men was R\$ 3.841,40 (Attachment). Higher levels of education of women with wages lower than men for the same activities show gender specific violations of the right to work with equal pay, which reaffirms the interdependence in the implementation of social rights, [www.ibge.gov.br](http://www.ibge.gov.br).

<sup>6</sup> Source: InfoPen, 2007.

<sup>7</sup> PANDJIARJIAN, Valéria. “Maria da Penha: una mujer, un caso, una ley”. In: Revista Informativa CLADEM, No. 9, Año 6, Noviembre 2007, p. 38-51.

<sup>8</sup> Process no. 222.942-8/06.

<sup>9</sup> “To judge, protection to women is ‘diabolic’”, Folha de São Paulo, Sunday October 21<sup>st</sup>, 2007, page. C13. See also Revista Consultor Jurídico, October 23<sup>rd</sup> 2007.

prejudice against women, besides also using religious foundation. Nowadays this judge is responding to a procedure before the National Council of Justice<sup>10</sup>.

15. Considering the controversy, the president joined in December 2007 with a Declaratory Action of Constitutionality before the Constitutional Court in Brazil, the Federal Supreme Court (STF) in order to pacify the area and recognize the law as constitutional. Then, the full implementation of the Act is upon the understanding of the STF, whose decision binds all legislation on the country. If the rule is declared constitutional, no judge can refuse to enforce it, which will contribute significantly to ensuring the rights of women in the country.

16. Recently the Supreme Court (STJ), by decision in the Habeas Corpus 11.608-MG, judged on March 5<sup>th</sup>, 2009, changed its view on a premise of the Maria da Penha Law that deals with the nature of the action. The law says that the action must be unconditional; it means the State directs the complaint independently on the representation of the victim. Until the month of March this was also the understanding of the Supreme Court, however, after this decision, the criminal action needs the representation of women to exist. This way, the action is subject to representation.

## **CONSTRUCTION OF STEREOTYPES**

17. In Brazil, all kind of media presents and reinforces stereotypes of men and women, reaffirming traditional gender roles. There are, in general, few spaces for the representation of diversity, singularities, including standards of beauty for women who are, usually, represented by white people, clear hair and eyes, while over 50% of the Brazilian population has African ancestry. To counter the negative and rooted cultural practices about stereotypes of discrimination against women, it is not able to forget the promotion of the image of women in the media. A recommendation of CEDAW to Brazil (2003) addresses the situation, and in Brazil, it is necessary to submit the following comments on the subject: The image of women represented reinforces stereotypes in soap operas, newspapers, humor TV shows and publicity campaigns. In some actions of civil society is possible to verify which standards are being enhanced:

18. *Beer advertisement* – “Women and Kaiser: Specialty of the House”: the campaign treats woman like a commodity and a consumer product, just like marketed beers. A complaint was made to the prosecutor of the State of São Paulo against the company in 2003. After investigation, in 2004 was signed a Term of Conduct Adjustment (TAC) with the company providing the realization of seminars in all regions of the country to discuss the image of women in advertising<sup>11</sup>.

19. *Case Via Costeira*: The announcement of services of mechanics, painting and funnel of a Volkswagen concessionaire's (Via Costeira) print the entire face of a woman injured on the side of saying “Mechanics, funnel and painting. It's in the face you need it” The advertising was made in one of the largest circulation newspapers in the state of Rio Grande do Norte.

20. The responsibility for the production of these messages of discrimination against women and the construction of stereotypes should be seen as the responsibility of advertisers, advertising agencies and the media. The State needs to monitor and oversee the practices of advertising offensive to the human rights of women, taking the appropriate measures to prohibit and punish abuses. Currently, control of advertising in the country is done by a mixed system that combines

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<sup>10</sup> National Council of Justice is the state agency responsible for the internal or administrative conduct of the judiciary, and its officials.

<sup>11</sup> TAC no. 16/2004, firmed on April 19<sup>th</sup>, 2004. Originated from delation of Cladem Brazil, with the support of various feminist organizations.

state legislation and self-regulation. Legal rules are open to interpretation and most of the judges and prosecutors do not consider the advertising vehicle as a propagator of values. In turn, the system of auto-regulation is ineffective, since it is a control exerted by their companies and advertising agencies. This way, it would be important that the matter was regulated by law that makes unfeasible sexism on advertisements.

21. It is possible to recognize some characters in the media that promote the image of women as intelligent and braves, but the images that reinforce the stereotypes of marriage, motherhood, economic interest, use of the body to obtain favors, are usual. It also presents black women in a position of subservience, and there is a very limited space for black women in magazines, newspapers and advertising in the country. In addition to these stereotypes, there is the spread of a single standard of beauty and a constant exploration of the female body (for example, in beer advertisements is common that the woman is presented as a consumer product, like the drink) and the excessive physics beauty, which contributes to the "imprisonment" of women to certain aesthetic standards, which contributes to a serious social problem that involves disturbances of body image, causing including psychic diseases. This situation affects not only adult women, but is also affecting female children. Today we know that 59% of Brazilian children and adolescents aged 7 to 19 years are unhappy with their physical appearance/body<sup>12</sup>, a factor that is critical for the spreading of diseases such as anorexia and bulimia, which are increasing among the young Brazilian<sup>13</sup>.

22. Discriminatory and stereotyped patterns are also present on the internet. On the eve of municipal elections in Brazil in 2008, occasion of debate and demand about public policies for women, a major Brazilian newspaper published on its website a poll about feminist claims: "If all the structural problems of the city had been resolved (Education, Health, Transportation, Security...) which feminine claims would you do?" Female public bathrooms perfumed and with hair dryer; baby car at the mall, especially at time of Christmas shopping; program "mother in shape", with the outfit comes a gym bag; makeup kit at home, distributed on the day of her birthday; ticket to have the hair smooth, to use in emergencies such as last-minute compromises; multiple card accepted at all aesthetics clinics; save-time manicures in strategic points: on the bus, the queue of the bank...

## **THE CRIMINALIZATION OF VOLUNTEER ABORTION**

The criminalization of abortion violates the principle of equality in Brazil because it helps women with economic conditions make abortion without incurring any criminal practice as the point "b" of 7<sup>th</sup> Article of the Criminal Code (the principle of extraterritorial criminal law); or simply they don't put their health at risk because they are able to pay for the illegal procedure. This violates the assumption of equal recognition of interests. The deaths of women, the risk to health and criminal practice are only for some women, mostly black and poor. The others, due to the access to information and economic conditions, have their will and physical integrity shielded. Furthermore, criminalization of voluntarily abortion contributes to the inequality between men and women with regard to reproductive autonomy.

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<sup>12</sup> Agreed to: Vilela JE, Lamounier JA, Dellaretti Filho MA, Barros Neto JR, Horta GM. "According to the EAT, 241 students (13.3%), mostly females, had inappropriate eating behaviors. Nineteen students (1.1%) had a BITE score indicating a possible diagnosis of bulimia nervosa. We found that 1,059 students (59%) were unhappy with their body image; 731 students (40%) were on a diet; and 1,014 (56%) exercised to loose weight. In addition, 218 students (12%) presented binge-eating and 175 students (10%) used purgative methods to control weight. CONCLUSIONS: We observed a high prevalence of possible eating disorders and inappropriate eating behaviors in the study population, especially among female adolescents".

<sup>13</sup> [http://www2.uol.com.br/vivermente/noticias/pacientes\\_com\\_anorexia\\_tem\\_ate\\_17\\_vezes\\_mais\\_risco\\_de\\_morrer\\_em\\_decorren\\_cia\\_do\\_transtorno\\_imprimir.html](http://www2.uol.com.br/vivermente/noticias/pacientes_com_anorexia_tem_ate_17_vezes_mais_risco_de_morrer_em_decorren_cia_do_transtorno_imprimir.html). Access on July 28<sup>th</sup>, 2008.

#### IV. WOMEN'S RIGHT TO WORK (6th Article)

23. The Brazilian economy has been growing since 2006. In the period 2004-2008 the annual growth rates were: 20% in 2004, 5,1% in 2005, 2,30% in 2006, 3,70% in 2007 and 4,50% in 2008 (Attachment). However, this economic development does not represent the social development. The concentration of income, although in decline, remains a striking feature of the country: 1,0% of the occupied population with lower income had 1,0% of total income from work in 2006, while 10% with the highest yields were to 44,4% of total earnings, a situation very similar observed in previous years. In 2004, the plots of the total were 1,0% and 44,6%, and in 2005 to 1,1% and 44,7%, respectively<sup>14</sup>.

24. In a country known by the concentration of income, social inequalities are exacerbated when speaking of black population: the impact of economic concentration in the country are higher in black women, inequality in the information addressed in 6<sup>th</sup> and 7<sup>th</sup> articles the ICESCR.

25. It is possible to indicate that the projection for the coming years is a decrease in this scenario: in a context of economic crisis since 2008, the forecast for Brazil is "massive increase in unemployment and poverty"<sup>15</sup>. Accordingly, studies of the International Confederation of Trade Unions indicated that "the current crisis affects is a 'special' manner women in time to get a job or in their labor conditions."<sup>16</sup>

26. A recent research with emphasis on the inequalities of gender and race, gets the following conclusions: (a) growth in the proportion of women headed families formed by couples with children; (b) the black population suffers from an average of years of schooling lower than the white population; (c) black women enters before and leave later in the labor market and retire with lower pensions; (d) domestic work is ongoing and mostly female, black and informal (without signed labour card); (e) even with the improvement of the average income of blacks and women, the white man - who lost income during the last decade - yet earn more.

27. Government employment policies focusing on non-discrimination of gender have shown themselves unable to prevent the predominance of female unemployment in the labor market. Although women's participation in the labor market has been increased in recent years - the proportion of women employed rose from 46% in 1996 to 52,4% in 2007, it is still significantly lower than men, which reached 72,4% in the same year<sup>17</sup>. Thus, women unemployment shows itself larger than the males, the rate of unemployment among men was 6,2%, while among women was 10,1% in January 2008. In the years 2005 and 2006, the total number of vacancies created in the market, 60% of them was occupied by women. In 2007, this percentage dropped to 30%. The year 2008 was characterized by both the decline in unemployment, as the consolidation of the predominance of women in the number of unemployed<sup>18</sup>.

28. The difficulty of gaining access to the labor market starts early for the female population: young women from 16 to 17 years have significantly lower occupancy rates for women of

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<sup>14</sup> Source: Brazilian Institute of Geography and Statistics.

<sup>15</sup> Source: International Labor Organization (ILO). Available at: [www.observatoriosocial.org.br](http://www.observatoriosocial.org.br). Access on March 28<sup>th</sup>, 2009.

<sup>16</sup> Source: International Confederation of Free Trade Unions – ICFTU. Available at: [www.icftu.org](http://www.icftu.org). Access on 28 mar 2009.

<sup>17</sup> PINHEIRO, Luana...[et al]. *Retrato das desigualdades de gênero e raça*. 3<sup>ed</sup>. Brasília: IPEA: SPM: UNIFEM, 2008. Available at: [http://200.130.7.5/spmu/docs/miolo\\_pgsoltas.pdf](http://200.130.7.5/spmu/docs/miolo_pgsoltas.pdf). Access on March 28<sup>th</sup>, 2009.

<sup>18</sup> Data from the Brazilian Institute of Geography and Statistics (IBGE).

other ages. In 2007, only 69,4% of those young people were employed, compared to 81,1% of young males<sup>19</sup>.

29. The vacancy rate - which measures the proportion of unemployed people to effective demand of employment - must also be evaluated from the perspective of inequality of gender and race. **Black women, which are in a more precarious situation, had an unemployment rate of 12,4% in 2007, compared to 9,4 for white women, 6,7 for black men and 5,5 for white men**<sup>20</sup> (Attachment). Therefore, public attention is called when implementing effective policies to combat discrimination by race, noting that unemployment is worse among black women.

30. The situations where are the highest overall unemployment rate are those where women belong to families consisting of a couple. In this case, the presence of children meant higher unemployment rate (15,6%), even greater when that child had less than one year of age (23,1%), decreased to 20,3% for those with young children over 1 year to 5 years and 12,3% when they were over five years (Table 5). Therefore, it seems that the presence of small children does not seem to prevent women from seeking work, but hampers their access to an occupation, by restricting their choice of work for a place closest to their residence and/or a type of working day less or more flexible or, because the employer prefers to hire women who does not have children<sup>21</sup>. The deficiency in public services (such as nurseries), which enable women to reconcile work with the care of children, is one of the causes of this difficulty for the exercise of women's work.

## V. WOMEN'S RIGHT TO FAIR WORKING CONDITIONS (7<sup>th</sup> Article)

31. Between 2004 and 2008 minimum wage increased by 43% and reached R\$ 415,00, [about \$187,10], 50% more than in 2000, and its impacts were greater for women, blacks, young people, the elderly and less educated. Among domestic workers, 30% receive the minimum - this group represents 8% of total employment and 17% of the female population<sup>22</sup>.

32. Recommendation No. 48 of the Committee of Economic, Social and Cultural Rights about assimilation on wages for equal work is not being implemented. According to the study published in March 2009 by the International Confederation of Trade Unions, **Brazil is the country with the largest wage difference between men and women worldwide, with 34% variation between the salaries of both genders**<sup>23</sup>. Data from the IBGE show that, on average, the income of women is equivalent to 71,3% of the men received. In 2008, the average yield of normal women was R\$ 956,80 [about \$ 431,19], while men was R \$ 1.342,70 [about \$605,09]. An attached table presented shows that between 2003 and 2008, growth of income of women was higher in Rio de Janeiro, 16,5% (from R\$ 817,20 [about \$368,27] to R\$ 952,90 [about \$429,62] ) and lower in São Paulo where there was a decrease of 2,2% (from R\$ 1.100,86 [about \$496,33] to R\$ 1.076,40 [about \$ 485,30]). In the metropolitan area of São Paulo were the highest average incomes usual, both for men as for women. Moreover, in Recife, men and women have the lowest incomes.

<sup>19</sup> PINHEIRO, Luana...[et al]. *Retrato das desigualdades de gênero e raça*. 3ªed. Brasília: IPEA: SPM: UNIFEM, 2008. Available at: <[http://200.130.7.5/spmu/docs/miolo\\_pgsoltas.pdf](http://200.130.7.5/spmu/docs/miolo_pgsoltas.pdf)>. Access on March 28<sup>th</sup>, 2009.

<sup>20</sup> PINHEIRO, Luana...[et al]. *Retrato das desigualdades de gênero e raça*. 3ªed. Brasília: IPEA: SPM: UNIFEM, 2008. Available at: <[http://200.130.7.5/spmu/docs/miolo\\_pgsoltas.pdf](http://200.130.7.5/spmu/docs/miolo_pgsoltas.pdf)>. Access on March 28<sup>th</sup>, 2009.

<sup>21</sup> DIEESE; SEADE. *Relação família e trabalho na perspectiva de gênero: a inserção de chefes e cônjuges no mercado de trabalho*. In *Mulher e Trabalho* – Edição Especial. São Paulo: 2009. Available at: [http://www.mte.gov.br/observatorio/Boletim\\_Mulher\\_Trabalho\\_Ed\\_Especial.pdf](http://www.mte.gov.br/observatorio/Boletim_Mulher_Trabalho_Ed_Especial.pdf). p. 13. Access on March 30<sup>th</sup>, 2009.

<sup>22</sup> Agência Estado. "OIT: efeitos da crise sobre salários serão 'dolorosos'." November 25<sup>th</sup>, 2008.

<sup>23</sup> Portal UOL. *Brasil é país com maior diferença salarial entre homens e mulheres*. 04 mar 2009. Available at: <<http://economia.uol.com.br/ultnot/efe/2009/03/04/ult1767u141428.jhtm>>. Access on March 28<sup>th</sup>, 2009.

33. The number of families formed by couples with children headed by women grew 10 times in 13 years, from 3,4%, or 247.795 families in 1993 to 14,2%, or 2.235.233 households in 2006. The proportion of families headed by women rose from 19,7% in 1993 to 28,8% in 2006. In 2006, 31,3% of households living in urban areas were headed by women, an increase of 9,6 percentage points compared to 1993. In rural areas at the same period, the percentage of women who headed families was 14,6%, which corresponds to an increase of 3,2 percentage points in comparison with 1993<sup>24</sup>. Data also show that 89,7% of households composed of heads without a consort and with children were headed by women (DIEESE/SEADE-2007/2208<sup>25</sup>): SILGLE MOTHERS. This new family composition, growing in Brazil, is linked to the problem of wage inequality: the heads of household are the same women at all levels of education that earn less than men, focusing therefore on low family income, and consequently, the gap in effectiveness breach of 7<sup>th</sup> article of the ICESCR - ensuring, through the work, of a decent existence without discrimination for women workers and their families.

### CONCILIATION BETWEEN WORK AND FAMILY

34. Three types of most common policies, usually existing in developed countries, promote the reconciliation of work and family care: (a) licenses from work to take care of children, without loss of employment and maintaining salary or other monetary benefits; (b) regulation of the work time that enables parents to relocate or reduce the hours of work when the needs for care of children is greatest, without economic costs and the development of career; (c) access to nurseries, pre-schools and schools full time as an alternative arrangement for the care of children when parents are at work<sup>26</sup>.

35. About the licenses from work to take care of family and maternity issues, Brazil has legislation on maternity leave (Law 11.770), expanded in 2007 from 120 to 180 days, a period in which the woman receive maternity pay. Although it expanded days, the new license is limited, because it is optional to the companies - which may or may not adhere to the federal program Citizen Company in exchange for tax relief. Moreover, the benefit is only achieved, in private companies, upon request of the pregnant employee, even when the boss already accepted the government program; or for those who are civil servants. The law also reinforces the stereotype of reproduction like something in the power of women, because it does not provides increased paternity leave.

36. The measures that are restricted to women in formal work exclude a significant number of women in positions of precarious work (informal, for subsistence and unpaid): 40% among others than black, and among the black contingent that rises to more than 50%. The informal work denies, in the present, access to labor rights, and for the future it means a maturity without social protection and income: in the Northeast, more than 70% of women do not contribute and therefore are more distant from retiring or social protection provided by the Social Welfare (DIEESE, 2005). In the field of women (black, not black), there are 39% of persons employed in agricultural activities unpaid and 42% of employed in the consumption production (PNAD, IBGE, 2003)<sup>27</sup>.

<sup>24</sup> Research Portrait of Inequalities of Gender and Race.

<sup>25</sup> DIEESE; SEADE. *Relação família e trabalho na perspectiva de gênero: a inserção de chefes e cônjuges no mercado de trabalho*. In *Mulher e Trabalho – Edição Especial*. São Paulo: 2009. Available at: [http://www.mte.gov.br/observatorio/Boletim\\_Mulher\\_Trabalho\\_Ed\\_Especial.pdf](http://www.mte.gov.br/observatorio/Boletim_Mulher_Trabalho_Ed_Especial.pdf). p. 03. Access on March 30<sup>th</sup>, 2009.

<sup>26</sup> SORJ, Bila. *Et al. Políticas e práticas de conciliação entre família e trabalho no Brasil*. Cadernos de Pesquisa, v. 37, n. 132, set./dez. 2007. Available at: <http://www.scielo.br/pdf/cp/v37n132/a0437132.pdf>. p. 3. Access on March 28<sup>th</sup>, 2009.

<sup>27</sup> ÁVILA, Maria Betânia. O trabalho das mulheres, ontem e hoje. Available at:

37. **Moreover, the licensing from work to take care of family matters provided by Brazilian labor laws are limited. These measures apply only to formal workers, who represent less than half of the workforce active in the country.** These workers are, in general, held in major private and public companies. The significant growth of informal employment in the last decade indicates that a growing contingent of workers is unprotected from basic labor rights, especially the spouses and heads of single parent families, who are more proportionately represented in the informal sector of the economy<sup>28</sup>.

38. About the care of children when the parents are at work: although women's participation in the labor market has been grown, this progress was not accompanied by a corresponding transfer of the time spent by men in the labor market to the "private sphere", thus maintain a sexual division of labor with a strong bias to gender<sup>29</sup>. The care of children remains socially assigned almost exclusively to women. Thus, children with or without the presence of parents, appear to hinder the entrance of women in the workplace, especially in situations where there is no sharing of household chores and care of children. This reaffirms the need for attention by the managers of public policies, to expand the supply of places in nurseries and infant schools, especially for families headed by women<sup>30</sup>.

39. Paying attention to the fact that rich women are able to pay for babysitters or private daycare for their children, the problem of reconciling work and family life shows itself with the social class bias, it means it affects women of poorest layers in society, which make up the majority of Brazilian female population and that is precisely the ones who needs public services.

40. A research from IBGE suggests that women predominate among workers with less extensive journeys. About half of men and women occupied, 51,6% and 49,5% respectively, work between 40 and 44 hours per week. However, on tracks of 39 hours or less, the female population employed predominates, with 26,4% against 10,1% of men. The opposite is true in the range of work for more than 45 hours per week, with rates of 38,2% for men and 24,1% for women. (Annex). While it appears that women journeys have been smaller than male, it is important to highlight the existence of the "tippie journey" of women: the attainment of the household chores and care of children are added to the labor activity of women outside, which could relativise the concept of less extensive journey, and point out two possibilities: a reduction of the working day for women, or promotion of the integration of men in housework and care of children.

**Experience of civil society:** a study on a Landless Movement (MST) encampment in the state of Santa Catarina, in 2003, indicates that the hours of work per day performed by men are 8 hours, while women account for 4 hours. The women themselves settle the differences between journeys as a possibility for care of children and household chores<sup>31</sup>.

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[http://observatoriodamulher.org.br/site/index2.php?option=com\\_content&do\\_pdf=1&id=18](http://observatoriodamulher.org.br/site/index2.php?option=com_content&do_pdf=1&id=18) . Access on March 31<sup>st</sup>, 2009.

<sup>28</sup> SORJ, Bila. *Et al. Políticas e práticas de conciliação entre família e trabalho no Brasil*. Cadernos de Pesquisa, v. 37, n. 132, set./dez. 2007 Available at: <http://www.scielo.br/pdf/cp/v37n132/a0437132.pdf> . p. 3. Access on March 28<sup>th</sup>, 2009.

<sup>29</sup> SORJ, Bila. *Et al. Políticas e práticas de conciliação entre família e trabalho no Brasil*. Cadernos de Pesquisa, v. 37, n. 132, set./dez. 2007 Available at: <http://www.scielo.br/pdf/cp/v37n132/a0437132.pdf> . p. 2. Access on March 28<sup>th</sup>, 2009.

<sup>30</sup> DIEESE; SEADE. *Relação família e trabalho na perspectiva de gênero: a inserção de chefes e cônjuges no mercado de trabalho*. In *Mulher e Trabalho – Edição Especial*. São Paulo: 2009. Available at: [http://www.mte.gov.br/observatorio/Boletim\\_Mulher\\_Trabalho\\_Ed\\_Especial.pdf](http://www.mte.gov.br/observatorio/Boletim_Mulher_Trabalho_Ed_Especial.pdf) . p. 20. Access on March 30<sup>th</sup>, 2009.

<sup>31</sup> SAALVARO, Giovana Ilka J. Jornadas de Trabalho de Mulheres e Homens em um acampamento do MST. *Revista de Estudos Feministas*. Jan-Abr. vol. 12. n°001. Rio de Janeiro: Universidade Federal do Rio de Janeiro, 2004.

## **DOMESTIC WORKERS**

41. Analyzing the distribution of economic activities, in January 2008, among employed women we found that 16,5% were in domestic services; 22,0% in Public Administration, Education, Defense, Security, Health; 13,3% in Services rendered to the Company; 13,1% in Industry; 0,6% in Construction; 17,4% in Trade and 17,0% in Other Services and Other Activities. Among occupied men have predominant participation in industry, 20,0%, and unlike women, they have a higher percentage of employment in construction, 12,0%, and reduced presence in domestic services, 0,7%<sup>32</sup>. Women are greater represented on the so called precarious work: domestic work, production for own consumption and unpaid work. These data provide a critical analysis of the increased female participation in the labor market: there are more women, but predominantly acting precarious work.

42. The research *Portrait of Inequalities of Gender and Race*, from the Institute of Applied Economic Research (IPEA), which analyzes data from the National Survey by Household Sample (PNAD) 2007, shows that among black women the data shows even more precarious situation. They constitute the majority of domestic workers, 21,4% (against 12,1% among white women and 0,8% among men), and production for subsistence and unpaid work, 15,4%. They are also the group with the lowest proportions with signed labor card, 23,3%, and in position of employer, 1,2%<sup>33</sup>. Therefore, it demonstrates that black women are in a situation of extreme vulnerability in the labor market (Annex) and urgently need for specific measures by the authorities, which even though it has been already discussed ways to focus on the racial and gender inequality, has not concrete measures for the reversal of this framework.

43. According to the National Survey by Household Sampling - PNAD, domestic work had 6,6 million people in 2006 among people aged 16 and over who were in the labor market. Of this total, 93,2% were women and 6,8%, men. The domestic work represented 16,7% of total female employment in Brazil, that is, in numerical terms, 6,2 million women. In a 100 black women employed in Brazil, approximately 22 are domestic workers. Among white women, yellow and indigenous, domestic employment corresponds to 13% of their occupation<sup>34</sup>.

44. The cohabitation in private homes creates confusion between the roles of professional and family. This situation is aggravated when the worker is a child or adolescent, because the guarantees are generally due to the discretion of the employer and are not always met the requirements for protection of the child put on ILO Conventions: No 138 on the minimum age for admission to work, and No 182 on the worst forms of child labor, both ratified by Brazil<sup>35</sup>.

45. On domestic work performed by girls aged between 10 and 17 years (school age) there was drop in percentage from 14,2% in 1996 to 5,8% in 2007. These numbers are respectively 12,8% and 4,4% among white girls, and 15,3% and 6,5% among blacks<sup>36</sup>. Observing these data, it is stressed on the one hand the positive aspect that there was a significant decline over the decade in the number of domestic workers with school age, however, on the other hand, the pattern on the racial discrimination persists. It is important to

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<sup>32</sup> Available at: [http://www.ibge.gov.br/home/presidencia/noticias/noticia\\_impresao.php?id\\_noticia=1099](http://www.ibge.gov.br/home/presidencia/noticias/noticia_impresao.php?id_noticia=1099)

<sup>33</sup> PINHEIRO, Luana...[et al]. *Retrato das desigualdades de gênero e raça*. 3ªed. Brasília: IPEA: SPM: UNIFEM, 2008. Available at: <[http://200.130.7.5/spmu/docs/miolo\\_pgsoltas.pdf](http://200.130.7.5/spmu/docs/miolo_pgsoltas.pdf)> . Access on March 28<sup>th</sup>, 2009.

<sup>34</sup> [http://www.oitbrasil.org.br/download/trabalho\\_domestico\\_25\\_04\\_2008.pdf](http://www.oitbrasil.org.br/download/trabalho_domestico_25_04_2008.pdf)

<sup>35</sup> [http://www.oitbrasil.org.br/download/trabalho\\_domestico\\_25\\_04\\_2008.pdf](http://www.oitbrasil.org.br/download/trabalho_domestico_25_04_2008.pdf)

<sup>36</sup> <http://www.ipea.gov.br/default.jsp>. Access on March 30<sup>th</sup>, 2009.

remember that the Presidential Decree No. 6841 of June 12<sup>th</sup>, 2008, prohibits domestic work for people aged younger than 18.

46. About the percentage of domestic workers with signed labour card: if in 1996 there was 18,7% among blacks and 23,6% among whites, in 2007 these rates were 25,2% and 30,5% (Annex). Even with the positive increase observed in both worlds, a gap remains between them, which signal the presence of racial discrimination<sup>37</sup>.

## **VI. PROTECTION OF FAMILY, MOTHERHOOD AND CHILDREN (10th Article)**

### **SEXUAL VIOLENCE AGAINST CHILDREN**

47. Sexual violence affects not only adult women. Female children are also disproportionately affected by this kind of violence.

48. A study realized between July 2005 and July 2007 based on numbers collected in the National System of Live Births, identified 99 cases of girls aged under 14 who gave birth in public hospitals in Recife (northeast of the country). According to the survey, 26% of girls said they suffered some kind of sexual violence throughout childhood. The research showed that most had only between 4 and 7 years of schooling. Still, only 44% are still studying and the others are divided into little valued and prohibited activities because they are still less than 14 years old and the law do not allow work for this age group<sup>38</sup>.

49. Although the majority of girls, 80%, had only one pregnancy, 17,7% of them had two pregnancies and 2,2%, three pregnancies. Drew attention the fact that most have participated in more than seven prenatal consultations. In 61% of notifications, is the child who takes care of the son or daughter. In 31% of cases the maternal grandparents of the newborn help. The maternal grandparents are the primary responsible in providing the children economically. Then comes the biological father, explains the doctor and author of the work. In 88% of cases, the babies were not included in social programs. Only 10% of pregnant women in this age group are absorbed by the teams of the Family Health Posts (PSFs).

50. Despite there is evidence that girls suffer, in proportion, more sexual abuse, there were no specific public policies to face sexual violence perpetrated against this group; there is only general campaigns against pedophilia, but that does not include a gender focus. This situation is aggravated because usually these girls have their rights to legal abortion impeded. Although the law permits the termination of pregnancy in cases of rape and risk of death to pregnant women, the procedure for minors should be required by the legal responsible for them. When the violence occurs in the home environment, it is common that the choice of abortion is not presented to the child or, when it is, the completion of the procedure remains hampered by pressure from religious groups opposed to the interruption of pregnancy in any way. The lack of places that offer the service also exacerbates the problem, especially in small communities, which are in general more vulnerable and lack of resources to deal with the particular situation.

### **DOMESTIC VIOLENCE AGAINST PREGNANT WOMEN**

51. According to the research "Physical domestic violence and pregnancy: results of a survey in the puerperium", performed by IMIP in 2001, the prevalence of domestic physical violence was

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<sup>37</sup> PINHEIRO, Luana...[et al]. *Retrato das desigualdades de gênero e raça*. 3<sup>ed</sup>. Brasília: IPEA: SPM: UNIFEM, 2008. Available at: <[http://200.130.7.5/spmu/docs/miolo\\_pgsoltas.pdf](http://200.130.7.5/spmu/docs/miolo_pgsoltas.pdf)>. Access on March 28<sup>th</sup>, 2009.

<sup>38</sup> Doctoral thesis in public health by the Oswaldo Cruz Foundation, authored by the doctor Carmelita Maia.

13,1% (IC 95% = 10,1-16,6) and 7,4% (IC 95% = 5,2-10,2) before and during pregnancy, respectively. The pattern of violence has changed during pregnancy, having ceased in 43,6%, decreased by 27,3% and increased in 11% of cases. After multivariate analysis, the variables that remained strongly associated with violence were low educational level and family history of violence of women, alcohol consumption and unemployment of the partner. Between prenatal outcome, there was high frequency of neonatal death among victims of violence<sup>39</sup>.

52. Still, according to the research: "Abortion and Religion in Brazilian Courts"<sup>40</sup>, which investigated the behavior of the courts in the period 2001 to 2006, 30% of cases condemning the practice of abortion that reach the Brazilian courts denounce situations where the pregnancy has violence from her partner (or ex-partner), in most situations, leading to death. Thus, it is noted to be quite common that violence against women is worse in times of pregnancy, showing a convergence between the issues of domestic violence and sexual and reproductive rights. There were no policies addressed specifically to these issues.

## DOMESTIC AND FAMILIAR VIOLENCE LAW

53. Violence, particularly domestic, produces public spending, especially health and welfare, and is an obstruction to national growth because it reduces investment in other areas and regions of the country<sup>41</sup>.

54. Considering the value of the goods and services used to prevent and treat violence and its consequences, we must consider that women in situations of domestic violence need to use more medical services and health in general; police services; legal and justice; housing services, among others. In Brazil, for example, is known the victims even get sick more often, even symptomatically, as a result of episodes of violence.

55. Considering the value of the goods and services which are no longer produced because of the violence, it should be taken into account: (1) the level of absence of women in the workplace due to such violence; (2) the fact that many lose their jobs due to continuous absences and/or the prosecution of its perpetrators in the workplace; and the fact there is the phenomenon of a lower productivity in the country resulting from such violence and loss of resources/income due to premature deaths of women murdered by their partners<sup>42</sup>.

56. Maria da Penha Law extends the concept of family when reiterates that every woman, independently of sexual orientation, class, race, ethnicity, income, culture, educational level, age and religion have the *right to live without violence*. By recognizing the existence of homoafective unions also build an entire process of disintegration of social prejudices, assertion of rights and acquisition of homoafective citizenship.

57. As for the content of the Act, the coverage of domestic and family violence, the Superior Court of Justice (STJ) believed that law enforcement does not apply from ex-boyfriend's aggression, but changed its view only after a demand with great repercussion in the national media on the murder of a teenager, known as the "Eloá Case".

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<sup>39</sup> [http://www.violenciamulher.org.br/index.php?option=com\\_content&view=article&id=159:violencia-fisica-domestica-e-gestacao-resultados-de-um-inquerito-no-puerperio-imip-2001&catid=7:dados-e-pesquisas&Itemid=4](http://www.violenciamulher.org.br/index.php?option=com_content&view=article&id=159:violencia-fisica-domestica-e-gestacao-resultados-de-um-inquerito-no-puerperio-imip-2001&catid=7:dados-e-pesquisas&Itemid=4). Access on March 30<sup>th</sup>, 2009.

<sup>40</sup> [http://www.ccr.org.br/uploads/noticias/330\\_aborto\\_e\\_religiao\\_nos\\_tribunais\\_brasileiros.pdf](http://www.ccr.org.br/uploads/noticias/330_aborto_e_religiao_nos_tribunais_brasileiros.pdf). Access on March 30<sup>th</sup>, 2009.

<sup>41</sup> See: PANDJIARJIAN, Valéria. Reflexiones sobre el contexto económico de la violencia doméstica contra las mujeres en Latino América desde una perspectiva de género. Mimeo. *Apud* BID. *Demasiado Cercano al Hogar: Violencia doméstica en las Américas*. Estados Unidos, 1999; especialmente el Capítulo 3. Available at:

<http://www.cladem.org/espanol/regionales/Violenciadegenero/Monitoreando/VIOINFOR.DOC>. Access on March, 2009.

<sup>42</sup> Idem ob. Cit.

**Eloá Case:** in 2008, gained prominence in the national media the femicide of a 15 years old woman, victim of her 22 years old ex-boyfriend. There were 101 hours in private prison, incessantly transmitted by the national press (both print and television, radio and internet). The young woman (Eloá) had broken up with her boyfriend and was reluctant to reinitiate the loving relationship. Not accepting the break, the man broke into the residence of ex-partner with a gun. Inside there was Eloá and some school mates, who were after released. At the end of 101 hours of private prison, Eloá and her colleague were shot, resulting in the death of Eloá. The man is arrested. One of the reasons given by the offender for his attitude was the resistance of Eloá in getting back their relationship, and because he felt jealous of his ex-girlfriend.

## **SEXUAL VIOLENCE AND INTERRUPTION OF PREGNANCY**

58. Recommendation 51 of the Committee ESCR is a specific concern about deaths from illegal abortion. The issue will be explained in more detail in this report on monitoring the Article 12 of ICESCR, abortion as a matter of public health in Brazil. However, it is important to highlight safe and legal abortion, and the anticipation of therapy delivery.

59. In Brazil the service of legal abortion is provided for cases of rape and risk of death for pregnant women. Despite this law mandate, which dates from 1940, there are some structural and moral problems: 1. not all hospitals offer the service, often forcing women to change their location; 2. some hospitals require formal procedures not predicted by law, as police reports, blocking access to health; and 3. often the procedure is not performed due to the grounds of conscientious objection. Structural problems stem in part on grounds of moral and public investments. The fundamental right of objection of conscience becomes a real limitation of women's rights when used in public services on a wrong way. The fact is that if the professional chooses to become a public servant, he knows, in advance, the prerogatives of its function at that time their freedom and conscience are shielded. He can, by faith, choose not to be official. Assuming the office and denying it to perform its function ends up breaking at the same time the public interest, democratic order and the rights of women. The situation is so serious that in some capital and in several cities of Brazil, it is not possible to perform the procedure for legal abortion. What is identified is a weakness on the meaning of state and public order. Not so much the fact of the Brazilian state is secular, but there is a difficulty on the part of the State institutions and their agents to take in understanding the meaning of their duties. There is the privatization of the public State in Brazil, something that occurs through the imposition of moral or economic interests.

60. Recently, a case that reached the two legal criteria drew attention of the Brazilian society and the international community.

**Pernambuco case:** A 9 years old child got pregnant, victim of domestic and family violence since she was 6 years old. The pregnancy, besides a consequence of rape, represented risk to the child who was pregnant of twins. The medical team made the legal and safe abortion. The question became nationally known when the Archbishop of Recife and Olinda (Pernambuco) said the excommunication of the child, the mother of the child and the medical team. The Church tried to prevent the child's access to legal abortion services, a right of children and women victims of family violence.

61. The anticipation of labor is the term used in the accusation of breach of fundamental precept (ADPF paragraph 54) for cases where there is fetal malformation incompatible with life outside the uterus, such as anencephaly. Despite this interruption is not a case of abortion, because there is no live fetus, the procedure is done only by judicial authorization. With the popularization of ultrasound systems in public health and the diagnosis of anencephaly - that are obtained in the third month of pregnancy - is how the issue got national scope. This is because, while women with economic conditions to do the procedure silently, poor women had their children without the right to think about stopping the pregnancy after the malformation diagnosis. Therefore, after a specific case that reached the Brazilian Constitutional Court (STF) in 2004, which was not tried for the birth of the fetus, some civil society organizations joined with ADPF/54, still awaiting decision in the STF. The objective of action is to prevent women and couples from requiring judicial authorization or any other bureaucratic procedure to stop the pregnancy before the diagnosis of anencephaly. The interruption of pregnancy for fetal anencephaly does not constitute a crime because the Brazilian state has a definition of death under the law of Transplantation, in this sense there is a perfect analogy between the facts: anencephaly and brain death, therefore no legal justification or ethical to force pregnant women to take that out, that is the central thesis of ADPF. Require that women and couples to carry out pregnancy for fetal anencephaly constitutes torture and serious violations of human rights.

62. During the first half of 2008 there were three decisions in the Courts of Justice of the states involving pregnancies whose fetuses were affected by serious deficiencies, and two of the anomaly were anencephaly. It is observed that some courts understand: (1) when the fetus is unable to extra uterine life there is no obligation for women to bring out the pregnancy and, (2) women's mental and physical health are rights to be preserved by, setting the example of the Civil Appeal 1.0297.07.006271-8/00, from Court of Justice of Minas Gerais. There were also decisions that defended the right to terminate the pregnancy with another<sup>43</sup> kind of anomaly that turned the fetus incompatible with life, on behalf of the health and dignity of the pregnant woman, as in Civil Appellant 1.0027.08.157422-3/001, June 2008<sup>44</sup>.

## WOMEN PRISONERS AND MATERNITY

63. Motherhood is protected by Brazilian law and treated as social right by the Federal Constitution (6<sup>th</sup> and 7<sup>th</sup> article). The rights of the child (The Child and Adolescent Statute) are also protected.

64. National and international legislation protects mothers and pregnant women in prison and their children in period of breastfeeding, without mentioning the age of the child. Despite the protection, to guarantee that right of mothers and children it is necessary structured prisons for the health of both, and also conditions of well being for children in prison space.

65. The research called *Mothers and children behind bars: in question the principle of human dignity*<sup>45</sup>, held in 79 prisons in 2005, provides data that must be considered in the

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<sup>43</sup> Decision about anomaly, thanatophoric dysplasia (TD). Unlike anencephaly, on thanatophoric dysplasia there is no absence of living brain, although there is also lack of extra-uterine life, because that is also lethal skeletal dysplasia. The thanatophoric dysplasia is characterized by a shortening of ribs and members, bending of long bones, vertebral anomalies, macrocephaly and changes in the natural process of development that makes the fetus incompatible with life. See the attachment with cases showing the importance of ADPF/54. The main arguments of judicial decisions are the integrity of the pregnant woman, her dignity, physical and emotional integrity and the right to choose to pursue or not the pregnancy, since pregnancy is not an end in itself.

<sup>44</sup> For the Court of Minas Gerais the gestation of a fetus with **congenital anomalies incompatible with life** (even different from anencephaly) provokes the confrontation of many values set by the Federal Constitution.

<sup>45</sup> SANTA RITA. Rosângela Peixoto. *Mães e Crianças atrás das grades: em questão o princípio da dignidade da pessoa humana*. Brasília, Ministério da Justiça. 2007. Available at:

implementation of public policies for women, and reinforce the need to observe the specificities of the female population in the prison system. According to the study, criteria of time and place of residence of the child with the mother changes according to who is leading the prison unit. Space for accommodation of children are improvised reaching situations where the babies are in the same cell as the mother, and when there are nurseries and kindergartens they are insecure establishments without specialized professionals. A report on violence and women in Brazil, after visits by Amnesty International in the country in 2006, include reports that reinforce the lack of investment in the protection of incarcerated mothers and their children: “babies in prison, and one of them would have only 13 days. The detainees said that these babies had not received the vaccines required, and therefore they were at risk of contracting tuberculosis, meningitis and hanta virus from the prisoners. They also reported to Amnesty International that they had no access to basic supplies such as diapers”. The complaints were denied by local authorities<sup>46</sup>.

66. Not only the situation of children newborn should be considered, the relationship between incarcerated women and their children can not be neglected even from the perspective of family ties. Brazilian civil society organizations presented a special report on incarcerated women, the Inter-American Commission on Human Rights of the OAS, indicating in a Report of the Subcommittee for the Promotion and Protection of Human Rights that high percentage of women prisoners are mothers and are responsible for caring for children. However, in general, there are no appropriate public policies in the treatment of prisoners. The report indicated that 87% of Brazilian inmates have children, while 65% do not maintain relationships with the children's father (they are single mothers), so the greatest responsibility falls on women. In fact, in São Paulo, where is sheltered approximately 41% of the female prison population in the country, the last census of 2002 - on the severity and complexity of guarantees related to the subject, especially the delicacy of relations between mothers and children, women and emotional relationships-, it was observed that in the Capital Women's Penitentiary, 83% of women had children, of whom 59% lived with the family of the in prisoner; the husband (or ex-husband) kept in custody only 6% of cases<sup>47</sup>. There is a lack of proportion between the number of women who have children and those living with husband/partner, which is indicative of “matriarchy” families.

## **VII. HEALTHY ENVIRONMENT, DWELLING AND HEALTH (1<sup>st</sup>, 11<sup>th</sup> and 12<sup>th</sup> articles)**

67. Over the past 15 years has been observed a continuous increase of women's diseases such as breast cancer, fibroids, endometriosis, abortions and infertility. There was also increase in cases of fibromyalgia, chronic fatigue syndrome and of hypothyroidism, which affects mainly women. Studies show that exposure to chemicals found in the environment such as pesticides, herbicides, insecticides and by-products of industry may cause endocrine disruption in people. Also in relation to the environment, it is worth mentioning that there are numerous actions of the movement of women to their preservation. In 2009, women from Via Campesina, a movement of rural women workers, occupied an area of land in the southern state of Rio Grande do Sul to denounce the harm caused by monocultures of exotic plants by agribusiness and multinationals. They complain that the in the border of Brazil with Uruguay, cities of Candiota and Aceguá, an area of almost 50 thousand hectares of land of Votorantin

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[http://btdt.bce.unb.br/tedesimplificado/tde\\_busca/arguivo.php?codArquivo=837](http://btdt.bce.unb.br/tedesimplificado/tde_busca/arguivo.php?codArquivo=837)

<sup>46</sup> ANISTIA INTERNACIONAL. Por trás do silêncio: Experiências de mulheres coma violência urbana no Brasil (Índice AI: AMR 19/001/2008)

<http://www.amnesty.org/en/library/asset/AMR19/001/2008/en/784c4e58-62f1-11dd-9756-f55e3ec0a600/amr190012008por.pdf>

<sup>47</sup> Relatório sobre Mulheres Encarceradas (março de 2007), elaborado por Centro pela Justiça e pelo Direito Internacional, CEJIL e outros. Disponível em:

<http://www.cladem.org/portugues/nacionais/BRASIL/Relatorio%20sobre%20mujeres%20encarceladas%20-%20Brasil.pdf>

Celulose, with monoculture of eucalyptus for the production of cellulose for export with tax benefits, destroys the soil, contaminates the water table on account of pesticides, dry rivers and springs.

68. At the end of 2008 many environmental disasters caused by heavy rains occurred on the state of Santa Catarina. Cities like Blumenau and most of the region of Vale do Itajaí had small homes and farms destroyed. The higher cost of the disaster falls on women who occupy the poorest sections of the population. In early 2009 the state of Minas Gerais has also suffered with the heavy rain, like the disaster of Santa Catarina. Despite the recent damage the Legislative Assembly of Santa Catarina approved on March 31<sup>st</sup>, 2009, Law 238/2008, which violates federal laws in order to reduce protected areas. The riparian forests on the banks of the rivers are reduced from 30 to 5 meters and in the case of the river headwaters area drops from 50 to 10 meters.

69. The lack of investment in family agriculture, environmental preservation, sanitation and the lack of policies to control pollution, affect women most directly, mainly poor women, indigenous, rubber, countrywomen, women riverside and fishers, who use the forest and nature for their survival. For example, family farming and organic cultivation are the best conditions for production of food because they have more nutrients and require the preservation of the environment. Every 10 hectares of Amazon forest destroyed, 50% are for industrial livestock production and 40% of soybean, which is used to feed animals in Brazil and abroad<sup>48</sup>. In 2008 the Ministry of Labor in the state of Rio Grande do Norte recorded the highest rates of child slave labor in slaughterhouses and prostitution of child girls in agricultural land<sup>49</sup>. Brazil also presents serious obstacles to women's access to land, rural credit and access to technology.

70. On March 25<sup>th</sup>, 2009 the federal government issued Provisional Measure 459 which provides the program My House, My Life (PMCMV) and urban land regularization. Besides the importance of investment to ensure access to house, the government fail about the land settlement, for example, he does not require sanitation and drainage of inland waters (article 51), only the fulfillment of some criteria that may or may not include these items.

## **VIII. RIGHT TO ENJOY THE HIGHEST POSSIBLE LEVEL OF PHYSICAL AND METNAL HEALTH (Articles 12, 3 and 4)**

### **Recommendation No. 51 of the ICESCR Committee: legislation review, illegal abortion and death.**

#### **ILLEGAL AND UNSAFE ABORTION**

71. The sealing of voluntary abortion in Brazil, as already noted, creates discrimination and violation of equality and the right of women's autonomy. Moreover, constitutes a serious public health problem. The situation of illegality does not curb the practice of this procedure, which leads to death of women and the serious risk for their sexual and reproductive health, with severe consequences affecting women within discriminated social groups, such as black women, poor women.

72. Despite being a reality in Brazil, illegal voluntary abortion is unsafe. According to Datasus/Ministry of Health/SIH-SUS, 2009, in the year 2007 were registered 222.552 cases

<sup>48</sup> World Wide Foundation [www.wwf.org](http://www.wwf.org). See: BUGLIONE, Samantha. Você sabia? In: Jornal A Noticia. Santa Catarina. Publicado em 27/01/2009, p. 11.

<sup>49</sup> Ministry of Labor and Employment from Rio Grande do Norte [www.mte.gov/delegacias](http://www.mte.gov/delegacias).

of abortion complications in the Unified Health Service (SUS) and in 2008 were 236.749. Of this total, only 2.130 in 2007 and 3.241 procedures in 2008 were due to legal reasons (legal forecast or judicial decision). All other attendances were due to complications arising from the conduct of illegal and unsafe procedures. Note that these data are only from the public health system, which covers the statistical procedures that were successful or even made in the particular health system. Thus, it is quite likely to occur in reality a greater number of illegal abortions.

73. Moreover, the abortion performed by qualified professionals in safety does not represent risks to life or sexual and reproductive health of women. According to the non-governmental organization Ipas-Brazil, the possibility of a woman dying due to complications from the practice of safe abortion is 1 in 100.000 procedures, it means less than the risk of dying in pregnancy or in childbirth<sup>50</sup>.

74. As a result of voluntary illegal abortion, Brazil is in 65<sup>th</sup> position in the world ranking of maternal deaths: 114 deaths/100.000 births<sup>51</sup>. The impact of this reality affects women unequally. The research "Magnitude of abortion in Brazil" (Ipas-Brazil/Social Medicine Institute from UERJ/Technical Area of Women's Health, the Ministry of Health) found that rates of maternal mortality caused by unsafe abortion are higher in the neediest regions, as North and Northeast. Moreover, post-abortion curettage is the second most obstetric procedures performed in inpatient units in these regions<sup>52</sup>.

75. Young black women, with few resources and living in the poorest regions of Brazil, are the main victims of illegal abortion. Research carried out by the Federal University of Rio de Janeiro (UFRJ) and the NGO Ipas, with more recent data from the Ministry of Health, shows that from 565 victims of abortion between 1999 and 2005, 50,6% were black women.

## **THE NATIONAL PARLIAMENT, ABORTION AND REPRODUCTIVE RIGHTS**

76. Among the 622 proposals currently in process in Brazilian Congress which has been accompanied by the non-governmental organization Cfemea<sup>53</sup>, 42 are directly linked to the issue of abortion. From these 42 legislative proposals, 31 provide for setbacks in relation to women's autonomy, from the aggravation of the penalty to including abortion as a heinous crime, amounting to torture, rape and traffic of drugs. Only nine proposals will meet the recommendations of international committees and propose improvements in legislation, such as decriminalization of abortion, and the obligation of the Unified Health Service carry out the abortions permitted by law. Two other legislative proposals require the convening of plebiscite on the issue<sup>54</sup>.

77. In the year 2008 two laws were highlighted in relation to reproductive rights: First, Law 11.804/2008 which disciplines the right to pregnancy food; second, Law 11.770/2008 establishing the Program Citizen Company for the extension of license maternity grant through tax incentive. In 2007, Law 11.634/2007 which guarantees the right of the pregnant to knowledge and link to the maternity where she will receive care under the Unified Health System, brought news to the legal system. The issue of greater emphasis on this legislation is in the Law 11.804 and Law 11.770. The law on pregnancy food caused wide discussion

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<sup>50</sup> IPAS. *Dados e reflexões sobre a condição de ilegalidade do aborto: no âmbito da Saúde e da Justiça*, p. 4 Available at: <<http://www.ipas.org.br>> Access on March 27<sup>th</sup>, 2009.

<sup>51</sup> ADESSE, Leila. ROSAS, Cristiano Fernando. *Mortalidade Materna: uma Questão Social*, p. 31. Available at: <<http://www.ipas.org.br>>. Access on March 27<sup>th</sup>, 2009.

<sup>52</sup> IPAS. *Magnitude do aborto no Brasil: Aspectos Epidemiológicos e Sócio-Culturais*. Available at: <<http://www.ipas.org.br>> Access on March 27<sup>th</sup>, 2009.

<sup>53</sup> [www.cfemea.org](http://www.cfemea.org)

<sup>54</sup> Access to the projects: [www.presidencia.gov.br](http://www.presidencia.gov.br).

about who is the subject of rights to food. The final text makes clear that the subject is the pregnant, however, different moral factions of the Brazilian society tried to make the law consider the fetus a subject of rights with subjective rights.

## **EMERGENCY CONTRACEPTION**

78. Researches indicate that more than 1.200.000 annual doses of emergency contraception (as single dose), are now sold among the seven brands in the country<sup>55</sup>. The result of the National Survey on Demography and Health of Women and Children, 2006, contained in the report of UNFPA on Family Planning in Brazil, announced that the emergency contraception is used by 0,1% of single women with no sexual experience<sup>56</sup>.

79. Although an effective method to prevent unwanted pregnancy and to act in cases of sexual violence, there is a major intervention of religious and moral groups in order to prohibit access to this product. In 2008 the City of Jundiaí, São Paulo state, approved and the mayor endorsed Law 7.025/08 which stated that the emergency contraception drug could not be available in public and private health care. This case allowed the issue to be discussed at the national level. Before the silence of civil police and the Prosecutor of São Paulo, different entities<sup>57</sup> organized a representation seeking, among other things, the unconstitutionality of the law. The prosecutor made the complaint and the case was dismissed in 2009 in the Court of São Paulo, with gain of the arguments presented by the concerned institutions. Objectively, they argue that the ban on emergency contraception: 1. violates the right to health of women, 2. promotes an unnecessary risk to women and put them in a situation of torture, 3. violates international documents, 4. violates assumptions of jurisdiction over the decision to use drugs, 5. violates the principle of equality and the principle of non-regression. Despite the decision of the Court of São Paulo, various local councils insist on promoting already known unconstitutional laws which hits enshrined fundamental rights. There was no accountability for public officials.

## **PARLIAMENTARY COMMITTEE OF INQUIRY (CPI) OF ABORTION**

80. At the end of 2008 the Congress approved the creation of a CPI for the purpose of investigation, as described in application No 09/2008 of "the existence of illegal trade of abortion substances, which violates the Brazilian Penal Code in its articles 124 and 127, which typify the crime of abortion". As a reason for opening the CPI was presented an interview with the Health Minister about the problems of illegal abortion in which he made reference to the indiscriminate sale of abortive drugs and other forms of realization of abortion. The creation of such CPI is far from a serious debate about the practice of abortion in the country: instead of approaching it as an issue of public health and autonomy, has criminalized, invasive and discriminatory bias against women and their families and the advocates of sexual and reproductive rights, representing a real attack on human rights. Besides these reasons the CPI is also unconstitutional because it does not have two important legal requirements: 1. the existence of "right fact", making a CPI based on general fact violates the principles of due process and contradictory, causing legal uncertainty; 2.

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<sup>55</sup> FIGUEIREDO, Regina. *Contracepção de emergência no Brasil: necessidade, acesso e política nacional*. Disponível em: <<http://www.ipas.org.br>>. Acesso em 27 mar 2009.

<sup>56</sup> UNFPA. *Planejamento Familiar no Brasil: 50 anos de história*, p. 20. Disponível em: <<http://www.unfpa.org.br/Arquivos/relatoriowpd.pdf>>. Acesso em 28 mar 2009.

<sup>57</sup> A representação foi entregue em 30 abril de 2008 pelas seguintes entidades da sociedade civil: CLADEM, CCR, Instituto Antígona, IPAS, Febrasgo, Rede Feminista de Saúde e Direitos Sexuais e Reprodutivos Jornadas pelo Aborto Legal e Seguro, REDE CE - Rede Brasileira de Promoção de Informações e Disponibilização da Contracepção de Emergência e Católicas pelo Direito de Decidir.

exceeds its investigative jurisdiction when proposes to do criminal prosecution, it means it goes beyond what it is allowed, and therefore go over the Executive jurisdiction.

## JUDICIARY AND ABORTION

81. In the year of 2008 the Brazilian Supreme Court (STF) manifested about the possibility of using stem cells in therapeutic research. The trial brought a large social mobilization and the arguments and polemics raised during the trial highlighted the discussion about decriminalization of abortion. Despite considering the resistance from the religious and conservative sections, the research with embryonic stem cells was permitted, which meant an important achievement for the national science, but also the comprehension that the Brazilian laws gives less protection to embryos than gives to fetus and children born alive. It occurred because the STF permitted some concepts to be market, specifically the differences between: subject of right, fetus and human. By this decision, it is clear that stem cells are human, due to the existence of human DNA, but it does not make a person or a subject of rights. The fact of been life human cells is not good enough for the existence of a subjective right to life.

82. The decisions of state and superior courts from 2001 to 2006 about abortion presents the following themes: a) 31% of the cases are classified as “violence”, involving situation of physical aggression against pregnant women which resulted in abortion; b) 17% are illegal abortion – if gathered together the cases classifieds as “illegal” (8%) and “illegal drug” (9%); c) 14% of the cases are classified as the term “procedural”. It was verified that is many of them the discussion of merit was about asks for reduction of penalty, progression of the prison, among others<sup>58</sup>.

## MATERNAL MORTALITY

83. Study of the Ministry of Health entitled “Mortality in Women from 10 to 49 years, with emphasis on Maternal Mortality”, published in 2006, shows that the indices of maternal mortality in Brazil are underestimated for two reasons: 1. no statement by doctors as a cause for maternal death; 2. too many deaths were not captured by the information system, especially in the North and Northeast<sup>59</sup>. However, the values found shows that from 7.332 deaths reviewed, 463 women (representing 6,3%), were pregnant or had been pregnant in the period up to 12 months before death. The figures vary according to regions of the country, with 8,5% in the North and 5,1% in the Southeast. Despite the fact of these women are in the cycle gravidicopuerperal the cause of the deaths resulting from maternity represents 51,6% of cases. The other causes are divided into external (16,2%), infectious diseases (8,0%), cancer (8,6%) and cardiovascular disease (5,6%)<sup>60</sup>. The Federal Government is taking measures in the health of women, to reduce maternal death and the practice of abortion, expressed in the policy of Comprehensive Health Care of Women, the National Policy for Sexual and Reproductive Rights in the Family Planning Policy, the National Pact for the Reduction of Maternal Mortality and Neo-Natal (2004), the Program for

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<sup>58</sup> Gonçalves, Tamara Amoroso, Coord.; Lapa, Thaís de Souza. *Aborto e religião nos tribunais brasileiros*. São Paulo: Instituto para a Promoção da Equidade, 2008. Available at: [http://www.ccr.org.br/uploads/noticias/330\\_aborto\\_e\\_religiao\\_nos\\_tribunais\\_brasileiros.pdf](http://www.ccr.org.br/uploads/noticias/330_aborto_e_religiao_nos_tribunais_brasileiros.pdf)

<sup>59</sup> Ministério da Saúde. *Estudo da Mortalidade de Mulheres de 10 a 49 Anos, com Ênfase na Mortalidade Materna*, p. 73. Ministério da Saúde. Available at: < [http://portal.saude.gov.br/portal/arquivos/pdf/estudo\\_mortalidade\\_texto.pdf](http://portal.saude.gov.br/portal/arquivos/pdf/estudo_mortalidade_texto.pdf)> Access on March 28<sup>th</sup>, 2009.

<sup>60</sup> Ministério da Saúde. *Estudo da Mortalidade de Mulheres de 10 a 49 Anos, com Ênfase na Mortalidade Materna*, p. 61. Ministério da Saúde. Available at: < [http://portal.saude.gov.br/portal/arquivos/pdf/estudo\\_mortalidade\\_texto.pdf](http://portal.saude.gov.br/portal/arquivos/pdf/estudo_mortalidade_texto.pdf)> Access on March 28<sup>th</sup>, 2009.

Humanization of Childbirth and the Birth, the National Plan - STD/AIDS, with actions to prevent and control aimed at the female population. Strengthening and adding to these initiatives, the two National Conference on Policies for Women (2004 and 2007) approved the decriminalization and legalization of abortion and recommended the creation by the Federal Government of a Tripartite Commission (Executive, Legislative and Civil Society) to review the legislation of abortion in the country and propose the basis for a new law. Coordinated by the Special Secretariat of Policies for Women of the Presidency -SPM/PR, and composed by 18 members with the expected proportionality, the Commission made a careful analysis of the projects about abortion existed in the Congress, and proposed a preliminary project which no longer is at the Congress.

**Campaign for an Inter-American Convention on Sexual and Reproductive Rights:** the initiative proposes that within the inter-American system (OAS) a convention is adopted aimed at providing legal guarantees for the exercise of sexual and reproductive rights of women and men. The Campaign appeared in 1999 in the framework of the adoption of commitments by states to respect the international conference promoted by the United Nations (UN). The campaign is integrated by a groups of individuals and organizations of various social movements, such as feminists, women, indigenous, human rights, sexual diversity.

## **HEALTH, SEXUAL EDUCATION AND SEXUALITY OF WOMEN PRISONERS AND ADOLESCENTS**

84. According to study conducted by ILANUD/Brazil (United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders), in São Paulo state, on preventive measures of health, it was found that 65,4% of egress male have received informative courses or assistance material (condoms, syringes and other contraceptives) for prevention of diseases and birth control, at some point during the passage through the prison system. Among women, this rate was much lower: only 23,5% received some form of guidance on this subject. Therefore, there is great difference in the care of the issue between men and women, reporting a significant gender inequality including the prison system. Although women comprise a small portion of the brazilian prison population, it is essential that their rights to health are fully observed and secured on an equal footing with men. The lack of medical care and guidance in the field of sexual and reproductive health results in tragic effects to this population, which is already excluded and marginalized. It is important to note that among the total of people gathered in the prison system, there is an average of 0,35% sore positive. In the prison system in São Paulo State, 3% of male prisoners are HIV positive (approximately nine times the national average). Among incarcerated women, this index reaches the impressive mark of 6,3% of contamination (approximately 28 times the national average), which clearly reflects the lack of guidance and services for attention to sexual and reproductive health of women prisoners.

85. Recent research, conducted with support of GRAL, identified the lack of policies for sex education among adolescents interned by the practice of an infringement act. Although the possibility of adolescents deprived of freedom receives visits from their intimate partners and companions are not peaceful, it is important to note that the sex between these young people is, as reported by the search, often without guidance or without appropriate sexual and reproductive health services. Moreover, there is a difference about gender, because in the three states of the federation studied the visit is only valid to male adolescents, and therefore denied to girls deprived of their liberty. It is also important to note that the policy adopted for intimate visit of adolescents discriminate female adolescents and young homosexuals.

86. The report organized by civil society organizations denounced to the Inter-American Commission on Human Rights of the OAS (2007), the total disregard to sexuality of women in prison: 1. Intimate visit is not guaranteed by law (for the male incarcerated population it is guaranteed), and thus depends on each prison; 2. There are no places with privacy and hygiene conditions for the intimate visit; 3. Some visits are conditional to evidence of bond of kinship or mandatory use of contraceptives; 4. Homoafective relations between women are not respected. There are establishments that qualify homoafective relations like administrative penalty harming the time of their sentence. It is widespread the discrimination of affection and sexuality of women in jail<sup>61</sup>.

## **HEALTH OF LESBIANS, BISEXUALS AND TRANSGENDER WOMEN**

87. The “Dossier on Lesbian Women Health: Promotion of Equity and Integration”, 2006, pointed to evidence of greater prevalence of certain risk factors for breast and uterus cancer among homosexual women. Several studies suggest, for example, lower frequency of performance of the Papanicolaou tests in this population group or because the health professionals seek less its implementation and/or because women do not always seek care. There is high rate of transmission of STDs among women who have sex with women, such as: number of partners, frequency of sexual intercourse, types of sexual intercourse and hygiene. Trichomoniasis, genital herpes and HPV lesions were observed without a history of sexual contact with men.

88. On May 13<sup>th</sup>, 2004 was published the Order No 880/GM, which provides for the creation of the Technical Committee for the formulation of draft national policy for population health of gays, lesbians, bisexuals and transgender, which involved the ATSM . It was the first step to achieve equity in the Unified Health System (SUS), attempting the deliberations of the 12<sup>th</sup> National Conference on Health and to guarantee respect to existent specificities.

89. High levels of psychological distress and experience of physical violence in the family, at work and in public places have been identified as a high proportion in several studies, when compared to the heterosexual population. Homosexual women are no less victims of homophobia than men, but the terms of victimization are less visible, due to they predominantly occur in the private sphere. Research in 2005 shows that 11,4% homosexual women reported physical violence; 47,5%, verbal aggression or threat of aggression, and 4,9% sexual violence. As the most significant attack suffered by the interviewees in life, 29,7% identified the home as a place of aggression, against 15,1% for general distribution; 20,3% identified family members as perpetrators and 9,4%, partners or ex-partners<sup>62</sup>.

## **IX. RIGHT TO PARTICIPATION, TO EXPRESSION AND THE RESPECT TO CULTURAL DIVERSITY OF WOMEN (15th Article, 3rd Article)**

90. The feminist movement and the movements related to democratization of the media in Brazil have strongly identified the media as a limitation of cultural diversity. Such violations are taking place through the daily programs from TV, radio, sections in newspapers and internet. The debate on the role of the media, gender and culture is a claim of dialogue including the National Conference on Policies for Women, with the axis Communication and democratic culture.

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<sup>61</sup> Report about Women Prisoners (March, 2007), created by the Center for Justice and for International Law (CEJIL) and others. Available at:

<http://www.cladem.org/portugues/nacionais/BRASIL/Relatorio%20sobre%20mujeres%20encarceladas%20-%20Brasil.pdf>.

<sup>62</sup> CARRARA, S.; RAMOS, S. Política, Direito, Violência e Homossexualidade. Pesquisa 9ª. Parada do Orgulho GLBT-Rio 2004. Rio de Janeiro: CEPESC, 2005.

91. Under the cultural perspective the representation of black culture draws attention: school books describe black people only as slaves (Brazil colony); in soap operas, news and advertisements, most people are white; the black work is secondary; there are offenses to African religions; there are no regional representations (North and Northeast), despite pejorative ones.

92. There are some actions in the Judiciary arising from the initiative of the prosecutor and/or civil society requesting the suspension of programs, advertisements and restitutions. Initiatives like the lawsuit against the music whose refrain banal from violence against women “a little spat does not hurt”, entered by Themis feminist organization, is a successful example. However, there are not agencies and rules to control content on the media daily transmitted. Civil society has been organized for the I National Conference of Communication, to be held in the year 2009, and aims to guide the content carried by the media, a subject of great controversy between the companies operating in the area. The tension arises from the fact that television channels and radio are public concessions, therefore subject to public interest and social responsibility.

### **GENDER AND LAW IN THE UNIVERSITY (15.2<sup>nd</sup> and 3<sup>rd</sup> Article)**

93. Aware of the training, under the Brazilian universities, there is a significant growth of the law courses and people trained in the area. However, remains a great challenge to recognize and guarantee rights related to issues of gender discrimination, race/ethnicity and social class.

94. It is important to note some data showing the state of the art of Higher Education in Law in Brazil. In 2007, the Brazilian Lawyers Association (OAB) published a figure of over a thousand schools of law, which is somewhere around 120 (one hundred and twenty) thousand bachelors of law per year. Through a survey<sup>63</sup> of active groups of studies registered in the system of the National Council for Scientific and Technological Development tied to colleges of law, may be observed the construction of institutional research in the legal field, especially those related to gender and law. Considering the key categories: abortion, crimes against women, reproductive rights, violence against women and sexual violence, were located only eight research groups in all registered groups, mostly those eight groups were linked to private educational institutions. The groups tend to be predominant in the area of Law, but are composed of researchers from other areas such as History, Social Work, Sociology, Production Engineering, Philosophy, Anthropology, Education, Social Policy and Social Sciences. The self denominations of research groups focus on issues of minority race/ethnicity, gender and social class. None of them deals exclusively with gender and law. While examining the latest publications of the members of research groups included in the directory of CNPq cadastre, it was found that only 10 (ten) percent of production is related to issues of gender. It is possible to observe the structure of normative law and its mechanisms of social control and supervision, for example, in the super protection of women’s moral in crimes related to reproductive capacity, sexuality and autonomy or in a prison system to male<sup>64</sup> hegemony of a certain morality. What is clear is the lack of research and production of institutionalized knowledge reinforces these processes and limits the scientific development.

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<sup>63</sup>About this study: BORGONHA, Mirtes; BUGLIONE, Samantha. Um laboratório tipicamente brasileiro: questionamentos sobre gênero e direito. Rio de Janeiro, 2008. Mimeo.

<sup>64</sup> About the discussion of singularities and inequalities on the prison system, see BUGLIONE, Samantha. O dividir da Execução Penal: falando de mulheres, falando de diferenças. In: CARVALHO, Salo (coord.). *Crítica à Execução Penal*. Rio de Janeiro, Lumen Juris, 2002.

95. It is not possible to understand the content of the research produced in Brazilian universities without relating it with the teaching framework. An example is the oldest law schools in the country (dating from 1827): the Faculty of Law of University of São Paulo (USP) and the Faculty of Law of University of Pernambuco (UFPE). There is no systematic data to provide a cut of gender and race of the framework for teachers, but can be considered an indication of the participation of women in this space: from 39 directors of the Law School since the founding of USP, only one woman was appointed (1998-2002).

96. If data about gender is rare, racial data is virtually nonexistent. Nevertheless, the search *Racial and Ethnic Inclusion in Brazil*, UNB, found that less than 1% of black teachers work today in Brazilian public universities. At the University of São Paulo (USP), for example, which brings together 4,7 thousand teachers, the number of blacks is lower than ten (0,2%). The University of Brasília (UnB) has 15 blacks for a total of 1,5 thousand professionals (1%). "Less than 1% of black teachers in public universities in a country of 45% of black people"<sup>65</sup>.

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<sup>65</sup> IBASE. Cotas raciais: por que sim? Rio de Janeiro: Ibase, 2008. Available at: [http://www.ibase.br/userimages/ibase\\_cotas\\_raciais\\_2.pdf](http://www.ibase.br/userimages/ibase_cotas_raciais_2.pdf)

# ANEXOS

## ANEX 1

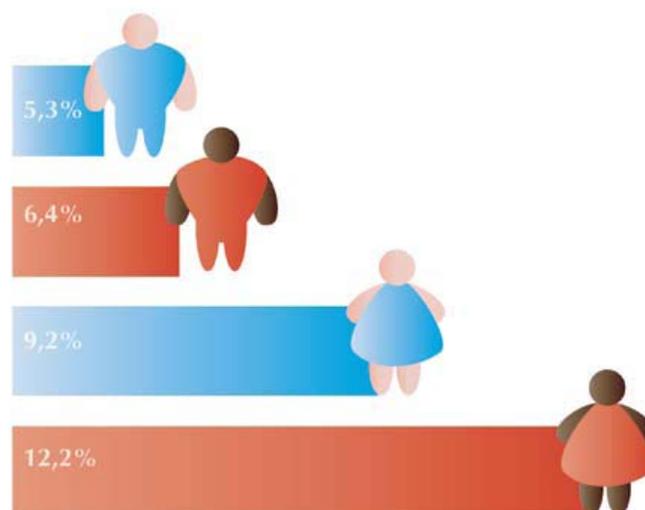
Gross Domestic Product (GDP) – Real Growth Rate: 4,5% (2007)

 Year	Gross Domestic Product (GDP) – Real Growth Rate	Rank	Progression Rate	Data Time Reference
2003	1,00 %	159		2002
2004	-,20 %	191	-120,00%	2003
2005	5,10 %	74	-2.650,00%	2004
2006	2,30 %	166	-54,90%	2005
2007	3,70 %	138	60,87%	2006
2008	4,50 %	130	21,62%	2007

Source: [CIA World Factbook](#)

## ANEX 2

Rate of unemployment for the population over 16 years old by skin color/ race and by gender (Brazil, 2007)<sup>66</sup>



<sup>66</sup>PINHEIRO, Luana...[et al]. *Retrato das desigualdades de gênero e raça*. 3ªed. Brasília: IPEA: SPM: UNIFEM, 2008. Disponível em: <[http://200.130.7.5/spmu/docs/miolo\\_pgsoltas.pdf](http://200.130.7.5/spmu/docs/miolo_pgsoltas.pdf)> . Acesso em: 28 mar. 2009.

### ANNEX 3

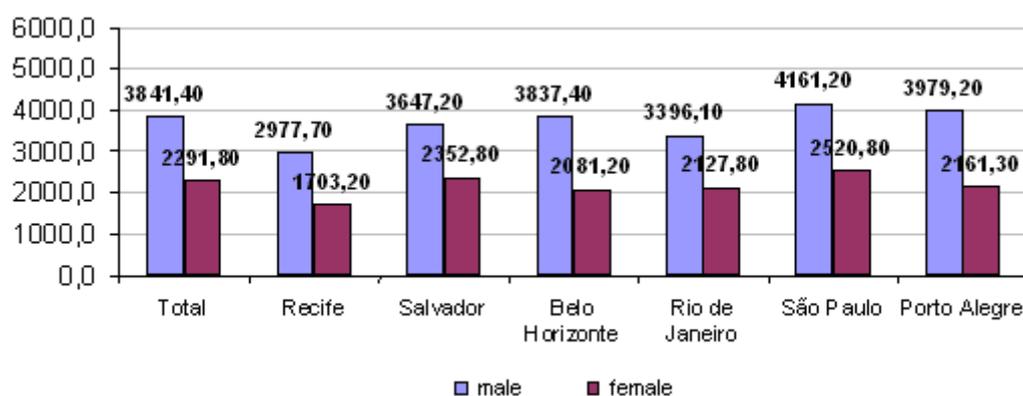
Regular Average Income by sex

	Regular Average Income for Males		Regular Average Income for Females	
	jan.03	jan.08	jan.03	jan.08
<b>Total</b>	1.302,30	1.342,70	933,53	956,80
<b>Recife</b>	834,91	926,20	647,88	703,00
<b>Salvador</b>	1.199,24	1.070,40	793,54	793,90
<b>Belo Horizonte</b>	1.102,67	1.250,80	705,09	816,10
<b>Rio de Janeiro</b>	1.088,78	1.260,90	817,82	952,90
<b>São Paulo</b>	1.529,24	1.528,80	1.100,86	1.076,40
<b>Porto Alegre</b>	1.100,94	1.295,10	782,73	897,20

Source: IBGE (Brazilian Institute of Geography and Statistics), Work and Income Coordination, Monthly Employment Research.

### ANNEX 4

The income of women with a college degree are 60% of men's income with a college degree.

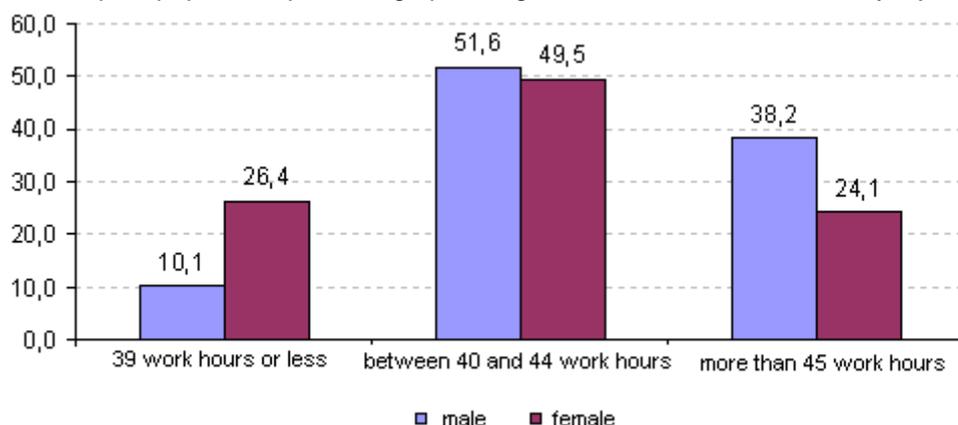


Source: IBGE (Brazilian Institute of Geography and Statistics), Work and Income Coordination, Monthly Employment Research.

Note: Vallues in Reais (R\$). \$1,0 corresponds to R\$ 2,218 on March 6<sup>th</sup>

## ANNEX 5

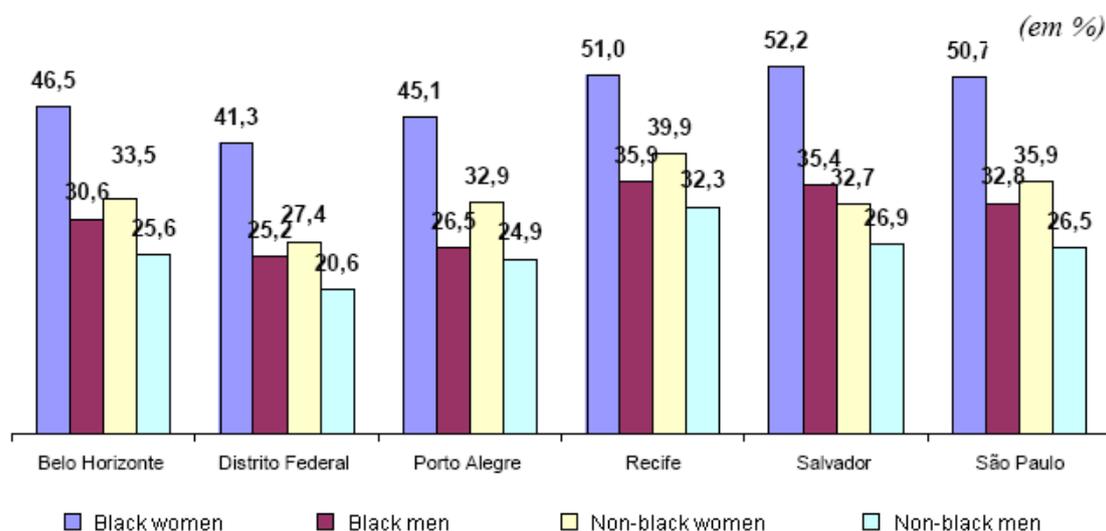
Occupied population percentage per range of total worked hours weekly – january /2008



SOURCE: IBGE (Brazilian Institute of Geography and Statistics), Work and Income Coordination, Monthly Employment Research.

## ANNEX 6<sup>67</sup>

Proportion of black and non-black occupied citizens in vulnerability situation, by sex.  
Metropolitan Areas and Federal District – 2004/2005 Biennium



Source: DIEESE/SEADE, MTE/FAT Cooperation Agreement and regional cooperation agreements. PED – Employment and Unemployment Research. Formulation: DIEESE.

Note: (1) Includes wage earners with informal work, autonomous non-exclusive workers, non-salaried family workers and domestic workers.

Observation: a) Black color = black + brown. Non-black color = white + yellow (asian).

<sup>67</sup> DIEESE. *A mulher negra no mercado de trabalho metropolitano: inserção marcada pela dupla discriminação*. Estudos e Pesquisas DIEESE. Ano II – Nº 14 – Novembro de 2005.

## ANNEX 7

Proportion of domestic workers with formal work, according to skin color/ race. Brazil, 1996 e 2007<sup>68</sup>



<sup>68</sup> PINHEIRO, Luana...[et al]. *Retrato das desigualdades de gênero e raça*. 3ªed. Brasília: IPEA: SPM: UNIFEM, 2008. Disponível em: <[http://200.130.7.5/spmu/docs/miolo\\_pgsoltas.pdf](http://200.130.7.5/spmu/docs/miolo_pgsoltas.pdf)> . Acesso em: 28 mar. 2009.