

NATIONAL RAPPORTEURS ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL HUMAN RIGHTS: A STRATEGY FOR DEMANDING RIGHTS

Maria Elena Rodriguez



Processo
de Articulação
e Diálogo

NATIONAL RAPORTEURS ON ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL HUMAN RIGHTS: A STRATEGY FOR DEMANDING RIGHTS

Maria Elena Rodriguez*

1ST EDITION

RIO DE JANEIRO, BRAZIL, 2007



**Processo
de Articulação
e Diálogo**

* Maria Elena Rodriguez is a Lawyer and DESC Program Coordinator at FASE



Booklet Series Publication
International Seminar

**NATIONAL RAPORTEURS
ON ECONOMIC, SOCIAL,
CULTURAL AND ENVIRONMENTAL
HUMAN RIGHTS: A STRATEGY
FOR DEMANDING RIGHTS**

2007 © PAD

TEXT

Maria Elena Rodriguez

ORGANIZATION

Process of Articulation and Dialogue – PAD
Rua das Palmeiras, 90 – Botafogo
Postal Code 22270-070 – Rio de Janeiro – RJ – Brazil
Telephone: +55 21 2536-7350
Fax: +55 21 2536-7379
E-mail: pad.pad@terra.org.br
Site: www.pad.org.br

SUPPORT

BROT FUER DIE WELT /PPM
CHRISTIAN AID
EED
HEKS
ICCO & KERK IN ACTIE
NORWEGIAN CHURCH AID/ AIN
SOLIDARIDAD

GRAPHIC DESIGN

Mais Programação Visual
www.maisprogramacao.com.br

PRINTED BY

Nonononono

PRINT RUN

700 issues

SUMMARY

Presentation	5
Introduction	7
1. Background and Methodology	9
1.1. The role of the Rapporteurs	10
1.2. Rapporteurs' methods of action	11
1.3. Case work	11
1.4. National Rapporteurs	12
1.4.1. Who are the National Rapporteurs	12
1.4.2. Selection procedure	12
1.4.3. Mandate	13
1.5. Assistants	14
1.6. Missions	14
1.6.1. Objectives	14
1.6.2. Modalities: joint missions	16
1.6.3. Modalities: preventive missions	16
1.7. Missions and Public Hearings	17
1.8. Communication Instruments – Reports	17
1.9. Monitoring	18
2. Social subjects and actors	20
3. Strengthening citizenship	22
4. Public function of National ESCER Rapporteurs	23
5. Building a new culture of rights and strengthening collective subjects	24
6. The scope for demanding and enforcing ESCER	26
6.1. Legal or administrative procedures taken by the authorities	27
7. Dialogue with the international system (UN and Inter-American) for the protection of human rights	28
8. Impact and Challenges for Strengthening the National Rapporteurs on ESCER	29
PAD Organogram	31

PRESENTATION

This publication is part of a series produced by PAD – Process of Articulation and Dialogue among European ecumenical agencies and their Brazilian partners.

From its beginnings in 1995, PAD has aimed to promote a new culture of multilateral dialogue and to establish a space for understanding international development policies. Ecumenism and multilateralism have always been the guiding principles. Interaction and active partnership between the agencies – BfdW and EED (Germany), Christian Aid (UK and Ireland), HEKS (Switzerland), ICCO and Solidaridad (The Netherlands) and NCA (Norway) – and their Brazilian partners – NGOs, ecumenical organizations and social movements – are basic to the structure of this network which aims to build a new solidarity between North and South.

Since 1998 PAD has centred its North-South, North-North and South-South dialogue and networking on ESC rights (Economic, Social, Cultural and Environmental human rights) because of their relevance and potential for mobilizing Brazilian society, churches and public opinion and for influencing European development cooperation and foreign policy. The breadth of this theme made possible interaction and exchanges with many networks and forums at national and international level.

This engagement between North and South, with ESC rights at its centre, is aimed at providing conditions for dialogue with development agencies that can contribute to and influence their policies, establishing a space beyond bilateral relationships in which to discuss the issues and exchange experiences. This was the basis on which PAD held its third international seminar in Brazil in November of 2006, when important cases from different regions were presented by Brazilian participants and analyzed under the perspective of ESC rights along with broader strategies for the struggle to implement these rights.

Others publications of this series are:

- “Rights in the Forest: Environmental Justice in the Amazon” Camping;
- Youth Rights in Brazil
- Monitoring ESCHR: Brief Report of the Brazilian Experience;
- Eucalyptus / Aracruz Celulose and Human Rights Violations;

- Soya and Human Rights;
- Human Rights Violations by The River São Francisco Transposition Project

The richness of the presentations led the PAD Coordination to decide to publish them, to give more visibility to Brazilian experiences working with ESC rights and to facilitate the exchange of experiences with other countries, thus supporting the global struggle against inequalities and for the implementation of rights, in the search for the “other world that is possible”.

INTRODUCTION

This is an analysis of actions by the National Rapporteurs on Economic, Social, Cultural, and Environmental Human Rights (ESCER). Its starting point is the recognition that we live in two worlds: a real, economic, social world, and a declaratory, rhetorical, legal world, made up of laws and norms. The first step to bringing these two realities closer together is acknowledging and ensuring human rights.

First, we will provide some background on the project and the most relevant issues of the process to develop the method. We will examine how compliance with economic, social, cultural and environmental rights is not considered to be a moral and political duty, but rather a legal, imperative and demandable obligation imposed by international treaties and constitutional norms. Then we will move on to analysing the subjects and actors, and what the approach to rights-focused work entails. Finally, we will show the contributions of the project to the processes of strengthening the subjects that intervene in public life, drawing a connection between rights and a just and dignified life.

1

BACKGROUND AND METHODOLOGY

The National Rapporteurs for Economic, Social, Cultural, and Environmental Human Rights Project is an initiative of the Brazilian Platform for Economic, Social, Cultural, and Environmental Human Rights (ESCER). This project was created because of the lack of effective monitoring mechanisms to promote respect for these rights in the country, and from the need for society to actively participate in order to implement them, as well as the realization that the culture of rights is still fragile in Brazilian society, especially the ESCER.

With the National Rapporteurs Project, the Platform seeks to give special attention to the attainment of economic, social, cultural, and environmental human rights, in order to contribute to expanding the practical implementation of these rights in our society. Its objective is to operate as an instrument for increasing the capacity to demand ESCER in Brazil, aiming for the comprehensive realization (promotion, protection, and reparation) of these rights for all.

The Project drew upon the experience of the United Nations Special Rapporteurs. However, unlike the United Nations, where thematic human rights reports are presented to the UN High Commissioner for Human Rights, the National Rapporteurs are a civil society initiative in Brazil. They are not institutionalised and have not been formally constituted by a law or national decree, unlike the State and Municipal Human Rights Councils or the National Human Rights Conference.

Nevertheless, as in the case of the United Nations and member countries, the National Rapporteurs exist to make a contribution to the country – society and government – to help it assess the capacity to implement the ESCER and also to present proposals to overcome obstacles and problems. Its objective is to *“contribute so that Brazil adopts a policy of respecting economic, social, cultural, and environmental human rights, based on nationally recognized commitments, through the Brazilian Constitution and the National Human Rights Programme, and internationally, through international human rights protection treaties ratified by the country.”*

Established in 2002, there are six National Rapporteurs for: the Human Right to Adequate Food, Water and Rural Land; the Human Right to Education; the Human Right to the Environment; the Human Right to Decent Housing and

Urban Land; the Human Right to Health; the Human Right to Work. Not all of them mirror the United Nations structure of Special Rapporteurs. For example, the United Nations does not have a Rapporteur for the Human Right to the Environment and its monitoring mechanisms are also not clearly specified. However, in Brazil, the surge of social and environmental conflicts in recent years was a decisive reason to create and structure this National Rapporteur's Office, and contribute to the public debate about the right to the environment, and the inclusion of this right and its strategic character in the discussion about human rights in the country.

The same is true of the National Rapporteur's Office for the Human Right to Work. From the start, the project has had the support and encouragement of several organizations, such as the Human Rights Commission of the Federal House of Representatives, the Federal Prosecutor's Office of Citizen's Rights, the United Nations Development Program (UNDP) and the United Nations Volunteers Program (UNV).

1.1. THE ROLE OF THE RAPORTEURS

The role of the Rapporteurs is to strengthen civil society's capacity to organize social control and independent monitoring, so it can influence government policies and the free market, and develop the ability to demand compliance with economic, social, cultural, and environmental rights. The Rapporteurs are responsible for diagnosing, reporting and recommending topics, cases, contradictions, conflicts, demands, knowledge, and power, and promoting wide-ranging public debate on these issues and methodology (locally restricted) through thematic networks of the Platform, of civil society as a whole and of socially controlled and other public bodies.

The Rapporteurs work very closely with thematic networks, Platform organizations and diverse civil society actors in the human rights field. Together with these actors, and in general, they play a decisive role in raising citizen's awareness of ESCER, especially with regard to the need for practical and permanent instruments with which to demand these rights and have them recognised in law (indicators, legal and administrative mechanisms, public actions).

The Rapporteurs' source material is social demands (organized or diffuse, but promoted by a properly constituted organization). The organization is under the obligation to always report to society, particularly to organized civil society's agents, such as the movements and thematic networks, and also to the Platform, public bodies and other social organizations and controllers of private agents (market).

One of the project's important contributions is to link up the local and national, contextualising the specific within the general, and the general within the specific, to take the movement forward at all levels, especially by making recommendations.

1.2. RAPORTEURS' METHODS OF ACTION

The Rapporteurs have the following objectives:

- a) to diagnose cases, contradictions, conflicts and denunciations, in the field of economic, social, cultural, and environmental human rights, and to report these to society for wide debate;
- b) to create ways of approaching and influencing public bodies;
- c) to support the strengthening of civil society's organizing capacity for social control and monitoring, with the intention of influencing government policies and promoting justice for human rights;
- d) to consolidate the process of recognition and strengthening of ESCER as human rights;
- e) to pressure the Brazilian government into promoting and guaranteeing compliance with economic, social, cultural, and environmental rights;
- f) to analyse the validity and effectiveness of human rights, as well as encouraging the creation of indicators and databases;
- g) to prepare documents and reports that make recommendations to civil society and, in this way, promote practical progress;
- h) to empower groups and increase their capacity to promote the solution of conflicts;
- i) to encourage networks to act in the field of protecting collective rights;
- j) to contribute to demonstrating the interdependence between human rights, democracy and development;

The National Rapporteurs use the judiciary, public policies and technical legal instruments to promote, protect and ensure economic, social, cultural, and environmental rights in Brazil.

1.3. CASE WORK

Cases may be adopted on the basis of information or accusations submitted by networks, forums, organizations, social movements or victims about situations requiring an investigation or verification mission. Once they have been made aware of a violation, Rapporteurs may take the initiative to conduct an investigation or a mission to the area in question, with reference to criteria defined by the project, such as:

- a) cases that involve collective conflicts arising from the violation of ESCER;
- b) cases where the life and/or survival of people, of threatened social groups or of victims of ESCER violations, are at stake;

c) cases where local or regional organizations (NGOs, popular and union associations, human rights entities) are available to help prepare, support, monitor and follow up the mission;

d) cases where it is possible to influence the situation, whether by prevention or reparation (very often, preventive actions may be more appropriate in a threatening situation).

1.4. NATIONAL RAPORTEURS

1.4.1. WHO ARE THE NATIONAL RAPORTEURS

The basic criteria used to choose a National Rapporteur are: knowledge and professional experience in the field of human rights; public recognition of the Rapporteur's commitment to promoting rights; legitimacy in the eyes of the networks, forums and civil society organizations that act in the thematic areas of each Rapporteur; autonomy and independence from governmental bodies.

To ensure the autonomy and independence of National Rapporteurs, they cannot have any ties with government, hold office or be employed by public bodies and institutions that may form an impediment to performing their function as a National Rapporteur. Likewise, they cannot be part of the Judiciary, such as prosecutors, attorneys, or judges, nor can they be members of the Legislative Branch (representatives, senators, municipal councillors).

The National Rapporteurs are volunteers and are not paid any kind of professional fee. Hence, it is important for them to have an understanding with the organizations or institutions where they work so that they are allowed time to dedicate themselves to their role as Rapporteurs.

It is important that civil society feels that Rapporteurs are representative and legitimate. Even though their mandate is personal, it is not imposed. Each Rapporteur's links with networks, entities, and popular movements derives from a shared history and is relevant for the success of their action.

The Rapporteurs face many challenges. They have to be able to carry out exemplary monitoring of the human rights situation, which requires a profound knowledge of the problems related to their mandate; cooperate with a wide range of social sectors in the search for solutions to the problems that arise; present viable solutions in the form of government policies and laws that can improve the quality of life of the Brazilian population.

1.4.2. SELECTION PROCEDURE

The ESCER Brazil Platform advertises widely for Rapporteurs through the networks, forums and academic environments. Rapporteurs are then selected by a Council established specifically for this purpose, comprising representatives of six civil society organizations, four Brazilian government agencies (Human Rights Commission of the Federal House of Representatives, Human Rights

Department of the Ministry of Foreign Affairs, Federal Attorney for Citizen's Rights and the Special Secretariat for Human Rights) and the project's international partner organizations, such as the United Nations Development Program (UNDP), The United Nations Children's Fund (UNICEF), the United Nations Educational, Scientific and Cultural Organization (UNESCO), and the United Nations Volunteers Program (UNV).

1.4.3. MANDATE

The mandate of a National Rapporteur lasts two years. However, National Rapporteurs may be candidates for a second mandate along with newly nominated candidates.

Rapporteurs cannot be removed from their office during their mandate. They carry out their work independently, with reference to the terms of their mandate, which contain elements that are common to all and some that are specific to each of them. The terms of the mandates were defined with the participation of organized civil society at the Seminar on the Creation of a Working Methodology for National Rapporteurs on ESCER, in 2002.

The National Rapporteurs perform the public function of agents for the promotion of ESCER, based on publicly mandated commitments, objectives, methods, and partnerships with they can use to monitor these rights. Civil society organizations and public authorities are able to contribute to the work of the Rapporteurs and ensure that the terms of the mandate are being complied with.

The first National Rapporteurs were appointed in October 2002, initially for only one year, but this period was extended to two more years at the unanimous request of the Rapporteurs themselves. They presented their first reports to the United Nations in April 2003 and Brazilian civil society in May 2003. At the beginning of 2005, after a wide-ranging selection process, six new Rapporteurs were appointed for two-year terms.

The main tasks of National Rapporteurs are:

- a) to receive and collate denunciations of human rights violations and submit them to the competent bodies;
- b) to complete at least two field missions per year to verify human rights violations and facilitate the identification of administrative, political and legal mechanisms capable of correcting them;
- c) to write mission reports covering the denunciations, statements and rights violated and present recommendations to the competent public authorities, in order to guarantee the effective protection of the rights violated;
- d) to write annual reports describing the human rights violations investigated during the year; assess the degree of applicability of economic, social, cultural, and environmental rights, impediments to the full attainment of these rights, and recommendations to implement these rights.

1.5. ASSISTANTS

Each Rapporteur has an assistant, who has basic knowledge and some experience in the relevant thematic area. Assistants may be appointed by the Rapporteurs or by organizations that are members of the networks and forums that support the project.

Assistants are employed by the United Nations Volunteers Program (UNV) in a partnership established at the beginning of the Project. Recruitment is conducted by the UNV, National Rapporteurs and the ESCER Platform.

The role of assistants is fundamental to the development of project activities, which includes making contact with the relevant social actors, research on violations and the pertinent legislation, local data collection, organisation of missions, report writing, publicity for and dissemination of reports and follow-up work on cases.

1.6. MISSIONS

1.6.1. OBJECTIVES

The purpose of missions is to publicise violations of rights and provide the affected sectors of society with an opportunity to state their case. This brings impediments, threats, and violations of ESCER affecting slum dwellers, indigenous and traditional populations, *Quilombola* and rural communities, urban movements and others to the notice of the Brazilian government and authorities. These authorities can then fulfil their role as mediators and interlocutors to resolve these conflicts.

During the implementation phase of the project, Rapporteurs had the autonomy to decide whether to undertake a mission or not. Such decisions are now made collectively during the “National Seminar to Define Strategies and Missions”, which takes place at the beginning of each year, and which is attended by Rapporteurs, networks, movements, forums and other key organisations in the relevant subject areas. This strategic change facilitated joint discussion of the conflicts, violations and policies. It also helped to consolidate the project as a collective civil society strategy to protect rights and encouraged commitment from all of the actors in the different stages of the process. The missions are mechanisms to promote struggle and organization, as part of a political strategy to demand respect for human rights.

The most important contributors to missions are popular organisations, networks and forums, and coalitions of local social movements that can help the organisation of the mission. Local networks and the Rapporteurs undertake careful planning prior to the mission. The local organizations are fundamentally important for identifying cases, affected groups and threatening situations, as well as mapping local power structures and providing briefings on the correlation of forces. Miscellaneous documents and records are collected to produce a dossier. These may include press clippings, contracts, certificates,

maps, photos, reports, protocols, videos, interviews, recorded and written statements and study and research results. Actions already taken by the networks, challenges and successes, and results and impacts are also considered.

In brief, according to Lia Giraldo¹ *“... by having contact with the local reality, we have the opportunity to establish more effective commitments and also broaden our perception of the problem, interacting with other social actors and enabling the establishment of a point of view which is more representative of the reality.”*

The Rapporteurs, together with organized civil society, are responsible for taking the case forward, “giving form” to the denunciation, diagnosing the situation, getting to know the actors involved and prioritising the steps required for effective and successful mission.

Communities visited during a mission see that their situation and suffering are being brought to the attention of society in what is usually a unique opportunity for them to voice their complaints.

Missions involve visits to communities and Rapporteurs conduct investigations that seek to clarify acts, facts and omissions. During these visits, meetings are held with the communities to collect specific information, take statements from victims, document the situation (photo, audio and video documentation), visit local authorities and agencies, hold debates and seminars with local people to disseminate ESCER and organise public hearings and press conferences to provide guidance on how to ensure respect for rights.

The success of a mission does not depend solely on the Rapporteurs or their assistants. The ESCER Platform has many partners that have assimilated the spirit and objective of the project and they play a decisive role in the mobilization and identification of human rights violations. All missions have one or several key local partner organizations, but missions must involve a greater range of people to have a meaningful impact. In fact, we have been able to set up support groups to accompany missions and/or participate in public hearings, that have included representatives from the federal and state Department of Justice, the state ombudspersons, victims’ organizations, relevant government agencies, federal and state legislative representatives, local human rights organizations, communications media and researchers. Local partner organisations make most of the necessary contacts, organise the logistics and advise the local people who feel threatened on how to denounce what is happening to them and how to challenge those responsible for violating their human rights.

Transparency, responsibility and a capacity for dialogue are essential characteristics of the missions. They try to promote a constructive dialogue with the authorities and always try to find solutions and promote adoption of appropriate measures.

1 National Rapporteur of the Human Right to Environment – 2005/2007.

The missions are not a moment for confrontation. They are a way to create the conditions for denunciations to be channelled towards mechanisms for protecting rights against violation or obtaining reparations. Hence the need to involve government bodies and public institutions in the mission, such as the Ombudsperson and the Department of Justice. The mission is equally important as an opportunity to publicize positive practices in the field of environmental rights with a view to replicating such practices.

1.6.2. MODALITIES: JOINT MISSIONS

Most missions are conducted individually by each Rapporteur, but since 2003 there have been joint missions involving two or more Rapporteurs or involving the United Nations Special Rapporteur for Human Rights, such as the mission to investigate the Right to Housing in 2004 by the National Rapporteur and the United Nations Rapporteur.

Joint missions provide an opportunity to observe the interdependence and indivisibility of human rights in a concrete situation and show the many dimensions of human rights in each case. As Lucia Moraes² says, *“...the forced eviction of a community violates several rights, such as the right to life, the right to housing, the right to work, the right to health, and the right to environment. The evictions are violent in every sense, failing to respect the human dignity of families (children, the elderly, women and all people in general). One example would be the eviction of the residents squatting in the Parque Oeste Industrial in Goiânia.”*

From this perspective, the joint action of the Rapporteurs strengthens the case, empowers the networks, legitimises the perspective of indivisibility and consequently broadens the spectrum of action, by uniting several thematic networks for the promotion and protection of ESCER.

1.6.3. MODALITIES: PREVENTIVE MISSIONS

The first mission took place in 2005, to the city of Sao Luiz, in Maranhão. Its objective was to investigate and denounce possible human rights violations caused by implementation of a steel industry project then under way. The main idea behind preventive missions is to protect the human rights of communities from ‘tragedies foretold’. The Rapporteurs do not intend simply to verify violations which have already occurred, as reparation or termination of violations usually takes years. In these cases, the Rapporteurs aim is to warn the state about possible future violations and encourage respect for human rights.

2 National Rapporteur of the Human Right to Decent Housing and Urban Land –2005/2007.

1.7. MISSIONS AND PUBLIC HEARINGS

A public hearing is one of the most important moments of the mission. It is an opportunity for the population to voice their complaints. Its main objective is to give a voice to social groups that are suffering obstacles and threats and are the victims of human rights violations. In brief, give visibility to the conflicts and make the victims the protagonists.

Representatives of the government, public authorities, the Department of Justice, the Ombudsperson, members of parliament, civil society organizations, networks, public service managers, researchers and victims of violence participate in the public hearing.

The term “public hearing” is borrowed from legal parlance, but it reflects the spirit of the meeting. However, this does not mean that all parties are heard. The real priority is to give victims and their organizations a chance to have their say in the presence of authorities that are prepared to respond and say what they intend to do to change the situation. The contribution of researchers familiar with the situation is important to support the case of victims. Public hearings also provide an opportunity to denounce other violations in places that the Rapporteurs may not have visited.

The hearings are heavily publicised in order to attract the attention of as much of the public as possible. This may encourage the victims and impress public opinion and the parties involved. The Rapporteurs have used public hearings to open channels of dialogue and mediate between the different parties to social conflict. At the end of a public hearing, the Rapporteur should present their first recommendations to the authorities and communities represented.

1.8. COMMUNICATION INSTRUMENTS – REPORTS

Rapporteurs produce a report on each mission within a month of that mission. They draw on contributions by local organizations, set out the legal basis of the case, describe the background, present the denunciation, include witness statements and present examples of positive responses to the problem. All this is accompanied by comments and recommendations by the Rapporteur.

These reports are directed at the competent federal, state and local authorities and also circulate widely among the local organizations and institutions that participate in the mission.

Mission reports make a considerable contribution to protecting communities, and quite often, preventing violations. They often serve as warnings, drawing attention to worsening situations or even imminent violations. For example, prior to the murder of Sister Dorothy Stang in Pará, the Rapporteur for the human right to the environment visited the region and interviewed both the sister and other leaders and authorities in the region. The Rapporteur’s Mission Report drew attention to the fact that Sister Dorothy was being threatened and intimidated and warned of the possibility of severe violence. However, Brazilian society failed to respond effectively to this important warning.

The *annual reports* describe the missions, actions and steps taken by the Rapporteurs on behalf of the victims, their organizations and society. In addition to being a source of information about the missions, these reports draw on the cases dealt with during the missions to analyse and conceptualise each human right. They try to promote a discussion on the content of each human right and the legal and juridical implications of realisation of these rights, with reference to Brazilian legislation. They also try to identify the main typologies of rights violations in the country, presenting the main obstacles to the realization of these rights. They also report on setbacks, threats, violations and implementation of these rights, assess the extent of compliance with ESCER, reflect on how to protect and demand observance of these rights, highlight actions taken by the state and the communities in question, as well as present general recommendations for each right.

Reports provide organized civil society with information they can use to protect and promote human rights. In Brazil, they are presented to the National Human Rights Conference, held annually by the Human Rights Commission of the Federal House of Representatives. They are also distributed to the Council for the Protection of Human Rights and other relevant organisations, depending on the subject matter (Conference of the City, Food Security Conference, World Social Forum). Abroad, they are submitted to the United Nations Special Rapporteurs, as well as presented to the UN Committee on Economic, Social and Cultural Rights, and at the regional level, to the Inter-American Commission of Human Rights of the Organisation of American States (OAS).

The ESCER Brazil Platform hopes that the end results are more than just the publication of quality reports about the missions and denunciations received by the National Rapporteurs. The Platform expects them to be used to strengthen and transform Brazilian society's capacity to monitor ESCER and show that these rights are as important as civil and political human rights. The National ESCER Rapporteurs Project will have accomplished its goal if it can clearly demonstrate that violations to economic, social, cultural and environmental human rights in Brazil are as serious as summary executions, torture and arbitrary imprisonment, inasmuch as these violations also cause the death of millions of people daily and that there are viable solutions in both cases, if the authorities would only prioritise their commitment to the enforcement of these rights.

1.9. MONITORING

The reports are sent to ministries and national councils responsible for government policies, regional and local authorities and government policy developers in order to update them on the situation of the relevant communities and provide them with an opportunity to make an official statement about the necessary measures that are being or that should be taken to put an end to the violations and ensure respect for the community's rights.

For the communities, the report is a political instrument. From the moment local violations are systematized and documented, there is a baseline that can be used to follow up and monitor the case. Sometimes, the Rapporteur returns to the locality to “deliver the report” to the communities, which provides an opportunity to discuss and draft an action plan and, usually, to establish a local group to continue the action.

Whether the suggested measures are in fact implemented depends mainly on the extent to which organizations, networks, forums and local, regional and national social movements take up the recommendations, monitor the situation and pressure the authorities to take the actions necessary to protect and promote these rights.

It is therefore fundamentally important that the thematic networks involved in the process are central protagonists, supported and linked by the ESCER Platform (which drives the process), given that it is the networks, local organizations and the Platform that gain in organisational and political terms. It is important that progress is made at the local, micro-regional and national levels and that the various actors are committed to working together, with different areas and levels of responsibility, before, during and after missions. Last year, *Follow-up Missions* were introduced, to observe to what extent the rights of communities were being respected or abused months or even years after a mission had taken place.

2 SOCIAL SUBJECTS AND ACTORS

The Brazil ESCER Platform, through the National Rapporteurs Project, has established partnerships with many social actors. Not all of them are “originally” from the field of human rights. On the contrary, they are civil society organizations, networks, movements and entities that have traditionally fought on specific social issues (land reform, food security, water, environmental justice etc.). The ESCER work promotes the formation of human rights networks. The notion of citizenship, associated with the exercise of and respect for rights has promoted co-operation between the most diverse types of social organizations.

The experience has shown that interaction, the exchange of methodologies and broader political alliances provides each social actor with new tools for the task in hand, as well as deepening the debate on the content of rights, government policies, violation typologies and mechanisms for demanding respect for rights. For example, social organizations have found it useful to incorporate a human rights-based perspective into their everyday activities. To identify conflicts and interpret them from such a perspective, and then to collectively develop the most effective strategy to demand and monitor observance of their rights is a very rewarding experience. It is a new way of building and coordinating social alliances and a new way of developing and conceiving of the fight for rights.

It is on this basis that the project acquires legitimacy among local organizations and provides an effective strategy to protect rights. Project mechanisms not only reveal new conflicts and organize new demands, but also “add value to struggles” already in process in the region. Missions and field visits ensure visibility, broaden dialog with public authorities, mediate in conflicts and create a new way to seek solutions to conflict.

The Rapporteurs depend on the institutional support of several organizations belonging to civil society networks and forums that work in fields covered by the Rapporteurs. These organisations also participate in the definition of a work plan, activities and missions. It is worth highlighting the following partnerships established by the Rapporteurs:

- Environment: Brazilian NGO Forum, Environmental Justice Network;

- Housing and Urban Land: National Forum for Urban Reform, Northeastern Forum for Urban Reform and Popular Participation, National Confederation of Black Rural Quilombola Communities, National Movement for Housing, Housing Rights and Evictions Centre (COHRE), Popular Movements Centre;
- Food, Water and Rural Land: FIAN Brazil, Landless Workers Movement (MST), Pastoral Land Commission (CPT), CONTAG, Brazilian Forum on Food Security;
- Health: National Feminist Network on Health and Reproductive Rights, SOS Corpo, Chemical trade unions, Regional Medical Councils, Brazilian Conference for the Right to Legal and Safe Abortions;
- Education: Inter-Institutional Education Forum, National Campaign for the Right to Education;
- Work: International Labour Organization (ILO), Landless Workers Movement (MST), Pastoral Land Commission (CPT), Workers Trade Union Central (CUT), Pastoral Service for Migrants;

In the four years of the project, the National ESCER Rapporteurs have carried out 46 missions and visited 82 cities. More than 300 organizations, movements, networks and victims have taken part in the activities. The project *exists* and grows, thanks to the hundreds of people that have been involved in planning, organising and conducting the missions, following up the recommendations and defining local strategies. These are the key figures in this collective project to protect and enforce rights.

The Rapporteurs have created “support groups” of representatives from government ministries, secretariats and other agencies to participate in missions and public hearings, especially the Ministry for Cities, the Ministry of Environment, the Ombudsperson and the various Councils. The Federal Prosecutor’s Office for Citizen’s Rights has played an especially important role, due to its support and co-operation provided during missions and following up on recommendations, and the authority and legitimacy with which its opinions and actions have a positive influence on the defence of human rights.

The Rapporteurs remain autonomous and independent while enjoying partnership and dialogue with these bodies. The Rapporteurs can make violations visible but it is the government’s job to see that rights are respected. This is why our effort is directed towards influencing, motivating, proposing, recommending, and demanding.

ESCER Brazil and the National Council of Prosecutors (*Conselho Nacional de Procuradores de Justiça*) have signed a “Protocol of Intentions” to work together on cases. We seek to use this instrument to coordinate the follow up of denunciations with a view to achieving justice within the country. NGOs and international agencies have made a fundamental contribution to the conceptual discussion, provided contacts with other monitoring experiences, given international publicity and, above all, created channels for discussion and the possibility of implementing this experience in other places.

3

STRENGTHENING CITIZENSHIP

The idea of monitoring by civil society is related to the notion of citizenship and the exercise of rights, to the strength and visibility of civil society and the resources available for mobilization. The National Rapporteur Project's experiences in defending rights share the same idea of building citizenship; that is, these experiences reinforce the citizenship of the people that participate, organise and develop them. When people successfully defend their self-esteem and dignity, their satisfaction (both material and spiritual) makes them stronger. Citizenship with participation as its mobilizing force, which involves raising awareness of its importance is, in other words, pedagogy of citizenship.

The projects enhances democracy and citizenship by helping people to play an active role in society and defining a relationship with the state that goes beyond that of a passive receiver of services. Citizenship, as we understand it here, entails the existence of human subjects articulated and activated as social and political subjects, with opportunities for self-determination and the capacity to represent their interests and demands. They act socially and politically in order to include those who are excluded, or to promote the exercise, enjoyment and universalisation of rights. This appeals to social subjects as citizens, interested in the promotion and defence of public interests, that is, in the generation and propagation of practical convictions, and relevant themes in the society as a whole. We can use here the concept of public standards developed by Habermas³, who draws attention to the role of "independent moral agents", based on the understanding that the enrichment of public debate helps society to have a critical analysis and exercise control over the state.

³ HABERMAS, Jürgen. "Soberania popular como procedimento: um conceito normativo de espaço público". in: *Novos Estudos CEBRAP*. São Paulo No. 26, 1990.

4

PUBLIC FUNCTION OF NATIONAL ESCER RAPORTEURS

One of the project's main achievements has been to bring ESCER to the attention of a wider public, in terms of creating a new democratic order that values the universalisation of rights. We use the term public here in the sense used by Ferrajoli: it is the same place as politics, that is, in everybody's interests. However, everybody's interests are, above all, those that are deemed rights by everyone, making them universal interests, and therefore fundamental.⁴

The project's actions are being consolidated in the sense of building a "non-state public sphere," in the sense of organizations or "public" control methodologies that are oriented to the general interest. They are "non-state" because they are not part of the state machine, either because they do not employ public sector workers or because they are not part of an action by the state.⁵ But they also strengthen the capacity of social actors to make proposals and empower collective actions to defend rights, "*...the paths to establishing this common sphere are built by the speech and the action of social subjects that, by establishing a public interlocution, can jointly deliberate the issues having to do with a collective purpose.*"⁶ Such decisions are the result of communication and exchange between sectors of the local population who are concerned with social problems and the lack of guarantees for rights. In addition, this communication must be consolidated in a continuous and expanding movement.

This project involves action to promote transformation, empower subjects and develop capacities, in the context of the balance of power between state and civil society. The participation of citizens implies the possibility of increasing their control and monitoring to help them to constantly reformulate their relationship with the States. The project's essence is in the "public spaces," the "participations" and the "mediations".

4 FERRAJOLI, Luigi. "De la carta de derechos a la formación de una esfera pública in: <http://www.bibliojuridica.org/libros/3/31471/5.pdf> acceso 13/08/06.

5 BRESSER PEREIRA, Luiz Carlos. "Cidadania e Res Publica: A Emergência dos Direitos Republicanos". Revista de Filosofia Política- Nova Série, vol.1, Porto Alegre: Universidade Federal do Rio Grande do Sul, Department of Philosophy, 1997.

6 RAICHELIS, R. Assistência social e esfera pública: os conselhos no exercício do controle social. Serviço Social & Sociedade, São Paulo, Cortez, n. 56, p. 77-96, 1998.

5

BUILDING A NEW CULTURE OF RIGHTS AND STRENGTHENING COLLECTIVE SUBJECTS

The project allows for the strengthening of collective subjects of rights. It is an attempt to generate and strengthen permanent and fruitful social dialogue about human rights with victims of violations, NGOs and representatives of the state, in order to seek solutions for the problems faced. The National Rapporteurs establish relationships with the most diverse social sectors in order to build solutions.

They try to foster people's and organizations' awareness of their citizenship in order to generate a real culture of rights and willingness to claim them in institutional spaces, in addition to the new spaces and those under construction. Raising citizens' awareness is as important as promoting the demand for economic, social, cultural, and environmental rights. These rights become effective when they are fought for, but for this to happen, people need to see themselves as subjects of rights and be aware of their capacity to demand recognition of their rights. In this sense, we do not seek policies of assistance, but demand the rights and implementation of government policies that protect and promote rights. We are not asking for favours from the state. We are asking the state to fulfil its responsibilities in this respect. It is therefore important to inform, publicize, denounce, and lobby for rights.

The National Rapporteurs Project is not restricted to the legal sphere, or to law specialists. On the contrary, it is an effort to provide society and, in particular, the victims of violations, with tools with which to fight for their rights and demand that the state fulfils its obligations and transforms its institutional practices within the Legislative, Executive and Judiciary powers. It is about the strengthening of civil society as a political subject, capable of proposing solutions to conflicts and influencing government policies to improve the access of the population to collective services. Only those that become the subjects of rights can take a principled stand against domination, authoritarianism, and injustice.

The Rapporteurs and, especially, the Missions, provide the forgotten, the invisible, and the excluded with channels of expression that allow them to have their say. It is therefore also a process to create individual and collective identities that can develop policies to recognize rights and fight against all kinds of discrimination and injustice. It is about raising awareness of their own active

role in society, of their duty to demand that the state of is at the citizens' service and not the contrary. The contact with the state presupposes that the state commits itself to complying with certain norms or standards of behaviour and promotes a change in its actions. In this entire process, public bodies may take into account the opinions and recommendations of the Rapporteurs, using them as a reference to make decisions or resolve a situation in which rights are being violated. However, active participation implies activity, which supposes negotiation and participation in decision making forums.

The experience of Rapporteurs has taught them how to listen to people. It has taught them to observe and respect their views of the world, their ways of working and thinking, because the most important thing is to put yourself in the other person's place and understand the limitations.⁷

A culture of rights is not created by a decree or a programme. It is the result of an open and collective social process of continuous re-signification of identity and of doing. It is a continuous and everyday exercise of citizenship that is given form by the meaning and representation that people give to human rights in their everyday lives.

⁷ Jean Pierre Leroy, National Rapporteur of the Human Right to Environment, 2002-2004

6

THE SCOPE FOR DEMANDING AND ENFORCING ESCER

The National Rapporteurs Project defines itself as an instrument for increasing the demandability or scope for requiring compliance with ESCER. Its role is to strengthen the organizational capacity of civil society to follow up and monitor situations, in order to influence government policies and ensure that human rights are justiciable or legally enforceable.

The project as a whole functions like a watchdog that monitors government behaviour. What is most important is that the project encourages citizens to exercise the right to participate in an organised way, affirm their demands and exercise their human rights. The project democratises government by bringing it closer to the demands and needs of the people and strengthening the capacity of citizens to influence the state.

Demand for rights is a social construction; it is a social, political, legal, and collective process. People, groups and directly affected communities can intervene. The social dimension of ESCER implies that beneficiaries are not only the groups or communities affected, but society as a whole. Demand for rights is a task for the whole society.

The role of organizations and social movements, even when they are mostly making demands of the state, should not be seen as being in opposition or antagonistic to the state. On the contrary, the state needs this cooperation in order to fulfil its essential purpose of ensuring social welfare and the full realization of human rights.

The project not only seeks to denounce rights violations. It tries to identify opportunities and solutions, to promote collective dynamics to create new processes. "Preventive missions" encourage the state and society make their aims explicit and promote communication with a view to identifying and avoiding human rights violations.

In general, the National Rapporteurs and the entities that support them have resorted to partnerships with state and Federal Departments of Justice to ensure public civil action to attain effective results. The Departments of Justice play an important institutional role in protecting social interests and demanding the state fulfil its obligations. Unfortunately, the Judiciary, whose job it is to enforce the law and avoid arbitrariness, takes a conservative posture in Brazil. In particular, the judiciary feels that the obligations that are said to arise from ESCER are ambiguous and casts doubt on the idea that these rights have the same stature as civil and political rights.

6.1. LEGAL OR ADMINISTRATIVE PROCEDURES TAKEN BY THE AUTHORITIES

- a) One of the instruments most used by the Rapporteurs has been an administrative procedure called *termo de ajustamento de conduta (TAC)*, (conduct adjustment term). This involves the offending parties agreeing to change their conduct in accordance with the law, and is supervised by the Prosecutor's Office. One such case involved the National Rapporteur for the Right to Education. After a mission to the Northeast to address the issue of Indigenous School Education⁸, the Rapporteur proposed and arranged for a TAC in Alagoas, where the situation was the most serious. The TAC was drafted by Attorney General Rodrigo Tenório, with the participation of indigenous tribes, the Federal Department of Justice, the Department of Labour Justice, the Alagoas Secretariat of Education, FUNAI and the Ministry of Education, and set out the commitments required from the three branches of power to develop government policy on indigenous school education, including the construction of an indigenous school, teacher training, education materials and the establishment of a state Indigenous Council.
- b) A channel widely used by the project is the partnership with the Council for the Defence of the Human Person (CDDPH), which comprises representatives from various human rights sectors. The representative nature of the project is demonstrated by Resolution 4 of January 31 2006 of the Presidential Special Secretariat for Human Rights, which created a Special Commission to investigate and monitor the situation of approximately 1,300 families occupying an urban area in Pinheirinho, Residencial União, in the city of São José dos Campos, São Paulo state, and associated matters, and which appointed the Rapporteur for the Human Right to Decent Housing and Urban Land as Special Collaborator of the Special Commission. A Special Commission to analyse and investigate cases arising from the violation of the right to food was also created, under the leadership of the National Rapporteur for the Right to Food.

We cannot fail to stress the importance of the project's development of demandability strategies, but we need a more detailed debate about mechanisms for making these rights legally enforceable, that in addition to seeking the reparation of rights, allows us to make a concrete interpretation of the legal process.

Many are the challenges we face to ensure human rights and to consolidate the instruments necessary to demand rights and legal enforcement of these rights. The lack of information about the rights of most of the population keep the people who should be the real beneficiaries of free legal services from making use of such services. The high costs of legal services marginalizes these people, who resort to non-governmental ways of carrying out justice. The lack of an Ombudsperson in many states also contributes substantially to maintaining the situation, as well as overloading the existing Ombudspersons with too many cases.

⁸ Mission to Alagoas, November 9, 2005.

7

DIALOGUE WITH THE INTERNATIONAL SYSTEM (UN AND INTER-AMERICAN) FOR THE PROTECTION OF HUMAN RIGHTS

In 2003, during the ordinary session of the UN Commission of Human Rights, in Geneva, the Brazilian Platform of Economic, Social and Cultural Human Rights organized the seminar “Monitoring Economic, Social and Cultural Human Rights: a Dialogue between the UN System and the National ESCER Rapporteurs”. They presented the first results of work developed by the National ESCER Rapporteurs and agreed to co-operate with the UN Special Rapporteurs on ESCR in jointly monitoring these rights. This resulted in a commitment to undertake joint missions in Brazil, like the one undertaken in 2004 by the UN Special Rapporteur and the National Rapporteur for the Right to Decent Housing. Another result of this dialog was the participation of the Rapporteur for the Right to Health and the Rapporteur for the Right to Education in the activities and public hearings held during the 2005 World Social Forum that developed the discussion regarding these rights.

Many reports were presented to the UN Committee on Economic, Social and Cultural Rights. However, it was notable that the Committee requested that the project’s methodology and experience should be shared with other members. This was in recognition of the solid and emblematic monitoring of ESCER by the project, which it was felt was applicable to other countries.

At the OAS (Organization of the American States), the project’s strategy is to provoke and stimulate discussion about ESCER and the guarantees of the Inter-American system, so reports have been presented at hearings with the commissioners since the project began.

8

IMPACT AND CHALLENGES FOR STRENGTHENING THE NATIONAL RAPORTEURS ON ESCER

The National Rapporteurs have enormous potential, especially to create a collective process to protect human rights. Their actions should be acknowledged and legitimised in Brazil and abroad in order to promote ESCER and strengthen the extent to which human rights considerations are incorporated into the development, implementation, monitoring and evaluation of all government policies.

The experience of the Rapporteurs shows that the public function of monitoring ESCER has been appropriated, recognized and legitimised by several networks and organizations that conduct rights work and policy development in education, health, work, housing, environment, food and human rights.

A more institutionalised relationship still needs to be established with the government. It is important to create formal ties between the projects and the National Policy Councils so that they take on a fundamental role in incorporating and monitoring the inclusion of ESCER in government policy.

Another significant step toward the recognition and institutionalisation of the Rapporteurs is the partnerships with international human rights organizations, in particular, the UN Committee on Economic, Social and Cultural and Human Rights, the United Nations Special Rapporteurs on Human Rights and the Inter-American Commission of Human Rights.

Another element that we still have to confront is the degree and expectations that Rapporteurs' initiatives generate. The vulnerability of exposed groups and communities often leads communities to expect that missions and especially the Rapporteur are going to resolve their problems. The method aims to make expectations realistic, since there are various actors involved, both with regard to the number of victims, the number of organizations participating in networks, the number of people responsible for human rights violations and the people responsible for government policies.

Groups clearly have high expectations of the visits. However, the many limitations must be recognized, as confirmed in this statement by a Rapporteur's assistant, Daniel Silvestre⁹: *"We arrived in a community after two hours on a*

⁹ Assistant to the National Rapporteur for the Human Right to Environment. Interviewed on August 9, 2006. Rio de Janeiro.

boat. The community knew we were coming because the union organized it. They lived on the banks of the river but they had problems using their boats to fish because the river was full of vessels transporting timber. There was no public support. So what was the community's view of the Rapporteurs? 'It does not matter who they are, they simply came here to solve our problems.' I do not know if they knew what a Rapporteur was, but it was someone visiting them to hear about what was affecting their daily lives. You have to think of the responsibility with which you are charged and be aware of your limitations, so that you do not give them false hopes."

The missions have had a profound impact on interventions to deal with human rights violations in Brazil. The missions are now the most effective instrument to monitor violations. The biggest advance achieved by the missions has been to promote dialogue between the authorities, the victims and the social groups and entities of organized civil society.

We still have to create clear indicators to measure the missions' impact. For example, the National Rapporteur for the Human Right to Health established the following indicators:

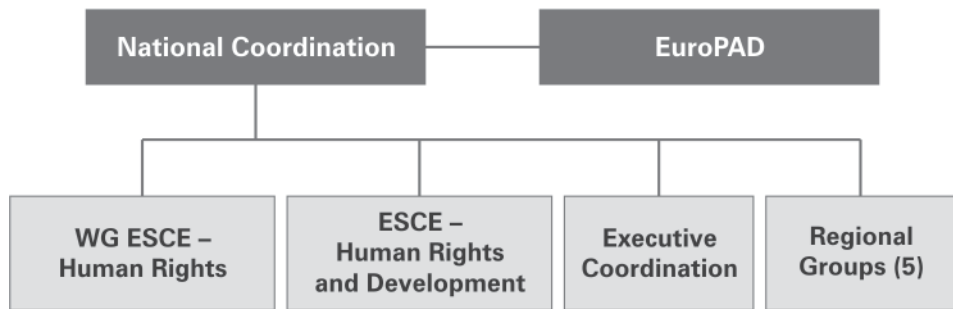
- a) the measures taken by the organizations involved after the mission is concluded, and whether they involve the victims;
- b) the measures taken by the public prosecutor and other authorities, as well as the degree to which they liaise to solve problems and seek reparations for rights violated;
- c) restitution of rights or reduction of harm caused to victims.

We can identify some improvements directly or indirectly generated by the activities of the Rapporteurs. They have:

- a) deepened the debate on human rights in civil society organisations that have traditionally fought for specific social demands (food and nutrition, land reform, food security, water etc.);
- b) intensified the debate on human rights and the need for the different sectors of the Brazilian state, at the national, state and local levels, to comply with their obligations;
- c) strengthened the actors' capacity to make proposals;
- d) enabled the implementation of policies based on recommendations and actions of Rapporteurs;
- e) turned the project into a model that can be used to replicate the experience in other countries.

This project was originally an experiment, but thanks to the joint efforts of those involved, it has become a mechanism that can enable us to build a small bridge that can bring us closer to our dream of a more equal and just society, in which everybody, men and women, can fully enjoy human dignity.

PAD ORGANOGRAM



COMPOSITION		
<p>National Coordination</p> <p>Executive Coordination</p> <p>Regional Representatives:</p> <ul style="list-style-type: none"> • Fase Amazon / North • Diaconia / Northeast • INESC / Central West • Koinonia / Southeast • CEBI / South 	<p>Executive Coordination</p> <ul style="list-style-type: none"> • ABONG / NGOs • CESE / Ecumenical Organizations • MST / Social Movements • Executive Coordinator • Executive Secretary <p>EuroPAD Coordination</p> <ul style="list-style-type: none"> • EED • PPM 	<p>EuroPAD</p> <ul style="list-style-type: none"> • Brot Fuer Die Welt / PPM • Christian Aid • EED • HEKS • ICCO & KERK IN ACTIE • Norwegian Church Aid / AID • SOLIDARIDAD

SUPPORT



NORWEGIAN CHURCH AID

