



**GENEVA**

37-39 rue de Vermont  
P.O. Box 104  
1211 Geneva 20  
SWITZERLAND

**T** +41 (0)22 779 4010

**F** +41 (0)22 740 2433

[geneva@fiop.org](mailto:geneva@fiop.org)

[www.franciscansinternational.org](http://www.franciscansinternational.org)

# **Universal Periodic Review (UPR) of Brazil Stakeholder Submission**

**Franciscans International (FI)**

(NGO in Consultative Status with ECOSOC)

**13<sup>th</sup> Session of the Working Group on the UPR**

**Human Rights Council**

**Geneva, November 2011**

## Introduction

1. Franciscans International submits written comments concerning Brazil for consideration by the Universal Periodic Review Working Group at its 13<sup>th</sup> session, from 21 May to 1 June 2012. FI is a faith based International Non-Governmental Organization (INGO) with General Consultative Status with the Economic and Social Council of the United Nations. It was founded in 1982 to bring to the UN the concerns of the poor and the most vulnerable. **This submission was prepared on behalf of Franciscans working at the grassroots level. FI conducted an in-country training on the Universal Periodic Review in Brazil, in June 2011.**
2. The report highlights key concerns related to two systemic problems that directly affect our partners in their work for the protection and promotion of human rights in Brazil with an emphasis on those that are most vulnerable to violations: (I) the lack of guarantees for human rights defenders, particularly in their pursuit of guarantees of land rights, of environmental protection, and the rights of indigenous peoples; and (II) the failure to guarantee the minimum conditions for female inmates detained in state institutions.
3. Human-rights defenders often assume great risks—and too often, great costs—in an effort to advance the cause of those most vulnerable and marginalized in the face of consolidated, powerful forces. The compliance of a State with the respect for and protection of the rights of human rights defenders warrants separate consideration because it is relevant to the rights of particular individuals and groups, but also because it is a concrete manifestation of the State’s political will to promote human rights and democracy based on the rule-of-law.
4. The situation of female inmates is also deserving of specific evaluation, particularly because the population of the women’s prisons is quite large but often invisible in the midst of a much larger and highly problematic men’s prison system. These individuals are under the complete control and custody of the state and therefore the obligation and potential to guarantee prisoner rights and dignified conditions is very high.

### I. Situation of Human rights Defenders

#### A. *Background: Institutional and Legal Framework*

5. Because of an understanding of “the importance of their efforts and the need to create conditions and instruments to protect these persons,”<sup>1</sup> the Special Human Rights Secretariat created the National Human Rights Defenders Protection Program (PPDDH or “Program”) in October of 2004. The Program was officially launched in February 2005. Two years later the President established formally a National Policy for the

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<sup>1</sup> Human Rights Secretariat, *Protection for Human Rights Defenders*, available at: <http://www.direitoshumanos.gov.br/protecao/defensores>.

Protection of Human Rights Defenders.<sup>2</sup> The objective of this policy was “to establish principles and directives of protection and assistance to persons or entities, groups, institutions, organizations, or social movements that promote, protect and defend human rights, and, which as a result of their actions and activities in these areas find themselves at risk or vulnerable.”<sup>3</sup>

6. The current structure is regulated only by decree; however a draft law, Bill 4575/2009 has passed in four congressional commissions (House of Representatives), and at the time of this writing is awaiting debate before a plenary session. The Bill sets out the mechanisms of the different institutional roles and establishes the conditions for entering under the program’s protection.
7. These normative and institutional advancements are positive national affirmations of agreement with the increasing international recognition of the importance of the role and rights of human rights defenders. The legislative and executive actions also constitute an important recognition of the precarious situation of human rights defenders in the country and the urgent need for State protection.
8. Unfortunately, the Program has not received enough priority and political will to create an effective and efficient structure for implementation. The structure of the Program has been criticized as overly bureaucratic, under-funded, and lacking in clarity in terms of federal and state competencies. Despite its name, the program is not yet national and is being implemented in only 8 of Brazil’s 26 states.<sup>4</sup>

*B. Promotion and Protection of Human Rights on the Ground: Implementation of International Human Rights Obligations*

9. The continued physical violence, threats, and judicial harassment against defenders of the right to land, indigenous peoples’ rights, and environmental rights has been widely documented and denounced by national and international civil-society organizations;<sup>5</sup> by the Inter-American system for the protection of human rights;<sup>6</sup> and by the Special Rapporteur on the situation of human rights defenders.<sup>7</sup>

<sup>2</sup> Presidential Decree no. 6044, “*approving the National Policy for the Protection of Human Rights Defenders (PNPDDH), defining the timeline for elaborating the National Plan for the Protection of Human Rights Defenders, inter alia,*” (Feb. 12, 2007).

<sup>3</sup> Presidential Decree no. 6044, art. 1.

<sup>4</sup> Pará, Pernambuco, Bahia, Espiritu Santo, Rio de Janeiro, Minas Gerais, Maranhão, and Sergipe.

<sup>5</sup> See, e.g., Observatory for the Protection of Human Rights Defenders, *Annual Report 2011*; Terra de Direitos & Justiça Global, Boletim: Defensoras e Defensores de Direitos Humanos no Brasil.

<sup>6</sup> E.g., Inter-American Commission, Precautionary Measures, PM 382/10 – Indigenous Communities of the Xingu River Basin, Pará, Brasil (April 1, 2011) (modified July 29, 2011); Inter-American Court of Human Rights, *Case of Escher et al. v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs, Series C. No. 200 (July 6, 2009).

<sup>7</sup> Most recently, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, *Summary of cases transmitted to Governments and replies received*, UN Doc. A/HRC/16/44/Add.1 (Feb. 27, 2011).

10. A major obstacle for the promotion and protection of the free exercise of the rights of human rights defenders is continuing rural conflicts that are not resolved in a democratic, peaceful manner with a respect for the rule of law. In April 2011, the Pastoral Land Commission (*Comissão Pastoral da Terra*) produced a review of the documentation that this movement has collected regarding the levels of rural violent conflict in Brazil from 2001 to 2010.<sup>8</sup> As can be seen in the graphic representations included below as Annex 1, the context for the protection of human rights defenders remains one of a persistently elevated level of violent conflict being resolved outside of the formal and legal channels of the State. Therefore, in terms of fulfilling its obligations to guarantee the rights of human rights defenders working in the areas of land rights, environmental protection, and indigenous and minority rights, it is particularly important that the State adequately address the sources of tensions and ensure democratic and peaceful resolution in accordance with Brazilian and international law.
11. Prosecutorial/judicial intervention in rural conflicts must be guided by the core rule-of-law principles, such as due-process rights, equality before the law, and victims' access to justice and right to reparation. Particularly in contexts of widespread impunity for violence committed against human rights defenders, community leaders, and activists, the swift action of the judicial branch in some cases to threaten or initiate criminal action against leaders appears arbitrary and interested in terms of the different forces in the conflict. The stigmatization and/or criminalization of legitimate efforts to seek guarantees for legal rights contribute to the vulnerability of these individuals and groups.

*C. Follow-up to the Previous Review*

12. During its first periodic review, Brazil recognized the need to improve the system of protection of human rights defenders throughout the country<sup>9</sup> and accepted the recommendations, two of which call for evaluation, intensified efforts, and cooperation to improve protection of human rights defenders.<sup>10</sup>
13. Despite advancements in recognizing the nature and urgency of the situation of human rights defenders in Brazil, the State has been reluctant to cooperate productively with international bodies/mechanisms. The Inter-American system for human rights has been an important source of support and protection for human rights defenders facing threats. However, the Brazilian State has actively resisted and opposed measures ordered by the Inter-American Court.<sup>11</sup> Also, the thematic Special Rapporteur has highlighted on several occasions the Brazilian government's failure to respond to her communications regarding urgent appeals and other matters. She cited 19 different communications that

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<sup>8</sup> The following graphs represent the statistics reported by the Pastoral Land Commission (*Comissão Pastoral da Terra*), *Conflitos no Campo: Brasil 2010*, ISSN – 1676 – 661 (Goiânia, April 2011).

<sup>9</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review of Brazil, A/HRC/8/27, (May 22, 2008), paragraphs 15 & 23.

<sup>10</sup> *Ibid*, paragraph 83: (3)-(4).

<sup>11</sup> Most notably, the case of the precautionary measures ordered for the communities in the Xingu River Basin.

went without response,<sup>12</sup> and has reiterated her “serious concerns expressed earlier at attacks against the life and personal integrity of Brazilian human rights defenders,” and particularly of “the continuing violations committed against human rights defenders working to promote the rights related to land ownership and the rights of indigenous peoples, and labor rights.”<sup>13</sup>

#### *D. Recommendations*

#### **14. Franciscans International urges the Government of Brazil to:**

- a) Set up an Independent Commission of Inquiry to deal with serious allegations of grave human rights violations of human rights defenders;
- b) Conduct comprehensive investigations into violations and abuses perpetrated against human rights defenders and ensure that the perpetrators are brought to justice;
- c) Reform the existing structure for the implementation of the Protection Program providing it with adequate resources and ensuring that it has a greater input in the formulation of public policy;
- d) Ensure the implementation of the Protection Program at the national level, in partnership with state governments and a broad range of civil society actors;
- e) Compile disaggregated statistics of cases against human rights defenders in line with the recommendations made by the Special Representative of the Secretary-General on the situation of human rights defenders after her country visit to Brazil in 2005.

## **II. Situation of Female Prisoners**

### *A. Background: Institutional and Legal Framework*

15. According to the Secretariat for Policies for Women of the state of Rio Grande do Sul, the total population of incarcerated women in Brazil has grown five-fold in recent years, mostly an increase in detentions for drug-related charges/convictions.<sup>14</sup> As of October 2011, it was cited that the total population of female inmates in Brazil is approximately 26,000.<sup>15</sup> However, it is often cited that women make up only 6% of the total prison population in Brazil. Brazil has been widely denounced for its prison conditions, and the federal government tends to acknowledge the severity of the situation.

16. Importantly, an Inter-ministerial Working Group was created through a presidential decree issued on May 25, 2007, to “make proposals for the reorganization and

<sup>12</sup> Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, *Summary of cases transmitted to Governments and replies received*, UN Doc. A/HRC/16/44/Add.1 (Feb. 27, 2011).

<sup>13</sup> Human Rights Council, Report submitted by the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, *Summary of cases transmitted to Governments and replies received*, UN Doc. A/HRC/10/12/Add.1 (Mar. 4, 2009).

<sup>14</sup> *Results of the Women’s Policy Secretariat: Progress and Challenges in the Confronting Violence against Women in Rio Grando do Sul*, Apr. 4, 2011, available at <http://www.spm.rs.gov.br>.

<sup>15</sup> Presidency of the Republic, Report of the Special Secretariat for Women’s Policy, Year IV, No, 4, Oct. 10, 2011.

reformulation of the Women's Prison System." This Group has conducted an important diagnosis of the situation of female prisoners and proposed emergency measures.

17. Despite important policy advances at the federal level, there has been uneven and generally unsatisfactory progress at the state level—constitutionally where prison management and police functions depend. Regardless, under international law it is the Brazilian Federal State that must ensure the satisfaction of the obligations that it has sovereignly assumed and the federal government has several means to increase pressure on states to improve compliance of these human rights obligations.

*B. Promotion and Protection of Human Rights on the Ground: Implementation of International Human Rights Obligations*

18. Over-crowding in women's prisons—as in men's—is the most readily identifiable obstacle to guaranteeing the rights of those under state custody. This problem is widely discussed in the broader analysis of the prison system. To illustrate the problem specifically for the female population, the state of São Paulo is a helpful example.
19. The state of São Paulo has made improvements in its treatment of female prisoners. A positive practice of the Penitentiary Administration Secretariat is that of maintaining up-to-date, detailed statistics, disaggregated by sex, for the population of each detention or correctional facility. However, these numbers reveal that out of a total of 15 detentions centers for females, 11 present overcrowding beyond maximum capacity.<sup>16</sup> The degree of the overcrowding varies from between 3 and 593 inmates over capacity, and from between an operating capacity of 103% of the maximum to a staggering 336% of the maximum capacity<sup>17</sup>.
20. Stemming from the overall panorama illustrated with the case of the state of São Paulo, the female inmate population has seen sex/gender-specific violations in addition to violations and deficiencies reported generally for the inmate population in general. This has included the placement of females in cells with male prisoners; sexual abuse of female inmates by male prison staff; deficient or absent women's health services; failure to address questions related to maternity and childcare; and inadequate physical spaces.

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<sup>16</sup> These numbers are reported to be current as of July 22, 2011. For more, please see Penitentiary Administration Secretariat, available at: <http://www.sap.sp.gov.br/>.

<sup>17</sup> For full details on the officially reported statistics for the São Paulo State institutions for women, please see the chart provided at the conclusion of this submission as Annex 2.

*C. Recommendations*

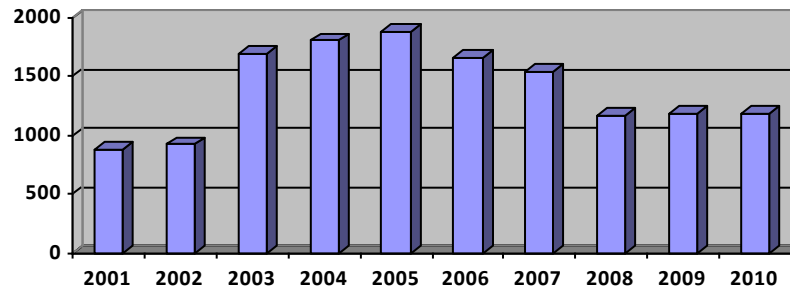
**21. Franciscans International urges the Government of Brazil to:**

- a) Involve civil society organizations in the activity of the Inter-ministerial Working Group, and ensure that the proposals are taken into consideration in policy making;
- b) Address overcrowding in prisons through allocation of funding to enlarge existing facilities and/or build new ones, and through the application of non-custodial penalties;
- c) Take adequate measures to ensure that women offenders are kept separate from men, through the provision of separate detention facilities or the provision of separate confinement areas within the same prison;
- d) Ensure that the federal policies are effectively implemented at the state level through the allocation of federal funding and the establishment of a federal monitoring authority to inspect and report on prison conditions.

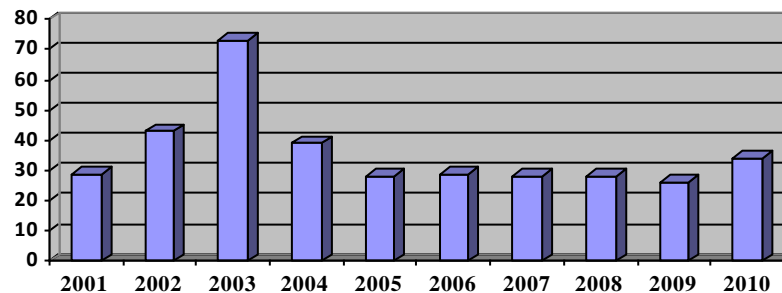
### ANNEX 1: Rural Conflicts and Deaths

FI has composed the following graphs using the statistics reported by the Pastoral Land Commission (*Comissão Pastoral da Terra*). For more details and a description of the methodology, see Pastoral Land Commission, *Conflitos no Campo: Brasil 2010*, ISSN – 1676 – 661 (Goiânia, April 2011). The inputs for both charts are provided below.

**Number of Rural Conflicts Recorded in Brazil: 2001-2010**



**Number of Deaths Resulting from Rural Conflicts: 2001-2010**



#### Inputs

Year	Number of rural conflicts	Number of killings in rural conflicts
2001	880	29
2002	925	43
2003	1690	73
2004	1801	39
2005	1881	28
2006	1657	29
2007	1538	28
2008	1170	28
2009	1184	26
2010	1186	34



### ANNEX 2: Overcrowding in Female Penitentiaries, State of São Paulo

FI compiled this table with the most recent statistics reported by the São Paulo State Penitentiary Administration Secretariat. These numbers are reported to be current as of July 22, 2011. For more, please see Penitentiary Administration Secretariat, <http://www.sap.sp.gov.br/>. The institutions included in this compilation are those for which the state has reported information disaggregated by sex. For example, the prison of Tupi Paulista has female inmates, but is not included here because the official statistics for capacity and total population are not separated by sex (total capacity: 768; total population: 1229).

Location/Institution	Maximum Capacity	Actual Population	Excess Population	Operating Capacity
<b>Women's Penitentiaries</b>				
1 Campinas	528	1062	<b>534</b>	<b>201%</b>
2 Ribeirão Preto	300	255	-	85%
3 São Paulo (Butantan)	620	679	<b>59</b>	<b>110%</b>
4 São Paulo (Capital)	251	844	<b>593</b>	<b>336%</b>
5 São Paulo (Sant'ana - Carandiru)	2400	2467	<b>67</b>	<b>103%</b>
6 Tremembé (Pelletier)	100	165	<b>65</b>	<b>165%</b>
7 Tremembé (II)	664	551	-	83%
<b>Women's Provisional Detention Centers</b>				
8 Franco da Rocha	864	1438	<b>574</b>	<b>166%</b>
<b>Women's "Re-socialization" Centers</b>				
9 Araraquara	64	71	<b>7</b>	<b>111%</b>
10 Itapetininga	210	268	<b>58</b>	<b>128%</b>
11 Piracicaba (Carlos S. Cantarelli)	120	210	<b>90</b>	<b>175%</b>
12 Rio Claro	80	52	-	65%
13 São José do Rio Preto	140	134	-	96%
14 São José dos Campos	75	115	<b>40</b>	<b>153%</b>
<b>Women's Custodial Hospitals</b>				
15 Franco da Rocha (Teixeira Lima) <sup>18</sup>	50	89	<b>39</b>	<b>178%</b>
<b>TOTAL</b>	<b>6466</b>	<b>8400</b>	<b>1934</b>	<b>130%</b>

<sup>18</sup> Current as of June 29, 2011.