

# CRIMINAL INJUSTICE

## VIOLENCE AGAINST WOMEN IN BRAZIL

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WOMEN'S RIGHTS PROJECT



AMERICAS WATCH

A DIVISION OF HUMAN RIGHTS WATCH

# **CRIMINAL INJUSTICE**

## **Violence Against Women in Brazil**

**An Americas Watch Report**

**Human Rights Watch**

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Americas Watch was established in 1981 to monitor and promote the observance of internationally recognized human rights in Latin America and the Caribbean. The chair of Americas Watch is Peter D. Bell and the vice chairs are Stephen L. Kass and Marina Kaufman. Juan E. Méndez is the executive director; Cynthia Arnson and Anne Manuel are the associate directors; David Holliday is the director of San Salvador office; Cynthia Brown is the representative in Santiago; Patricia Pittman is the representative in Buenos Aires; Mary Jane Camejo is the research associate; Clifford C. Rohde and Patricia Sinay are associates.

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On August 5, 1988, in the Brazilian city of Apucarana, João Lopes (nicknamed "Joe Slick"), after spending two days in search of his wife, Terezinha Ribeiro Lopes, arrived at a hotel where he believed her to be with her lover, José Gaspar Félix. A bellman took him to the room of the two people answering to their description. At the bellman's request, the door was opened by José Félix who, with no forewarning, was stabbed repeatedly in the chest by João Lopes. Lopes then ran after his wife, who fled naked from the room and out of the hotel. Lopes chased his wife into the streets and caught up to her at the door of a hospital where he killed her with two knife wounds.

The all-male jury<sup>1</sup> accepted the argument advanced by the defense that Lopes had acted in legitimate defense of his offended honor in killing the two victims and unanimously absolved him of the double homicide. The state appellate court in Paraná upheld this decision.

The Federal Public Ministry responsible for prosecuting the case sought recourse to the Superior Tribunal of Justice, Brazil's highest court of appeal. The Tribunal accepted the prosecution's appeal,<sup>2</sup> and on March 11, 1991 overturned the lower court's decision and ordered a new trial. In so doing, the Tribunal declared that murder cannot be conceived of as a legitimate response to adultery and that what is being defended in this type of crime is not honor, but "self-esteem, vanity and the pride of the Lord who sees his wife as property."<sup>3</sup>

The Superior Tribunal's decision represented an historic moment, both for the Brazilian judiciary and for the feminist activists who waged a twenty-year campaign against the honor defense and the proprietary attitudes towards women on which it is based. However, despite such welcome progress, the reality is that in Brazil – as elsewhere – wife-murder is still considered an appropriate response to alleged unfaithfulness. On August 29, the Lopes case was re-tried in the State Court of Paraná, and Lopes was again acquitted of the double homicide on the grounds of legitimate defense of honor. The decision perpetuates a culture of impunity in wife-murder crimes sanctioned by the Brazilian

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<sup>1</sup> Not all jurors in Brazil are male. The defense attorney in the *Lopes* case felt the sex of the jurors had "nothing to do" with the decision. He chose two women jurors for the trial, but they were rejected by the prosecution.

<sup>2</sup> Under Brazilian law prosecutors have a right to appeal an acquittal when the decision is made against all available facts in the case.

<sup>3</sup> Decision of the Superior Tribunal de Justiça, March 11, 1991, Brasília.

*courts, and represents a victory of social prejudice over the rule of law in Brazil.*

## I. INTRODUCTION

In April of this year, Americas Watch, together with the Women's Rights Project of Human Rights Watch, travelled to Brazil to assess the response of the Brazilian government to the problem of domestic violence. This report contains the findings of that mission. It focuses on wife-murder, domestic battery and rape. It constitutes the first report of the newly formed Women's Rights Project of Human Rights Watch which monitors violence against women and discrimination on the basis of sex throughout the world.

The crime of domestic violence is not unique to Brazil. According to recent United Nations reports, it exists in all regions, classes and cultures.<sup>4</sup> Women all over the world and from all walks of life are at risk from violence in the home, usually at the hands of their husband or lover. Although the exact number of abused women will probably never be known,<sup>5</sup> available information indicates unequivocally that domestic violence is a common and serious problem in developed and developing countries alike.<sup>6</sup>

Although domestic violence is common and widespread, it has traditionally been perceived as a private, family problem, beyond the scope of state responsibility. Indeed, in the past husbands have had the legal right to punish or even kill their wives with impunity.<sup>7</sup> Only

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<sup>4</sup> *The World's Women 1970-1990: Trends and Statistics*, United Nations (New York, 1991), p. 19.

<sup>5</sup> Attempts to quantify levels of domestic abuse are hampered by, among other things, a lack of available and accurate statistics and case work and a disinclination of women to report domestic-abuse crimes.

<sup>6</sup> Statistics compiled for 1990 by the U.S. National Coalition Against Domestic Violence indicate that 30% of all female homicides in the United States take place in the home at the hands of a husband or lover.

<sup>7</sup> Connors, Jane Frances, *Violence Against Women in the Family*, United Nations (New York:1989), p. 11. Connors cites Blackstone's 1775 *Commentaries on the Laws of England* which stated that a husband was empowered to correct his wife "in the same moderation that a man is allowed to correct his apprentice or children." She also found that this power "was confirmed in judicial decisions in England and North America, where domestic chastisement of the wife went unpunished unless some permanent injury

gradually changing social attitudes and increased reporting have propelled the problem into the public eye. And as the nature and severity of violence in the home has become evident, so has the responsibility of governments to prosecute such abuse as they would any other violent crime.

The Women's Rights Project chose to issue its first report on domestic violence and state responsibility in Brazil because of the severity of Brazil's domestic violence problem, made visible largely by the campaigning of the women's movement, and the degree to which such abuse continues to receive both the explicit and implicit sanction of the Brazilian government.<sup>8</sup> Our report focuses on the problem of impunity, as reflected primarily in the use of the honor defense to exculpate men accused of killing their wives. It also examines the more general failure of the Brazilian criminal justice system to investigate and prosecute in a non-discriminatory manner crimes of domestic violence against women, in contravention of Brazil's obligations under international law.

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For over twenty years, the Brazilian women's movement has actively campaigned against domestic violence and the failure of the Brazilian government to adequately punish such abuse. As a result of their efforts, domestic violence emerged in the early 1980s as a major public policy issue, and councils on women were integrated into state and federal administrations. The year 1984 saw the ratification by Brazil of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) followed by the creation of specialized police stations staffed by female officers to deal exclusively with crimes of violence

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or death resulted. Even where permanent injury or death resulted, the husband's actions were often justified on the grounds of, for example, provocation, and the penalty was always light. The husband's right to chastise his wife received acceptance in popular culture by being known as "the rule of thumb," because it appeared that normal wife-beating involved chastisement with a stick no bigger than a man's thumb."

<sup>8</sup> Prior Americas Watch reports and newsletters on Brazil are: *Police Abuse in Brazil: Police Abuse in Brazil: Summary Executions in São Paulo and Rio de Janeiro*, December 1987 (New York: Americas Watch, 1987); *Prison Conditions in Brazil*, April 1989 (New York: Americas Watch, 1989); *News from Americas Watch*, "Notorious Jail Operating in São Paulo," October 1989; *News from Americas Watch*, "On Trial in Brazil: Rural Violence and the Murder of Chico Mendes," December 1990; *News from Americas Watch*, "Forced Labor in Brazil," December 1990; *Rural Violence in Brazil*, February 1991 (New York: Americas Watch, 1991).



against women in 1985. A nationwide women's rights campaign during the drafting of the 1988 Constitution led to constitutional guarantees of equality before the law and established an obligation by the government to prevent violence in the home.

Despite these welcome developments, which culminated in the Superior Tribunal's rejection of the legitimate defense of honor in *Lopes*, domestic violence continues to increase and the response of the Brazilian government and its public institutions to this serious problem remains woefully inadequate.

Although national homicide statistics broken down by gender are not available, existing information indicates that wife-murder is a common crime. A 1991 study of more than 6,000 violent crimes against Brazilian women from 1987 to 1989 found that 400 incidents involved murders of women by their husbands or lovers.<sup>9</sup>

It is still possible in Brazil for a man to kill his allegedly unfaithful wife and be absolved on the grounds of honor, particularly in Brazil's interior, where one state prosecutor told Americas Watch the honor defense is successful 80 percent of the time. The notion of "provocation by the victim" continues to result in unduly short prison terms for wife-murder, even in cases involving premeditation. Moreover, such crimes are often reclassified as less serious charges, and defendants, who are usually first time offenders, receive preferential treatment from the courts despite the extreme gravity of their crime.

Available statistics show that over 70 percent of all reported incidents of violence against women in Brazil take place in the home. In almost all of these cases the abuser was either the woman's husband or her lover. Over 40 percent involved serious bodily injury caused by, among other things, punching, slapping, kicking, tying up and spanking, burning of the breasts and genitals, and strangulation.

Physical and sexual abuse in the home has become more visible and is more often investigated as a result of the women's police stations. But these stations have been severely hampered in their efforts by shifting and often diminishing government support, most clearly reflected in their limited distribution throughout the country (a total of 74 of which 50 are concentrated in the state of São Paulo alone), under-staffing and a lack of specialized training for the officers. In part because of these difficulties, the police often fail to classify domestic abuse as a crime, or

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<sup>9</sup> Leticia Lins, *Jornal do Brasil*, April 1, 1991. The article cites a study prepared by Viva Mulher!, a group based in the northeastern capitol of Recife which monitors crimes of violence against women.

classify domestic abuse crimes too leniently, and discriminatory attitudes towards female victims persist.

Moreover, female victims still have little reason to expect that their abusers -- once denounced -- will ever be punished. A police chief in Rio de Janeiro told Americas Watch that to her knowledge, of more than 2,000 battery and sexual assault cases registered at her station in 1990, not a single one had ended in punishment of the accused. The São Luis women's police station in the northeastern state of Maranhão reported that of over 4,000 cases of physical and sexual assault registered with the station, only 300 were ever forwarded for processing and only two yielded punishment for the accused.

Brazil's criminal law is part of the problem. In the Brazilian Penal Code, rape is defined as a crime against custom rather than a crime against an individual person -- society rather than the female victim is the offended party. Most other sex crimes are deemed crimes only if the victim is a "virgin" or "honest" woman. If a woman does not fit this "customary" stereotype, she is likely to be accused of having consented to the crime and it is unlikely to be investigated. Moreover, pursuit of these cases by law depends on the initiative of the victim, not the state; if at anytime she desists from prosecution the case will be dropped. Of over 800 cases of rape reported to the São Paulo women's police stations from 1985 to 1989, less than 1/4 were ever investigated.

Marital rape, in particular, is severely under-reported and least likely to be prosecuted. While marital rape theoretically is included within the general prohibition against rape, in practice it is not commonly viewed by the courts as a crime. Under the Brazilian Civil Code, the refusal of sexual relations is cause for legal separation. According to several attorneys with whom Americas Watch spoke, when a husband uses violence to compel his wife to have sexual relations, it is viewed by the courts as enforcing the wife's conjugal obligations, not as rape. As a result, rape in the home, with the exception of incest, is almost never punished.

It is mandated by law that a victim of sexual or physical abuse be examined by the Medical-Legal Institute (IML), which has sole jurisdiction over the medical analysis of all crimes of physical or sexual violence as defined under Brazilian law. Yet, the IMLs are concentrated in urban areas, often in obscure locations and they are understaffed, with few female doctors, and none of the staff has specialized training in sexual abuse crimes. Examiners have been found to omit medical-legal information which is crucial to proving the existence of the crime.

Women's rights activists and legal scholars are seeking changes in the medical-legal system and Civil and Penal Code reforms<sup>10</sup> which would, among other things, equalize women's status in the home, transform rape into a crime against a person rather than custom, and eliminate all reference to "honest" or "virgin" victims in the definition of other sex crimes. These reforms, which follow from the 1988 Constitution, are stalled in the National Assembly, leaving Brazilian women in the precarious state of having constitutional rights which are not reflected in the codes designed to enforce those rights.

\* \* \* \* \*

Under international law, the Brazilian government has an obligation to guarantee civil and political rights and to guarantee equality before the law and equal protection of the law for all its citizens, without regard to gender. Article 3 of the International Covenant on Civil and Political Rights provides for "the equal right of men and women to the enjoyment of all civil and political rights...." Article 26 further provides that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law." Furthermore, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), which Brazil ratified in 1984, obligates state parties "to pursue a policy of eliminating discrimination...to refrain from engaging in any act of discrimination...[and] to ensure that public authorities and institutions shall act in conformity with this obligation."

The continued application of the honor defense which has no basis in law, is inherently biased, and is almost exclusively applied to wife-murder; the emphasis on "provocation" by the victim even in pre-meditated wife-murder crimes; the near total failure to prosecute battery and rape in the home; and the prejudicial treatment of rape victims both in law and in fact, establish a pattern of discriminatory treatment by the criminal justice system of female victims of domestic violence. Because of this pattern we believe that Brazil is failing to meet its international obligations to guarantee to its female citizens the equal enjoyment of their civil and political rights and the equal protection of the law.

There should be no doubt about the capacity of the Brazilian government to meet these obligations. The Superior Tribunal's decision

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<sup>10</sup> The women's movement first introduced Civil Code reforms in 1981. Since that time, the proposed reforms have been rewritten eight times in different proposals by several congresspeople and the Ministry of Justice. No final proposal has been adopted. Penal Code reforms were presented to the Congress in March 1991.

in *Lopes*, the 1988 Constitution and the creation of women's police stations reveal the existence of adequate legal and institutional structures. What is lacking is the political will to implement these obligations fully and fairly. As a result, female victims of domestic violence in Brazil cannot reasonably expect to obtain consistently fair treatment from the criminal justice system.

## II. BACKGROUND

### A. The Role of the Women's Movement

The Superior Tribunal's rejection of the honor defense in *Lopes* follows a decade-long struggle of Brazilian feminists to de-legitimize the "legitimate defense of honor" and to force the state to prosecute wife-murder and other domestic violence crimes to the full extent of the law. This effort began in connection with two famous cases in Rio de Janeiro and São Paulo.

The first involved Raul Doca Street who in 1979 murdered his lover after she decided to break off their relationship. During Street's first trial the defense argued he had acted in legitimate defense of his offended honor. While the court ultimately did not accept the honor defense, it did accept the notion that Street acted in a moment of "violent emotion" (discussed below), which it took as a mitigating factor justifying a sentence of only two years for the crime. The decision was appealed and at Street's second trial in 1980, thousands of women gathered outside the courthouse protesting the earlier decision. Street ultimately was sentenced to fifteen years in prison – the standard sentence for intentional homicide.

The second case, which took place in 1981, involved Lindomar Castilho, a famous Brazilian singer who shot his wife, Eliane, and her cousin, who Lindomar believed was Eliane's lover. Eliane died but her cousin survived. In the pre-trial phase, the defense argued that the crime had been motivated by "violent emotion due to the unjust provocation of the victim," whereas the prosecution charged that the crime was premeditated and that Eliane's active nightlife and love relationship were "not valid reasons for a crime of this magnitude." The judge ultimately accepted violent emotion as a factor in the crime. Women's rights activists immediately protested the judge's ruling. In 1984, when the case was finally brought to trial, the jury rejected the "violent emotion" defense and Lindomar was sentenced to 12 years in prison.

These two cases, together with two similar cases heard at the time in Minas Gerais, galvanized a national women's movement to protest domestic violence and the inadequate, often discriminatory response of the Brazilian police and judiciary.

This movement against domestic violence emerged, in part, against the background of Brazil's military dictatorship and in the context of the gradual liberalization which began in the late 1970s and culminated in the 1985 indirect election of a civilian president and the creation of the new Brazilian Republic. Reports on sexual abuse, torture and murder of

political prisoners during the dictatorship led to a national debate about violence and, in the mid-1970s, to the creation of a number of non-governmental human rights organizations in which women were very active.

With the development of the broadly based pro-democracy movement, "the debate on violence enlarged to include many forms of its exercise, besides those which occurred directly at the hands of the authoritarian state."<sup>11</sup> Women's organizations proliferated during this period,<sup>12</sup> particularly SOS-Mulher, a nationwide organization devoted to combatting violence against women. As a result of these developments, gender-specific issues which had previously been considered "private" or "personal," such as domestic violence, emerged as major public policy concerns.

Active women in both urban and rural areas and across racial and economic divides seized on domestic violence and used it successfully to propel gender concerns into the broader public policy debate. A series of local demonstrations led to several nationwide protests against domestic violence from which emerged the anonymous slogan that became the *crie de coeur* of the Brazilian women's movement: "Those who love don't kill."

The 1982 elections, which represented the first direct balloting for state governor since 1965,<sup>13</sup> demonstrated the emergence of the women's movement as a major political force. Women were very active during the campaign, and gender-specific demands were for the first time integrated into the platforms of the various political parties. As a result of the 1982 elections several opposition candidates won state governorships, most notably in São Paulo and Rio de Janeiro. Women's demands were soon institutionalized in these states through the creation of state councils of women.

The first state council (*Conselho Estadual da Condição Feminina*) was created in São Paulo in 1983. Its primary goals were to increase women's access to the policy-making process and to promote women's

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<sup>11</sup> Jacqueline Pitanguy, former president National Council of Women's Rights, "Violence Against Women: Addressing a Global Problem," report to the Ford Foundation, 1991, p. 2 (mimeo).

<sup>12</sup> Sonia Alvarez writing in *Democratizing Brazil*, edited by Alfred Stepan, (Oxford, 1989), p. 211, notes the "presence of over 400 feminist groups in the major Brazilian urban centers" in the mid-1970s.

<sup>13</sup> Skidmore, Thomas E., in *Democratizing Brazil*, p. 23.

interests within the state administration. It was followed by the creation of similar councils in many other states and, in 1985, under the auspices of the first civilian President, Tancredo Neves, by the creation of a National Council for Women's Rights (CNDM), one of the very few things Neves did during his brief tenure as President which was cut short by his death in March of that year. The CNDM was a federal body "in charge of designing and developing public policy to improve the condition of women."<sup>14</sup>

A major goal of both the state and national councils was combatting violence against women. CNDM president Jacqueline Pitanguy put gender-specific violence at the top of the Council's political agenda, launching a "say no to violence against women" campaign and compiling several documents detailing violence against women and criticizing the inadequate penal and judicial response.

During this period, women also began to be better represented in professional and political life. According to research conducted in 1984, "the female economically active population (EAP) went from 18.5 percent in 1970 to 26.9 percent in 1980, a proportion which accounts for 41 percent of the increase in the total EAP over the decade."<sup>15</sup>

The type of women's employment also changed. "The share of female EAP increased in administrative occupations (from 8.2 percent in 1960 to 15.4 percent in 1980) and in professions of higher prestige (engineers, architects, doctors, dentists, economists, university professors and lawyers which went from 19,000 in 1970 to 95,800 in 1980)."<sup>16</sup> In 1980, the number of women enrolled in Brazilian universities almost equaled the number of men.<sup>17</sup> According to statistics compiled by the Inter-American Commission on Women, women now represent 52 percent of Brazil's voting population.<sup>18</sup>

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<sup>14</sup> Pitanguy, p. 2.

<sup>15</sup> Boschi, Renato Paul, "The Art of Associating: Social Movements, the Middle Class and Grassroots Politics in urban Brazil," Final Report for the Tinker Foundation, December 1984, quoted in Sonia Alvarez, "Politicizing Gender and Engendering Democracy" in *Democratizing Brazil*, p. 211.

<sup>16</sup> *Ibid.*, p. 211.

<sup>17</sup> *Ibid.*, p. 211.

<sup>18</sup> Comissão Interamericana de Mulheres, Brazil report, July 1990.

Women's increased economic and political power coupled with the development of autonomous and state-affiliated women's institutions, enabled the women's movement to press for fundamental changes in the state's response to gender-specific violence. In 1985, women's groups, together with the state council on women, persuaded São Paulo's opposition party mayor to establish a woman's police station, staffed entirely by women and dedicated solely to crimes of violence against women, excluding homicide, which was not viewed as a gender-specific crime.<sup>19</sup> By late 1985, eight women's police stations (*Delegacias De Defesa Da Mulher*, hereafter *delegacias*) had opened in the state of São Paulo, and by 1990 there were 74 throughout the country.<sup>20</sup>

The women's *delegacias* represented an integrated approach to the problem of domestic violence. They were designed to investigate gender-specific crimes, and to provide psychological and legal counseling. The female police officers (*delegadas*) were to receive training in all aspects of domestic violence, from its psychological impact to the legal remedies available to the victim. The medical practitioners at the Medical Legal Institute (IML), charged with certifying the nature of physical injuries to the police, were also to receive such training. Finally, the *delegacias* were to integrate perspectives gained in their work into the activities of the other stations and, in some states, a permanent commission was formed to ensure these objectives were met.

By the mid-1980s, the now active and institutionalized women's movement began to focus on legal reform to consolidate their hard-won gains. Women were granted the franchise in 1932, but until a 1962 Civil Code reform they were considered perpetual subordinates, legally equated with "minors, spendthrifts and backwoodsmen"<sup>21</sup> and could not, for example, work outside the home without their husbands' consent.<sup>22</sup> The

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<sup>19</sup> In general, the *delegacias*' responsibilities include crimes involving bodily wounds, threats, and sexual crimes, including rape.

<sup>20</sup> Pitanguy, Jacqueline, "Violence Against Women: A Global Problem," report to the Ford Foundation, 1991.

<sup>21</sup> de Fonseca, Romy Medeiros, "Law and the Condition of Women in Brazil," cited in *Law and the Status of Women*, Columbia Human Rights Review, (New York: 1977), p. 14.

<sup>22</sup> Lombardi, Karen, "Retrato da Mulher Brasileira," 1990 (mimeo).



reform equalized women's legal status, but still left the male as the head of the family unit.<sup>23</sup>

In 1984, women's rights advocates secured Brazil's adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), although with several reservations.<sup>24</sup> In 1986, the women's movement held a national constitutional forum to draft a list of recommendations for consideration by the Constituent Assembly, which was elected in the 1986 congressional elections to take up the task of writing a new Brazilian Constitution. They sought, among other things, equality before and equal protection of the law, the same rights and responsibilities as men, and equal opportunity in health, education, employment and civil status. They also called on the Assembly to obligate the state to take measures to counter violence in the home. Their proposal to the Assembly stated:

All are equal before the law which will punish any discrimination which threatens human rights. No one will be prejudiced or privileged on the basis of place of birth, race, color, sex....The public authorities, through specific programs, will promote social, political, economic and educational equality.<sup>25</sup>

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<sup>23</sup> de Fonseca, p. 16.

<sup>24</sup> Brazil entered reservations regarding the sections of the Convention that guarantee the equal rights of men and women to choose their residence and domicile, to have equal rights to enter into marriage, during marriage and at its dissolution, and to have the same personal rights, including the right to choose a family name. Brazil also entered reservations to the Convention article according the same rights "for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property...."

International legal scholar Rebecca Cook notes that "though over one hundred countries have joined the convention, 21 of these countries, including Brazil, have filed over a total of 80 reservations to the Convention by which they limit their obligations. In contrast, 123 countries have joined the International Convention on all Forms of Racial Discrimination and only two countries have reserved certain of their obligations to eliminate racial discrimination," cited in "Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women," *Virginia Journal of International Law*, Vol. 30, No. 2, Spring 1990.

<sup>25</sup> CNDM, "Quadro Comparativo dos Direitos da Mulher na Constituinte," July 1988 (mimeo), cited in Alvarez, p. 251.