

# Brazil

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## 1. Introduction: *For the English to see?*

**T**rafficking in persons is often referred to as one of the most explicit forms of modern slavery. Although officially abolished, slavery was never really eradicated. International treaties, national laws and binding resolutions might be able to prohibit trafficking, but putting an actual end to the practice depends on much more than legal tools, policies and law-making processes. The truth of this statement is best exemplified in an old Brazilian saying, which remains popular even today and is only too relevant to the issue we are reviewing: ‘for the English to see’, meaning that it is enough to give the appearance of having good intentions (see Box 1).

### **Box 1 – The Slave Trade in Brazil**

When Brazil declared its independence from Portugal in 1822, its main trading partner was Great Britain. While the British offered various forms of support and friendship in return for access to Brazilian ports and the right to trade in Brazil, Great Britain had already declared the importation of African slaves into its colonies to be illegal and was encouraging other countries to do the same. Moral arguments played a role, but Brazil – economically highly dependent on cheap slave labour on the sugar, coffee and cotton plantations – was also considered an unfair competitor by Britain and its colonies, which were producing many of the same goods and where slavery was abolished in the 1830s. As a result, under British pressure a number of Brazilian laws were passed, aimed formally at the abolition of slave trade, while actually having little or no impact. These initiatives were *para inglês ver* (for the English to see). One of these laws, the *Lei Euzébio de Queiroz*, which prohibited slave trafficking in 1831, did not have even the slightest effect – after this prohibition, the nominally illegal slave trade even increased significantly (Bethell, 1989, 40, 62, 95; Militão, 2005).

The next few sections will show how recent anti-trafficking initiatives in Brazil were also triggered by subtle or less subtle foreign pressure. At the same time, attention will be drawn to the most important dimensions of human trafficking in Brazil, being a country of origin and destination of people who are trafficked. Finally, throughout the different sections, existing governmental and non-governmental initiatives will be analysed in order to assess if they address the needs of trafficked persons adequately, or serve other interests and objectives.

## 2. The Current Legal Framework

The year 2006 will probably be a watershed year in the history of Brazil's anti-trafficking efforts. Until recently, international trafficking in women for the purpose of prostitution was routinely considered to be the only contemporary form of human trafficking occurring in Brazil, while slave labour and practices similar to slavery regularly found on huge and isolated soy and sugarcane plantations were treated as something completely different. This separation seems to be closely linked to debates on voluntary and forced prostitution and the feminisation of the increasing flows of people leaving Brazil on the one hand, and internal migration and a traditional patron-client system on the other.

On 26 October 2006, Brazil's President Luiz Inácio Lula da Silva signed Decree No. 5,948 promulgating the *National Policy to Combat Human Trafficking*,<sup>1</sup> and organised federal government initiatives around this issue. Although without the status of law,<sup>2</sup> for the first time in Brazil's history, all the different forms of human trafficking mentioned in the UN Trafficking Protocol, including slave labour and practices similar to slavery, as well as the illicit removal of organs, are officially considered to constitute human trafficking (even though the country's legislation does not yet reflect this interpretation).

Is Decree No. 5,948 just another legal instrument 'for the English (and Americans) to see'? The answer to that question will mainly depend on how anti-trafficking efforts are put into practice and if courageous political support from local, state and federal authorities will be forthcoming to back this common framework that relies on substantial investment at national level, involvement of NGOs and international cooperation. Although Brazil's legislation on human trafficking needs to be improved, a major concern is that laws, in general, often go unenforced.

### Recent Changes in the Law: Human Trafficking for the Purpose of Prostitution

Brazil's Penal Code, which used to refer only to women being trafficked abroad into prostitution, has, since March 2005, explicitly made internal human trafficking a crime and now also applies to men and children. These changes should be welcomed but the new articles (Articles 231 and 231-A of the Penal Code)<sup>3</sup> still restrict their definition to cases involving prostitution and do not apply to other forms of human trafficking. Although not labelled as human trafficking, most of these other forms are, in part at least, offences under other articles of the Penal Code or under other special laws. For instance, the *Children's Rights Statute*, adopted in 1990, already has some articles indirectly referring to trafficking in children.

The changes introduced by Law No. 11,106 (adopted on 29 March 2005) came more than a year after the UN Trafficking Protocol had already been ratified by Brazil (on 29 January 2004). The ratification gave the UN Trafficking Protocol (which entered into force in Brazil on 28 February 2004) the same legal status<sup>4</sup> as ordinary non-constitutional laws, such as the more recent, though more restricted, Law No. 11,106. Consequently, there are two legal instruments on (partially) the same issue, not synchronised with each other.<sup>5</sup>

This is also clear evidence that the various Brazilian policy makers do not coordinate properly or exchange enough information, or, by implication, give sufficiently close attention to issues pertaining to human trafficking. Clearly, the changes<sup>6</sup> foreseen by Law No. 11,106 did not take into account the broader international context of the UN Trafficking Protocol, although it abolished, among other changes, the questionable and discriminatory use of the term *honest woman* (as used previously in Articles 215 and 216 of the Penal Code), which had been

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used to imply that only a woman who was *not* a prostitute and therefore sexually ‘honest’ could be a victim of certain sexual assaults.

So, despite the recent changes in the Penal Code, the scope of the concept of human trafficking in Brazil continues to be very limited and highly controversial. It still emphasises human trafficking for the purpose of *prostitution*, without narrowing prostitution down to the UN Trafficking Protocol’s focus on the “exploitation of the prostitution of others”. “The Brazilian Penal Code, dated 1940, considers prostitution as a crime, not for the prostitute, who does not incur in any crime, but for the so-called agents (hotel, cabaret, and brothel-owners), as well as for any other person working in or around the sex sector” (Leite, 2000, 11).

Indeed, Brazilian legislation already penalises the exploitation of prostitution through Articles 228 to 230 of the Penal Code.<sup>7</sup> So Article 231-A, defining internal human trafficking, is redundant and there is consequently a serious question about whether it is simply ‘for the English to see’. Furthermore, this article does not criminalise the more narrow offence of “exploitation of prostitution”, but refers instead to the “promotion and facilitation of prostitution”.<sup>8</sup>

Articles 231 and 231-A do not take into account the fundamental difference between forced and voluntary prostitution, and so, in the name of a policy intended to stop human trafficking, they may eventually result in the closing down of brothels, making it impossible for sex workers to earn a living. Tightening legislation on human trafficking for the purpose of *prostitution* (which is not, as such, prohibited in Brazil) does affect all sex work directly, but also indirectly. Since corruption among law enforcement officials is known to exist, they can demand higher bribes to ‘protect’ sex workers’ jobs, especially when policemen own brothels.<sup>9</sup>

### **The New National Policy to Combat Human Trafficking (for all purposes)**

Fortunately, the recently adopted *National Policy to Combat Human Trafficking*, defining ‘trafficking in persons’ in Article 2, makes a direct reference to the UN Trafficking Protocol’s definition. But paragraph 7 of that same article also introduces a significant difference. Since the National Policy does not consider ‘consent’ of the victim to be relevant at all, it avoids the discussion on consent in a rather unorthodox way, by not referring to Article 3(b) of the UN Trafficking Protocol (which states: “The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used”). This Brazilian solution of avoiding any discussion on consent *de facto* also ignores the issue of recruitment through abusive means, which is an essential part of the UN Trafficking Protocol’s definition of trafficking in persons. However, these means are still mentioned in the National Policy’s definition of what trafficking consists of (“...the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”).

In other words, by disregarding whether the victim (initially) consented to being recruited, and as such ignoring any analysis on the use (or not) of any of the means to achieve instigated or ‘poisoned’ consent, Brazil appears to have adopted a simplified definition, with the intention of avoiding misuse and interpretative discussions at the level of the courts. Before and during the National Consultation on the National Policy, that occurred on 28 June 2006 in Brazil’s capital Brasília, some of the participating governmental and non-governmental policy makers had expressed their fear that cases of trafficked sex workers might precipitate lengthy court discussions, triggered

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by conservative judges or smart lawyers, on trafficked ‘non-honest women’ who will automatically be assumed to have consented to their exploitation since they earn a living from sex work. Those in favour of avoiding any discussion about consent wanted instead to focus on the issue of ‘exploitation’ as the key constitutive element defining human trafficking.

Shrinking the UN Trafficking Protocol’s definition of human trafficking by eliminating the issue of consent, means that the Brazilian National Policy in fact considers trafficking in persons to be *the recruitment, transportation, transfer, harbouring or receipt of persons, for the purpose of exploitation*. Exploitation is then still interpreted to mean what is set out in the UN Trafficking Protocol: “Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

In the view of Projeto Trama<sup>10</sup> (the Brazilian NGO based in Rio de Janeiro to which the authors belong), expressed during the public consultations on the *National Policy to Combat Human Trafficking*, Brazil has not only adopted a different definition of trafficking from that recognised by the international community, but also introduced aspects of paternalism and a somewhat moralistic approach to the issue. Without a clearer and more specific definition of ‘exploitation’ than the one mentioned in the UN Trafficking Protocol, the paid activities of a non-autonomous adult sex worker, who has made a genuine voluntary choice to work in a brothel where her or his rights are fully respected, might be considered criminal acts of ‘exploitation of the prostitution of others’ and, consequently, human trafficking.<sup>11</sup> In fact, the practical solution to ignore the discussion on ‘consent’ makes a case-by-case analysis impossible and eliminates all subjective elements and possible personal circumstances that should be taken into consideration to determine precisely where, in a particular case, autonomy ends and exploitation begins, especially in those cases within the dim area where the universally accepted minimum definition of exploitation as set out in the UN Trafficking Protocol is not applicable.

### **Other Forms of Exploitation associated with Human Trafficking**

As already mentioned, the anti-trafficking Articles 231 and 231-A of the Penal Code do not define as human trafficking any of the other forms of exploitation mentioned in the UN Trafficking Protocol, such as forced labour or services, slavery or practices similar to slavery, servitude, unlawful organ removal or even other forms of sexual exploitation. Some of these practices are, however, considered crimes, partially or wholly, by other articles of the Penal Code, or specific laws.

Article 149 of the Penal Code (reducing someone to slavery-like working conditions) deserves extra attention since it was changed by Law No. 10,803 (dated 11 December 2003). Formerly, Article 149 was able to cover different types of exploitation, but its scope was narrowed from “reducing someone to a slavery-like condition” (which could include forced marriage) to slavery-like *working* conditions. Article 206 of the Penal Code pertains to the fraudulent recruitment of workers for emigration purposes. Likewise, Article 207 deals with the fraudulent recruitment of workers to transport them elsewhere within national territory.

Article 14 of Law No. 9,434, dated 4 February 1997, amended by Law No. 10,211 dated 23 March 2001, prohibits the removal of organs from living persons or corpses when proper legal procedures are not followed. Article 9, however, states that, in the eyes of the law, anyone who is apt to make decisions for themselves is entitled, under strict conditions, to dispose of tissues, organs or other parts of their own living body for the

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purpose of proven indispensable transplantation or therapy, if such does not imply any risks for the health or the physical integrity of the donor involved.

In contrast with the UN Trafficking Protocol, none of these various other offences mentioned above make exploitation a key constitutive element of the offence. Consequently, their practical scope in human trafficking cases will be limited. Besides, none of these offences are considered to constitute human trafficking, meaning that people defined as victims of human trafficking, under an international law which Brazil is committed to enforce, may not receive the protection and assistance to which they are entitled.

### 3. Policies to Combat Human Trafficking

The practice of human trafficking is not new: from the sixteenth to the nineteenth centuries, the slave trade resulted in millions of Africans being exported to various countries to be exploited, including to Brazil, the last country in the Americas to abolish slavery (in 1888). This phenomenon that today involves organised and informal networks supplying a cheap workforce for labour and other forms of exploitation, such as the unlawful organ removal for transplantation,<sup>12</sup> began to be studied and combated in Brazil only in the 1990s.

This section delineates some of the major governmental and non-governmental initiatives to combat human trafficking, focusing on special laws and policies, as well as the international support that Brazil has received on this issue.

#### The First Steps to Combat Human Trafficking

In 1992, Gilberto Dimenstein, a well-known Brazilian journalist, denounced the problem of commercial sexual exploitation of girls, especially in the Amazon. His book, entitled *Meninas da Noite* (Girls of the Night), however, did not explicitly label forced prostitution of girl-slaves as human trafficking. In the same year, Americas Watch published its report *The Struggle for Land in Brazil, Rural Violence Continues*, denouncing several *fazendas* (large ranches) for using forced labour, supplied by so-called *gatos* (literally: cats) or labour contractors who recruit workers, mostly with false promises, to cut down the forest, especially in the southern part of the Amazon state of Pará. This report in English was mainly based on information provided by the grassroots *Comissão Pastoral da Terra* (Pastoral Land Commission – CPT), an organisation linked to the National Conference of Brazilian Bishops, formed in 1975 to monitor human rights abuses in Brazil's countryside.

Three years later, in 1995, the *Centro de Articulação de Populações Marginalizadas* (Centre for the Articulation of Marginalized Groups – CEAP), launched the first campaign and research on trafficking in persons in Rio de Janeiro with the slogan, *Trafficking in Women is a Crime: a Dream, a Passport, a Nightmare*. At that time however, the political agendas of federal, state and local governments, as well as various NGOs, did not seem ready to respond to the problem of human trafficking, although there was already quite some focus on the commercial sexual exploitation of children.

The question of how to combat human trafficking found a place on the political agenda only at the beginning of the new millennium, when the first National Research on Trafficking in Children, Women and Adolescents for

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Commercial Sexual Exploitation, also known by the acronym PESTRAF (2002), was conducted jointly by a large group of Brazilian NGOs and universities receiving substantial international support.

### **Offices to Assist Victims of Human Trafficking**

In December 2001, the conservative government of President Fernando Henrique Cardoso – through the National Justice Secretariat of the Ministry of Justice – signed an agreement with the UNODC to implement the Global Programme Against Trafficking in Human Beings (GPAT), financed by the governments of Brazil and Portugal<sup>13</sup> in order to combat international trafficking in women for sexual exploitation.<sup>14</sup> In 2002, the Federal Government, not yet fully influenced by PESTRAF, set up State Committees to Prevent and Combat Human Trafficking in five Brazilian states (Bahia, Ceará, Pará, Pernambuco and Rio de Janeiro), basically within the structure of the Federal Witness Protection Programme, PROVITA.<sup>15</sup> It also tried enlisting the support of NGOs for back-up and networking facilities.

After this largely unsuccessful governmental initiative, the new and more left-leaning government of President Lula revived the GPAT, choosing initially four priority states – Ceará, Goiás, São Paulo and Rio de Janeiro. Ceará and Goiás were chosen as they were considered to be locations of intense trafficking activity, while Rio de Janeiro and São Paulo have the country's main international airports that serve as departure points for many trafficked persons going overseas. It is important to emphasise that a notorious human trafficking route, from Belém (capital of the northern state of Pará in the Amazon region) to Surinam and further on to Europe, and some other infamous routes in Brazil, such as the point where the three borders of Argentina, Brazil and Paraguay meet (Sanchis, 2005, quoting the IOM), were unfortunately not covered by this first five-year GPAT.

The GPAT proposed specific actions concerning research and the prevention of human trafficking for sexual exploitation in the four states involved. Other forms of trafficking were not covered in this first programme. In particular, the patterns of slave labour occurring within Brazil were dealt with quite separately, receiving international attention instead from the ILO. The focus within the GPAT was on capacity building among law enforcement professionals (especially the federal police), campaigns, research and diagnosis, and the construction of a database on trafficking statistics that was not fully concluded.

Furthermore, together with the governments of the four states involved, the Ministry of Justice and the UNODC promoted the creation of Victims of Human Trafficking Assistance Offices. The offices were supposed to provide legal, social and psychological assistance to enable trafficked persons to reintegrate. Health services, education and social facilities were to be offered through a network of local service organisations. Even though innovative and, to a certain extent, showing the government's commitment to initiate action, the four offices hardly represent good practice in terms of providing assistance to trafficked persons or preventive action.

#### *Victims of Human Trafficking Assistance Office in São Paulo*

The office in São Paulo was opened in May 2003, within the headquarters of São Paulo's Secretary of Justice and Defence of Citizenship. São Paulo's state government provided staff and an office, while the Federal Ministry of Justice promoted training and workshops on human trafficking. But the fact that the São Paulo office, located in the city centre, could extend assistance to very few trafficked persons might be explained by the lack of means and the difficulties experienced in identifying trafficked persons, who do not easily step forward. As a result, the

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office gives support to an NGO,<sup>16</sup> that by the end of 2006 started a pilot project at São Paulo's International Airport at Guarulhos to provide information to Brazilians who might have been trafficked and forcibly repatriated and their rights violated in the process.

### *Victims of Human Trafficking Assistance Office in Goiás*

The office in the capital Goiânia of the centre-west state of Goiás was also installed in cooperation with the state government, within the state public prosecutor's office in Goiás. As in São Paulo, there was not a great demand for the office's services, although it provided assistance to some trafficked women returning from abroad. As a result, the office in Goiás started focussing on prevention and awareness raising activities in schools, in order to mobilise in a non-discriminatory and empowering manner. It also managed to establish close contacts with the general social assistance network, since the coordinator is also the leader of the Municipal Network to Combat Sexual Violence, which helps to bring together practical assistance to trafficked people. In fact, Goiás has a reference centre for legal abortion as well as a special police station for women. As a result of these initiatives, the Federal Special Ministry of Women Rights (SEPM) chose Goiás to set up the Centre to Assist (female) Victims of Violence, also intended to identify trafficked persons.<sup>17</sup>

### *Victims of Human Trafficking Assistance Office in Ceará*

In contrast to the other offices, the office in the capital Fortaleza of the north-east state of Ceará on the Atlantic coast collaborates with the state public prosecutor's office on the issue of internal trafficking, mainly involving children and adolescents. A civil police detective (without a mandate to investigate international human trafficking) was appointed to conduct investigations and to act together with the office.<sup>18</sup>

### *Victims of Human Trafficking Assistance Office in Rio de Janeiro*

Rio de Janeiro was the only state where the project was postponed, since the Ministry of Justice took some time to identify which state organisation would be able to take responsibility in the regional project. In 2005, the Rio de Janeiro *Conselho Estadual dos Direitos da Mulher* (State Women's Rights Council – CEDIM), turned out to be a relevant, gender-sensitive partner for the Federal Ministry of Justice. CEDIM has been developing several strategies for the implementation of the mandate of the office, inviting several relevant NGOs to participate. However, as far as trafficking for sexual exploitation is concerned, Rio de Janeiro – being depicted as one of its biggest suppliers for the foreign market and an important trafficking route (Leal and Leal, 2002) – still lacks policies to assist trafficked persons, since the office has not yet been set up and the state government has not yet taken any substantial initiative on this issue. UNIFEM, however, directed a specialist on the issue to work at CEDIM's headquarters in the city centre of Rio de Janeiro.

### *Limits of effectiveness*

Opening an Office to Assist Victims of Human Trafficking, even when offering a range of services, is unlikely to be effective unless there is also a clear strategy and campaign on how to address and identify trafficked persons in a non-discriminatory and empowering way. However well intentioned, unless assistance services take the direct needs of trafficked persons into account, they are hardly going to be effective. According to Sodireitos, one of the main NGOs involved in responses to human trafficking in the north of Brazil, the offices lack a clear mission and the (four) bureaux do not work together or liaise in any way.<sup>19</sup>

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Another concern regarding mid- and long-term assistance is that the existing support network is not prepared to assist trafficked persons. In the city of Rio de Janeiro, for example, there are only two public shelters to protect women. However, these shelters are designed for victims of domestic violence and in principle do not accept sexually exploited or trafficked women.

Furthermore, the title of the Office was not carefully chosen, since people who suffer human rights violations, especially trafficked persons, do not automatically identify themselves as ‘victims of human trafficking’. Trafficked persons may well just want to forget what has happened to them, as if it were a bad dream, an unlucky choice for which they carry the sole responsibility or just another chapter in an unfair life full of exploitation. They may not perceive this as a violation of their human rights that needs to be confronted.

Maybe even more important, trafficked persons might be reluctant to step forward for fear of reprisals by traffickers and their lack of confidence in the police and law enforcement officials, owing to intimidation and abuse. The fact that the offices in São Paulo, Goiás and Ceará were situated in the premises of other state government organisations – directly linked to law enforcement – is likely to have been another factor that discouraged trafficked persons from stepping forward.

The first phase of the GPAT ended in 2005. Throughout 2006, the Brazilian government negotiated with the UNODC to secure its financial support for a second phase. A new phase will start in 2007 and it seems that all Brazilian states willing to develop tailor-made anti-trafficking initiatives will be able to take part.

### **The National Policy to Combat Human Trafficking and its future Plan of Action**

The *National Policy to Combat Human Trafficking* recognises that human trafficking is a multi-dimensional problem that needs joint action, and brings together, for the first time, all the different actors and agencies that should be involved. In a broader analysis, it can be stated that the Brazilian anti-trafficking policy is primarily based on human rights principles (Articles 1 and 3). The policy, for example, states explicitly that it does not make any of the victims’ rights conditional on their cooperating with law enforcement (Article 3, III).

Nevertheless, there is still a lot of practical work to be done in terms of implementation. Therefore, the development and implementation of the *National Plan of Action to Combat Human Trafficking*, as foreseen in the National Policy, will have to establish specific long-term, mid-term and short-term goals, set deadlines, allocate responsibilities to governmental organisations and necessarily include a detailed budget. Civil society, without a doubt, will have an important role to play in monitoring the implementation of the National Policy and Plan of Action, the latter expected to be ready in September 2007.

## **4. Migration Policies and Human Trafficking**

Migration is an important aspect of society in Brazil. This largest country in South America started off as a typical receiving country for international migrants, while undergoing colonisation (and economic exploitation) from 1500 onwards by the French, Dutch and (especially) Portuguese immigrants. Later on, the slave trade from Africa to Brazil meant a huge rise in Brazil’s population. After the slave trade and slavery were officially abolished in 1888, “the immigration of Italians between late nineteenth and early twentieth centuries comprised more than

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800,000 immigrants. The Japanese flow brought to Brazil around 200,000 immigrants in the first half of the twentieth century” (CNPd, 2005, 2).

From the 1970s onwards, internal migration within Brazil became a significant issue, with a large number of people from the less developed north and dry north-east regions moving to the south-east of Brazil, especially to metropolises such as Rio de Janeiro and São Paulo. As a result, slums multiplied, as well as economic and social inequality, since the cities were not prepared to receive millions of migrants (MacDonald, 1991). The same is true for people migrating into the Amazon, opened up by the military dictatorship (1964–1985) and by the construction of the Transamazonica highway.

### Emigration from Brazil

During the 1980s, Brazil, for the first time in history, had more people leaving the country than coming in (CNPd, 2005, 2). Conversely, in 1980 the (military) government created the National Council on *Immigration*,<sup>20</sup> consequently only dealing with *immigrants*, as the former government had also done, in fact affirming a policy of *laissez-faire* towards emigration (and internal migration). Official estimates from the Ministry of Foreign Affairs point out that the number of Brazilians emigrating in 2001 was around 1,887,895, approximately 1.5 per cent of the total population at that time (CNPd, 2005, 7). The number of Brazilians living abroad went on increasing, to about two million living overseas by 2005 (CNPd, 2005, 2), prompted, at least in part, by successive economic crises. According to estimates from the Brazilian Ministry of Foreign Affairs, currently some three to four million Brazilians live abroad, some with regular status and some as irregular migrants (Chagas, 2006).

In May 2005, the Brazilian Congress set up a Mixed Parliamentary Commission of Inquiry (CPMI) to investigate criminal and civil offences related to the illegal emigration of Brazilians to the US, in particular, as well as to investigate the citizenship of Brazilians living abroad. One of the many recommendations the CPMI made was to call for the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CPMI Illegal Emigration, 2006, 532). A lengthy report<sup>21</sup> (577 pages), dated 12 July 2006, managed to examine several important issues, such as emigration, human smuggling, especially via Mexico to the US, as well as the precariousness of the rights of Brazilians living (undocumented) abroad.

It is important to note that the “LAC [Latin America and the Caribbean] migrants show relatively high levels of education and significant feminization; indeed, more than half of all LAC migrants are women” (Pellegrino, 2004, 6). According to the population census of 2001, published by the Spanish National Institute of Statistics, 54.6 per cent of all South American migrants in Spain are female, while the percentage representing women rises to 69.5 when considering Brazilian migrants alone (Pellegrino, 2004, 30).

It is also interesting to see that most Brazilians who officially emigrate come from the richer south-east region of the country (CNPd, 2005, 2), which seems to confirm the idea that at least emigration is not caused by *absolute* poverty, but by *relative* poverty. This means that the differences people feel in social, economic and educational opportunities are more likely to cause them to migrate abroad than poverty alone.

Finally, it must be highlighted that most Brazilian migrant workers travelling to Europe enter as tourists without work permits, especially those who were already part of the informal work sector in Brazil. Seeking opportunities to earn more money away from home, sometimes even without job offers in advance, they normally end up in informal forms of employment that do not require specific qualifications, such as baby-sitting, domestic work and

sex work. These migrants are most likely to experience some kind of exploitation at least, being also vulnerable to immediate deportation from destination countries if and when their irregular status is discovered. Or, in other words: "...with the migratory flows, the number of irregular migrants has also increased and human trafficking between LAC and the EU has become a serious problem. The trafficking in women and children for sexual exploitation is particularly serious and a growing concern" (Pellegrino, 2004, 6).

### **Internal Migration: Sexual Exploitation *versus* Slavery-like Practices**

Since internal migration is an important issue in Brazil, a distinction can be made between the flows from poor rural regions (especially in the north and the north-east) to large urban metropolises on the one hand, and, on the other, to large agricultural development zones where cutting down the forest, ranching and growing various crops on an industrial scale have all been very profitable. Internal trafficking to large urban areas as well as to the agricultural and other distant development zones both have two different faces:

1. internal human trafficking for prostitution purposes (Article 231-A of the Penal Code);
2. internal 'human trafficking' of labourers (Articles 207 and 149 of the Penal Code, considering slave labour or slavery-like practices).

Brazil's current legislation on human trafficking treats them as two separate crimes, formally only labelling the first one as trafficking. Moreover, the government, until the promulgation of the *National Policy to Combat Human Trafficking* in 2006, also did not consider the confinement of labourers to huge farms in the north, north-east and centre-west regions of Brazil to be one of the patterns of internal human trafficking, but as slave labour or practices similar to slavery. Not only did legislation and government policies make (and still make) this distinction, but also international organisations, governmental structures, researchers and civil society organised themselves separately on the issues of forced labour and sexual exploitation (and still do today). This does not always turn out to be a useful distinction, since, through the exchange of information about good practices obtained in these different locations where people are exploited, more effective anti-trafficking measures could be deployed in various other contexts.

The ILO has described the initiatives taken by the Brazilian authorities to stop slavery-like practices as a model for other countries to follow.<sup>22</sup> A good example is the so-called *lista suja* (literally: *dirty list*, in order to avoid the discriminatory term, 'black list') published by the Federal Ministry of Labour,<sup>23</sup> which in October 2006 contained the names of 178 employers caught red-handed exploiting slave labour at rural properties. As a result of this 'name and shame' tactic, the entrepreneurs and companies mentioned in the *dirty list* have been prevented from obtaining loans from public (and some private) banks.

Nevertheless, the US Department of State's Trafficking in Persons Report (TIP Report 2006) that placed Brazil on its Tier 2 Watch List, emphasised Brazil's "failure to apply effective criminal penalties against traffickers who exploit forced labour" (US Department of State, 2006, 76), since "there was only one reported prosecution in Brazil that resulted in a conviction at the national level for a trafficking-related crime during the reporting period [i.e. 2005 and early 2006] – a decrease from three convictions obtained in 2004" (US Department of State, 2006, 77). The US Department of State correctly typifies slave labour and slavery-like practices as internal trafficking, but when it comes to criminal convictions in Brazil it only seems to consider international slave labour and slavery-like practices, ignoring possible criminal convictions for other forms of human trafficking, such as for

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sexual exploitation. It also does not highlight non-criminal repression and convictions, such as payment of damages and fines for labour law offences.

The ILO confirms that in Brazil no one has served time for exploiting slave labour, and the CPT estimates that at least 25,000 Brazilians fall victim each year. In 2004 the Brazilian authorities appeared to agree with this estimate in their contacts with the UN (ILO, 2005, 23). However, according to the Labour Inspection Secretary from the Federal Labour Ministry (SIT/MTE), their mobile anti-slavery teams (the GEFM, installed in 2002)<sup>24</sup> managed to free a total of 17,983 forced labourers between 1995 and 2005 (ILO, 2005, 24).

More structural and daring changes, such as a proposed amendment to the Constitution (PEC 438-2001, former PEC 232-1995) that foresees, among other measures, the expropriation (without compensation) of land where slave labour is detected, have already been under discussion for 11 years now, indicating a complete lack of political will to adopt them. On the other hand, the *National Plan to Eradicate Forced Labour*, launched in 2003, sets out a series of concrete actions to address the structural causes of slave labour in Brazil. It also led to the creation of a National Council for the Eradication of Forced Labour (CONATRAE), counting on governmental and non-governmental participation. Though based on agreements with the ILO, the Plan, unfortunately, does not encompass anti-trafficking actions as such and does not make any reference to the definitions contained in the UN Trafficking Protocol.

According to Camargo,<sup>25</sup> a federal labour law prosecutor and member of the CONATRAE, rescued slave labourers have applied successfully both for unemployment assistance (to be paid by the state) and labour law damages (a fine paid by their former abusive employers). Victims of other forms of human trafficking – where no regular relationship of employment can be detected, as in the case of forcibly employed sex workers – are traditionally considered unprotected by Brazil's quite progressive labour law provisions. But they can apply for damages, like anyone else, through a lengthy and rather costly civil lawsuit, based on a penal conviction. Although the employment of prostitutes is illegal, sex-workers, however, should somehow also be able to successfully invoke the labour law provisions in case of a violation, since apparently applicable jurisprudence also honours labour law claims of those employed in the illegal and mafia-like gambling business (*jogo do bicho*).

### **Immigration to Brazil and MERCOSUR**

The region that constitutes the MERCOSUR (*Mercado Común del Sur*, the Southern Common Market) initially included Brazil, Argentina, Paraguay and Uruguay. Other states have joined subsequently: Chile (1996), Bolivia (1997), Peru (2003), Colombia (2004), Ecuador (2004) and Venezuela (2004). There has been significant migration within the region, although the Treaty of Asunción, that created the MERCOSUR in 1991, was concerned principally with the free movement of capital, goods and production.

In December 2002, the four initial member states of MERCOSUR, together with Bolivia and Chile, signed two agreements – *Residence for Nationals* and *Regulating the Migration of MERCOSUR Citizens*. “According to the Agreement on Residence for Nationals of the MERCOSUR Member Countries, immigrants from one country of the region who acquire a temporary or permanent residence visa in another MERCOSUR country will receive the same treatment as the country's nationals, including in the labour field” (Intall, 2004, 69). The two agreements will only enter into force after ratification by all six signatories. “The fact that the situation of the labour

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markets in the MERCOSUR countries remains difficult is, to a greater or lesser extent, a significant obstacle to such ratification in the short term” (Intall, 2004, 69).

In 2005 the MERCOSUR countries, together with Chile, Bolivia, Peru, Venezuela and Ecuador, signed the *Montevideo Declaration Against Human Trafficking*, foreseeing police cooperation and exchange of information on trafficking in persons, especially trafficking linked to prostitution (CPMI Illegal Emigration, 2006, 333). In 2006 the Montevideo Declaration gained practical significance through the adoption of the *MERCOSUR Plan of Action to Combat Human Trafficking*. Conceived in Buenos Aires, the MERCOSUR Plan of Action has identified focal points within each government responsible for its implementation and also foresees informative campaigns, exchange of information, training of governmental and non-governmental actors and assistance for victims of human trafficking.

Brazil is mainly a destination country for human trafficking in relation to neighbouring countries. Latin American immigrants, especially Bolivians, Paraguayans, Peruvians and Chileans, but also Koreans, face exploitative work conditions or even forced labour and slavery-like practices in Brazil’s largest urban centres, especially in small industries (sweatshops) in São Paulo (US TIP Report, 2005). Immigrants, most of them undocumented, are attracted to the most productive areas of the MERCOSUR region, trying to get a share in the material benefits. There are around 150,000 Bolivians in São Paulo alone, mainly without a residence permit, sometimes exploited in unfair labour conditions.<sup>26</sup> According to the Catholic Church’s *Serviço Pastoral de Migrantes*<sup>27</sup> (Migrant Pastoral Service or SPM) – one of the few Brazilian organisations working directly with migrants – around 10 per cent of Bolivians in São Paulo are subjected to slave-like practices and servitude (Castro, 2005). Moreover, some undocumented migrants in vulnerable situations get involved in drug trafficking as a means to pay off their debts, but end up in prison instead. The coordinator of the NGO ASBRAD has come across a considerable number of Latin American women from different countries imprisoned in São Paulo for (international) drug trafficking. They in fact assert that they were forced to act as ‘drug-mules’.<sup>28</sup>

In September 2005, the Federal Ministry of Justice launched a public consultation on its proposal for a new Foreigners Statute (Alien Law). The actual *Foreigners Statute* (Law No. 6,815, dated 19 August 1980) is the product of a period when the (military) government was preoccupied with national security issues and is restrictive as far as immigrants’ rights are concerned. The new proposed Foreigners Statute aims to be more progressive. It also makes it easier to obtain a temporary resident status in order to attract immigrants, and proposes to change the National Council on Immigration into the National Council on *Migration*, thereby extending its scope.<sup>29</sup>

Nevertheless, migrants’ organisations and agencies such as the SPM believe that the proposed statute does not go far enough on the issue of free mobility within the MERCOSUR region and the protection of the human rights of migrants (Bassegio, 2005, 2). Moreover, the SPM believes that the proposal is extremely selective, scarcely paying any attention to the interests of migrants who do not have qualifications or who are not highly educated, but who may nevertheless be productive in the Brazilian economy.<sup>30</sup>

On the other hand, in 2006 the Brazilian government made it possible for Bolivians whose residence situation was irregular to apply for a permit without having to return to Bolivia, implying some kind of an amnesty. Since the MERCOSUR agreements have not been ratified, Brazil and Bolivia have adopted a temporary measure to solve the problem of a great number of undocumented Bolivians in Brazil. On 15 August 2005, Brazil and Bolivia concluded the *Migration Regulation Agreement*,<sup>31</sup> with the objective of promoting the socio-economic integration

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of undocumented immigrants of both countries in their territories. For that, the immigrant has to present some documents in order to request a permanent residence permit. The only concern here is with regard to the payment of a fine resulting from irregular residence, since those migrants may not be able to pay the tax to register and be granted residency.

### **5. The Human Rights Impact of Anti-Trafficking Efforts**

This section will analyse some of the impacts of anti-trafficking laws, policies and initiatives on the human rights of trafficked persons, migrants, sex workers and other groups in vulnerable situations.

#### **The Impact on Trafficked Persons**

The general assistance services in Brazil are unprepared to extend security, legal and health services. More importantly, authorities and officials show a lack of understanding about what respecting the human rights of trafficked persons entails. Ana's case<sup>32</sup> helps to understand the complexity of international trafficking in women, efforts to combat it and the impact on trafficked persons and their families.

In 1999 Ana left her home in the coastal state of Bahia to travel to Switzerland at her aunt's invitation. Her aunt promised that she would be able to study, have a good job and also be able to send money to sustain her family living in the countryside. As soon as Ana arrived in Switzerland, she married a Swiss man, probably to arrange a permit to stay. However, her newlywed husband started almost immediately exploiting her with the help of her aunt. They kept all of Ana's earnings acquired through forced prostitution. In the first year, Ana also became pregnant and was forced to have an abortion. She suffered serious bleeding and was taken to hospital. This allowed her to escape from her abusive husband and aunt.

It is important to note that in many Brazilian cases, the trafficker is a family member or a friend, usually a woman and sometimes someone who was herself once trafficked, as suggested by the Director of the Human Rights Division of the Department of the Federal Police.<sup>33</sup> "The relevance of neighbourhood-schemes, friendships and family relations, that we have learnt about from other research in connection with people on the move, is important to take into account as we develop awareness raising materials to try and prevent human trafficking" (*unofficial translation*, Piscitelli, 2006, 67).

Supported by the Swiss NGO FIZ<sup>34</sup> (Women's Information Center for women from Africa, Asia, Latin America and Eastern Europe), in 2000 Ana started legal proceedings as a victim of human trafficking. Ana's mother was asked to testify in favour of her daughter. She travelled to Switzerland despite being threatened by Ana's aunt before leaving Brazil. Soon after her return to Brazil, Ana's mother was murdered, while her father was badly injured.

The *Centro Humanitario de Apoio a Mulher* (Humanitarian Centre to Assist Women – CHAME<sup>35</sup>), the main NGO in Bahia involved in efforts to combat human trafficking, contacted the local police in order to explain that the murder of Ana's mother was almost certainly a consequence of transnational trafficking in women. Together with FIZ, CHAME arranged for Ana to travel to Brazil in order to meet with her sisters and father. CHAME also contacted and gave information to the federal police, Ministry of Justice and the public prosecutor in order to secure protection for Ana and her family.

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The Federal Witness Protection Programme PROVITA offered to protect Ana while she was in Brazil. This nationwide programme protects and assists threatened witnesses in general, without being specific to victims of human trafficking. It is important to observe that PROVITA guarantees protection and assistance only to victims who agree to testify in the course of a prosecution. Once supported by PROVITA, the federal police were in charge of picking Ana up at the airport and driving her to a safe place indicated by the protection programme. The day before her arrival, however, CHAME was informed that the federal police would not pick up Ana at the airport, since the genuineness of her case had been called into question. Only after a superior order had been issued did the federal police go to the airport. At the same time, the state civil police from Bahia was not convinced that the murder of Ana's mother was a trafficking-related crime – an indication that both these agencies had not coordinated well with each other over an international trafficking case.

As of April 2007, court proceedings in Brazil are still pending and the murderers of Ana's mother are still at large, putting her and her family at serious risk. During this entire process, Ana's behaviour and reliability have been challenged and questions were raised about why she had consented to travel to Switzerland. The proceedings in Switzerland are closed now and the traffickers have managed to get away with a minor punishment for the promotion of prostitution. Ana, still very traumatised, continues to live in Switzerland and receives support from FIZ. For years, her application for a residence permit as a victim of human trafficking was ignored, but quite recently it has been sorted out and she can stay in Switzerland as a registered migrant. Since Ana's human rights as a trafficked person and the rights of her family were denied and seriously violated, her case exemplifies 'bad practice'. It can also be cited as an example of 'good practice', in the sense that Ana herself recognised that her rights were being violated and courageously stepped forward to demand that justice be done.

The number of investigations concerning international human trafficking is growing in Brazil, but figures are still relatively low, according to the table<sup>36</sup> below.

**Table 1: Brazilian federal police investigations into transnational trafficking for the purpose of prostitution over the past 17 years**

Year	Total number of investigations
1990	1
1991	5
1992	4
1993	4
1994	6
1995	8
1996	10
1997	7
1998	11
1999	20
2000	35
2001	48
2002	39
2003	56
2004	72
2005	119
2006	35
<i>(Until 30 June 2006)</i>	
<b>TOTAL</b>	<b>480</b>

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This chart – from the Human Rights Department of the Federal Police – mentions 480 federal police investigations into cases of transnational trafficking for prostitution purposes recorded over the past 17 years. These numbers do not accurately reflect the scale of human trafficking in Brazil, for the simple reason that not all cases of human trafficking are the subject of a police investigation. Also, the chart does not mention cases of other forms of exploitation. Furthermore, investigation and prosecution of internal trafficking cases is not a responsibility of the federal authorities, but rather of the state civil police and the state public prosecutor's office, making it more difficult to link information obtained in transnational trafficking cases to internal trafficking investigations, or *vice versa*.

It is also important to reiterate that numbers, tables and charts on human trafficking reflect only part of what is happening in reality, as human trafficking is a crime couched in secrecy and hence difficult to measure. It must also be pointed out that in Brazil all the various numbers, tables and charts still reflect a confused understanding of what constitutes human trafficking.

### **The Impact of Anti-Trafficking Initiatives on Sex Workers**

Although this is not intended to label sex workers or to contribute to any kind of stereotype, in practice it seems there are two groups of Brazilians who migrate to earn money from commercial sex – sex workers who migrate internally or to other countries, aiming to increase their profits,<sup>37</sup> and Brazilians without a previous history in the sex business who consider prostitution to be a temporary opportunity to earn (more) money.

In both cases people mainly resort to irregular emigration (i.e. leaving Brazil without proper documentation such as working-permits or without following legal procedures), or being smuggled in order to go abroad. Human trafficking might (eventually) be one of the consequences. Both groups of migrant sex workers might face human rights abuses that they would have already experienced in Brazil, and hard social and economic living conditions. Experienced sex workers, however, seem to be relatively more aware<sup>38</sup> than many other migrants of the risks when migrating, calculating the risks, just as they are used to doing in their daily work in Brazil.

With a federal minimum wage just raised to 380 Brazilian *Reais* per month (equivalent to US\$187 in April 2007), poverty is omnipresent and few incentives are needed for someone to take extra risks for a better life. Many a time, a well-packaged promise is enough, especially in a country that is still steeped in the traditional economic 'patron-client' system,<sup>39</sup> which makes you believe that you are morally and financially obligated to anyone who helped you survive or arranged a job for you. This means that a financial or moral debt need not be backed up by the use or threat of force, even when circumstances are extremely hard or exploitative, since paying back a debt is already part of the patron-client system and ingrained in the debtor's culture and beliefs.<sup>40</sup>

The anti-trafficking Articles 231 and 231-A of the Penal Code only focus on trafficking for prostitution purposes. These articles do not consider consent of the person as a relevant factor in assessing whether an offence has been committed. At certain times, the police have conducted raids in saunas, massage parlours, baths (*termas*) and brothels to curb prostitution.<sup>41</sup> Legislation makes no distinction between forced and voluntary prostitution and consequently, criminalises all who make money out of prostitutes, although prostitution as such is not prohibited. So helping someone to migrate (within or from Brazil), while knowing that the person has the intention to practise prostitution, can, under the terms of the law, be considered an act of human trafficking (Piscitelli, 2006, 65). In contrast, the UN Trafficking Protocol does not consider people who decide for themselves to migrate and earn

money from commercial sex to be victims of trafficking, nor those who aid them to be guilty of any sort of trafficking offence, unless some element of deception or force is used or the migrant is under 18.

### **The Impact of Anti-Trafficking Initiatives on Migrants**

Undoubtedly, in the name of combating human trafficking, governments – especially in destination countries – implement policies that are contrary to the interests of trafficked persons and migrants in general. It was not by chance that many destination countries from the north have expanded their legal arsenal for containing and controlling migration, even adopting repressive methods to deal with the problem. The US, for example, is supposed to have pressured Mexico to require Brazilians to obtain a visa to enter Mexico, in order to stop the massive irregular flows of Brazilians using Mexico as a ramp to enter the US (CPMI *Illegal Emigration*, 2006, 100–109).

Research conducted at the International Airport at São Paulo among Brazilians who had been deported or refused entry to another country and repatriated, seems to confirm that a rather large number of Brazilian women who were refused entry into the European Union countries were not prostitutes, nor were they planning to join the sex business (Piscitelli, 2006). “An image of Brazilian women from a certain social background, a particular colour and with their own body language has been constructed that portrays them as prostitutes” (*unofficial translation*, Piscitelli, 2006, 65). This stereotype seems to be nurtured by the immigration departments of numerous other countries. Many Brazilian women who were deported or refused entry mentioned the bad treatment and humiliations they suffered while in Europe. “It is important to consider that prostitutes are more visible and vulnerable than other workers in an irregular situation and it is possible that this aspect is reflected through a relatively larger representation of sex workers within the deported group” (*unofficial translation*, Piscitelli, 2006, 65). The research concludes that European countries have treated Brazilian women in a disrespectful and humiliating way. “The study suggests that in these (European) countries there is a great concern about irregular migration, which, to Brazilian women, is highly connected with the stigma of prostitution” (*unofficial translation*, Piscitelli, 2006, 67).

In Brazil, as in other countries, law enforcement and immigration officials do not always realise that trafficked persons and their traffickers might travel together. This puts trafficked persons in an extremely vulnerable situation, when they and their traffickers are attended, interrogated or detained together. On 14 September 2006, during a joint action at the International Airport of Rio de Janeiro, the coordinator of ASBRAD and the psychologist of Projeto Trama, responding to a special request by the federal police in Goiânia, tried to assist three young Brazilian women being deported from Spain, apparently victims of human trafficking. The federal police at the Rio de Janeiro airport did not facilitate the entrance of the two professionals into the restricted area and also obstructed a private conversation, as one of the police officers was present throughout and the women seemed to be afraid of talking in front of the police. When two of the women went to the bathroom, the youngest one stated that, although she earned some money in Spain, she did not want to go back, preferring to stay with her little daughter in Brazil. But when the other women returned from the toilet, the coordinator of ASBRAD was aggressively told by one of them to mind her own business. It became clear that she probably was the trafficker; she spoke for the other two, saying that they were aware of their rights, wanted to return to Spain and did not need any help. The others did not contradict this.

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Finally, it is important to draw attention to the vulnerability of migrant transgendered persons (transsexuals, transvestites and cross-dressers). According to the street educator of Projeto Trama, some transgender persons (migrating especially to Italy) mention their experience of exploitation, violence and threats, but reckon they can protect themselves abroad better than women.<sup>42</sup> “This is a category (transgender) that, until now, has been receiving little attention in the discussions on international and internal human trafficking” (*unofficial translation*, Piscitelli, 2006, 67), although the media have started taking note of the trafficking of transgendered persons.<sup>43</sup>

### **The Impact of Anti-Trafficking Initiatives on Children**

PESTRAF identified specific flows of children being trafficked into commercial sexual exploitation. On the 110 internal trafficking routes between different towns in the same state and between different states in Brazil, the number of adolescents (children between 12 and 18 years of age) was found to be greater than the total number of younger children and adult women (Leal and Leal, 2002).

In 2006, a two-year training programme, financed by USAID, was launched to develop a reference methodology of local service networks in 11 cities that focuses on sheltering victims up to the age of 18 who have been trafficked for sexual exploitation within Brazil. The option to focus assistance on children avoids any dilemma regarding USAID funds – since funds for anti-HIV/AIDS efforts<sup>44</sup> and anti-trafficking efforts are conditional on their local partners pledging to oppose commercial sex work.

The coordinator of the Programme to Assist Children and Adolescents Victims of Trafficking for Sexual Exploitation from Partners of the Americas acknowledges this fact: “Our programme focuses on children up to 18 years who are victims of trafficking for sexual exploitation purposes. With a child you do not have to discuss prostitution because there is a legal standard for offering protection against what has to be considered a crime, no matter what... In the case of adults, it is far more complex and a lot of other questions might be asked.”<sup>45</sup> Furthermore, although the coordinator of the programme told the authors that she recognised that trafficked children are also subjected to other forms of exploitation, the USAID programme is intended to assist children who have been trafficked within Brazil for sexual exploitation.

A rather recent phenomenon of child trafficking, especially relevant in football-loving Brazil, was the subject of a proposed European Parliament resolution, as part of the 2007 European Parliament report on the future of professional football in Europe. It suggested that “additional arrangements are necessary to ensure that the home-grown players initiative does not lead to child trafficking, with some clubs giving contracts to very young children (below 16 years of age)” (Belet, 2007, 10). The Brazilian media, along with their counterparts in several European countries, have published information on this phenomenon.<sup>46</sup>

Finally, regarding legal criminal procedures in general, Brazilian justice automatically guarantees some confidentiality in cases involving children and adolescents,<sup>47</sup> although confidentiality might also be requested in certain circumstances in (criminal and civil) cases involving adults.<sup>48</sup> For adults however, this is not a standard procedure and victims and witnesses, children and adults, normally have their identity exposed during the legal procedure, not receiving any special support, and therefore feeling unsafe and afraid.

## The Impact of Anti-Trafficking Initiatives on Indigenous Communities

The length of Brazil's inland frontiers, touching almost all the other countries in South America, should cause worries regarding human trafficking, especially when it concerns remote indigenous communities. Although specific information on the trafficking of people belonging to Brazil's indigenous communities is lacking, some issues have received attention. For instance, the sexual exploitation and prostitution of young women and adolescent Indians have provoked a few superficial reactions from official institutions such as FUNAI (National Foundation on Indigenous Issues) and FUNASA (National Health Foundation).<sup>49</sup> The *Conselho Indigenista Missionário* (Indigenous Missionary Council – CIMI) highlights cases of sexual exploitation in different states, such as Paraíba, Mato Grosso do Sul and Paraná. “In Paraíba, the disordered growth of tourism to indigenous territories makes the infiltration of organised crime and the recruitment of adolescents for sexual exploitation purposes easier” (CIMI, 2006, 125). According to Sodreiros, the problem is particularly serious in the centre-east region of Mato Grosso do Sul, where indigenous women and girls are being prostituted and used for international drug trafficking.<sup>50</sup>

Likewise, another matter of concern is the recruitment of indigenous children by drug traffickers and other criminal organisations. “In Dourados [the centre-west state of Mato Grosso do Sul near the Bolivian border], a fifteen-year-old girl was recruited by drug dealers and forced into prostitution in order to pay off the drugs she used” (CIMI, 2006, 125). Moreover, a recently published article in one of Brazil's main newspapers denounced the recruitment of Brazilian children in the Amazon at the border with Colombia. In at least three municipalities (Santo Antônio de Içá, Atalaia do Norte and São Gabriel da Cachoeira), there were reports of Brazilian adolescents being recruited by the Colombian guerrillas. The Federal Police Coordinator for Special Border Operations (COESF) rather unfortunately stated that the “adolescents were not forced to join the FARC (Colombian Revolutionary Armed Force) but seduced with money. And as far as we know, the FARC do not pay what they promise” (*unofficial translation*, Gripp, 19 December, 2006).

The fact remains that trafficking of people belonging to indigenous communities and their exploitation has not been the subject of specific research. This may lead to the conclusion that the issue is just as marginalised as the indigenous communities themselves are within Brazil.

## 6. Conclusion: Concerns and Possibilities

### Concerns

“Brazil's dramatic level of social inequality and lack of work opportunities are the push factors leading Brazilians to leave their homes and their country” (Almeida, Leite and Nederstigt, 2006, 34). This root cause should be the first and central observation of any conclusion on internal and international human trafficking. Not because it is so obvious, but to remind us that anti-trafficking efforts may in fact not have any real effect, but merely be palliative and provide a little assistance while doing nothing about the continuing patterns of trafficking and exploitation, which are due, in large part, to current macroeconomic and social policies associated with unlimited capitalist growth and globalisation based on free-market principles and a policy of non-state intervention. This suggests that the focus in discussions about the effectiveness of anti-trafficking efforts should be on the contradictions

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between anti-trafficking efforts on the one hand and the macro politics that fertilises the root causes for human trafficking on the other – causes which are able to dilute anti-trafficking efforts into mere symbolism. People without access to education, health care and especially employment or social security naturally seek practical solutions. They might courageously opt to migrate in the legitimate search for better living conditions, necessarily accepting risks, including those of irregular migration, contracting smugglers and possibly ending up as trafficked. What can be worse than the exploitative status quo? Moreover, preventing people from migrating, besides being quite naïve in a globalised world, violates their right to freedom of movement (Article 13 of the Universal Declaration of Human Rights).<sup>51</sup>

Another concern is the widespread foreign influence. As mentioned before, anti-trafficking initiatives in Brazil, ever since the English pressured Brazil to abolish slave trade, were triggered by subtle or less subtle foreign influence. Governmental and non-governmental anti-trafficking efforts are directly or indirectly financed and programmed by IGOs, foreign governments (such as the US and Portugal) or foreign NGOs. Foreign interest in Brazil's anti-trafficking efforts became evident only a few years ago, and might be welcomed when it involves the exchange of information, good practices, bilateral agreements, capacity building and finance to be spent according to Brazil's priorities.

But it is important to ask if existing governmental and non-governmental initiatives really address the needs of trafficked persons, or if they serve other interests and objectives? This is partly answered when analysing national and international relations. *Being indifferent* to the issue of human trafficking and *not* being able to show any kind of anti-trafficking effort means risking becoming a political pariah. Rushing the implementation of anti-trafficking efforts without clear strategies, such as the setting up of the Victims of Human Trafficking Assistance Office, might appear as an achievement in the yearly ranking of the US TIP reports (2005), but such actions can also be considered highly speculative and ineffective. Undertaking efforts which are visible and get noticed seems to become the priority, instead of the *impact* of those efforts. Furthermore, there is a possibility that governments, as well as NGOs, may use the issue of combating human trafficking to pursue their own agendas: the US, for example, as mentioned before, is supposed to have pressured Mexico to require Brazilians to obtain a visa to enter Mexico (CPMI Illegal Emigration, 2006, 100–109).

A third major concern is the fact that Brazil's prosecutors and the media have ignored the difference between forced prostitution and sexual exploitation on the one hand and voluntary prostitution on the other. This gets further complicated by issues of sex tourism and commercial sexual exploitation of children. In addition, human smuggling and irregular migration enter the discussion, not always contributing to a fruitful debate, piling up concepts that are somehow linked, but different. These various conflations and mix-ups have a negative impact on the design and implementation of adequate and pertinent strategies to combat human trafficking. For instance, one has to bear in mind that protective measures for sexually exploited and trafficked children, such as the USAID initiative, cannot automatically apply to trafficked adults, since adults have to be addressed quite differently. Of course, it should be acknowledged and appreciated that the issues of international human trafficking and smuggling have been aired on Brazilian television recently, for the first time, via enormously popular and influential soap operas, but the exact meaning of these terms or the difference between them is not yet clear to the public.

Lastly, a significant conclusion is that whenever there are few opportunities to migrate legally and an excess of push factors, people in vulnerable situations will be more likely to fall prey to human traffickers and smugglers. Therefore, Brazil, as a country of origin and destination, should urge for the promulgation of a human rights based

Foreigners Statute, free movement within the MERCOSUR region and a quick ratification of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*.

### **Possibilities**

Notwithstanding the concerns mentioned above, the Brazilian context also offers interesting future possibilities, indeed more than ever before. Human trafficking is now on the political agenda with the promulgation of a *National Policy to Combat Human Trafficking*. For the first time in Brazil's history, the multidimensionality of human trafficking is recognised, as 13 ministries are invited to participate in the development of a National Action Plan. And, also for the first time, all the forms of exploitation associated with human trafficking that are mentioned in the UN Trafficking Protocol, including slave labour and practices similar to slavery, and the removal of organs, are officially considered to constitute human trafficking.

It is evident that Brazil, with a clear and outspoken aspiration to become Latin America's permanent representative in a remoulded UN Security Council, is evolving from an isolationist ex-military dictatorship into a kind of international role model for world democracy and human rights. Brazil's role in international politics is characterised by a heightened sense of engagement on several issues, including human trafficking and migration. Some recent examples of its participation in the human trafficking issue are: fielding Mary Castro as Brazil's candidate for the Global Commission on International Migration; active participation in the UN High Level Dialogue on Migration and Development (New York, 11–15 September 2006); and sending a highly qualified delegation to the Conference of State Parties to the Protocol to Prevent, Suppress and Punish Trafficking in Persons (Vienna, 8–12 October 2006) (GAATW, 2006). Besides that, Brazil's eagerness to pay attention to UN standards, while at the same time playing a quite independent role in relation to the US, might turn out to be a political opportunity.<sup>52</sup> It is a fact that the largest country of South America owes the existence of its multicultural society to internal and international migration (including forced migration). If Brazil really opts to open up its borders, respecting the human rights of migrants, it might serve as an example to counter the current of anti-migration policies worldwide.

And last but not least, the fact that, according to the ILO, the way slavery-like practices have been eliminated in Brazil has become a model for other countries to follow and this should facilitate the implementation of good practices (as well as prevent bad practices). The Brazilian know-how on the eradication of slave labour, although understandably not entirely free of its critics, is a great asset when drawing up joint actions in the *National Action Plan to Combat Human Trafficking*. Slave labour and forced prostitution are different problems with a lot in common; so the strategies to combat them should probably also have a lot in common, even though it is clear that it would be a mistake to adopt a 'one size fits all' approach. The UN Trafficking Protocol clearly considers both patterns of exploitation to be part of human trafficking. Or should we say (modern) slavery?

ENDNOTES

- <sup>1</sup> *Política Nacional de Enfrentamento ao Tráfico de Pessoas* in Portuguese. The word *enfrentamento* means facing up to a challenge and it is used in Brazil instead of the word ‘combat’ (as in ‘to combat trafficking’) used in English language texts elsewhere. In Brazil, the word *enfrentamento* is less repressive, referring also to prevention and assistance actions. However, the word ‘combat’ is used throughout this chapter whenever the Portuguese text refers to *enfrentamento*.
- <sup>2</sup> Based on Article 84, VIa of the Brazilian Constitution (1988), meaning that Decree No. 5,948-2006, although a legal instrument, does not have the status of law but is an administrative regulation.
- <sup>3</sup> Unofficial translation from Brazil’s Penal Code:  
 International Trafficking of Persons (amended by Law No. 11,106-2005)  
 Art. 231 – Promoting, serving as an intermediary, or facilitating the entry, into national territory, of a person with the intention to practice prostitution, or the exit of a person with the intention to practice prostitution on foreign soil.  
 Penalty – imprisonment from 3 to 8 years and fine.  
 § 1º – If this occurs in conjunction with any of the circumstances listed in § 1º of Art. 227:  
 Penalty – imprisonment from 4 to 10 years and fine.  
 § 2º – If there is use of violence, serious threat, or fraud, the penalty is imprisonment from 5 to 12 years as well as a fine and apart from the penalty corresponding to violence.  
 Internal Trafficking of Persons  
 Art. 231-A. Promoting, serving as an intermediary, or facilitating, within national territory, the recruitment, transport, transfer, harbouring or receipt of a person with the intention to practice prostitution (Included by Law No. 11,106-2005):  
 Penalty – imprisonment from 3 to 8 years and fine.
- <sup>4</sup> Until a recent change in Brazil’s Federal Constitution (Constitutional Amendment No. 45, dated 30 December 2004), an intense legal debate in Brazil focused on the legal status of international treaties ratified by Brazil, particularly whether they had the status of Constitutional Law or were less significant. Since the UN Trafficking Protocol is not a human rights treaty and was not approved by the Brazilian Congress through the (newly introduced) special constitutional procedure of Article 5, paragraph 2 (stipulating that only international human rights treaties ratified by Brazil will have a Constitutional status when approved two times in both chambers by 3/5 of the quorum), the UN Trafficking Protocol should be considered to have the same legal status as ordinary non-constitutional law (Capez, 2006, 245–246).
- <sup>5</sup> Although one could argue that *lex posterior derogat legi priori*, which means that a newer law on the same issue replaces a previous one whenever the two are in conflict. In this case, it means that Law No. 11,106 implicitly sets aside the UN Trafficking Protocol, which, of course, was never intended and should not be accepted, especially since the *National Policy to Combat Human Trafficking*, published by Presidential Decree No. 5,948 on 26 October 2006, defines “trafficking in persons” in its Article 2, by making a direct reference to the UN Trafficking Protocol definition.
- <sup>6</sup> Proposed Law No. 117-2003.
- <sup>7</sup> Unofficial translation from Brazil’s Penal Code:  
 Favouring Prostitution  
 Art. 228 – To induce or attract someone to prostitution, facilitate it or prevent someone to abandon it:  
 Penalty – imprisonment from 2 to 5 years.  
 § 1º – If in conjunction with one of the circumstances listed in § 1º of the previous article:  
 Penalty – imprisonment from 3 to 8 years.  
 § 2º – If the crime is committed with the use of violence, serious threat, or fraud:  
 Penalty – imprisonment from 4 to 10 years, apart from the penalty corresponding to violence.  
 § 3º – If the crime is committed with the intention to make profit, a fine may also be applied.  
 Sheltering Prostitution  
 Art. 229 – Maintaining, on one’s own or through a third party, a house of prostitution or place designated for libidinous encounters, regardless of the intention to make profit or direct involvement of the owner or the manager:  
 Penalty – imprisonment from 2 to 5 years and fine.  
 Ruffianism

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Art. 230 – To take advantage of the prostitution of another person, participate directly in profit making or being sustained by it wholly or partially:

Penalty – imprisonment from 1 to 4 years and fine.

§ 1º – If this occurs in conjunction with any of the circumstances listed in § 1º of Art. 227:

Penalty – imprisonment from 3 to 6 years and fine.

§ 2º – If the crime is committed with the use of violence or serious threat:

Penalty – imprisonment from 2 to 8 years and fine apart from the penalty corresponding to violence.

8 *supra* note 3.

9 *O Globo*, Marcelo Dutra, 4 February 2007, *Nas casas de ‘fast-sex’, um real por minuto; Centro já tem pelo menos 30 pontos de prostituição desse tipo, onde o movimento maior é na hora do almoço*. In the ‘fast-sex’ houses, one Brazilian Real [equivalent to US\$0.49 in April 2007] per minute; the centre – of Rio de Janeiro – has at least 30 of these points of prostitution, where it is the busiest around lunch-time. (“...*Não há crime nessa região, já que a maioria desses lugares pertence a policiais...*” There are no crimes in this area, because most of these places are owned by policemen...)

10 [www.projetotrama.org.br](http://www.projetotrama.org.br)

11 *supra* note 7.

12 The final report of the Parliamentary Inquiry Commission (CPI) that investigated trafficking in organs mentions several cases (November 2004). [www2.camara.gov.br/comissoes/temporarias/cpi/encerradas.html/cpiorgao/relatoriofinal.pdf](http://www2.camara.gov.br/comissoes/temporarias/cpi/encerradas.html/cpiorgao/relatoriofinal.pdf)

13 [www.unodc.org/unodc/en/trafficking\\_projects.html](http://www.unodc.org/unodc/en/trafficking_projects.html)

14 [www.unodc.org/pdf/brazil/folder\\_tsh\\_ing\\_port.pdf](http://www.unodc.org/pdf/brazil/folder_tsh_ing_port.pdf)

15 Law No. 9,807 dated 13 July 1999 ([www.planalto.gov.br/ccivil/leis/L9807.htm](http://www.planalto.gov.br/ccivil/leis/L9807.htm) and also [www.presidencia.gov.br/estrutura presidencia/sedh/protacao/](http://www.presidencia.gov.br/estrutura_presidencia/sedh/protacao/))

16 *Associação Brasileira de Defesa da Mulher, da Infância e da Juventude* (Brazilian Association for the Defense of Women, Children and Adolescents – ASBRAD).

17 Interview, Marina Pereira Pires de Oliveira, Project Manager of the National Justice Secretariat, Brasília, 19 September 2006.

18 *O Globo*, 25 February 2007, *Só este ano, 16 mulheres enviada para o exterior*. Only this year already 16 women were sent abroad.

19 Written interview, Sodireitos, Belém, 6 November 2006.

20 *Conselho Nacional de Imigração*, created by Law No. 6,815-1980 (Foreigners Statute), amended by Law No. 9,694-1991 and Law No. 8,422-1992.

21 The report of the CPMI on illegal migration was accessed at [www.senado.gov.br/web/comissoes/CPI/Emigracao/RelFinalCPMIEmigracao.pdf](http://www.senado.gov.br/web/comissoes/CPI/Emigracao/RelFinalCPMIEmigracao.pdf).

22 *Diário do Pará*, 23 April 2006, *OIT avalia trabalho escravo no Pará e no Brasil*. In this interview with the newspaper *Diário do Pará*, Patrícia Audi, National Coordinator of the *Projeto de Combate ao Trabalho Escravo* (Project Combating Slave Labour) and representative of the International Labour Organization (ILO) in Brazil explains how Brazil managed to become an international model for combating the enslavement of workers.

23 [www.mte.gov.br/Noticias/conteudo/5773.asp](http://www.mte.gov.br/Noticias/conteudo/5773.asp) (see also *Portaria* No. 540, dated 15 October 2004.)

24 The GEFM (*Grupos Especiais de Fiscalização Móvel*) were installed through *Portaria* No. 265, dated 6 June 2002. [www.mtb.gov.br/legislacao/portarias/2002/p20020606265.asp](http://www.mtb.gov.br/legislacao/portarias/2002/p20020606265.asp)

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- <sup>25</sup> Interview, Luis Antônio Camargo de Melo, Federal Labour Law Prosecutor and member of the National Council for the Eradication of Forced Labour (CONATRAE), Brasília, 19 September 2006.
- <sup>26</sup> Barros, Marcelo, *Travessias na Desordem Global*, in [www.migracoes.com.br/artigos.html](http://www.migracoes.com.br/artigos.html).
- <sup>27</sup> SPM (*Serviço Pastoral de Migrantes*) is an organisation linked to the Social Pastoral Sector of Brazil's National Conference of Bishops (CNBB). See also: [www.migracoes.com.br](http://www.migracoes.com.br).
- <sup>28</sup> *supra* notes 16 and 17.
- <sup>29</sup> [www.mj.gov.br/noticias/2005/setembro/rls010905estrangeiros.htm](http://www.mj.gov.br/noticias/2005/setembro/rls010905estrangeiros.htm)
- <sup>30</sup> Interview, Luiz Bassegio, SPM coordinator, São Paulo, 25 September 2006.
- <sup>31</sup> [www.mte.gov.br/Empregador/TrabEstrang/Ingles/Acordo/Default.asp](http://www.mte.gov.br/Empregador/TrabEstrang/Ingles/Acordo/Default.asp)
- <sup>32</sup> This is not her real name.
- <sup>33</sup> Presentation by Eriosvaldo Renovato Dias, former Director of the Human Rights Division from the Department of the Federal Police, *Human Trafficking, the Brazilian Reality* at a seminar on human trafficking (Pernambuco, 17–19 May 2006) promoted by the Federal Police and the French Embassy.
- <sup>34</sup> [www.fiz-info.ch](http://www.fiz-info.ch)
- <sup>35</sup> [www.chame.org.br](http://www.chame.org.br)
- <sup>36</sup> *supra* note 33 [Eriosvaldo Renovato Dias]
- <sup>37</sup> *Jornal de Brasília*, 28 October 2006, Prostituição: brasileiros detidos; *Folha de São Paulo*, 26 October 2006, Espanha desmantela rede de prostituição que envolvia brasileiras; *O Globo*, 19 October 2006, PF prende 10 durante operação contra tráfico de travestis; *Portugal Diário*, 11 October 2006, Brasil, China e Nigéria alimentam prostituição em Portugal; *Notícias Terra*, 14 June 2006, Presas 17 brasileiras por prostituição na Espanha; Últimas Notícias Terra, in [www.projetotrama.org.br/trafico\\_pessoas/noticias.asp](http://www.projetotrama.org.br/trafico_pessoas/noticias.asp).
- <sup>38</sup> Interviews and 'diary-reports' of street educator Wanderley da Silva Oliveira of Projeto Trama, Rio de Janeiro, 2006.
- <sup>39</sup> Although Skidmore makes a reference to ...*old-style* "clientelistic" *politics*..., the system of powerful local leaders with military power (known as 'coronel' or 'coronéis' in Portuguese, colonels) deciding on behalf of their people, whom they employ and 'own' is also highly economical (Skidmore, Thomas. E. *Politics in Brazil 1930–1964, an experiment in democracy*. Oxford University Press, New York, 1986, pages 33 and 77–78. Boris Fausto, "Society and Politics," chapter 6 in Bethell, 1989, writes: "*Social and political life were dominated throughout the First Republic by clientelistic relationships, even in major urban centres such as Rio de Janeiro and São Paulo. (...) ... and the generally precarious conditions for survival did not allow the dominated classes to pursue any course other than individually to seek the protection of the most powerful elements. Protection, in the form of land, financial assistance or employment, was exchanged for a guarantee of loyalty, which, depending on individual cases, meant being prepared to defend the coronel physically, or obey his wishes at the ballot box*" (267–268).
- <sup>40</sup> Lecture by the CPT lawyer in Marabá, during Jepiara's Conference on Migration, Slave Labour and Human Trafficking, Belém, 1 April 2005.
- <sup>41</sup> *Globo News*, 6 September 2006, PM prende oito em Goiás por tráfico de mulheres; *Jornal Extra*, 12 Agosto 2006, Agenciadora de prostitutas é presa.
- <sup>42</sup> *supra* note 38 [Wanderley Interviews].
- <sup>43</sup> *Folha Online*, 20 December 2006, Itália desarticula rede brasileira de exploração de transexuais ([www.projetotrama.org.br/trafico\\_pessoas/noticia1.asp?id=293](http://www.projetotrama.org.br/trafico_pessoas/noticia1.asp?id=293)); *Globo Notícias*, 19 October 2006, PF prende 10 durante operação contra tráfico de travestis ([www.projetotrama.org.br/trafico\\_pessoas/noticia1.asp?id=278](http://www.projetotrama.org.br/trafico_pessoas/noticia1.asp?id=278)).

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- 44 *Brazil Refuses \$40M in US AIDS Grants to Protest Policy Requiring Groups To Condemn Commercial Sex.* Brazilian officials last week said that the country has refused US\$40 million in US AIDS grants because of a Bush administration requirement that HIV/AIDS organizations seeking funding to provide services in other countries must pledge to oppose commercial sex work (Phillips/Moffett, Wall Street Journal, 5/2). ([http://gaatw.net/index.php?option=com\\_content&task=view&id=124](http://gaatw.net/index.php?option=com_content&task=view&id=124))
- 45 Interview, Leila Paiva, Programme Coordinator Partners of the Americas, Brasília, 19 September 2006.
- 46 *Globo Esporte*, 16 March 2007, Denúncia! Tráfico humano atinge futebol europeu. Falsos agentes levam, de maneira ilícita, jovens jogadores brasileiros e africanos. (<http://globoesporte.globo.com/ESP/Noticia/0,AA1490725-4840,00.html>, see also: [www.footsolidaire.org](http://www.footsolidaire.org))
- 47 Article 17 and 18 of Brazil's *Children's Rights Statute* (inviolability of a child's physical, moral and psychological integrity and dignity), as well as Article 143 (in case a child is a suspect in a criminal case).
- 48 Article 155 of the Brazilian Civil Procedure Law Code and Article 792, §1 of the Brazilian Penal Procedure Code.
- 49 *supra* note 19 [Interview Sodireitos].
- 50 *supra* note 19 [Interview Sodireitos].
- 51 Article 13 of the Universal Declaration of Human Rights (10 December 1948): 1. Everyone has the right to freedom of movement and residence within the borders of each State. 2. Everyone has the right to leave any country, including his own, and to return to his country.
- 52 *supra* note 44 [Brazil Refuses \$40M].

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