July 24, 2007

The Committee on the Elimination of All Forms of Discrimination against Women (CEDAW)

Re: Supplementary Information about Brazil
Scheduled for review during the CEDAW's 39th Session

Dear Committee Members:

This letter is intended to supplement the periodic report of the government of Brazil to the Committee on the Elimination of Discrimination against Women (CEDAW Committee). The Center for Reproductive Rights (the Center), an independent, non-governmental organization, hopes to further the work of the Committee by providing information concerning the rights protected in CEDAW. This letter highlights areas of concern related to the status of the reproductive health and rights of women and girls in Brazil, with a focus on maternal mortality, abortion and adolescents.

The Right to Reproductive Health Care (Article 12, together with Articles 1, 10 & 16 of CEDAW)

Reproductive rights are fundamental to women's health and social equality, and an explicit part of the Committee's mandate under CEDAW. The commitment of States Parties to uphold and ensure these rights deserves serious attention. Specifically, article 12 requires that States Parties "take all appropriate measures to eliminate discrimination against women in the field of health care," and specifically requires that governments ensure access to "appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation."[1] Article 10(h) requires that women have "[a]ccess to specific educational information to help to ensure the health and well-being of families …"[2] The Convention also requires States to "take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: …[t]he same rights to

[1] Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979) (*entered into force* Sept. 3, 1981), art. 12(2) [hereinafter CEDAW].
[2] *Id.*

decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights" [Article 16(1)(e)].[3]

The Committee's General Recommendation 24 on women and health affirms that "access to health care, including reproductive health, is a basic right under [CEDAW]"[4] and is central to women's health and well-being.[5] Furthermore, it instructs States
Parties to take the following measures: "[e]nsure the removal of all barriers to women's access to health services, education and information, including in the area of sexual and reproductive health,"[6] "… reduce maternal mortality rates through safe motherhood services and prenatal assistance,"[7] and finally, to "[r]equire all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice."[8]

The CEDAW Committee has further stated that the duty to fulfill rights "places an obligation on States parties to take appropriate legislative, judicial, administrative, budgetary, economic and other measures to the maximum extent of their available resources to ensure that women realize their rights to health care."[9] The Committee has also noted that it is the "duty of States parties to ensure women's right to safe motherhood and emergency obstetric services and they should allocate to these services the maximum extent of available resources."[10]

We would like to direct the attention of the Committee to the following issues of concern that directly affect the reproductive health and lives of women in Brazil:

A. Maternal Mortality

The CEDAW Committee has stated that high maternal mortality rates are an "important indication for States parties of possible breaches of their duties to ensure women's access to health care."[11]

Most maternal deaths are not complicated or expensive to prevent.[12] The majority of these deaths are the result of hemorrhage, infection, or unsafe abortion, which health workers with midwifery skills are capable of managing.[13] High-tech equipment and costly drugs are not necessary to prevent and control leading causes of maternal death including shock, infection,

---

[3] *Id.*
[4] Committee on the Elimination of Discrimination against Women (CEDAW Committee): General Recommendation 24, *Women and Health,* para. 1, U.N. Doc. A/54/38/Rev.1 (Part I) (1999) [hereinafter General Recommendation 24].
[5] *Id*. at para. 2.
[6] *Id*. at para. 31(b).
[7] *Id*. at para. 31(c).
[8] *Id*. at para. 31(e).
[9] *Id.* at para. 17.
[10] *Id*. at para. 27.
[11] *Id.* at para. 17.
[12] OECD Observer, Maternal Mortality, Helping mothers live (December 2000), *at* http://www.oecdobserver.org/news/fullstory.php/aid/374.
[13] *Id.*

convulsions, and hemorrhage. Many surgical procedures like caesarean delivery likewise do not necessitate expensive equipment or medication.[14]

In addition to the right to health, the right to life is implicated in cases of maternal mortality. The UN Human Rights Committee has instructed that protection of the right to life "requires that States adopt positive measures."[15] Because most maternal deaths are preventable, States have a duty to adopt positive measures to prevent these deaths.

The World Health Organization (WHO) has estimated that in one year approximately 529,000 women die from pregnancy and childbirth related causes worldwide.[16] The majority of these deaths occur in low and middle-income countries, while less than one (1) percent occurs in high-income countries.[17] A study by the WHO indicates that in one year 22,000 women die from complications related to pregnancy and childbirth in Latin America and the Caribbean.[18] In Brazil alone, the WHO calculates that 8,700 women die from complications related to childbirth and pregnancy every year.[19]

The CEDAW Committee has expressed its concern at the high maternal mortality rate in Brazil.[20] However, Brazil has not risen to the challenge of combating maternal mortality. As the British Department for International Development, an agency that funds efforts to fight extreme poverty, has noted, "[t]he main exception [in Brazil's Millennium Development Goal progress] is maternal health where the maternal mortality ratio has been rising ... reversing this trend will be a major challenge."[21]

Despite the fact that Brazil accounts for over one-third of all maternal deaths in Latin America, the government is not treating the problem with a corresponding level of urgency. Its health priorities have neglected maternal health, as revealed in a recent survey conducted by the Economic Commission for Latin America and the Caribbean. The Commission surveyed seventeen Latin American countries in an effort to analyze the state of health and health-care programs from the perspective of the health ministry in each country. One of the survey questions asked each country to rank, in order of priority, its top three health problems. Brazil's response did not include any references to maternal health, whereas Bolivia, Guatemala, and Nicaragua listed maternal and child mortality as their top health concern, and Peru identified maternal mortality as its third most serious health problem.[22] The absence of maternal mortality

---

[14] *Id.*
[15] Human Rights Committee, General Comment 6*, Article 6 (Right to life)*, para. 5, U.N. Doc. HRI/GEN/1/Rev.7 (1982).
[16] WORLD HEALTH ORGANIZATION, MATERNAL MORTALITY IN 2000: ESTIMATES DEVELOPED BY WHO, UNICEF, UNFPA 10 (2004) [hereinafter WHO, MATERNAL MORTALITY IN 2000].
[17] *Id.*
[18] *Id.*
[19] *Id*. at 22.
[20] *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Brazil*, 29th Sess., 610th, 611th, and 616th mtgs., para. 126, U.N. Doc. A/58/38 (2003) [hereinafter *CEDAW Concluding Observations: Brazil*].
[21] Department for International Development, The Development Challenge for Brazil, p. 2, *at* www.dfid.gov.uk/pubs/files/brazildevchallenge.pdf.
[22] ECLAC, SOCIAL PANORAMA OF LATIN AMERICA 263 (2005). Brazil's top three priorities were non-transmissible

in Brazil's response is telling, particularly because its maternal mortality ratio is nearly identical to that of Guatemala and Nicaragua.[23]

Other indications of the Brazilian government's health priorities point to negligence in reducing maternal mortality. In its Multi-Year Plan for 2004-07, the government identified seven priorities in the area of health, not one of which was the reduction of maternal mortality.[24]

As recently as August 2005, the United Nations Development Assistance Framework Common Country Assessment for Brazil noted with concern high maternal mortality rates and detrimental disparities in health care.[25] It stated that Brazil's maternal mortality rates are "considerably higher than those of countries with lesser levels of economic development, and are generally conceded to be unacceptable."[26]

A government audit of maternal mortality monitoring and prevention efforts revealed the inadequacy of current government efforts. The audit, carried out in 2000 by the *Tribunal de Contas da Uniao* (TCU), Brazil's Court of Audit, assessed the performance of the national, state, and municipal committees and the Ministry of Health's technical units on maternal mortality.[27] The TCU found that all of the sources consulted unanimously admitted an under-evaluation of the number of maternal deaths.[28] The TCU found that many of the maternal deaths were preventable, and were caused by ailments such as hypertension, hemorrhage and infection.[29] In addition, the TCU found that although 24 state committees on maternal mortality had been established, only 14 of them were effective.[30] A separate assessment conducted the following year was no more encouraging. According to that report, only 18 states were investigating maternal deaths. Of those, only seven relied on systematic investigations conducted by regional and municipal committees.[31]

---

diseases, transmissible infectious diseases, and external causes (e.g., related to accidents and violent behavior).

[23] UNFPA, STATE OF THE WORLD POPULATION REPORT 89 (2007). Guatemala has a maternal mortality ratio of 240 per 100,000 live births, Nicaragua has a ratio of 230 deaths per 100,000 live births, and Brazil has a ratio of 260 deaths per 100,000 live births.

[24] Pan American Health Organization, Country Health Profile: Brazil, 2001, *available at* http://www.paho.org/English/SHA/prflbra.htm.

[25] BRAZIL'S UNCT, A UN READING OF BRAZIL'S CHALLENGES AND POTENTIAL: COMMON COUNTRY ASSESSMENT iii (2005), *available at* http://www.unodc.org/pdf/brazil/Final%20CCA%20Brazil%20(eng).pdf.

[26] *Id.* at 14.

[27] BRAZILIAN COURT OF AUDIT, EXTERNAL CONTROL SECRETARIAT, GOVERNMENT PROGRAMS CONTROL AND EVALUATION SECRETARIAT, TCU EVALUATION OF MATERNAL MORTALITY MONITORING AND PREVENTION 8 (2003).

[28] *Id*. at 11.

[29] *Id*.

[30] *Id*. at 13.

[31] PRESIDENCY OF THE REPUBLIC, GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL, BRAZILIAN

Maternal mortality rates are high despite the fact that 91.5 percent of childbirths are performed in public hospitals.[32] Approximately 66 percent of women who die from pregnancy-related causes are completely dependent on the public health system to give birth.[33]

There are higher maternal mortality rates among black, indigenous, and single women living in the poorest regions of Brazil.[34] A United Nations report on Millennium Development Goals progress in Latin America notes that although there are high maternal mortality rates among women from all income levels, "the fact that it is more prevalent among women from lower socio-economic strata makes it a poverty-related issue."[35]

Maternal mortality violates women's right to equality and nondiscrimination. The CEDAW Committee has explained that "[m]easures to eliminate discrimination against women are considered to be inappropriate if a health care system lacks services to prevent, detect and treat illnesses specific to women."[36] The Brazilian government's failure to provide access to quality health care and treat conditions related to pregnancy and childbirth constitutes a violation of women's rights to equality and nondiscrimination.

Further, where certain groups of women, in this case women of African descent and poor women, are disproportionately impacted by maternal mortality, the right to equality and nondiscrimination is also violated.

The government of Brazil has a legal duty to immediately address maternal mortality and all of its underlying causes.

MONITORING REPORT ON THE MILLENNIUM DEVELOPMENT GOALS 52 (2004).

[32] LATIN AMERICAN AND CARIBBEAN COMMITTEE FOR THE DEFENSE OF WOMEN'S RIGHTS (CLADEM), PAPER OF THE BRAZILIAN WOMEN'S MOVEMENT REGARDING THE BRAZILIAN STATE'S COMPLIANCE WITH CEDAW: PROPOSALS AND RECOMMENDATIONS 86 (2003), *available at* http://www.cladem.org/english/regional/monitoreo_convenios/cedawaltbrasil.asp.

[33] *Id.*

[34] CLADEM, Monitoring Alternative Report on the Situation of Maternal Mortality in Brazil to the International Covenant on Economic, Social and Cultural Rights, at Executive Summary, *available at* http://www.cladem.org/english/regional/monitoreo_convenios/descMMbrasili.asp.

[35] PAHO, ECLAC, AND UNFPA, THE MILLENNIUM DEVELOPMENT GOALS: A LATIN AMERICAN AND CARIBBEAN PERSPECTIVE 148, *available at* http://www.eclac.cl/publicaciones/xml/0/21540/chapter5.pdf.

[36] General Recommendation 24, *supra* note 4, at para. 11.

B. Abortion

In 2003, the CEDAW Committee expressed its concern at the high rate of clandestine abortion, and its causes.[37] When abortion is illegal, women are forced to resort to clandestine abortions, which are performed under unsafe conditions and put women's lives at risk.

In Brazil, abortion is legal only to save the woman's life or in cases of rape.[38] Illegal abortions are punishable by one to four years imprisonment for the person who performs the abortion (with the consent of the pregnant woman)[39], and one to three years imprisonment for the woman having the procedure done.[40] The CEDAW Committee has previously characterized such an approach as punitive, rather than in the interests of public health.[41]

Despite these restrictive laws, abortions in Brazil are widely performed, with the vast majority carried out under unsafe conditions. There are an estimated one to four million abortions each year in Brazil.[42] Unsafe abortions account for 25 percent of the cases of infertility, and they are the fifth leading cause of hospitalization among women.[43] According to data collected on the Brazilian Public Health System, in the year 2004, 243,988 Brazilian women were hospitalized because of induced abortion complications.[44]

The criminalization of abortion disproportionately affects low-income women. While women of greater economic means are able to afford safe, though illegal, abortions, poor women are often forced to seek dangerous abortions from unskilled providers. Inequitable access to safe services also contributes to the higher maternal

---

[37] *CEDAW Concluding Observations: Brazil*, *supra* note 20, at para. 126.
[38] Penal Code, Decree Law No. 2.848, Dec. 7, 1940, Special Section, title I, ch. I, art. 128, *available at* http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del2848.htm (in Portuguese).
[39] *Id.* at art. 126.
[40] *Id.* at art. 124.
[41] *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined initial, second, third, fourth and fifth periodic reports of States parties, Brazil*, Committee on the Elimination of Discrimination against Women (CEDAW Committee), 29th Sess., p. 164, U.N. Doc. CEDAW/C/BRA/1-5 (2002) [hereinafter *Brazil Report*].
[42] International Women's Health Coalition (IWHC), Abortion Rights are Human Rights: The September 28th Campaign, *at* http://www.iwhc.org/resources/092803.cfm.
[43] WORLD BANK: BRAZIL, MATERNAL AND CHILD HEALTH 21 (2002) [hereinafter BRAZIL: MATERNAL AND CHILD HEALTH]; WORLD ORGANIZATION AGAINST TORTURE (OMCT), VIOLENCE AGAINST WOMEN: FOR THE PROTECTION AND PROMOTION OF THE HUMAN RIGHTS OF WOMEN: TEN REPORTS/YEAR 2003 94 (2004) [hereinafter OMCT, VIOLENCE AGAINST WOMEN]; *Brazil Report, supra* note 41, p. 170.
[44] Portal da Saúde, *at* http://portal.saude.gov.br/saude/visualizar_texto.cfm?idtxt=22411.

mortality rates in rural areas.[45] In addition, poor women face an increased risk of pregnancy due to inadequate and unequal access to contraceptives and sex education.[46]

The Brazilian government has acknowledged that "[t]he implementation and expansion of abortion services to assist the cases in which abortion is permitted by law, as well as family planning services, are both urgent and fundamental to Brazilian women's health."[47] Brazil must ensure that women are not forced to seek abortions under clandestine, unsafe conditions. There is a critical need for a revision of abortion laws in Brazil.

C. Adolescents

The health condition of young women in Brazil is a matter of concern and deserves special attention, specifically regarding rates of HIV/AIDS infection and pregnancy, and sexual abuse and violence.

The CEDAW Committee has recently expressed its concern about the increase in the prevalence of HIV/AIDS among young women.[48]

Adolescents account for 24 percent of mothers giving birth in Brazil.[49] Also, rates of fecundity among young women have grown 26 percent since the 1990s.[50] In Brazil's less prosperous states, girls under 19 occupy more than half of all maternity beds, and nearly half of all legal abortions are performed on girls under 20.[51] Low-income girls are more likely to become pregnant due to an insufficient supply of contraceptives, restricted access to reproductive and sexual health services, fear due to confidentiality concerns and legal barriers such as parental notification requirements.[52] Social vulnerability and low social hierarchy status are also important factors in understanding the high rates of pregnancy among adolescents in Brazil, especially black girls.[53]

---

[45] International Women's Rights Action Watch, Country Report: Colombia, 1997, *available at* http://www1.umn.edu/humanrts/iwraw/publications/countries/colombia.htm.
[46] *Id.*
[47] *Brazil Report*, *supra* note 41, at 170.
[48] *CEDAW Concluding Observations: Brazil*, *supra* note 20, at para. 126.
[49] *Brazil Report, supra* note 41, at 171.
[50] Ministério da Saúde, Marco Teórico e Referencial Saúde Sexual e Saúde Reprodutiva de Adolescentes e Jovens Versão Preliminar, 2006, p.17, *available at* http://portal.saude.gov.br/portal/arquivos/pdf/marco_teorico_referencial.pdf.
[51] BRAZIL: MATERNAL AND CHILD HEALTH, *supra* note 43, at 22.
[52] *Brazil Report*, *supra* note 41, at 171.
[53] Ministério da Saúde, *supra* note 50, at 18.

Sexual abuse, which accounts for 13 percent of all domestic violence, is perpetrated against girls 80 percent of the time; the majority of these young victims are between two and 10 years old.[54]

Every day throughout the country, girls and adolescents are subjected to diverse forms of sexual exploitation and traffic. Despite laws rendering these activities illegal, incidents of child abuse and exploitation have increased over the last several years.[55] Every year, it is believed that approximately one million children enter the sex market.[56]

High pregnancy rates, growing HIV/AIDS rates and high incidents of violence and sexual abuse must be addressed by the Brazilian government.

We hope the Committee will also consider addressing the following questions to the government of Brazil:

1. What steps are being taken to ensure that women have access to reproductive health services, as well as the provision of contraceptive methods and the dissemination of information regarding contraception?

2. What measures are being taken to reduce the high maternal mortality rates, particularly among the most affected populations, namely women of African descent and those with lower educational and income levels?

3. A report by Brazil's Federal Parliamentary Commission of Inquiry found that 98 percent of all maternal mortality deaths are preventable. Therefore, why is the current maternal mortality ratio in Brazil higher than in 1990 and the same as in 1995?

4. What measures are being taken to address the issue of unsafe abortion, a primary cause of maternal mortality, particularly among poor women upon whom the criminalization of abortion has a discriminatory effect?

5. What steps are being taken to address the increased feminization of HIV/AIDS?

6. What efforts have been taken to enact and enforce laws to reduce rates of violence against women, particularly in the domestic sphere, and to ensure that the perpetrators of violence are punished?

7. What is Brazil doing to increase its collection and analysis of data

[54] OMCT, VIOLENCE AGAINST WOMEN, *supra* note 43, at 78.
[55] *Id.* at 86.
[56] *Id.*

disaggregated by race, gender, age, economic status, and geography?

We appreciate the active interest that the Committee has taken in reproductive health and rights, and the strong Concluding Observations and General Recommendations the Committee has issued to governments in the past, emphasizing the need for governments to take steps to ensure the realization of these rights. We hope that the information presented is useful during the Committee's review of Brazil's compliance with the provisions contained in the Convention.

If you have any questions, or would like further information, please do not hesitate to contact the undersigned.

Sincerely,

Lilian Sepúlveda
Legal Adviser for Latin America and the Caribbean
International Legal Program