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Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Informe del Relator Especial sobre el derecho a la alimentación, Olivier De Schutter*

Adición

Misión al Brasil**

Resumen

El Relator Especial sobre el derecho a la alimentación visitó el Brasil en misión oficial del 12 al 18 de octubre de 2009. El Relator Especial quedó impresionado por la determinación y los esfuerzos del Gobierno del Brasil para mejorar la situación en materia de seguridad alimentaria en el país.

En el presente informe se examinan las políticas que han permitido al Brasil lograr notables avances en la lucha contra el hambre, en especial la malnutrición infantil, desde 2002. En él se establecen también una serie de desafíos futuros y se incluyen recomendaciones sobre la forma de hacer frente a esos desafíos.

Se formulan recomendaciones concretas en cuanto a la necesidad de: a) crear una institución nacional independiente para promover y proteger los derechos humanos; b) fortalecer el Sistema Nacional de Seguridad Alimentaria y Nutricional (SISAN); c) promover el fomento de capacidad dentro del Ministerio Público Federal; d) mejorar los derechos de los pueblos indígenas; e) realizar evaluaciones previas de efectos sobre el derecho a la alimentación en los proyectos de infraestructura a gran escala; f) respetar la

* Documento presentado con retraso.

** El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo, se distribuye en el idioma en que se presentó solamente.

libertad de expresión y la libertad de reunión ejercidas por medios legítimos de protesta social; g) consolidar aún más las políticas sociales del Programa Hambre Cero; h) utilizar al máximo los recursos públicos disponibles para la puesta en práctica progresiva del derecho a la alimentación; i) distribuir las tierras; j) realizar una evaluación participativa de las distintas formas de agricultura (en gran escala y familiar en pequeña escala) y del apoyo que les presta el Estado brasileño; k) realizar una evaluación participativa de los efectos de las políticas comerciales en el derecho a la alimentación; y l) cumplir las prescripciones sociales y ambientales en las plantaciones de caña de azúcar.

Anexo

Report of the Special Rapporteur on the right to food, Olivier De Schutter, on his mission to Brazil (12 to 18 October 2009)

Contents

<i>Chapter</i>	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–3	4
II. Overview of hunger and malnutrition in Brazil	4–14	4
III. The obligation to respect the right to food	15–25	8
IV. The obligation to protect the right to food	26–31	10
V. The obligation to fulfil the right to food	32–50	12
VI. Conclusions and recommendations.....	51	21

I. Introduction

1. The Special Rapporteur on the right to food, Olivier De Schutter, conducted an official mission to Brazil between 12 and 18 October 2009. The purpose of the mission was to assess the progress made since the 2002 mission of the former Special Rapporteur, Jean Ziegler,¹ as well as the remaining obstacles to the realization of the right to food in Brazil.

2. During the mission, the Special Rapporteur took part in the seminar on claim mechanisms for the human right to adequate food and the national system on food and nutrition security, jointly organized by the Ministry for Social Development and the Fight against Hunger, the National Council on Food and Nutrition Security (CONSEA) and the non-governmental organization (NGO) Brazilian Action for Nutrition and Human Rights. He met with the Minister of Foreign Affairs, Celso Amorim, the Minister for Social Development and the Fight against Hunger, Patrus Ananias, and the Minister for Agrarian Development, Guilherme Cassel. He also met with officials of the ministries of health, education, and agriculture and with the vice-director of the Casa Civil, Mr. Dos Santos. At the Congress, he met deputies from various groups, as well as the President of the Senate, José Sarney, and the President of the Chamber of Deputies, Michel Temer. Meetings were organized also with the head of the Brazilian Agricultural Research Cooperation, Pedro Antonio Arraes; the President of the National Institute of Colonization and Agrarian Reform (INCRA), Rolf Hackbart; the Inter-Ministry Chamber of Food and Nutrition Security; CONSEA, under the leadership of its chair, Renato Maluf; and members of the Federal Public Ministry, including Gilda Pereira de Carvalho, the head of the Federal Prosecutor's Office for the Defence of Citizens. The Special Rapporteur expresses his gratitude to Milton Rondo of the Foreign Affairs Ministry and Crispim Moreira of the Ministry for Social Development and the Fight against Hunger, as well as to the Permanent Mission of Brazil to the United Nations in Geneva for their support during the visit. He is also very grateful to the representatives of civil society whom he met during his mission, including representatives of indigenous and Quilombola communities, and he particularly thanks Sergio Sauer, the National Rapporteur for the Human Rights to Food, Land and Territory.

3. This report offers a general introduction to the enjoyment of the right to food in Brazil. It then examines how Brazil is discharging the three levels of obligations identified by the Committee on Economic, Social and Cultural Rights under article 11 of the International Covenant on Economic, Social and Cultural Rights:² to respect, protect and fulfil the right to food. While fully acknowledging the impressive range of South-South cooperation programmes that Brazil either has initiated or is supporting which seek to promote agricultural and rural development in developing countries, the Special Rapporteur focused on the situation of the right to food in Brazil and regrets that the former aspect of the country's policies could not be included in this report.

II. Overview of hunger and malnutrition in Brazil

4. According to the 2009 Human Development Report, Brazil ranks seventy-fifth among high-income countries. Its ranking according to the Human Development Index has improved considerably, from 0.685 in 1980 to 0.813 in 2007, an average improvement rate

¹ See E/CN.4/2003/54/Add.1.

² Committee on Economic, Social and Cultural Rights, general comment No. 12 (E/C.12/1999/5), para. 15.

of 0.63 per cent per annum, although the improvement rate has been lower recently (0.41 per cent per annum since 2000). If the index's main components are decomposed, Brazil is above the world average in each category (except gross domestic product (GDP) per capita), but below the Latin America and Caribbean average (except in education). The country's place on the Human Poverty Index (Brazil ranks 43 out of 135) is considerably better than on the Human Development Index. This suggests that Brazil has been particularly effective in tackling extreme forms of deprivation. However, average Human Development Index levels hide significant regional and ethnic disparities. The 2005 Brazilian Human Development Report shows that African descendants enjoyed on average the same Human Development Index in 2000 as whites had enjoyed in 1980.³

5. The latest large sample survey on malnutrition was undertaken in 2003.⁴ Among adults, weight deficit was observed in 4 per cent of the population, excess weight in 40.6 per cent and obesity in 11.1 per cent. Malnutrition among adults is a phenomenon closely related to gender in Brazil: below-average weight-to-height ratios above 6 per cent were only observed among women, particularly in the rural north-east, mid-west and south-east regions, and malnutrition was twice or more prevalent among women than among men in nearly all groups. Moreover, 8.5 per cent of women with income below a quarter of the minimum wage displayed weight deficit, whereas for men the prevalence was 4.5 per cent. Ethnicity was associated less strongly with the prevalence of weight deficit, although only among African and African-descendant women in rural areas did the malnutrition rate reach 6 per cent.

6. More recent official data indicates that food insecurity exists in 37.5 per cent of households, although strong regional variations exist, with the rate ranging from 25 per cent in the southern region to 55 per cent in the north-east region.⁵ Severe food insecurity is concentrated in households belonging to the lowest income quintiles and in households where the mother's schooling level is low. The National Demographic and Health Survey of Infants and Mothers showed that ethnic characteristics were also a determining factor: both moderate and severe food insecurity were nearly twice as likely in households where the respondent was an Afro-Brazilian.

7. Child malnutrition was substantially reduced between 1996 and 2006, in particular among children from the north-east region and, in general, among children of lower income families. The average stunting (height-for-age) rate observed was 7 per cent: this was higher for boys (8.1 per cent) than for girls (5.8 per cent), slightly more frequent in rural (7.5 per cent) than in urban (6.9 per cent) areas, with a much higher prevalence in the north of Brazil (14.7 per cent), than in the rest of the country. The mother's educational level had greater bearing than income level differentials: in families where the woman had less than three years of schooling, the prevalence of stunting was eight times higher than in families where the mother had completed 12 years of schooling. Income differentials between the highest and lowest quintiles were associated with three times greater prevalence of stunting in the lowest quintiles. The average rate of wasting (weight-to-height ratio) was 1.4 per cent, and the rate did not exceed 3 per cent in any group, thereby suggesting that acute forms of malnutrition are now under greater control in the country. The prevalence of

³ See United Nations Development Programme, *Relatório do desenvolvimento humano Brasil 2005 – Racismo, pobreza e violência* (Brazil, UNDP, 2005), p. 59.

⁴ See Brazilian Institute of Geography and Statistics, *Consumer Expenditure Survey (POF) 2002–2003: Analysis of the household availability of food and nutritional condition in Brazil* (Rio de Janeiro, 2004).

⁵ For the statistics in this and the following paragraphs, see Ministry of Health, *Pesquisa Nacional de Demografia e Saúde da Criança e da Mulher – PNDS 2006: Dimensões do Processo Reprodutivo e da Saúde da Criança* (Brasília, 2009), p. 232.

underweight children (according to weight-to-age) was 1.9 per cent nationally, although it reached 4.5 per cent in the case of children with mothers with little schooling and belonging to the lowest income quintile. Low intake of vitamin A was also observed in 17.4 per cent of children under the age of five: the highest prevalence rates were observed in the impoverished north-east (19 per cent) and comparatively wealthier south-east (21.6 per cent). Urban areas also saw higher prevalence rates than rural ones. This data also indicates that nearly 21 per cent of the population, on average, was anaemic and prevalence bore no correlation to income group or race. Considerable regional variations were observed, although the two poorest regions displayed opposite outcomes: the north had the lowest (10.4 per cent) and the north-east the highest (25.5 per cent) levels of prevalence in the country. Urban children were, on average, more at risk of anaemia than rural ones. Lastly, the risk of obesity reached a national average of 7.3 per cent.

8. The monitoring of food insecurity in Brazil has recently been significantly improved by the overhaul of the Food and Nutritional Surveillance System (SISVAN), which monitors the nutritional status and food intake of persons who use the services of the Unified Health System in all age categories. The various methodologies used include SISVAN-Web, a fully integrated national information technology platform that allows basic health units in municipalities throughout the country to provide observation data on child and mother nutrition. The provision of such data has been linked, since 2007, to the monitoring of the *Bolsa Família* conditionalities. In 2007, 39 per cent of municipalities had submitted some information on the nutritional situation of their population (although these submissions are admittedly not representative samples of the entire population), while among municipalities taking part in the *Bolsa Família* programme, reporting was much higher, exceeding 76 per cent.⁶ In the future, this should allow policymakers to assess progress much more often and in much greater detail.

9. The distinct methodologies employed within the SISVAN framework produce quite different results. The latest regional survey in the northern region⁷ reported that tremendous regional and subregional variations subsisted. Although the National Demographic and Health Survey of Infants and Mothers had observed acute malnutrition (low weight-to-age ratio) in 1.7 per cent of children nationwide, in the north, the regional survey revealed that the average rate of acute malnutrition was 3.4 per cent and, in three of the seven northern states, over 8 per cent. With respect to chronic malnutrition (low height-to-age ratio), the national average was 7 per cent, while the average for the northern region was nearly 15 per cent (and around 30 per cent in three of the seven states in this region). This suggests that an adequate and timely picture of the situation of malnutrition requires the use of tools that permit greater refinement in disaggregation, and a constant inflow of updated data.

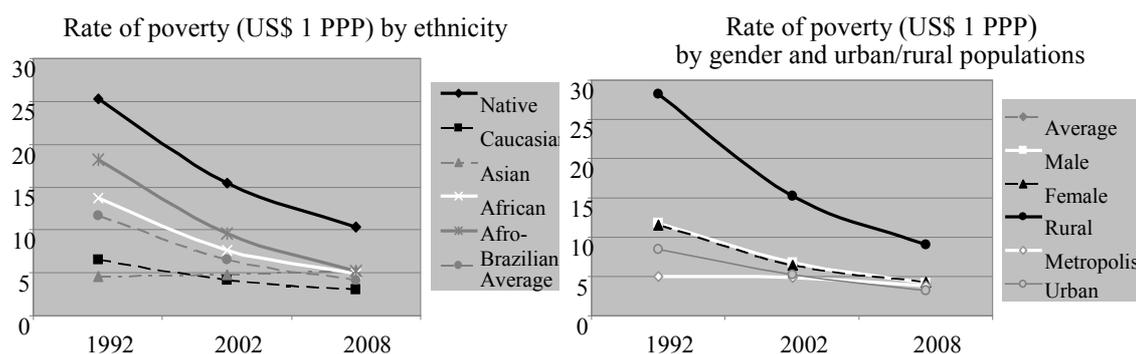
10. According to data available, real income among the poor has steadily grown since 2002. This is attributed to the steady increase in the minimum wage, at a rate quite above inflation, and to cash-transfer programmes targeting those with the lowest income.

11. Based on the data from the National Household Sample Survey,⁸ the evolution of extreme poverty — defined as living with less than US\$ 1 (parity purchasing power, PPP) per day — from 1992 to 2008 can be visualized as follows:

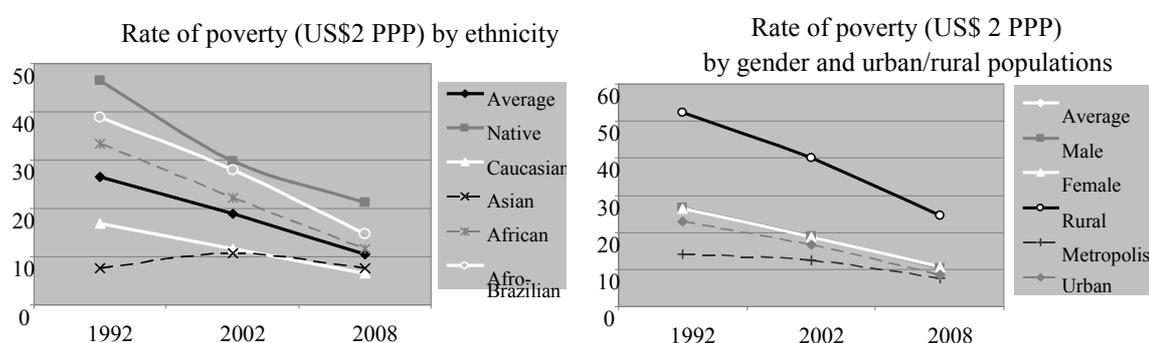
⁶ Ministry of Health, *Indicadores de Vigilância Alimentar e Nutricional: Brasil 2006* (Brasília, 2009), pp. 65–66.

⁷ Ministry of Health, *Chamada Nutricional da Região Norte 2007: resumo executivo* (Brasília, 2009).

⁸ Brazilian Institute of Geography and Statistics, *National Household Sample Survey* (Brasília, 2009).



12. Using the criterion for moderate income deprivation — the US\$ 2 (PPP) poverty line — the decline in poverty is also marked:



13. It is clear from the data available that poverty and malnutrition are still predominantly affecting persons of African, Afro-Brazilian and indigenous descent, although the rate of poverty reduction is considerably higher among these groups as they start from much lower levels of income.

14. The remainder of this report examines the remaining challenges to ensuring the full realization of the right to food and the policies put in place by Brazil to remove them. Brazil has placed the fight against hunger at the centre of its development strategy. Since it was adopted, the 2006 law establishing a National Food and Nutritional Security System (SISAN) has been a benchmark for many countries across the world. The law reinstated CONSEA (which ensures the active participation of civil society in drafting recommendations to the Government); it improved the coordination of the variety of programmes set up under the “Zero Hunger” strategy, as well as the accountability of the agencies responsible for implementing these programmes; and it provided that an inter-ministerial taskforce would develop a national policy and plan on food and nutritional security. The participatory nature of these programmes, particularly shown through the work of CONSEA, are remarkable, and the success of Brazil in combating hunger and malnutrition, particularly child malnutrition, bears witness to the contribution that such participatory strategies can make to fulfilling such an objective.

III. The obligation to respect the right to food

15. The obligation to respect existing access to adequate food requires States not to take any measures that result in preventing such access.⁹ This requires that remedies be available to victims of violations of the right to food that stem from the adoption of such measures by States.

1. The legal protection of the right to food

16. On 3 February 2010, the Brazilian Chamber of Deputies cast the final vote needed to amend the Constitution in order to guarantee the right to food. The adoption of the amendment further confirms the leading role of Brazil in ensuring the legal and institutional implementation of the right to food. Such an amendment is particularly important since the courts appear reluctant to apply the International Covenant on Economic, Social and Cultural Rights directly, despite the clear constitutional mandate under article 5, paragraph 3, of the Constitution that obliges them to recognize the applicability in the domestic legal order of international human rights treaties.¹⁰ The Special Rapporteur was impressed by the degree of involvement of civil society organizations in the process of constitutional amendment.

17. Nevertheless, at the time of the mission, gaps in the protection of the right to food remained. The Special Rapporteur notes that the protection of the right to food would be further strengthened by the establishment of an independent national institution for the promotion and protection of human rights, in accordance with the Paris Principles, as recommended by the Committee on Economic, Social and Cultural Rights,¹¹ and Brazil has committed itself, under the universal periodic review process, to setting up such an institution.¹² The Council for the Defence of the Rights of the Person, which is placed under the authority of the Special Secretariat for Human Rights, is not an independent institution ensuring the protection of the right to food, and its special commission for monitoring violations of the right to food, set up in 2003, has recently discontinued its monitoring activity.

18. The Special Rapporteur was impressed by the role played by the Federal Public Ministry in protecting collective interests and safeguarding the basic rights of the citizen, and he welcomes the adoption by the Federal Public Ministry of a set of recommendations to strengthen the protection of the right to food. According to information received during the mission, the Public Ministry of the state of Alagoas — in a first case for Brazil — successfully obtained a judicial injunction to guarantee the communities of the Orla Lagunar area of Maceió their fundamental rights to food, education, health and housing. The Special Rapporteur considers this proactive use of the constitutional guarantees to ensure the realization of the right to food exemplary and calls upon the local government to take all measures required to comply with the recommendations of the judiciary. However, the Special Rapporteur notes that the capacity of the Federal Public Ministry remains — in certain regards — insufficient to ensure such actions are taken on a systematic basis.

⁹ See E/C.12/1999/5, para. 15.

¹⁰ The Special Rapporteur notes the ongoing debate on the question of the impact of constitutional amendment No. 45 on the hierarchical rank of international human rights treaties ratified by Brazil prior to the adoption of that amendment.

¹¹ See E/C.12/BRA/CO/2, para. 7.

¹² A/HRC/8/27, para. 83.

2. Measures preventing access to productive resources

19. Indigenous, Quilombola and other traditional communities depend on the Government of Brazil to fulfil its constitutionally mandated obligation to demarcate their ancestral lands, and provide title and protection to this communal property. In the case of indigenous peoples, the Federal Constitution of 1988 required — under article 67 of the Transitional Constitutional Provisions Act — that the Government conclude all demarcations by late 1993; however, this constitutional requirement has not been fulfilled. Considerable difficulties persist in the territorial demarcation of all traditional communities. Some of these difficulties are linked to the insecurities regarding titling of lands, particularly in the Amazonian region, where land registration has not been completed, leading to competing claims of ownership.

20. According to information received from indigenous community representatives, the overall process of demarcations has virtually come to a standstill in recent years. These difficulties in demarcation procedures are being compounded by the criteria set by the Supreme Court in its *Raposa Serra do Sol* ruling. Meanwhile, private ownership claims over land and, more recently, settlements of INCRA are increasing pressure on these traditional communities and displacing them, often by State-sanctioned use of force. Large landowners have systematically relied on courts to expel indigenous peoples from their lands and to attempt to nullify the different administrative acts that lead up to the demarcation, thereby drawing out the procedure and leaving displaced communities exposed to egregious nutritional and sanitary conditions. A large number of bills have been filed in Congress, sponsored by large landowners, tending towards limiting the rights of indigenous people to their land or countering measures adopted by Government to ensure progress in demarcation. This paralysis of the land demarcation process for indigenous communities is of particular concern because the lands claimed by the traditional communities are, in the meantime, not protected against *grilagem*, i.e., the fraudulent appropriation of public lands by private persons, which is dealt with later in this report.

21. The Special Rapporteur understands the difficulties associated with the clarification of land registration and titling in the vast expanses of the Amazon region, as well as the difficulties involved in the demarcation procedures. Nevertheless, he urges the Government to adopt the measures necessary to ensure that the constitutionally mandated demarcations be accelerated, procedures and standards used in the process be clarified and streamlined and that, pending final determinations and assignment of lands, traditional communities be supported and have their right to food ensured either by a minimum level of access to productive resources or direct provision of culturally appropriate food aid.

22. Large-scale infrastructure projects that deprive communities of access to land also create a high risk of violations of the right to food. As Brazil increases investment in transport, energy and urban infrastructures it also exposes groups to displacement and adjustment vulnerability. The Brazilian Growth Acceleration Programme is expected to invest R\$ 509 billion from 2007 to 2010, over half of which will be in the energy sector. Large projects such as dams, transportation and energy distribution networks are known to have a disproportionate impact on populations that are worst-off, aggravating their already precarious livelihoods.¹³ The increased number of projects and the tight time frame set for their conclusion raises the risk that expediency will trump the need to properly assess environmental, social and human rights impacts and involve local communities in effective consultations. For instance, whatever the merits of the transposition of the São Francisco river, indigenous communities and other *ribeirinhos* (traditional riverside communities)

¹³ See also A/HRC/4/18, para. 21.

should be meaningfully consulted and legal procedures — such as previous congressional authorization for the exploitation of natural resources in indigenous lands — fully respected.

3. Excessive use of force and criminalization of social movements

23. The Special Rapporteur notes with concern that politically tense situations — particularly those involving disputes over land and the implementation of large infrastructure projects — can still result in violent repression by State security forces, in a manner that is inconsistent with the need to respond with due restraint and in a proportional manner.

24. In this context, the Special Rapporteur has taken note of the recent final report of the Special Commission of the Council for the Defence of the Rights of the Person on the criminalization of social movements.¹⁴ This report, focusing on the situation in the state of Rio Grande do Sul, reached the conclusion that “there is evidence of criminalization of the social movements in both rural and urban contexts by local authorities ... this process of intimidation and criminalization [can be said to have] become a State policy, executed by the three branches of Government”. Further evidence of this process and the excessive use of State power to curtail the freedoms of social movements can be found in the two recent judgements of the Inter-American Court on Human Rights, one of which dealt with illegal wiretapping against organizations of the landless peasant movements, and the other with the impunity regarding a forced eviction by private militia.¹⁵

25. The Special Rapporteur urges the State, at federal, state and municipal levels, to take all measures necessary to ensure that legitimate forms of protest and social activism enjoy the protections afforded to them by international human rights standards. Furthermore, he recalls that restrictions on activities deemed illegal must be based on the rule of law and strictly proportionate to the public goal pursued.¹⁶

IV. The obligation to protect the right to food

26. The obligation to protect the right to food requires each State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.¹⁷ Measures conducive to this outcome include labour and environmental legislation, as well as the law on land ownership and use.

1. Labour relations

27. Labour regulation in Brazil — based on a national codification first carried out in the 1940s — has not changed significantly since 2002. However, monitoring activities by

¹⁴ Council for the Defence of the Rights of the Person, *Relatório Final do CDDPH sobre a Criminalização dos Movimentos Sociais* (Brasília, 2009).

¹⁵ See *Escher and others vs. Brazil* (Series ‘C’, No. 200), Judgement (preliminary exceptions, merits and reparations) of 6 July 2009 (illegal wiretapping by the police of people linked to the *Movimento dos Trabalhadores Rurais Sem Terra* (MST)); *Garibaldi v. Brazil* (Series ‘C’, No. 203), Judgement (preliminary exceptions, merits and reparations) of 23 September 2009 (failure to investigate properly the death of a landless peasant during a forced eviction carried out by a private militia).

¹⁶ See the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, art. 17.

¹⁷ See E/C.12/1999/5, para. 15.

the federal labour inspectorate have increased and Brazil has taken a number of measures to repress slave-like labour conditions, particularly in rural areas. These efforts, as well as the tremendous sacrifice of individual inspectors, some of whom have been murdered in the exercise of their duties, are to be commended. Brazil must step up efforts to tackle this problem. In particular, the Special Rapporteur encourages Brazil to adopt the constitutional amendment that would allow expropriation without compensation of farmlands in which slave labour was found to occur. Slave-like labour is both a serious violation of a human right in its own right, and the most extreme violation of the right to a decent standard of living, including the right to adequate food, that is recognized in article 11 of the International Covenant on Economic, Social and Cultural Rights.

28. One of the main tools that the Government has to protect the right to food of workers is its power to set the national minimum wages. Since 2002, minimum wages have been readjusted annually and these wage hikes have resulted in increased purchasing power in real terms. Accumulated inflation from 2002 to 2008 was of 64 per cent, while the minimum wage grew 158 per cent over the same period. The indirect effects also are noteworthy: pensioners, and particularly rural pensioners, have their income linked to the national minimum wage, the level of which also influences wages in the informal sector;¹⁸ in addition, by consistently expanding the domestic consumer market, Brazil has developed greater resilience to external shocks, such as the financial crisis of 2008.

2. Environmental regulation

29. The protection of the environment affects the right to food in different ways: it ensures the long-term sustainability of the agricultural sector; makes sure that food produced is appropriate for human consumption and healthy; and guarantees that biodiversity is preserved, ensuring that seeds, plant and animal species remain available for food production and renewal of natural resources.

30. In this respect, Brazil has taken a number of measures to ensure the compatibility of agricultural expansion with the protection of the environment. Depending on the biome, agricultural establishments must set aside an area (“legal reserve”) varying from 20 to 80 per cent of the farm’s surface for preservation purposes. Failure to register these areas and practising deforestation within them constitute punishable environmental crimes. Moreover, Brazil has recently concluded a national zoning for sugar-cane production which discourages its cultivation in over 81 per cent of agricultural land. At present, producers who do not respect the zoning would be sanctioned only by the denial of Government credit and other subsidies, but a bill has been presented to Congress that would effectively prohibit the cultivation of sugar canes in those areas. These initiatives have certainly reinforced the legal framework of environmental protection, but the crucial factor is the capacity of Brazil to monitor compliance with these regulations. Brazil should also step up its efforts to combat the excessive use of pesticides: the Brazilian Sanitary Vigilance Agency has found dangerous trace levels of pesticides in food, including substances prohibited by the agency.

3. Land ownership and use

31. In Brazil, the clarification of land registration in rural areas has long been an area of concern and, despite progress in the period under review, great challenges remain.

¹⁸ M. Neri et al., *Efeitos informais do Salário Mínimo e Pobreza*, Economic Working Papers No. 372 (Brazil, Fundação Getúlio Vargas, 1998).

Grilagem, already referred to above, concerns an estimated 100 million hectares in Brazil, or roughly 12 per cent of the national territory, according to a Government estimate.¹⁹ In 2000, for instance, INCRA cancelled the registration of 1,899 large properties which claimed over 62 million hectares. *Grilagem* is particularly frequent in the Amazon region, since 45 per cent of its surface has not been officially titled, and low population density invites informal occupation. The current accelerated process of land regularization for the Amazon region, the “Terra Legal” Programme, aims at addressing this issue by guaranteeing title to lands of up to 1,500 ha for settlers who have occupied land peacefully since 2004, where there are no rival claims to ownership. Titling will be free for properties up to 100 ha; below market price for properties up to 400 ha; and at market price for properties up to 1,500 ha. This initiative has raised concerns among indigenous communities and civil society that prior claims by traditional communities will not be given sufficient consideration, increasing tensions and ultimately slowing the pace of demarcation of indigenous lands. Moreover, there are fears that large landowners will use intermediaries to legalize properties and then consolidate them within their own property through fictional acquisitions.

V. The obligation to fulfil the right to food

32. The obligation to fulfil the right to food includes an obligation for the State to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security.²⁰ Under article 2 of the International Covenant on Economic, Social and Cultural Rights, Brazil must take steps, “to the maximum of its available resources”, towards the full realization of the right to food. The burden is on the State to demonstrate that every effort has been made to use all resources that are at its disposal in an effort to ensure, as a matter of priority, that each individual has access to the minimum essential level of food required to be free from hunger.²¹ The Special Rapporteur was impressed by the level of commitment of Brazil to the full realization of the right to food, as illustrated by the policies described below.

1. The national “Zero Hunger” strategy

33. An impressive set of social policies have been grouped under the “Zero Hunger” strategy pursued by the Federal Government. The strategy is to be commended, in particular, for its participatory dimension: the various policies it comprises are characterized by an impressive degree of involvement of civil society in their design and implementation, as well as by a decentralized approach that empowers local authorities and improves targeting. The “Zero Hunger” strategy encompasses 53 initiatives implemented by 11 different ministries. Among these are social protection programmes, the most important of which are the *Bolsa Família* cash-transfer programme and the National School Feeding Programme. They also include a low-income restaurant programme, food banks, community kitchens, and cisterns, as well as the improvement of facilities for the storage of food in rural areas. It further includes income-generation initiatives, including support for family agriculture and “solidarity economy initiatives”. The strategy has achieved significant results in reducing malnutrition and poverty: child malnutrition has been

¹⁹ Instituto de Pesquisa Ambiental da Amazônia, *A grilagem de terras públicas na Amazônia brasileira*, study series No. 8 (Ministry of the Environment, 2006), pp. 16–17.

²⁰ See E/C.12/1999/5, para. 15.

²¹ See E/1999/5, para. 17.

reduced by 73 per cent between 2002 and 2008 and child deaths by 45 per cent.²² Brazil should be commended for these efforts.

34. The indigenous communities and Quilombolas face specific difficulties in accessing the programmes developed under the “Zero Hunger” strategy. Geographical distance from urban centres is, in many cases, a major obstacle. Illiteracy and lack of understanding of the procedures are also a barrier, as is the lack of cultural sensitivity in the design and implementation of the programmes concerned. It is the responsibility of the State to remove these obstacles.

2. The maximum use of available resources

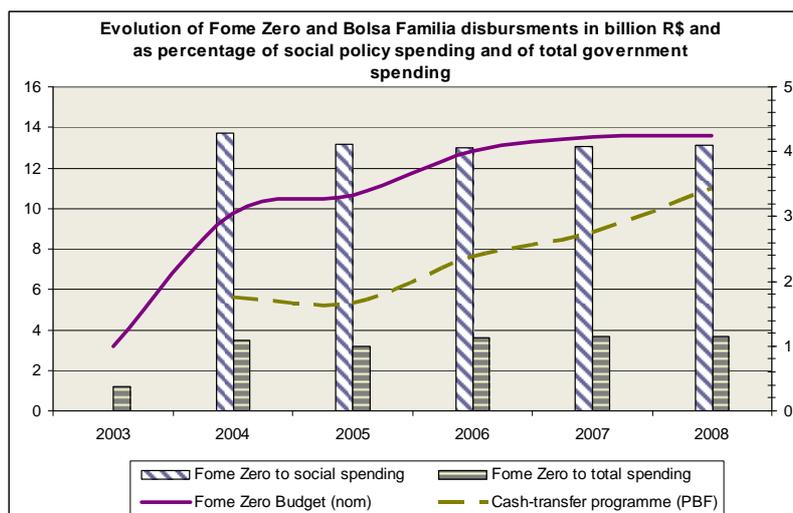
35. The programmes implemented under the “Zero Hunger” strategy will only be effective if their funding is sufficient. As a minimum, the funding of these programmes should be insured against the risk of economic shocks, whether of a domestic or foreign origin: it is precisely in times of crisis that the role of such programmes is most important. The Special Rapporteur therefore encourages Brazil to include the right to food among the social objectives to be pursued by the Pre-Salt Social Fund. However, other reforms may also be required to ensure adequate funding of these programmes. Social spending has increased consistently since 1995 in nominal terms, and reached over 15 per cent of GDP in 2007 (from 11 per cent in 1995).²³ This sum was equivalent to US\$ 1.3 trillion (in 2007) but included all spending by the ministries of health, pensions, education, social development and the fight against hunger. The budget allocated to food and nutritional safety²⁴ has also increased steadily in nominal terms, but has remained roughly constant as a percentage of the budget effectively disbursed in social policy (averaging 4 per cent), and of the national budget (1 per cent). Of this amount, a growing part is linked to the *Bolsa Família* cash-transfer programme, while other programmes of the “Zero Hunger” strategy have not used their budgets fully: although on average over 80 per cent of the budget allocated to “Zero Hunger” since 2004 was spent, the percentage would be considerably smaller — around 68 per cent — without *Bolsa Família*. So, although the data available suggests that there is no reduction of the budgetary effort of the State, the distribution of these resources and the modalities of expenditure vary considerably. The 1-per-cent national budget allocation to the “Zero Hunger” programme contrasts with the 48 per cent of the 2009 budget earmarked for the issuance, rescheduling, reimbursement and servicing of the public debt.²⁵

²² See UNICEF, *Situação Mundial da Infância 2008 – Caderno Brasil*, (Brazil, UNICEF, 2008).

²³ See J.V. Chaves and J.A.C. Ribeiro “Gasto Social Federal: Execução Orçamentária dos Órgãos Sociais Federais em 2007 e primeiras Impressões”, (Brasília, Institute of Applied Economic Research, 2008).

²⁴ Data generated via the Senate’s SIGA-BRASIL budget monitoring tool. Available at http://www9.senado.gov.br/portal/page/portal/orcamento_senado/Programas_Sociais.

²⁵ See Institute for Socioeconomic Studies, PLOA 2009: *metade do orçamento para os credores financeiros*, Technical Note No. 143, 2008, p. 2. This is relevant in the Brazilian context because of the possibility since 1994 of de-coupling national revenue, allowing the Federal Government to redirect up to 20 per cent of constitutionally earmarked revenues from social policy towards constituting a fiscal surplus used, in turn, to service the public debt.



36. The tax structure in Brazil remains highly regressive. Tax rates are high for goods and services and low for income and property, bringing about very inequitable outcomes. According to one estimate, families with an income amounting to less than two minimum wages pay an average of 46 per cent of their income in indirect taxes, while families earning over 30 times the minimum wage pay around 16 per cent in indirect taxes.²⁶ A recent report by the Tax Services²⁷ confirms the very low levels of property taxes. In particular, the rural territorial tax collected, in 2008, a mere R\$ 416 million (US\$ 239 million) nationwide.²⁸ As a percentage of GDP, this amounts to 0.01 per cent and, as a percentage of total taxation, the tax accounts for only 0.04 per cent. Given the very high level of land concentration and the large incomes generated by the agricultural sector, this is highly regressive. In contrast, taxes on goods and services, as well as social contributions to pensions and social security accounted for the lion's share of Government income: over 70 per cent in 2008. The Special Rapporteur concludes that, while the social programmes developed under the "Zero Hunger" strategy are impressive in scope, they are essentially funded by the very persons whom they seek to benefit, as the regressive system of taxation seriously limits the redistributive impact of the programmes. Only by introducing a tax reform that would reverse the current situation could Brazil claim to be seeking to realize the right to adequate food by taking steps to the maximum of its available resources.²⁹

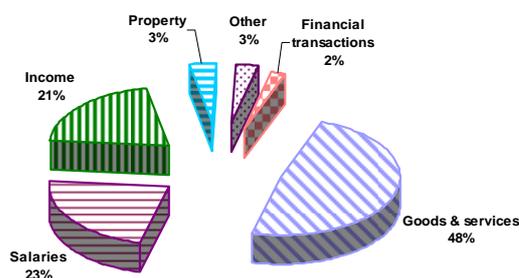
²⁶ See M.H. Zockun (ed.), "Simplificando o Brasil: Proposta de reforma na relação econômica do governo com o setor privado", discussion paper of the Fundação Instituto de Pesquisa Econômica, (São Paulo, University of São Paulo, 2007), p. 19.

²⁷ Tax Services, *Carga Tributária no Brasil – 2008: Análise por Tributo e Bases de Incidência*, Estudos Tributários No. 21, (Brasília, Ministry of Finance, 2009), p. 8.

²⁸ Note that, compared to the income of the agricultural sector and the concentration of land discussed below, this sum is particularly minuscule: income in 2006 amounted to R\$ 122 billion, while the tax accounted for R\$ 304 million, i.e. 0.25 per cent.

²⁹ E. Salvador, "Quem financia e qual o destino dos recursos da seguridade social no Brasil?", *Observatório da Cidadania 2007*, pp. 81–90. See also Social Watch International, *Social Watch Annual Report 2008: Rights is the answer* (Montevideo, Third World Institute, 2008), pp. 102–103.

Government Revenue in 2008 by Source of Taxation



3. Supporting family agriculture

37. Under Brazilian law, a family farm is an agricultural establishment that occupies up to four fiscal modules,³⁰ employs family labour predominantly, and is run by family members. Family farming plays a vital role for the food security and economy of Brazil (as proven by the latest agricultural census), accounting for R\$ 54 billion worth of agricultural production. It outperforms large-scale plantations on land productivity measurements (R\$ 750 per hectare per year compared with R\$ 358 per hectare per year for large-scale plantations). It also has a positive impact on rural communities and the environment. It is therefore welcome that, following decades of relative neglect, family agriculture is now supported actively by the Government. The results have followed: although extreme poverty is higher in the rural areas than in cities, extreme poverty in rural areas has decreased in relative terms from 28 to 9 per cent between 2002 and 2008, lifting over 1.5 million people out of extreme poverty and 4 million out of poverty. Part of the “Zero Hunger” strategy aims at supporting family agriculture, in particular through the provision of credit under favourable terms (PRONAF). Resources allocated to PRONAF since 2003 have gone from R\$ 2 to 15 billion and an additional 1 million families have been given access to rural credit under better-than-market terms. This encouraging development must be tempered, however, by the observation that, according to data from the 2006 Agricultural Census for 2006, large landowners owning only 1 per cent of rural establishments obtain over 43 per cent of all agricultural credit, while farmers with fewer than 100 ha (88 per cent of the total number of establishments) captured only 30 per cent. The census does not provide clear indication of how much of publicly funded credit and subsidy programmes are captured by small and large farmers. However, it is well established that the high level of credit default among large farmers — unrelated to climatic or crop price variations — has resulted in repeated rescheduling of their debt, with part of the default cost and risk being transferred to the Government, which in effect subsidizes agribusiness — some of which is clearly inefficient.³¹ Central bank data for 2008 shows that PRONAF funds represented only 13 per cent of the total value of loans to agricultural establishments,³² despite the fact that family agriculture produced 38 per cent of the total

³⁰ A fiscal module is a municipal unit of measurement, expressed in hectares, that reflects the predominant patterns of land occupation in the region, its profitability and the estimated agricultural needs of a family farm. In practice, a module can vary from 5 ha in fertile, market-connected areas, to 110 ha in remote Amazonian areas. The national median currently is 30 ha.

³¹ See J. Graziano da Silva, M. Del Grossi, et E. Del Porto, “As (Re) Negociações das Dívidas Agrícolas”, *Sociedade e Desenvolvimento Rural*, vol. 2, No. 1 (2008), pp. 171–188.

³² See Central Bank of Brazil, *Anuário Estatístico do Crédito Rural 2008* (Brasília, 2009).

value of agricultural output.³³ The focus on family farming in publicly subsidized credits is thus entirely justified, given the existing imbalances. The Special Rapporteur also encourages the Government to explore how it could be ensured that support will also reach the most vulnerable farmers, who should be assisted in overcoming barriers stemming from generally poor levels of education, lack of documentation, geographical distance and the lack of information. It should also conduct a review of the distributional aspects of its credit afforded to agriculture, and the possibility of increasing credit to family farming as a share of total credit, given this sector's greater social and food security impact.

38. The Programme for the Acquisition of Food plays a particularly important role by ensuring that the Brazilian Corporation for Provisioning will purchase food from small farmers and encouraging the acquisition of food by family farmer cooperatives. Act No. 11,947 of 16 June 2009 provides that a minimum of 30 per cent of all food acquired for the school feeding programme should be sourced from family farms. This innovative policy links social programmes to support to family farming, and could be scaled up in the future. It represents a powerful encouragement to family farming: for the fiscal year 2009, the total value of the National School Feeding Programme was R\$ 2.2 billion (US\$ 1.2 billion), ensuring that R\$ 733 million will be purchased from family-farming establishments. The Special Rapporteur expresses the hope that the priority given in legislation to family farms, including *assentamentos* and those of indigenous communities and Quilombolas, will be realized in the future.

39. There is a heated debate within the Brazilian society about how to manage a possible coexistence between large-scale, industrial farming, on the one hand, and small-scale family farming on the other hand. Such a debate is welcome, but should take into account not only the question of productivity per hectare or per active labourer, but also the environmental and social dimensions of farming. Some forms of agriculture have important environmental impacts that are not accounted for, particularly in terms of greenhouse gas emissions, soil degradation, contamination of water tables and crop genetic erosion: these are social costs that are not reflected in the prices of commodities. Conversely, other forms of agriculture may contribute to the preservation of biodiversity and ecosystems. Similarly, the impact of agriculture on the creation of employment and the incomes of the poorest groups of the population in the rural areas should be taken into account in assessing different forms of agricultural development.

4. Agrarian reform

40. Guideline 8.10 of the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security recommends advancing land reform to enhance access to productive resources for the poor and women.³⁴ Building on this guideline, the Member States of the Food and Agriculture Organization emphasized the "essential role" of agrarian reform in the realization of basic human rights and food security at the Porto Alegre 2006 International Conference on Agrarian Reform and Rural Development. One of the most important challenges that Brazil is facing in the progressive realization of the right to food is the extraordinarily widespread inequality in access to land, which the country appears unable, under the current framework, to tackle effectively. Some 2.4 million farms (47 per cent of the total) with less than 10 ha cover only 2.7 per cent of

³³ See Brazilian Institute of Geography and Statistics, *Censo Agropecuário 2006 – Agricultura Familiar* (Rio de Janeiro 2009).

³⁴ See Food and Agriculture Organization, *Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security* (Rome, FAO, 2005), guideline 8.10.

the agricultural surface, whereas 47,000 large properties (>1,000 ha) — although constituting only 1 per cent of farms — cover 43 per cent of the land. The 2006 Agricultural Census, carried out by the Brazilian Institute of Geography and Statistics, reports a Gini coefficient for land distribution in Brazil of 0.872. This means that there is a higher degree of inequality than in 1995–1996, when the last census was conducted. As illustrated by the example of the state of São Paulo, where land concentration increased by 6.1 per cent, the planting of more sugar cane, itself the result of incentives for the production of ethanol, seems to have played a role in this situation.

41. The Special Rapporteur commends the efforts of INCRA to ensure a more equitable redistribution of land, in accordance with the principle established under the Constitution that property shall respect its social function. INCRA is responsible for executing land reform policy and supporting new settlements. Between its establishment in 1970 and 2006, this agency has founded over 8,000 settlements, covering 64 million hectares, and benefiting nearly 1 million families. Of these totals, the period of 2003–2006 accounts for 29.9 per cent of settlements, 27.6 per cent of families and 45.3 per cent of the surface of land distribution, which shows considerable commitment by INCRA to carrying out its mission. Based on the mapping of families living in precarious encampments and settled families, the Special Rapporteur notes that in the contested areas of south-east, central and coastal Brazil — which are far more fertile and integrated into the domestic market — there is a huge, unmet demand for land. In contrast, there are a large number of settlements in northern Brazil. This illustrates the fact that the conflict for land is being mediated by the State by displacing landless peasants to the north, slowly dissolving the tensions in the highly productive areas of the south-east, but increasing pressure on land in the Amazon region.

42. Agrarian reform still encounters important obstacles. First, the index of productivity on the basis of which land may be found unproductive and thus “de-propriated”, has not been updated since 1975, despite the important advances made in improving yields since this period. For instance, average yields in sugar cane have increased 65 per cent since 1975, and the increase for soy beans has been of 53 per cent³⁵. Even when land is found to be unproductive, landowners may be tempted to speculate on the length of litigation, being rewarded by high compensatory interests for using tactics to delay judicial proceedings. Because of this situation, strict time limits should be imposed during judicial proceedings, in order to accelerate those proceedings, while incentives for landowners to abuse the judicial process should be removed. Second, when landless families occupy land — even when it is not cultivated — this could make registration and “de-propriation” impossible under the existing legislation, even where the other conditions are met. Third, once a settlement is recognized (*assentamento*), the settlement development plan that must be prepared in order for the settlement to benefit from credit and other forms of support sometimes requires months or years to be approved by the INCRA regional office, following a procedure that lacks clarity and for which little technical assistance is available. Lastly, land redistribution is delayed because of the failure to implement the constitutional provisions allowing the use of slave labour or environmental degradation to be considered as grounds for expropriation. The same can be said of the extremely low tax rate on rural property, which provides no disincentive to landowners who acquire or occupy land but do not realize its social function. The Special Rapporteur encourages the Government to review each of these obstacles to the acceleration of the land redistribution process and the successful development of settlements in areas which are unproductive.

³⁵ Calculation by the Special Rapporteur obtained by comparing the first and last average yield data from the Ministry of Agriculture, Livestock and Provisioning, *2009 Agroenergy Statistical Yearbook*.

5. The impact of trade and export-led agriculture

43. The Special Rapporteur acknowledges the importance of international trade to the development strategy of Brazil, but notes that both the pursuit of access to foreign markets and the greater degree of openness of the domestic market to trade must be accompanied by serious consideration of the effects — economic, social and environmental — on different groups within the country and on the sustainability of the process seen in its entirety. He recalls, to this effect, the recommendations that he formulated in the report drafted following his mission to the World Trade Organization.³⁶ From the point of view of the right to adequate food, what matters is not only the aggregate impacts of improved access to foreign markets and a fairer international trading system that is currently heavily skewed in favour of rich countries, but also the distributional effect of a more liberalized market on the poorest Brazilian households. It will be crucial, in this context, to ensure that the situation of households depending on family farming does not worsen, while households depending on the larger farms would benefit, as result of the expansion of export volumes. The commendable efforts made in favour of family farming should be stepped up as markets expand, and not lowered, despite the temptation to support as a matter of priority the large farms that are most competitive on international markets.

44. Brazil offers a particularly interesting context because of the coexistence of both a competitive agro-industrial, export-focused sector and a vibrant family agricultural sector that is responsible for the greater part of the domestic market while also contributing to exports. These two models of agriculture have served the country well in different contexts: the agro-export sector has ensured the exports required to ensure stability of the country's balance-of-payments, whereas family farming has allowed Brazil not only to ensure food security in times of commodity price volatility, but also to ensure increased revenues and employment among the poorest populations of the country. Brazil should therefore continue to promote family agriculture, and ensure that it is afforded the support required to face the challenges of an eventual liberalization of agricultural trade.

45. The effects of trade liberalization on other activities, including industrial activities, and on urban populations should also be assessed. There is some evidence that liberalization since the 1990s — although associated with a significant reduction of poverty — has deepened the international division of labour and has resulted, in Brazil, in a certain level of deindustrialization and reduction of the value added in its exports, including in the agricultural sector. Expanded exports in agricultural products and increased investment in the Brazilian stock- and bond-markets are already resulting in considerable currency appreciation, which might harm other Brazilian exports, leading, in the long term, to deindustrialization. While industrial goods represent a larger proportion of Brazilian exports, the exports of primary commodities have been growing at a much greater rate. It is because of these uncertainties regarding the overall and distributional effects of increased agricultural trade that a comprehensive, participative impact assessment on the right to food should be conducted by Brazil.

6. Agrofuels: ethanol and biodiesel production

46. The Special Rapporteur takes note of the ongoing debate about the role of agrofuels in Brazilian development strategies. Brazil is expected to produce in excess of 563 million tons of sugar cane in 2009. It is the world's largest producer of both raw and refined sugar, accounting for a third of global sugar-cane production, and 40 per cent of worldwide sugar

³⁶ See A/HRC/10/5/Add.2.

exports. Many of the State's ethanol plants are actually compound sugar mill/distillery complexes, capable of producing both refined sugar and ethanol and of shifting from 60 per cent ethanol and 40 per cent sugar to 60 per cent sugar and 40 per cent ethanol. This allows Brazil to capitalize on the volatile price structure of the international sugar market by producing more sugar when rates are high, and more ethanol when rates are comparatively lower, thus maximizing the return on sugar cane. In addition, sugar-cane mills in certain cases provide low-carbon and affordable electricity to a number of rural households.

47. Although, according to the Government, the *Próalcool* programme launched in 1974 has led to 600 million fewer tons of carbon dioxide being emitted in the atmosphere as a result of the replacement of gasoline by ethanol in transport, there are mounting concerns that the current expansion of sugar-cane plantations for ethanol may not be sustainable because of its social and environmental impacts.³⁷ The Brazilian Government has not remained inactive in the light of such concerns. The Special Rapporteur notes with interest: the initiative of the Government in conducting a national agroecological zoning, and denying governmental support to plantations that fail to comply with it; the recent Presidential proposal to prohibit the cultivation of sugar cane on 81 per cent of the agricultural land; and the National Commitment on working conditions in sugar cane agreed upon by the Government, employees and employers on 25 June 2009. These developments are welcome, as they demonstrate the will of both the Government and the other stakeholders to improve the sustainability of the production of ethanol from sugar cane. At the same time, sugar-cane production continues to be based upon a monocropping agricultural model that has certain environmental negative externalities. It results in a loss of biodiversity. The intensive use of pesticides may contaminate water reserves. The use of vinasse in the fields for fertigation purposes may contaminate land and groundwater, and the practice of sugar cane burning produces large, and unaccounted for, amounts of greenhouse gas emission, also resulting in serious and immediate impacts for the surrounding communities. In addition, as indicated above, the expansion of ethanol production may lead to reconcentration of land. Finally, there are recent indications that working conditions on the sugar-cane plantations remain very poor — and in many cases create a health hazard for the workers involved — and that wages remain low,³⁸ although a positive step, the recent National Commitment to improve these conditions remains a voluntary instrument and is no substitute for stronger monitoring of compliance with labour legislation. Brazil has in place a number of instruments to achieve this, including relative to the maintenance of a list of companies which do not comply with labour legislation.³⁹ It is encouraged to pursue its efforts in this direction.

³⁷ L.A. Martinelli and S. Filoso, "Expansion of sugarcane ethanol production in Brazil: environmental and social challenges", *Ecological Applications*, vol. 18, No. 4 (June 2008), pp. 885–898.

³⁸ See FIAN International et al., *Agrofuels in Brazil: Report of the fact-finding mission to Brazil on the impacts of public policies encouraging the production of agrofuels on the enjoyment of the human rights to food, work and the environment among the peasant and indigenous communities and rural workers in Brazil* (2008). Other evidence presented by the Brazilian Government points to opposite conclusions: see J. Goldemberg et al., "The sustainability of ethanol production from sugarcane", *Energy Policy*, vol. 36 (April 2008), pp. 2086–2097. On 8 January 2010, it was announced that Cosan SA Industria and Comercio was placed on a list of enterprises found to be violating labour legislation, resulting in this enterprise being cut off from financing by Brazil's State Development Bank after the company — considered to be the world's largest sugar-cane processor — was found to have workers in slave-like conditions. This shows both that the problem persists, and the Government takes seriously its responsibility to tackle it.

³⁹ *Ibid.*

48. The Special Rapporteur has repeatedly called for the definition of an international consensus on the sustainability of the production and use of agrofuels.⁴⁰ A similar call was made in the Declaration of the High-Level Conference on World Food Security convened in Rome from 3 to 5 June 2008. Brazil should take a leading role in forging such a consensus. Any criteria developed at national or international level on the development of agrofuels should include the need to ensure that the development of agrofuels production increases the incomes of the poorest in the rural areas, for instance (as recommended in the preliminary conclusions of the International Conference on Biofuels held in São Paulo from 17 to 21 November 2008) by prioritizing the inclusion of small farmers in the production chains. That challenge — to ensure that agrofuels production shall not increase inequalities in rural areas — may be even more difficult to address than the challenges posed by compliance with environmental requirements and labour legislation. In Brazil, as elsewhere, there is a risk that crops for fuel will most often be grown by large agricultural producers or multinational companies that own or rent land for that purpose. Although, according to the 2009 National Commitment, 33 per cent of total production comes from “independent” sugar-cane producers, which include the 80,000 who produce less than 10,000 tons, the pace of mergers and acquisitions has increased significantly in recent years, leading to fears that production will be increasingly concentrated and that the trickle-down impacts on rural poverty will be less important.⁴¹

49. Partly in order to develop agrofuels that are more inclusive of family farming, Brazil most recently sought to encourage biodiesel production by establishing a national programme for biodiesel production and use that aimed at increasing production in a sustainable, socially inclusive manner by ensuring the use of different oilseeds well-adapted to different regions: castor, soybean, African palm, sunflower, babassu palm, peanut and *Jathropa curcas*. The programme includes measures for funding and establishing a “social fuel” seal (held by 93 per cent of biodiesel producers in December 2009) that rewards producers for purchasing raw materials from family agriculture with significant federal tax exemptions (from 68 to 100 per cent for producers in the northern region that buy palm oil from family farms or producers in the north-east and in the semi-arid region that buy castor oil from family farms), and more favourable credit from the national development bank and PRONAF. Concerns remain, however, as to how effective this policy has been so far, given that an estimated 76 per cent of the oilseeds still come from agribusiness and that between 75 and 90 per cent of the oilseeds are soy beans which are largely produced in a monocrop basis, by large agricultural establishments.⁴² These establishments employ as few as 18 workers per 1,000 ha; more than 90 per cent use pesticides, chemical fertilizers and mechanization; and as many as 46 per cent use GMO seeds.⁴³

7. Citizens’ Territory Programme

50. The Citizen’s Territory Programme is an inter-ministerial initiative coordinated by the Ministry of Agrarian Development and implemented by 22 ministries, deploying roughly 200 policies in those territories found to have the lowest human development in the country. The programme originally focused on 60 areas and has now been extended to a total of 120 territories, with a current budget of R\$ 25 billion, or roughly US\$ 14 billion.

⁴⁰ See A/HRC/9/23 and A/HRC/12/31, para. 23.

⁴¹ See *Agrofuels in Brazil*, p. 26.

⁴² The figure of 90 per cent is cited in *Agrofuels in Brazil*, p. 34. The Government estimates the figure to be between 75 and 80 per cent (estimates of the Ministry of Mines and Energy for 2008 and 2009). The percentage is in any case estimated to be a high one.

⁴³ Data from the Agricultural Census.

These areas include 62 per cent of the low-income municipalities in Brazil, cover 52 per cent of the national territory and 24 per cent of its population, including more than half of the indigenous population and two-thirds of the Quilombola population. By combining multiple policies simultaneously in persistently poor regions, the Government expects to accelerate their development and make them converge with the national averages. This strategy constitutes a welcome recognition of the fact that only policies that target the most vulnerable have a chance of succeeding. At the same time, geographical coverage of certain regions cannot be a substitute for targeting the poorest households in the relatively wealthier areas.

VI. Conclusions and recommendations

51. The Special Rapporteur commends Brazil for its remarkable progress in the realization of the right to food since 2002. It has achieved significant results in reducing malnutrition and poverty by setting up food security laws and institutions that promote the right to food; by creating and subsequently scaling up “Zero Hunger” programmes; and by providing noteworthy support for family farming. However, major challenges remain. The Special Rapporteur makes the following recommendations:

(a) Brazil should strengthen the protection of the right to food by the establishment of an independent national institution for the promotion and protection of human rights, in accordance with the Paris Principles, as it committed itself to do under the universal periodic review process;⁴⁴

(b) The National Food and Nutritional Security System (SISAN) should be further strengthened by the adoption of a national strategy for the realization of the right to food, establishing clear benchmarks with associated time frames, identifying responsibilities across different branches of Government, and ensuring an adequate monitoring of the objectives set;

(c) The capacity of the Federal Public Ministry should be strengthened, allowing it to make greater proactive use of the constitutional guarantees to ensure the realization of the right to food;

(d) The Special Rapporteur urges the Government to ensure that, in the process of regularization of land in the Amazon region and elsewhere, due consideration be given to the rights of indigenous peoples and other traditional communities. The National Indian Foundation (FUNAI) must be given the means to effectively carry out its tasks related to demarcation issues and guaranteeing access to other State programmes, including those of the “Zero Hunger” strategy. Moreover, he invites the Government to include in its regularization process a strong commitment to reducing land concentration and ensuring an effective and sustainable occupation pattern for the region, making sure that environmental, market-access and other considerations guide the titling of land. With respect to *grilagem*, the Special Rapporteur invites the Government to pursue all necessary measures to ensure that land registration throughout the country produces a single, clear and consolidated land-ownership framework, under which land ownership is accompanied by the responsibility to fulfil the social function of property, pay corresponding taxes and preserve the “legal reserve” within each establishment. The Government should accelerate the constitutionally mandated land demarcations for the indigenous,

⁴⁴ A/HRC/8/27, para. 83.

Quilombola and other traditional communities and, in the interim, better protect these communities from *grilagem*.

(e) The authorities should systematically perform *ex ante* impact assessments on the right to food when engaging in large-scale infrastructural projects, such as dams, with the participation of the communities affected. They should ensure that no eviction takes place which would not comply with the existing relevant international standards, particularly general comment No. 7 of the Committee on Economic, Social and Cultural Rights on the right to adequate housing (art. 11, para. 1): forced evictions⁴⁵ and the Basic Principles and Guidelines on Development-based Evictions and Displacement presented in 2007 by the former Special Rapporteur on the right to adequate housing;⁴⁶

(f) Legitimate social protest should not be criminalized. The State, at federal, state and municipal levels, should take all measures necessary to ensure that legitimate forms of protest enjoy the protections afforded by international human rights standards. Restrictions to activities deemed illegal should be based on the rule of law and be strictly proportionate to the public goal pursued. A strong civil society and strong civil movements are key assets for a comprehensive approach to combating hunger in Brazil.

(g) Social policies of the “Zero Hunger” strategy could be further consolidated by: (1) being institutionalized under a single, unifying legislative framework; (2) ensuring that the local-level authorities have the required capacity to deliver, which requires adequate training and monitoring; (3) ensuring that beneficiaries are clearly informed about their rights under the existing programmes, including their right to claim mechanisms; (4) ensuring that the administrations competent for indigenous communities and Quilombolas (including but not limited to FUNAI) have officers travelling to the communities concerned, in order to assist them in complying with the necessary formalities; (5) ensuring that indigenous communities and Quilombolas are systematically represented in the administrations concerned and receive adequate support to ensure the effectiveness of such participation.

(h) Brazil should review the structure of its existing public revenues and public spending in order to ensure that the progressive realization of the right to food is pursued through the maximum use of its available resources. In the Special Rapporteur’s view, only a tax reform that would reverse the current regressive nature of taxation would enable Brazil to make such a claim; and it would enable even greater progress in the fight against hunger. The Special Rapporteur also encourages Brazil to earmark a portion of the revenues from the pre-salt field for the “Zero Hunger” strategy by including the right to food among the social objectives to be pursued by the Pre-Salt Social Fund.

(i) The Government should pursue and scale up the strategy to ensure a more equitable redistribution of land, in accordance with the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security. He urges the Government of Brazil to review the obstacles to the acceleration of the land redistribution process.

(j) The Special Rapporteur calls for a participatory assessment to be performed, in order to guide the choices made by the Government of Brazil relative to the support it provides to different forms of agriculture (large-scale and small-scale

⁴⁵ E/1998/22, annex IV.

⁴⁶ A/HRC/4/18, annex I.

family farming), including through research. The Special Rapporteur encourages the Government to further increase its support to family agriculture by: (1) ensuring that such support reaches the poorest farmers, who should be assisted in overcoming existing barriers; (2) devoting the necessary means to ensure the rapid implementation of Act No. 11,947 of 16 June 2009 which provides that a minimum of 30 per cent of all food acquired for the school feeding programmes should be sourced from family farms.

(k) The pursuit of access to foreign markets and the greater degree of openness of the domestic market to trade must be accompanied by serious consideration of the effects — economic, social and environmental — on different groups within the country and on the sustainability of the process seen in its entirety. In order to ensure that the promotion of export-led agriculture is not done at the expense of smallholders, Brazil should continue to promote family agriculture and ensure that it is afforded the support required to face the challenges of an eventual greater liberalization of agricultural trade, including by the promotion of cooperatives to increase scale economies and better adapt to certification and standardization procedures required by exacting import markets. The Government could study the possibility of using the Brazilian Export and Investment Promotion Agency as a coordination platform to develop actions to ensure the gradual integration of small-scale farmers and their cooperatives in export-oriented projects, as it is actively doing with organic farmers.

(l) Brazil could lead by example in conducting a comprehensive participative right to food impact assessment in order to assess the overall and distributional effects of increased agricultural trade.

(m) Brazil could step up its efforts to monitor compliance with social and environmental requirements in the sugar-cane plantations. It could set up task forces comprising members of the labour inspectorate, the Ministry of the Environment and the Federal Public Ministry, supported by the federal police, to make unannounced visits in plantations in order to verify compliance with these requirements and impose dissuasive penalties in cases of non-compliance, including expropriation without compensation. Brazil could also take the lead in establishing integrated social and environmental certification procedures, with a view to reducing inequalities of incomes in rural areas by using the ethanol production chain as a tool for human development. Public loans could be made conditional upon successful completion of ex ante impact assessments based upon these standards. The integration of food and energy production should be encouraged at the local level, which would mean that the current sugar-cane zoning initiative should be complemented by a microbiome zoning (maximum percentage of sugar cane on a given area in the regions where it is authorized).