Cover Photo (Man holding bars)

"Robbery and Theft police station, Paraná state" Clarissa Lima©

‘They treat us like animals’

Torture and ill-treatment in Brazil: dehumanization and impunity in the criminal justice system.

Introduction

For over 30 years Amnesty International has documented and campaigned consistently against the widespread and systematic practice of torture in Brazil. During this time there have been changes in government as the country moved from democracy to military dictatorship in 1964 and then underwent a slow and cautious transition back to democracy in 1985. Yet today, shortly after commemorating the 500th anniversary of the arrival of the Portuguese, it is clear that these political changes have had little, if any, impact on the continuing use of torture by members of the police and prison services.

Sixteen years after the military dictatorship gave way to presidential democracy, the use of torture and ill-treatment continues unabated and generally unpunished. In today’s Brazil torture and ill-treatment are no longer weapons of political repression, they have become the essential tools of everyday policing. Amnesty International has found that among certain elements within the authorities, the press and the public, violent and repressive policing is in danger of becoming an acceptable consequence of sustaining a criminal justice system straining under intense social, economic and political pressures.

At the start of the 21st century, the use of torture or other cruel, inhuman or degrading treatment in Brazil remains widespread and systematic. Amnesty International delegates have obtained consistent evidence of this during regular visits to the country[1] and through testimonies given by victims or local human rights groups. In effect this evidence suggests there is recurrent and calculated use of torture or ill-treatment in many police stations and detention centres throughout the country’s 26 states and in the Federal District, not as an official policy but as an accepted method of policing or control within correctional facilities.

[***Photo - Man in bag on the floor surrounded by torutre instruments.***
“This photograph was taken when members of the Brazilian national lawyers’ association Ordem dos Advogados do Brasil (OAB) walked in on this man being tortured in a police station in Fortaleza, Ceará, in April 1993. He was handcuffed and wrapped in a blanket, beaten and semi-asphyxiated with a rubber inner-tube of a car tyre placed over his head. In the foreground can be seen a `palmatoria` - wooden bat or club - electric wires, and rubber tyre tubing.”
© Evilázio Bezerra / O Povo.]

Today torture is used as a means of extracting confessions; to dominate, humiliate and control those in detention; or, increasingly, to extort money or to serve the criminal interests of corrupt police officials.

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[1] Amnesty International delegates regularly visit Brazil. During the last three years Amnesty International delegates have visited over 10 states and around 40 centres of detention, including police stations, women’s police stations, juvenile detention centres, pre-trial detention centres, prisons and women’s prisons. During these visits delegates met with victims of torture, witnesses of torture, relatives of victims, human rights defenders, police officers, Police Ombudsmen [*ouvidores*], members of internal investigation units [*corregedores*], prison guards and directors, union representatives, forensic doctors, public prosecutors [*promotores*], public defenders, judges, lawyers, state and federal deputies, senators, as well as members of the state and federal authorities. The most recent visits were in March and November 2000.

It is either committed by agents of the state -- especially members of the military or civil police forces as well as prison guards -- or with their connivance; or is facilitated by their failure to act. It occurs at the time of arrest, in police stations, in prisons, as well as in youth detention centres. Crucially, it is a crime that persistently goes unpunished, either by internal disciplinary bodies or, more importantly, in the criminal courts under the appropriate law. This is especially so as the vast majority of victims are poor, under-educated, criminal suspects and are often of Afro-Brazilian or indigenous descent, a sector of society whose rights have been consistently ignored within Brazil.

Amnesty International is launching this report at a time of intense debate on torture within Brazil among the criminal justice system, those working with victims of torture as well as in the media. It seems there has never been a better time for revitalizing the campaign to stop torture and bring to justice those who practice it.

> On 16 March 2000, three women were detained on suspicion of shoplifting by the manager of a supermarket in Vila Velha, in the state of Espirito Santo. Amnesty International received reports from local human rights defenders that the three women, aged between 20 and 30 years, were taken by supermarket security staff into a back room where they were reportedly made to kneel in the dark. They were then allegedly beaten with a truncheon and punched. After some time, the women demanded that the police be called and were informed that the police were on their way. However, the women stated that when three military police officers arrived the beatings intensified. The women reported that the police officers made them take their clothes off, and one woman was forced to perform oral sex on a police officer: this stopped only when she pretended to faint. After several hours the women were released from the supermarket and one of the police officers reportedly threatened to kill them if they lodged an official complaint.
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> The women reported the incident to the police and an investigation was opened by the gender crimes unit of the civil police [*Delegacia da Mulher*] in Vila Velha. Amnesty International has received information that, following an investigation, charges have been brought against the staff of the supermarket and the military police officers for "causing physical injury" [*lesão corporal*]. None of the police officers has been charged under the Torture Law. According to information received by Amnesty International three military police agents involved continue to be on active duty. The women are presently in hiding having received various threats to their lives after reporting the incident.

Amnesty International has not been alone in identifying the extent of the problem of torture in Brazil. Recent scrutiny of Brazil by the United Nations (UN) Committee against Torture[2] as well as the UN Special Rapporteur on Torture has been vital in focusing national and international attention on the violence suffered in Brazil's police stations and prisons. The level of concern shown by these bodies was clearly set out in their subsequent published conclusions.

Following his mission to Brazil in August and September 2000, Sir Nigel Rodley, UN Special Rapporteur on Torture, stated in his report that, "…torture and similar ill-treatment are meted out on a widespread and systematic basis…"[3] He went on to state his feelings on conditions of detention:

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[2] The UN Committee against Torture is a treaty oversight body, which monitors the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by countries which have ratified it. For more information see the UN High Commission on Human Rights website at www.unhchr.ch.

[3] Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001. E/CN.4/2001/66/Add.2. para 166. The Special Rapporteur also added the following footnote: "As far as the term 'systematic' is concerned, the Special Rapporteur is guided by the definition used by the Committee against Torture: ' … Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between

> "The Special Rapporteur feels constrained to note the intolerable assault on the senses he encountered in many places of detention, especially police lock-ups he visited… He could only sympathize with the common statement he heard from those herded inside, to the effect that "they treat us like animals and they expect us to behave like human beings when we get out".[4]

Nevertheless, during its six years in power the Brazilian federal government has undoubtedly changed the panorama for human rights in the country, creating a whole new discourse on human rights with the introduction of a National Program for Human Rights, as well as specific laws to tackle human rights abuses, including Law Nº 9455, of 7 April 1997 known as the Torture Law.

In the light of recent national and international criticism, the Brazilian federal government has sought to confront the issue of torture. In presenting their first ever submission to the UN Committee against Torture,[5] the government gave what was widely recognized as a full and frank account of the reality of the use of torture and ill-treatment in Brazil. Amnesty International, in its parallel submission to the UN Committee against Torture, welcomed Brazil's report as thorough.

In response to the recommendations made by UN bodies, the Brazilian government has announced a number of measures to be undertaken in collaboration with non-governmental organizations (NGOs) which aim to fight the continued use of torture in Brazil. These include a nationwide media campaign against the practice of torture in the country, which should have been launched by the time this report is published.

Unfortunately, Amnesty International has found that while this openness before international forums is welcome, there have not been corresponding improvements in the human rights situation within the country. The organization recognizes that the government is presently preparing to launch its new campaign against torture. However, a lack of political will to ensure the effective implementation of essential reforms and legislation has meant that many similar proposals in the past have failed to bring about significant improvements for victims of human rights violations, especially torture victims. In particular, despite the positive efforts of some of those working within the criminal justice system, institutions within the justice system have failed to ensure the full implementation of the Torture Law. This has led to the perpetuation of the cycle of impunity that prevails in Brazil's police stations, detention centres and prisons and allowed the widespread practice of torture and ill-treatment to continue.

> The case of Alexandre Madado Pascoal was cited in the UN Special Rapporteur on Torture's report on Brazil. On 30 August 2000, the Special Rapporteur visited the Moniz Sodré provisional detention facility [*casa de custodia Muniz Sodré*], part of the Bangu penitentiary complex in Rio de Janeiro. There

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policy as determined by the central Government and its implementation by the local administration.'" (A/48/44/Add.1, para 39).

[4] Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001. E/CN.4/2001/66/Add.2. para 167.

[5] Initial report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submitted by the Government of Brazil, 26 May 2000.

he met with a number of inmates who reported that following a search of their cell by guards, inmates had complained that a number of personal items had gone missing. They told the Special Rapporteur that they were then taken to the courtyard where they were severely beaten for five or six hours by some 50 prison guards and members of special police units using wooden clubs and iron bars, some with wires tied around them.

Alexandre Madado reportedly suffered the most serious injuries as a result of the beatings which were said to have taken place at Moniz Sodré provisional detention facility on 28 August 2000. In addition to the beatings, which allegedly made him lose consciousness four times, the head of security is believed to have bitten his buttocks. On 30 August 2000, Alexandre Madado was presented before a magistrate who reportedly refused to hear him and ordered his immediate transfer to an emergency room. Alexandre Madado reported that he was then transferred to a hospital where a doctor ordered his hospitalization, but the guards who accompanied him refused to allow this. He allegedly received no medical treatment, not even painkillers. He was then taken to the Forensic Medical Unit [*Instituto Médico Legal* (IML),] where his injuries were said to have been recorded. He did not complain about the beatings for fear of reprisals since a guard from Muniz Sodré was constantly present.

At the time of his interview with the Special Rapporteur he had two large haematomas on his lower back and a large bump at the back of his head; he could not move his right leg or left arm; his lips were cut; he had bruises all over his body, in particular on his forehead; and some of the fingers of his left hand seemed to be broken. He was said to be vomiting blood. With the help of the officer-in-charge of the Vieira Ferreira Neto penitentiary, Alexandre Madado was then taken on a stretcher to a medical unit next door, where a doctor examined him and ordered his transfer to a hospital.

Informed of the situation by the Secretary of State for Justice, the Assistant-Secretary for Human Rights and the Head of Security for the Penitentiary System joined the Special Rapporteur at 2 AM and recorded the testimony of Alexandre Madado. They assured him that he would receive proper medical treatment and would be protected against reprisals. The Special Rapporteur was also informed that the Secretary of State for Justice had already taken the decision to suspend the director of Muniz Sodré and his head of security pending investigations.

Amnesty International has since been informed that Alexandre Madado is recovering well, both physically and mentally. According to information from both the Assistant-Secretary for Justice and Human Rights as well as a member of the State Legislature's Commission for Human Rights, he will shortly be released as he has completed his sentence. Alexandre Madado is presently held in Bangu 3, where he was transferred following a request from the State Legislature's Commission on Human Rights. Amnesty International was also informed that the prison guard reportedly responsible for leading the torture session was temporarily suspended from duty, although he was reportedly later appointed to the prison system's shock troops. After a further complaint from the state Commission for Human Rights he was suspended again and is reportedly awaiting an internal investigation. The criminal case is now with the Public Prosecutor's Office awaiting a decision on whether to prosecute.

Photo of metal bars and belts. "Objects found in the DEPATRI police station by members of the Federal Human Rights Commission. Metal bars, truncheons, wooden sticks, ropes and belts are frequently used by members of the police in torture sessions."© Clarissa Lima.

This is the context in which Amnesty International presents its report. Political transition is now a thing of the past and previous proposals by the government have been given sufficient time to measure their success. While looking at the nature of torture in present-day Brazil, the report will primarily address why the government's measures introduced to punish acts of torture, namely the Torture Law, have so clearly failed. This report will also look to assess the government's new proposals to tackle torture and offer conclusions and recommendations as to how the federal and state governments should confront this scourge. Above all this report and the subsequent Amnesty International campaign aims

to support and complement all other efforts at fighting torture in Brazil today.

A summary of Amnesty International's concerns:

- Systematic use of torture and ill-treatment of criminal suspects at time of arrest and during interrogation, to obtain confessions, information or to extort money.

- Cruel, inhuman or degrading conditions of detention in police stations, detention centres and prisons. Little or no external, independent and effective monitoring of places of detention.

- Widespread impunity for perpetrators of torture, compounded by the consistent failure to apply of the Torture Law. Institutional failures of the criminal justice system at state level to ensure the implementation of the Torture Law.

- Failure of the federal government to ensure the full implementation of the Torture Law by providing the necessary political will and support, which includes monitoring the use of torture and introducing safeguards against the failures of the criminal justice system.

The historical context of torture in Brazil

Most studies of torture in Brazil today, including the government's own submission to the UN Committee against Torture, ascribe a great deal of importance to the country's heritage, citing the long history of slavery and the more recent period under military rule as having a fundamental influence on attitudes towards torture as well as its continued practice. Thus they ascribe an apparent acceptance of torture among both affluent as well as deprived sectors of society to a cultural predisposition or at best an innate resignation towards the use of such violent and abusive practices.

Undoubtedly the long history of slavery has left its mark on a society which remains extremely stratified in terms of both wealth and race. It is a society in which those from the more underprivileged sectors are routinely deprived of access to their most basic human rights as a matter of course. Furthermore, it is a society where the human rights violations they suffer at the hands of the police are rarely deemed worthy of investigation, let alone punishment, and where those who challenge this are dismissed as "defenders of criminals" [*defensores de bandidos*].[6]

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[6] A recent e-mail sent to the offices of Amnesty International in Brazil by a military police officer from Minas Gerais, exemplifies this. The e-mail arrived shortly after the historic decision by a São Paulo court to convict Colonel Ubiratan Guimarães for his role in the Carandiru prison massacre on 2 October 1992 in which 111 detainees were killed by members of São Paulo's military police. The police officer wrote:

> I do not understand how the media can give so much space to a gang of hypocrites who defend crooks and criminals… The day will come when a member of Amnesty International or a human rights defender will be dignified enough to support a worker, father, killed by a crook… Supporting honest citizens does not earn you popularity or money, for that reason you support muggers, rapists and the like; That is what I have to get off my chest (Name and rank supplied)
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> [*Não consigo entender, como a mídia pode dar atenção a um bando de hipócritas que defendem bandidos e criminosos...Ainda está para chegar o dia em que um membro da Anistia Intencional ou dos Direitos Humanos de dignará a apoiar um trabalhador, pai de família, morto por um bandido…Apoiar cidadão de bem não dá IBOPE e não dá dinheiro, por isso apóiam assaltantes, estupradores e similares;*
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> *É o que tenho para desabafar.(Nome e posto fornecido*)]

Nevertheless, the focus on cultural explanations for the existence of torture in Brazil can be misleading, especially as they tend to result in simplistic and sometimes misguided solutions to the problem. Without identifying the very concrete social, economic and political reasons for the continued use of torture today and the impunity which those who practice it widely enjoy, those in government will not be able to implement fundamental and necessary reforms which will effectively ensure that repressive policing becomes a thing of the past.

The legacy of the military rule

From 1964 to 1985 Brazil was ruled by its military forces. During this period the state apparatus was geared towards the systematic repression of political opposition. The use of torture by the security forces was a government approved policy, and as such its practice became institutionalized. An example of this was the "confidential" manual on interrogation techniques produced in 1971 by the head office of the Army Ministry and by its Centre of Information [*Centro de Informações* (CIEx)] and later discovered in a security police archive in the state of Paraná:

> "... From this one can conclude that the objective of an interrogation of a subversive is not to obtain elements by which they can be tried under the criminal law; its real objective is to obtain the maximum possible amount of information. To accomplish this it will frequently be necessary to employ interrogation methods which legally constitute violence." [7]

Under military rule extrajudicial execution, "disappearance", torture and ill-treatment, became standard methods used by state agents. As a result, the methods of repression adopted became increasingly sophisticated and ingrained within the security forces. Today, some of these methods, especially in relation to torture, remain widely in use. Amnesty International continues to receive reports from victims and human rights NGOs that many of the torture methods employed under military rule are still prevalent in police stations across Brazil. These include, among others: "the telephone" [*o telefone*], which involves blows over the victim's ears with cupped hands; electric shock treatment [*electro choque*], often using a small manually operated generator; and most infamously "the parrot's perch" [*pau de arara*] whereby the victim's hands are bound or handcuffed beneath their feet and they are then hung upside-down from a metal or wooden bar and beaten or given electric shocks.

Photo - Man hanging from 'parrot's perch'-

"This photograph of a criminal suspect on the 'pau de arara', parrot's perch, was taken by a police inspector in the mid 1980s. This method of torture is still commonly used in police stations throughout Brazil. The suspect, known as Doge, was killed two weeks before testifying against four policemen who stood accused of torturing him."

[7] "*Disso se conclui que o objetivo de um interrogatório de subversivos não é fornecer dados para a justiça criminal processá-los; seu objetivo real obter o máximo possível de informações. Para conseguir isso será necessário, freqüentemente, recorrer a métodos de interrogatório que, legalmente, constituem violência.*" Quoted in *Tortura no Brasil como herança cultural dos períodos autoritários*, a speech presented by Dr Cecilia Maria Bouças Coimbra at the National Seminar on the effectiveness of the Torture Law, 30 November 2000, STJ, Brasilia.

Following the transition to democracy, large parts of Brazilian society believed that violent and repressive policing methods, specifically torture, had come to an end. Amnesty International was often told by officials, lawyers, members of the security forces and members of the general public that torture was a thing of the past. These people consistently described torture as an act committed by the military regime against political activists, normally members of the white, educated, middle-classes. Yet few were able to equate these acts with the continued practice of torture or other cruel, inhuman or degrading treatment repeatedly suffered by those from deprived sectors of society. Torture once again became an unseen and largely forgotten crime, as these victims did not command the same social status as many of those who suffered at the hands of the military regime.

Since the end of the military dictatorship none of the torturers from that period has been brought to justice. The very nature of the transition from a military to a democratic government meant that little or no attempt was made to punish those who had committed human rights crimes in the past. Although the 1979 Amnesty Law does not specifically cite torture as a crime which is included within its remit, judges in Brazil have decided to interpret the Law in this way.[8] As a result not only are the torturers from the period of military rule free today, but many of them also continue to work actively within the security forces and some hold high political office.

During the UN Committee against Torture hearings in 2001, a delegation from Brazilian NGOs presented a list of the names of 444 known torturers from the period of military rule listed in the *Brasil nunca mais*, Brasil Never Again, project of the archdiocese of São Paulo. Furthermore a Rio de Janeiro based NGO, *Tortura Nunca Mais*, Torture Never Again, provided the names of members of the security forces implicated in torture and other serious human rights violations who currently hold positions of political power. The failure to investigate and punish the crimes committed under the military government has built up an ethos of impunity within the security forces which has allowed torture and ill-treatment to flourish.

> Amnesty International has received reports of the continuing use of torture and ill-treatment within the army, either as a punishment or as part of excessive and abusive training methods. According to information received from *Tortura Nunca Mais*, investigations are rarely opened into allegations of torture and those investigations that do take place are internal and very rarely result in prosecutions under military law. Those responsible are never punished for these crimes.
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> This year *Tortura Nunca Mais* presented a list of 23 cases of torture within the armed forces to the UN Committee against Torture. The Committee raised the question with the Brazilian government delegation who promised to investigate the matter.

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[8] The Amnesty Law, law nº 6,683 of 28 August 1979, states: "Section 1 - Amnesty is hereby conceded to all those who, during the period 2 September 1961 - 15 August 1979, committed political or related electoral crimes, to those persons whose political rights were suspended, and to civil servants employed by the administration... Section 1 (1) - For the purposes of this section this includes crimes of any nature related to political crimes, or crimes carried out for political reasons."
[*Art. 1º - É concedida anistia a todos quantos, no período compreendido entre 2 de setembro de 1961 e 15 de agosto de 1979, cometeram crimes políticos ou conexos com estes, crimes eleitorais, aos que tiveram seus direitos políticos suspensos e aos servidores da Administração*
§ 1º. Consideram-se conexos, para efeito deste artigo, os crimes de qualquer natureza relacionados com crimes políticos ou praticados por motivação política.]
Brazilian judges have decided to interpret the term "related crimes" ['*crimes conexos*'] as including torture. This has allowed continued impunity for the torturers from the period of military rule.

> The case of 18-year-old Cadet Márcio Lapoente da Silveira, training at the Military Academy of Agulhas Negras in the state of Rio de Janeiro, was one of those presented to the Committee. On 9 October 1990 at 5AM, Cadet Márcio Lapoente, who was prohibited from resting, finally fainted from exhaustion. His instructor ordered him to get up. When Márcio Lapoente failed to get up he was reportedly severely kicked and beaten by the officer in charge. Other officers stood by and watched, allegedly preventing Márcio Lapoente's colleagues from coming to his rescue. According to reports Márcio Lapoente's left hand was then broken with a rifle butt.
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> As the training continued Márcio Lapoente was reportedly left unconscious on a stretcher in the sun with no medical assistance for three hours. Two doctors present were prohibited from giving him assistance, as this was apparently part of his training. At 8.30 he was finally admitted to the infirmary where they reportedly diagnosed that he was suffering from meningitis. Although there was a hospital nearby with an emergency room, the cadet was transferred to another hospital in town. Márcio Lapoente died on the way.
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> The autopsy was signed by a forensic doctor who has since been struck off the register by the Regional Medical Council of Rio de Janeiro, following reports that he signed false medical reports during the military dictatorship. Márcio Lapoente's case was then referred to the military justice system where, according to information received by Amnesty International, it was held up while the accused officer was promoted to captain.
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> Although the military courts recognized that excesses had been committed and that the military medical team had been negligent, the officer in charge was given a suspended sentence by the Supreme Military Court [*Superior Tribunal Militar*]. Márcio's Lapoente parents continue to campaign for justice, despite reported death threats.

Torture and society in democratic Brazil

The economic collapse of Brazil following the 1978 global oil crisis brought an end to the "economic miracle" that had helped to sustain the military government for so long. The 1980s saw the Brazilian economy, along with most other Latin American economies, suffer an extended period of recession as it was hit by debt crisis. According to the World Bank, growth figures for Brazil between 1980 and 1993 averaged just 1.5 percent.

In a country already known for its social and financial disparity, the gap between rich and poor steadily increased. The 1990s offered little or no comfort to marginalized groups in society as the structural readjustment policies introduced to stabilize the economy exacted a high social cost. Once again the inequalities between the affluent and those excluded from the subsequent benefits of a more stable economy became increasingly apparent.[9]

The increase in social disparity coincided with a sudden growth in the drugs trade throughout Brazil. As well as becoming one of the main routes for the trade in illegal drugs from Latin America, the levels of internal consumption in Brazil began to rise. According to the UN Office for Drug Control and Crime Prevention, drug abuse among the Brazilian population has increased fourfold over the last

[9] Today 49.6 million Brazilians are living in poverty, with a monthly income of less than R$79 a month (around US$31). (Source: Instituto Brasileiro de Economia da Fundação Getulio Vargas.)

decade.[10] The combined effects of widespread social deprivation and the growth in the trade and use of illegal drugs caused a dramatic rise in the incidence of violent crime during the 1980s and 1990s, especially in Brazil's urban centres.

Photo - Men in overcrowded cell look out from behind yellow bars.

"Prisoners are crammed into a cell in the Ari Franco prison, Rio de Janeiro. Extreme overcrowding is commonplace in Brazil's police stations and prisons. Often prisoners do not leave their cells for months at a time."

As crime rates have risen rapidly,[11] sensationalist media coverage of urban violence has inflamed popular fears. Television shows specializing in the coverage of violent crime have become the mainstay of early evening programing on a number of channels, while reporting in the print media has also played to the general population's fears of falling prey to muggers and thieves.

> In October 2000, popular television presenter Carlos Massa, known as *Ratinho* (little rat) showed a video of a known criminal torturing a three-year-old girl. The criminal, who beat and kicked the girl, claimed he was acting out of revenge as he had been betrayed by her father. Following the video *Ratinho* attacked those who believe in the reduction of prison sentences. His program was widely criticized in the Brazilian press for having lowered the standards of Brazilian broadcasting, but is one of the most popular on Brazilian television. This program was shown during the election for mayor of São Paulo when the issue of crime was high on the political agenda.

A major national weekly news magazine regularly produces reports on high crime rates, and the failures of the police with titles such as "HELP! Crime levels in Brazil break records and terrify society" ['*SOCORRO! A criminalidade no Brasil bate record e apavora sociedade*'] or "We are all hostages because of the incompetence of the police and justice system" ['*Somos todos reféns, em razão da inépcia da polícia e da Justiça*'].

In response to these fears, the authorities have sought to employ increasingly repressive measures in an attempt to deal with rapidly rising crime figures. This in turn has placed further pressure on all levels of a criminal justice system which is clearly unable to cope with the ever mounting demands made of it.

Amnesty International recognizes the complexity and scale of the social and economic difficulties that have confronted the authorities over recent years, particularly the rise in violent crime. However, the organization considers that the authorities, in their zeal to tackle public order issues, have failed to take adequate steps to safeguard the fundamental rights of all citizens and to ensure the eradication of torture. It appears that the failure to prevent the relentless spread of violent crime has been, in many respects, testament to the ineffectiveness of the repressive methods adopted by the criminal justice

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[10] Source: United Nations Office for Drug Control and Crime Prevention website, www.undcp.org .

[11] In the State of São Paulo, according to the State Secretariat for Public Security, homicides have increased by 6.76 percent a year between 1993 and 1999, although they decreased by 1.4 percent in 2000. In 2000 there was a murder rate of 53.2 per 100,000. Robbery increased on average by 13.59 percent a year between 1993 to 1999, although again it diminished by 2 percent in 2000. Car theft increased by on average 11.53 percent a year between 1993 to 1999, and by 7 percent in 2000.

system. It seems clear that far from providing the solutions sought by the public at large, violent methods of policing, coupled with the cruel, inhuman and degrading conditions suffered by those in detention, will perpetuate the cycle of violence.

Torture in Brazil today

Policing

Policing methods in Brazil reflect both the institutionalized repressive policing inherited from the military government and the increased pressure on the criminal justice system to stop the spread of violent urban crime.[12] Inadequately trained, poorly resourced police forces, under constant pressure to deal with mounting crime rates, continue to employ repressive policing methods which depend on widespread human rights violations. Torture and ill-treatment are *de facto* replacements for scientific and professional investigation techniques in all but a few cases.

Photo- Masked policeman holding stun instrument

"A hooded policeman displays an electric shock instrument which he claims to use during torture sessions. This photograph was published as part of an article in a national newspaper, in which a civil policeman was quoted as saying of this instrument, "The main thing is not to leave any marks...It is efficient and gives us pleasure." [O principal é não deixar marcas...É effciente e nos dá prazer.]"

A clear example of the failure of police to perform professional and scientific investigations and their reliance on confessions extracted under torture, is the case of 23-year-old Alexandre de Oliveira. He was arrested on 12 January 2001 in the Municipio de Bom Jardim, in the state of Minas Gerais. He was charged with the rape of his one-year-old daughter who had been hospitalized reportedly suffering from bleeding in her genital area.

Alexandre de Oliveira was taken to the police station at Bom Jardim where he reportedly denied having raped his daughter. Members of the civil police then reportedly handcuffed him and beat the soles of his feet with a stick wrapped in sticky tape, and gave him electric shocks on the nape of his neck. Alexandre de Oliveira further reported that the police officers told him that the torture would not stop until he signed a confession. He signed a confession, although he stated that he was not given an opportunity to read its contents.

On 17 January 2001, Alexandre de Oliveira was released after further medical examinations found that a tumor was responsible for the bleeding and swelling of his daughter's genital organs. The police internal investigations office of Minas Gerais has opened an investigation into the incident. Six civil police officers have been officially named as suspects.

There are four principle police forces in Brazil, a federal force -- the federal police, which is responsible to the Ministry of Justice -- and three state forces -- the military, civil and traffic police. The civil and the military police are the main forces responsible for day-to-day policing; the military police are responsible for policing in the streets and the civil police are responsible for investigatory policing. Both these bodies come under the control of state governments' Secretaries for Public

[12] See: Initial report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submitted by the Government of Brazil. 26 May 2000, para 44.

Security.

Although the military police are under the control of the civilian government they are still tried under military law. Amnesty International welcomes the introduction of law 9299/96, under which military police accused of committing murder will be tried in civil courts. However, Amnesty International is still concerned that military police accused of crimes such as torture are tried under military law, which has increased the level of impunity.

The training offered to the police forces today in Brazil is clearly lacking. Police authorities and police officers in various parts of the country have informed Amnesty International that the average period for the training of a police officer ranges between three and four months and that should there be an urgent need for new officers these training periods can be curtailed.[13]

> The work of police officers and prison guards is difficult and dangerous and often goes unrecognized. Recent strikes by military police in the states of Tocantins, Bahia and Alagoas show the level of discontent among serving officers. According to figures in the *Folha de São Paulo* , one of the main national daily newspapers, the basic monthly pay of a military police officer in the state of Alagoas is R$380 (approximately US$ 150) and civil police receive R$ 600 (approximately US$ 240). This means that often members of the police are forced to live in deprived areas in which they do some of their most high-profile policing, at a risk to themselves and their families.
>
> Members of the civil police frequently work shifts of 24 hours on, 72 hours off which do not allow for continuity in investigations. However, most police need this shift pattern to allow them to work other jobs to complement their low salaries. Amnesty International received information from the Police Ombudsman's Office in São Paulo that of the 138 police killed during 1999 in the city of São Paulo, 110 (80 percent) were killed while working as security guards in their own time.[14]
>
> Amnesty International has also received many reports of police and prison staff suffering both physical and psychological problems as a result of the pressures of their work.

Photo - Masked policemen sitting above police station "Striking military police officers, wearing hoods to protect their identity, watch over the front entrance to a prison in Salvador, Bahia in July 2001. Police officers in many states throughout Brazil went on strike this year to protest against poor pay and difficult working conditions. At the time of the strike military police officers in Bahia received a basic salary of R$ 450 (c. US$ 180) per month. The federal government is presently considering measures to prohibit police from striking in the future." © Reuters

Amnesty International recognizes that some state authorities and the federal government have invested in human rights education projects for police officers. However, given the continued widespread practice of torture in Brazil this is clearly not adequate. By failing to invest sufficiently in a

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[13] By comparison training periods in the USA and some European countries can range from nine to 19 months. However, most importantly, all these training periods depend on regular refresher training, to ensure that police officers continue to show aptitude in three specific areas: knowledge of the law, skills for the proper application of the law (that is, the skills of how to arrest someone without having to use undue force), and the required attitudes conducive to professionalism and respect for human rights.

[14] *Pesquisa sobre o uso da força letal por policiais de são paulo no ano de 1999*, Police Ombudsman's office in São Paulo [Ouvidoria da Policia de São Paulo], June 2000, p. 2.

professionally trained, properly resourced and technically skilled police and prison service, the Brazilian authorities have allowed the widespread practice of human rights violations to continue unabated. As the Brazilian government itself states in its report to the UN Committee against Torture, increased police professionalism is vital if improvements are to be made in respect for human rights:

> "... [T]he police need a structure which paves the way for investigation based on scientific methods, as torture is often used as a primitive and illegal form to provide answers to society, which in turn demands an effective police."[15]

Torture by members of the military police is often used openly on the street at the time of arrest as a means of intimidating criminal suspects. After arrest the suspect is taken to a police station where they are placed in the custody of the civil police and where more formalized forms of torture are often used. Among various forms of torture reported to Amnesty International are: electric shocks; beatings with a *palmatoria* (wooden paddle); submerging the detainee's head in a plastic bag filled with water until they are half drowned; mock executions; hanging a detainee upside-down on a "parrot's perch" and then beating them or giving them electric shocks. Amnesty International received information of one torture victim being held in the DEPATRI police station in São Paulo while police waited for the arrival of "the suitcase" [*a mala*] which was said to contain a rope, an iron tube, a blanket, and a small electric shock device.

Photo - Ropes and noose on table-

"Objects found in the DEPATRI police station by members of the Federal Human Rights Commission. Among these was found the noose displayed at the front of the desk."

Interrogation techniques are an important area of concern since police lacking the training and resources required for a professional and scientific investigation have come to regard signed confessions as the only means to ensure a prosecution. In contravention of the Constitution and the Law on Execution of Sentences,[16] detainees rarely if ever have access to a lawyer or a doctor before, during or after an interrogation. Interrogations, often occur in isolated and secret places. Amnesty International has received reports that individuals are held in solitary confinement or punishment cells during long periods of interrogation, and that criminal suspects are regularly interrogated without a lawyer being present. Equally alarming are the numerous reports from victims, public prosecutors, lawyers, and human rights defenders of bribes being demanded in order to protect detainees from further torture to force them to sign confessions to other, unrelated, charges.

> Amnesty International delegates met with Antonio Marcos Joaquim in the Belém pre-trial detention centre [*Centro de Detenção Provisória de Belém* (CDP)] in São Paulo on 23 November 2000. Antonio Marcos, a 21-year-old man, informed delegates that he could no longer speak as a result of the torture he had suffered

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[15] Initial report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submitted by the Government of Brazil (CAT/C/9/Add.16) 26 May 2000 para 44.

[16] Constitution of the Federative Republic of Brazil, 5 October 1988, Article 5 LXXIV, and Law on Execution of Sentences [Lei de Execução Penal], Law n° 7,210 of 11 July 1984, art 41 (2).

following his arrest. This information was confirmed by other detainees who had been held with him. Antonio Marcos communicated with the delegates by signs and by writing.

Antonio Marcos informed the delegation that he had been arrested in November 1999, when he was taken to the 58th police station, where he was beaten by civil police officers on his arrival. From there he was moved to DACAR 2, a detention centre, where he alleged that for two months he was held in solitary confinement in a dark cell. He further reported that during this time, members of the homicide police [DHPP], entered DACAR 2 to interrogate him. During that time he was given electric shocks, his genitals were stamped on, a gun was pointed in his mouth, he was forcibly fed, he had soap forced into his mouth and he was beaten. Antonio Marcos informed the delegation that although he signed a confession during the early stages of his detention the torture continued. He also reported that his mother and mother-in-law had seen his injuries. Antonio Marcos was later transferred to 56th police station, where he was held for 10 months before being transferred to the pre-trial detention centre at Belém on 9 November 2000. He alleges that during that time he was taken to see a psychologist, who, he claims, took one look at him and said that he was well. He did not mention any other medical treatment. All other detainees at the centre claimed that they were very rarely given access to a doctor.

Meagre salaries and dangerous working conditions have meant that many police turn to other means to supplement their income, and consequently corruption within police forces is rife. The scale of the problem has made it logistically and politically difficult for state governments, with so much invested in the police, to intervene and end the cycle of impunity. Political efforts to fully reform police forces which adopt violent or corrupt methods of policing are consistently compromised in the face of public and media pressure to resolve public order problems.

Attempts to reform policing in the state of Rio de Janeiro exemplify this. The governor of the state of Rio de Janeiro embarked upon a fundamental reform of the police with the appointment of Luis Eduardo Soares to the post of Public Security Coordinator to oversee the reforms. However, according to information received by Amnesty International from NGOs as well as from those previously working within the State Secretariat of Public Security, a large part of the reforms were abandoned when high-ranking members of the police began to put pressure on the state governor, informing him that unless reform programs were dropped crime figures would increase. In a controversial move, Luis Eduardo Soares was publicly dismissed and was forced to leave the country for a time fearing reprisals reportedly from corrupt elements within the police force.

Amnesty International has repeatedly documented weaknesses in specific areas of policing and investigative practices, especially in human rights related cases. Mishandling or destruction of crime scenes, lack of scientific investigation techniques, and persistent use of excessive force are some examples that clearly indicate how severely under-prepared the Brazilian police are for the task of gathering evidence to mount criminal prosecutions. According to recent figures, up to 90 percent of homicide investigations in Rio de Janeiro do not produce sufficient evidence for prosecution.[17]

Conditions of detention

Pre-trial detention

[17] Paul Chevigny, "Definindo o papel da Polícia na América Latina", *Democracia, Violência e Injustiça – o não-estado de direito na América Latina*, ed. Juan E. Méndez, Guillermo O'Donnell & Paulo Sérgio Pinheiro, São Paulo, 2000, p.77.

The pre-trial detention system is close to collapse under the pressure of growing numbers of detainees. Pre-trial detainees suffer as a result of the huge backlog in the judicial system. The pace of Brazilian justice is painfully slow with cases often taking years to go through the courts.

Amnesty International delegations visiting police stations and pre-trial detention centres regularly meet with detainees held for several months, sometimes years, prior to their case being heard in the courts. Time periods established in the Penal Code to limit pre-trial detention of criminal suspects are routinely extended. A judge must be notified of detention within 24 hours, and total pre-trial detention should not exceed 81 days. The law allows for this to be extended in extreme cases, but judges regularly extend this period.[18] Detainees with no access to lawyers and little education or understanding of the legal system have no idea what stage of the legal process their case has reached.

The ensuing backlog has meant that pre-trial detention centres are teeming with those waiting for court hearings, and police holding cells in effect become detention centres, often with 30 or more prisoners held in small cells.[19] Conditions are generally described as subhuman.[20] Amnesty International delegations have consistently testified to the fact that police holding cells are illegally used as pre-trial detention centres owing to the lack of other units to hold detainees. In some cases sentenced prisoners are held in police stations, or pre-trial detention centres as the penitentiary system cannot hold them. There is no separation of detainees, between first time offenders or extreme recidivists, or by their legal status, with pre-trial detainees being held with sentenced inmates.

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[18] The UN Special Rapporteur on Torture stated in his report "it is reported that the Federal Court of Appeal has ruled that the 81-day period must not be considered strictly, and that the judge may apply the 'reasonablenes' principle in order to keep someone in detention if delays are justified by natural difficulties of criminal proceedings. The Court stated that 'the case law construction that has defined the limit of 81 days to prove guilt in case where the defendant is detained, must be applied flexibly to take account of the principle of reasonableness. It is admissible to exceed this limit in adequately justified circumstances.' Public prosecutors have drawn the attention of the Special Rapporteur to the fact that this jurisprudence was potentially extremely dangerous since it does not establish a threshold for the application of the 'reasonableness principle'. Persons in preventive detention are eligible for provisional release on bail." Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001 E/CN.4/2001/66/Add.2. para 108.

[19] According to figures quoted on the Ministry of Justice's own website, 73,865 detainees held within the detention system are awaiting trial. That is about 33 percent of those held within the detention system. At present there are 61,852 detainees held in police stations awaiting transfers to other units, in a system built to hold 26,152. That is around 27 percent of those held within the detention system, and nearly two and half times more than the system was built to hold. It is illegal under Brazilian law to hold a detainee for longer than 24hrs in a police station. However, of these 61,852, there are 25,535 convicted prisoners being held in police stations awaiting transfer to prisons. These figures accentuate the extent of the overcrowding in police stations, which have been built to hold criminal suspects overnight. It also presents an added pressure on members of the civil police who are forced to act as prison guards as well as investigators.

[20] The UN Special Rapporteur on Torture describes detention conditions in his recent report on Brazil: "In addition, conditions of detention in many places are, as candidly advertised by the authorities themselves, subhuman. The worst conditions the Special Rapporteur encountered tended to be in police cells, where people were kept for more than the 24-hour legally prescribed period... The problem was not mitigated by the fact that the authorities were often aware and warned him of the conditions he would discover." Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001 E/CN.4/2001/66/Add.2. para 167.

In the State of São Paulo, the State Secretariat for Prisons Administration [*Secretaria de Administração Penitenciaria* (SAP)] has begun an important program to build pre-trial detention centres [*Centros de Detenção Provisórios* (CDPs)] to reduce overcrowding in police stations across the state. While Amnesty International welcomes this initiative, it is concerned that prison building programs are no longer enough to solve the problems of overcrowding. In a meeting with the Secretary for Prison Administration, Amnesty International was informed that these units could not be built quickly enough to house the number of new detainees admitted each month. Furthermore, Amnesty International has received reports that these pre-trial detention centres may be used to house convicted criminals who cannot be taken by the prison system because of overcrowding.

The Theft and Robbery police station [*delegacia de Roubos e Furtos*] in Belo Horizonte, Minas Gerais, has been the focus of many reported incidents of torture and ill-treatment. In 1998 Amnesty International visited the police station and received various reports of torture and found various weapons consistent with those reportedly used in torture.

Amnesty International continues to receive reports of widespread torture and ill-treatment in the police station from the human rights department of the Public Prosecutor's Office [*promotores de justiça*]. One detective has had a number of accusations of torture and corruption made against him. While in charge of the detainees in the triage cells ['*setor de triagem da carceragem* '] he is accused of torturing and harassing a number of detainees. Many of the victims, or their families, were forced to pay the accused in order to guarantee transfers to different sections or simply to avoid torture. A. das D. S. reported having been beaten, subjected to electric shocks, asphyxiated by drowning and burned with cigarettes. He also reported being repeatedly threatened with violence unless he agreed to pay R$ 10,000 (about US$ 4,000). He refused to pay as not only did he not have the money, but he had also already served his 11-year sentence. Adilson das Dores said it was common for detainees to have to buy their way out of the police station.

J. C. R. dos S. went through a similar experience, having been tortured with electric shocks to his mouth, ears and testicles. His family handed money over to the accused to ensure he was kept in a relatively safe cell.

Other victims were reportedly regularly tortured by the detective and other police officers. One of the victims, S. R. P. was also offered a "free" transfer to another prison establishment if he agreed to deny all allegations of torture to himself or any of his fellow detainees in the future.

Victims have also reported that the instances of torture occurred in a specific room, but stopped when public prosecutors visited and that the "parrot's perch" was removed and hidden when not in use. It was also reported that many officers took part in general beatings of prisoners, in particular after a rebellion on 24 September 1999. After that event it is reported that the detective ordered the room used for torture to be cleaned and renovated in case an inquiry found evidence of torture. The Public Prosecutor's Office has opened an investigation into these accusations.

Penitentiary system

Extreme overcrowding caused by pre-trial detainees awaiting sentence and the imposition of long custodial sentences for petty crimes[21] have taken their toll. The penitentiary system can no longer

[21] An Amnesty International delegation was introduced to an elderly lady held in the Butantan women's detention centre in São Paulo who was sentenced for five years' imprisonment for stealing an ice cream. Her sentence was upheld on appeal.

cope with the numbers of prisoners it is holding. Prisoners are packed into dark, airless cells where they are exposed to life-threatening diseases, such as AIDS and tuberculosis, for which they receive little or no medical treatment. They are still not separated according to their offence or their sentence.[22]

Amnesty International has consistently received reports of widespread beatings. Specific requests made by detainees in police holding cells or in prison, especially those for medical assistance, are often met with violence or, in some cases, shots into crowded cells. On a visit to the 2nd police station [2º DP] in the city of São Paulo various holes in the wall which were consistent with bullet holes were pointed out to Amnesty International by members of the prisons ministry [*pastoral carceraria*]. Amnesty International, members of the Congressional Federal Commission of Human Rights as well as the UN Special Rapporteur on Torture found stashes of iron bars and sticks during visits to prisons in areas to which only prison guards had access. These included bars and sticks found in locked cupboards to which guards held the keys, in boxes for fire-fighting equipment, or in areas designated for the guards such as under desks at prison receptions. Amnesty International was invariably informed by prison authorities that these bars and sticks were used for testing the bars of cells or testing walls for hidden escape tunnels.

Photo - Ariel view of riot being quelled
"Police quell a riot in the Carandiru prison complex, in February of this year. This was part of the largest prison uprising in Brazilian history, when a coordinated rebellion broke out in 29 prisons in the state of São Paulo. The riot was allegedly coordinated by criminal gangs active within the Brazilian prison system."
© Reuters

Weekly riots, escapes and almost daily serious assaults indicate that in many prisons the authorities have lost control.[23] Corruption is rife. Staff entrusted with the care and rehabilitation of prisoners do not have the resources to carry out their jobs. Prison guards do not receive professional training in important skills such as methods of restraint and are themselves at risk of violence. Despite the enormous responsibilities of their work, they have no official guidelines to direct them and are not effectively monitored. In conversations with Amnesty International delegations, many prison guards complained of the long hours worked and the lack of medical support they are given to help them in their work. Low pay forces many of them to do other jobs often working as private security guards during their time off.

The crisis in the Brazilian penitentiary system was noted by the UN Committee against Torture in its consideration of the federal government's initial report:

> "The Committee expressed its concern about... the overcrowding, lack of amenities and poor hygiene in prisons, the lack of basic services and of appropriate medical attention in

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[22] See: *Brazil: 'Nobody here sleeps safely' -- Human rights violations against detainees* (AI index: AMR 19/009/1999), 23 June 1999.

[23] In its 1999 report *Brazil: 'Nobody here sleeps safely' -- Human rights violations against detainees* (AI Index: (AMR 19/009/1999) p.6, Amnesty International reported on the authorities' failure to punish the activities of powerful gangs within the prison system such as the *Primeiro Commando da Capital* (PCC), First Command of the Capital. The PPC are alleged to have organized a coordinated riot in 29 prisons in São Paulo in February 2001.

> particular, violence between prisoners and sexual abuses. The Committee is particularly concerned about allegations of ill-treatment and discriminatory treatment, with regard to access to the already limited essential services, of certain groups, notably on the basis of social origin or sexual orientation."[24]

Photo - men protected from pigeon crap by plastic sheets
"Prisoners in the Evaristo de Moraes prison [Presidio], Rio de Janeiro, are forced to cover their open cells with tarpaulin to protect them from pigeon excrement. The building in which they are detained was not designed as a prison and is overrun with rats and pigeons. Members of the Federal Human Rights Commission reported that the prison floods in heavy rain."
© Marilda Campolino.

Furthermore the UN Committee went on to recommend:

> "Urgent measures should be taken to improve conditions of detention in police stations and prisons, and the State party should, moreover, redouble its efforts to remedy prison overcrowding and establish a systematic and independent system to monitor the treatment in practice of persons arrested, detained or imprisoned."[25]

While efforts have been made by federal and certain state authorities, it is clear that there is a long way to go. Although a central federal fund has been set up for investment in prison building programs, Amnesty International has received reports that the federal government has not fully distributed this money to the states as was originally planned. Furthermore, it is clear that prison building programs alone, without the necessary judicial and social reforms to support them, have not made a significant change to the state of the Brazilian prison system.

> In April 1998, members of an Amnesty International delegation were temporarily prohibited from entering the Roger prison in the state of Paraíba. At that time Amnesty International was receiving many reports of widespread torture and ill-treatment in the state's prisons system. Documentation collected by town councillor [*vereadora*] Cozete Barbosa indicated the continued use of torture and ill-treatment in the prison of Serrotão in Campina Grande, Paraíba. Included in the documentation sent by the councillor was the following transcription of a statement made by an anonymous detainee on 24 October 2000:
>
> "I have three hernias. I got them from them stamping on me. This is the way it is, the living dead. The prisoners themselves help put the guys, all wet, into the electric chair and then they give him electric shocks. This is a place which only God can save us from. They rule us, we can't say one peep. Here we're all the same, they don't like the human beings who are imprisoned, we're just dogs to them... They [the guards] keep shooting in the prison. They go out and come back all drunk... Here everything that is bad they [the guards] do it. It's not the prisoners who are bad here, it's they who are bad here. The beds here are all sold.... When you want to go to the infirmary the guards won't let you go. They tell you there is no medicine and people end up dying here. Let me tell you what it's like here, when I arrived I gave them my belongings to look after, but they only gave me back my wedding ring. The watch, the wallet with money, which also had my gold chain in, which was the main thing, it all vanished. This prison is a disgrace."

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[24] Conclusions and recommendations of the Committee against Torture: Brazil 16/05/2001. CAT/C/XXVI/Concl.6/Rev.1.

[25] Conclusions and recommendations of the Committee against Torture: Brazil 16/05/2001. CAT/C/XXVI/Concl.6/Rev.1.

[*Tenho três hérnias, foi da pisa que levei deles. Aqui é o lado que é, o morto vivo. Os presos mesmo bota o caba todo molhado na cadeira elétrica e vai dá choque na pessoa. Aqui é um lugar que so que so Deus pode socorrer nós, nós não pode dizer nem bolacha redonda. Aqui é tudo um bando só, eles não gostam de ser humano que fica preso não, para eles nos somos cachorros mesmo...Eles ficam atirando aqui na cadeia, vai para rua e chega tudo bêbado aqui....Aqui tudo que é ruim eles fazem. Aqui não é os presos que é ruim não, aqui quem é ruim e eles mesmo. As camas aqui são todas vendida... Quando queria ir para enfermaria os guardas é sem querer deixar, diz que não tem remédio a pessoa fica se acabando de morrer aqui. É o seguinte, quando eu cheguei aqui dei meus objetos para guardar e só me devolveram aliança, o relógio, a carteira com dinheiro, que tinha meu cordão de ouro, que era o principal sumiu. Aqui dentro do presidio já um vergonha.*]

Amnesty International has been informed that following the councillor's complaint, investigations have been opened into the conditions in the *Serrotão* jail and a new director has been appointed.

Women in detention

Women make up only 4.32 percent of those held within Brazil's detention system. Although documented reports of sexual violence are rare, Amnesty International has received testimony from women detainees who reported having suffered sexual coercion or sexual humiliation. Most reported cases of violence were of beatings, either as punishment or to extract confessions.

Photo - Woman with her back turned to camera -
"Women's detention centre, Instituto Penal Feminino Desembargador Auri Moura Costa, Ceará. Conditions such as those depicted were found to be commonplace by the Brazilian Federal Human Rights Commission, which toured Brazil's prisons last year."
© Marilda Campolino.

On a recent visit to the Butantan women's prison in the city of São Paulo [*Penitenciaria Feminina do Butantan*], Amnesty International delegates were shocked by the extreme fear shown by the women at their presence. The inmates were reluctant to speak to Amnesty delegates in the presence of guards. When the guards left, some women told the delegates that they would probably be beaten for speaking to them. This information was immediately passed to the head of the State Secretariat for Prisons Administration (SAP).

Those who did speak informed the delegates that both male and female guards often used violence against inmates. A woman held in solitary confinement said that she had been transferred from Tatuapé women's prison, where she had been beaten along with other inmates following a dispute over food. Amnesty International informed the Prisons Ombudsman about this case and were informed that the SAP internal investigations unit had opened an investigation. The woman stated that she had been transferred from several prisons, where she was constantly kept in solitary confinement. A member of the prison ministry informed Amnesty International that the use of repeated transfers allowed inmates to be held in solitary confinement for longer than the legally stipulated maximum of 30 days. Several other inmates recounted incidents of beatings. One detainee said that she had been sexually assaulted by police during her arrest.

During the visit to the Butantan centre and several other women's detention centres, Amnesty International was informed that male guards would often flout rules set up specifically to protect female inmates. In several of these prisons guards reportedly entered solitary confinement cells alone and unsupervised. When male guards were questioned on the presence of unaccompanied male guards by delegates visiting DACAR 1 detention centre for women in São Paulo, they stated that these situations did occur on rare occasions owing to a lack of staff. Furthermore, Amnesty International consistently receives reports that basic health needs of women are not catered for. The system takes little or no account of the specific needs of pregnant women and mothers, or of the

distress and disruption faced by families when women are separated from their children.

At around 2am on 22 April 2001, detainees held at DACAR 1 women's prison in the city of São Paulo were awoken by gunshots. Members of the *Grupo de Operações Especias* (GOE), military police shock troops, entered the detention centre and began shooting randomly and beating the women. The GOE were accompanied by the prison officer responsible for discipline. According to information received by Amnesty International the GOE entered DACAR 1 following protests by inmates.

On 25 April 2001, an independent delegation, including a member of Christian Action for the Abolition of Torture [*Ação dos Cristãos para Abolição da Tortura* (ACAT)], a representative of a federal deputy, a municipal deputy and a state deputy visited DACAR 1. They found the detainees kept in groups of between 10 and 12 to a cell. All the women had been kept awake since the morning of the raid three days earlier.

The detainees informed the delegation of widespread beatings and ill-treatment by prison guards, abuse, humiliation of visitors, and lack of medical assistance and treatment. Since their protest they had had no electricity or water and they only had the clothes they were wearing as all their belongings had reportedly been destroyed by the members of the GOE.

The delegation testified to the fact that most of the 675 prisoners had bruises on their bodies as well as other evidence of ill-treatment, including: gunshot wounds in their feet, legs and shoulders; cuts to their heads; cuts on their fingers reportedly caused by blows with metal bars; and broken teeth. The delegation was also informed that pregnant women had been kicked in their stomachs; that prisoners were suffering from serious tuberculosis crises, could not speak and were coughing blood; that others were suffering from HIV and could not stand. Delegates reported finding a hole in the wall of one the cells reportedly made by a gunshot and empty shells and bullet fragments on the floor. The conditions of the detention centre also shocked delegates, who stated that there was rubbish everywhere and that a horrible stench permeated the whole building.

Some of the prisoners were examined by a doctor, although others did not seek assistance for fear of more reprisals. During their visit delegates found around 15 or 20 prisoners in the medical wing with more serious wounds or failing health.

The delegation reported on some specific cases which they encountered:

- Cell 8: M. do S. S. and C. M. S. both showed signs of having been beaten, including bruising.
- Cell 7, upper floor: K. C. O., who was four months pregnant, reported that she was beaten by the GOE and had bruises on some parts of her body; M. E. L. had bullet fragments in her eyes and although she had received treatment her eyes were still swollen and red.
- Cell 6, Delta wing: D.F. D., who was seven months pregnant, reported that she was beaten by GOE agents with a metal bar on her stomach and other parts of her body.
- Cell 6, upper floor: I. C. G. was reportedly beaten and her teeth were broken. She was also reportedly forced to drink the urine of a male prison officer from a bottle.

The delegation has since passed on the information of their visit to the proper authorities, but according to information received by Amnesty International, no investigation has been opened and the military police and prison officers allegedly involved continue on active duty.

Juvenile detention

Brazil's juvenile detention system is also in crisis. In July 2000, Amnesty International launched its report on the extreme problems faced by the *Fundação do Bem-Estar do Menor* (FEBEM) Foundation for the Well-Being of Minors,[26] in the state of São Paulo, detailing the extent of the

[26] The FEBEM system in São Paulo is part of Brazil's juvenile justice system. The units are run by the State Secretariat for Social Development Assistance *[Secretariado de Assistência de Desenvolvimento Social*]. Offenders under the age of 18 are detained within the system. Amnesty International has documented problems

problem and the failures of the authorities to deal with the crisis.[27] Today problems in the juvenile detention system persist.

Amnesty International recognizes that many of the adolescents held in the country's juvenile detention system have committed serious crimes, that some of them present a danger to society at large and that it is the duty of the authorities to protect the public against crime. However, it is clear that the authorities have failed in their duty to ensure that juvenile offenders' rights are protected as required by law. Brazil has one of the most advanced frameworks of legislation for the protection of children. The Statute of the Child and Adolescent, *[O Estatuto da Criança e do Adolescente*, (ECA)] law 8,069 of 13 July 1990, brings Brazilian legislation into line with international standards.[28] Yet Amnesty International continues to receive reports that the Statute is flouted on a daily basis by those running the juvenile detention system.

Widespread punishment beatings and violent repression of riots and disturbances are regularly reported to Amnesty International. The organization has also received reports of sexual molestation of juvenile detainees. Amnesty International delegates who visited juvenile detention units and met with former offenders were informed that they are often beaten as a form of punishment. Ex-offenders and public prosecutors have informed Amnesty International of the extreme overcrowding in the initial holding unit *[Unidade de Atendimento Inicial* (UAI)] where detainees are held before being placed in a detention centre. According to information given to Amnesty International by members of the public prosecution service, between 300 and 320 juveniles were being held in a unit designed to hold 62. Members of the public prosecution service, ex-offenders and organizations working with juvenile detainees informed Amnesty International that the adolescents were forced to spend all day motionless in a large room watching the television. Should any one of them move, several boys would be beaten. Amnesty International was informed by former inmates that one adolescent suffering from epilepsy was beaten if he had a fit.

Photo - Boys bowed, watching TV
"Adolescent detainees are often forced to sit motionless for hours watching television. Those that move can be beaten for doing so."
© Private.

Adolescents who spoke out of turn were reportedly forced to stand with their head against the wall for several hours. Guards would then reportedly hit boys on the nape of the neck with their elbow. Another form of punishment that the ex-offenders related to delegates involved the juvenile detainee placing one hand on the floor and then being forced to run in circles. When the detainee fell, he would immediately be beaten by the guards. Though it is difficult to substantiate the individual allegations of inmates, these reports are consistent with the pattern of complaints received by the organization and widely reported in the press.

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within large, overcrowded units in many states. Moves to build smaller units in some states, including São Paulo, seem to have produces more favourable conditions. The organization continues to monitor this situation.

[27] See: *Brazil: A waste of lives -- FEBEM juvenile detention centres, São Paulo. A human rights crisis not a public security issue* (AI index: AMR 19/014/2000), July 2000.

[28] UN Convention on the Right of the Child; UN Rules for the Protection of Juveniles Deprived of their Liberty; UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines); UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).

Amnesty International has also recognized that guards [*monitores*] working with juvenile offenders are offered little training, poor remuneration, and little if any medical or social assistance to help them deal with the pressures of a difficult and dangerous job. The organization notes the announcement of a new appointment to the Secretariat for Social Development Assistance as well as the appointment of a new head of the FEBEM system in São Paulo and will continue to monitor the situation closely for promised changes and improvements.

Photo - Boy (eyes blacked out) with marks from beating.
"A juvenile detainee shows clear signs of having been beaten after a rebellion in Franco da Rocha FEBEM unit in São Paulo was suppressed by military police. This photograph was taken by a public prosecutor who visited the prison shortly after the riot was quelled."

Attempts by the São Paulo authorities to deal with the widespread use of violence and excessive force against juvenile detainees held in the FEBEM system are failing. Amnesty International continues to report and campaign against the routine use of torture and ill-treatment by guards [*monitores*] against inmates.

The Franco da Rocha Unit has recently been the focus of many reported incidents of punishment beatings and violent reprisals. Following the visit of the UN Special Rapporteur for Torture to the Franco da Rocha unit in September 2000, a number of juvenile detainees were reportedly beaten for having informed the Rapporteur of the whereabouts of sticks and metal bars used by the guards as weapons. An Amnesty International delegation was informed by the former State Secretary of Social Development Assistance, Edsom Ortega, that the boys had beaten themselves in an attempt to feign acts of torture. This is a common accusation which is levelled at reported victims of torture by guards and by the authorities. Amnesty International was further informed by Edsom Ortega that all boys involved escaped while being transferred to another FEBEM unit and so were unable to testify regarding allegations of torture. Edsom Ortega left the post in April 2001.

Violence is often used by members of the military police when they are called upon to quell disturbances in FEBEM units. On 11 March 2001 members of the military police were sent into Franco da Rocha unit following reports that a riot had broken out. The authorities at the scene claimed the riot broke out following a bungled escape attempt by inmates. However, the families of detainees claimed the riot started in response to torture by warders earlier in the week following a visit by the Federal Congressional Commission on Human Rights. A 21-year-old guard was killed during the escape attempt.

During the riot inmates held around 40 hostages for several hours. Television pictures showed military police firing rubber bullets, sometimes at point blank range, and using tear gas and pepper sprays to regain control of the centre. Guards waiting outside the prison attacked two negotiators, Father Julio Lancelotti and Ariel Castro. The two men are longstanding campaigners for the rights of juvenile detainees and were invited by the authorities to negotiate with the rioters. Members of the Public Prosecutor's Office, also invited to negotiate, were forced to use a police escort to protect them from attacks by the guards. A journalist at the scene reportedly heard one of the centre's directors telling the guards that they would be able to take revenge on the boys after the riot had been quelled.

On 15 March, public prosecutors went to the centre, together with 11 forensic doctors, to examine and interview the 302 male juvenile detainees to see whether these threats had been carried out. The photographs, video footage, doctors' reports and victim testimony they gathered during the visit indicated that the boys had suffered mass beatings at the hands of the guards and police in the immediate aftermath of the riot. Public prosecutors reported that 80 percent of the detainees had physical injuries consistent with torture or ill-treatment.
The problems highlighted at Franco da Rocha unit are widespread throughout São Paulo state's FEBEM system, reflecting the authorities' persistent failure to investigate and punish the torture and ill-treatment of juvenile inmates by police and guards. No FEBEM staff member has been charged under Brazil's 1997 Torture Law. Amnesty International has since been informed by members of the Public Prosecutor's Office of further reported incidents of torture and ill-treatment in Franco da Rocha, in June 2001.

Impunity: the criminal justice system and the Torture Law

The widespread failure of the authorities to bring those responsible for torture to justice has been one of the main factors contributing to the prevalence of torture in Brazilian police stations and prisons today. Amnesty International recognizes the fact that Brazil has included several safeguards to prevent or punish torture in its Constitution and legislation. The inclusion of references to torture in the 1988 Constitution, its subsequent inclusion in the Statute of the Child and Adolescent,[29] and most importantly the approval in April 1997 of the Torture Law, which codifies the crime of torture in the Penal Code, have all marked important steps in the recognition of torture as a crime that must be punished under the criminal justice system.

However, it is apparent that there has been a failure within the criminal justice system in Brazil, from the security forces through to the judicial system and the penitentiary system, to implement that legislation and protect the fundamental rights of criminal suspects. Amnesty International delegates were informed by victims, human rights defenders, lawyers and public prosecutors, that pressure placed on the criminal justice system to process an ever increasing number of criminal suspects, has led to the persistent flouting of legislation designed to safeguard detainees' rights.[30]

Amnesty International is further concerned by the fact that since the introduction of the Torture Law few cases of torture have been prosecuted and even fewer convicted under the Torture Law and only eight cases have reportedly been upheld by the courts [*res judicata*], despite the numerous cases reported by victims or their relatives.[31] Most cases of torture which reach the courts are prosecuted under charges of either abuse of authority [*abuso de autoridade*] or causing bodily harm [*lesão corporal*], which carry far less punitive sentences.

Although federal and some state authorities are beginning to look at ways of ensuring that the law is put into practice, Amnesty International continues to find fundamental flaws at every level of the criminal justice system. In essence the Torture Law is not being used to protect members of the public against elements within the security forces who commit torture and ill-treatment, often on a regular basis.

Photo - Policeman waving gun at naked man
"A military policeman violently subdues a detainee who was caught while trying to escape from 34th police station in Vila Sônia, São Paulo. The incident was witnessed by a news crew who reported hearing a female police chief ordering her subordinates "Let him have it. Escapees have to be beaten." [Desce o pau nele. Fugitivo tem que apanhar.]"

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[29] Note that the reference to torture in the Statute of the Child and Adolescent was revoked with the introduction of the Torture Law in April, 1997.

[30] The UN Special Rapporteur on Torture reported that, "The Special Rapporteur notes that he was given contradictory or inconsistent versions regarding various legal provisions, especially regarding those related to arrest and provisional (pre-trial) detention by his official interlocutors, including from the judiciary. This seems to support allegations by both detainees and representatives of civil society that guarantees established by law are not respected in practice, at least in view of the fact that they are not known by those supposed to implement them.". Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001 E/CN.4/2001/66/Add.2. para 90.

[31] See Appendix for full list of figures.

Summary of the journey of a torture case through the criminal justice system

Torture most often occurs in police stations or prisons. This has made reporting acts of torture very difficult and dangerous for victims. Not only is access to an independent body limited but they continue to be under the control of the very people who have tortured them. When victims of human rights violations, their relatives or human rights defenders manage to report acts of torture, the victims is required to undergo a police medical examination for indications that torture or ill-treatment may have been used in order for the case to progress.

Allegations of torture can be reported to a number of bodies:

- Defence lawyer: the majority of Brazil's prison population today have little access to defence lawyers. Few have the financial means to hire their own lawyer and most states have not set up a public defenders office as required by the Constitution.
- Ombudsman's Office [*ouvidoria*]: the Ombudsman should be an independent man or woman, working within an organization such as the police or prison service, appointed to receive complaints from individuals. The Ombudsman would pass these complaints on to the relevant authorities, normally the internal investigations unit, and is then able to follow the progress of cases until they are sent for prosecution or are archived. Ombudsmen cannot open their own investigation.
- Internal investigation units [*corregedorias*]: these are units that exist within official bodies, such as the police, the prison service, the Public Prosecutor's Office or the judiciary, to investigate complaints and reports of institutional or criminal wrong-doing. They are staffed by members of the same body, which means for example that civil police investigate civil police. Once an investigation is completed, the police internal investigations unit will either: archive it, should they feel the allegations were unsubstantiated; recommend an administrative or disciplinary charge; or undertake both institutional and criminal proceedings against the suspected perpetrator. Should they decide to open criminal proceedings, the case will be passed to a judge with a recommendation as to how it should be prosecuted.
- Judiciary [*judiciario*]: the judiciary also receive reports of torture and ill-treatment, especially during trials when criminal suspects allege that confessions were extracted under torture. In such cases the judge should immediately halt the trial and call on the police and the Public Prosecutor's Office to open an investigation into the allegations. If the judge accepts that criminal proceedings should take place, they pass the case to the Public Prosecutor's Office, and ensure that an investigation into the allegations is opened.

- The Public Prosecutor's Office [*promotoria*]: this Office can receive complaints of torture, open their own investigations into torture cases, or ask the police (normally the internal investigations unit) to open an investigation. In most states, cases will be randomly allocated to a prosecutor who will decide how to take the prosecution forward, if at all. The prosecutor is not compelled to follow the recommendation of the internal investigation unit or the judge. However, should the judge, who should be informed of this decisions, not agree with the prosecutor's decision to either archive the case, or prosecute it on lesser charges, the case can be sent back for re-evaluation.

Where the prosecutor decides to prosecute, the case will be heard by a judge, and can then go to appeal at state and federal levels. The prison system has its own internal investigations unit and sometimes its own Ombudsman, which follow a parallel process. However, according to reports received by Amnesty International, few reported cases ever reach the stage of being properly investigated, let alone prosecuted. Although the UN Special Rapporteur on Torture cited 348 cases of

torture in his recent report, the government was only able to cite 16 convictions under the Torture Law.

The UN Special Rapporteur on Torture cited the case of Sheila Barbosa in his report. Sheila Barbosa was reportedly arrested on 5 February 2000 by about 20 officers of the military police, in Campina Verde, in the state of Minas Gerais. One of them allegedly sexually assaulted her and kicked her. As a result she reportedly sustained injuries to her breasts and leg. Sheila Barbosa stated that she had been beaten in order to extract information on the location of a man with whom she was having a relationship and who was wanted by the police. The police officers then found out that she was the subject of an arrest warrant in the state of Minas Gerais.

She was reportedly informed that a police officer, whom she already knew, would be coming from Sobradinho to talk to her. According to Sheila Barbosa, she had already been ill-treated by this officer when she was arrested previously in a drug case. Sheila Barbosa stated that when this officer arrived she was left alone with him in a small room for nine hours. She went on to state that she was handcuffed, and then sexually assaulted, beaten, and her head was put in a bucket full of water. She reportedly fainted on several occasions and was given some drugs. When she left the room, she was reportedly forced to sign some papers which she did not read.

She was held for 25 days in Campina Verde police station. She said that during that time she tried to commit suicide by taking sleeping pills. On 3 or 7 March, she was transferred by car to Brasilia by the same officer who had reportedly sexually assaulted her. When she arrived at Sobradinho police station, she was handcuffed to a window, and left sitting on a bench for an entire day. On the following day, she was reportedly taken to the bush by the same officer and other police officers. Sheila Barbosa described how gunshots were fired over her head and she was threatened.

She was then taken back to the police station and allowed to contact her family. On the following day her sister arrived at the police station, but Sheila Barbosa had just been transferred to the women's prison in Brasilia. Before her transfer, she had reportedly been examined by a forensic expert to whom she complained about the treatment she had been subjected to in Minas Gerais. She was reportedly not shown the medical certificate.

According to her family, no one had been informed of her arrest and they were told that they could not visit her for the first 30 days of her detention in Campina Verde police station. The Federal Congressional Commission of Human Rights wrote a letter of concern to the Police Ombudsman of Minas Gerais asking for measures to be taken immediately to allow her to see a doctor. The police officer responsible for the sexual assault reportedly threatened other members of her family if she continued to complain. Her family is said to have complained about these incidents to the police to no avail.

Legislation

The Torture Law, while being the most important tool to end the widespread impunity enjoyed by torturers, fails to define the act of torture fully, as set out in Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). The Torture Law defines torture as:

> "Article 1
>
> "I - constraining a person by using violence or serious threat which results in physical or mental suffering; with the purpose of obtaining information, a declaration or confession from the victim or third person; to provoke criminal action or omission; due to racial or religious discrimination;
>
> "II - submitting a person under one's responsibility, power or authority to intensive physical or mental suffering, by his/her use of violence or serious threat, as a way of enforcing personal punishment or as a preventive measure."

Under this definition the use of "violence or serious threat" is necessary. However, Article 1 of the UN Convention against Torture refers to "any act", not necessarily violent, designed to inflict "severe pain or suffering, whether physical or mental". Furthermore while the Torture Law states that torture may occur as a result of "racial or religious discrimination", the UN Convention against Torture refers to "discrimination of any kind", allowing for a much wider definition of discrimination, including, for example, discrimination on grounds of gender or for sexual, social or cultural reasons.

It is also important to note that the Torture Law does not limit itself to acts of torture perpetrated by state officials.[32] However, it has been noted that cases of prosecution of private citizens under the Torture Law may have affected the figures of the total number of prosecutions under the law.

Also of concern is the widespread failure by professionals in the criminal justice system to implement the Torture Law. During various research visits to Brazil, Amnesty International found a distinct ignorance of the details of the Torture Law, or reluctance to implement it, among members of police internal investigation units as well as public prosecutors and even members of the judiciary. Delegates were invariably informed that the law did not define torture well enough, or that the incident had to include some formal act of torture with the intention of obtaining a confession or information – which clearly ignores Article 1, part II of the Law -- or that the act should have included some form of "intense suffering" [*sofrimento intenso*]. Amnesty International has also been informed that the law was excessively punitive, that the stigma of the word "torture" was seen as too damaging to the police for it to be used, or that since victims were criminal suspects, their word could not be trusted.

In a meeting with the head of the internal investigations unit of São Paulo's military police Amnesty International was informed that beatings performed by military police at the time of arrest were not covered by the Torture Law and so should not be prosecuted as torture. When Amnesty International delegates cited Article 1, paragraph II of the Torture Law to show how the Law clearly does cover these situations, they were told, ['*O senhor esta fazendo uma intepretação muito literal desta lei*'] "Your interpretation of this law is far too literal."

Photo - Crying man placed in Police van
"A criminal suspect is detained by members of the military police. Detainees, especially those from marginalised groups, are at risk of beatings in the street or in police vans at the point of their arrest."
© Imagens da Terra.

It was also found that ignorance of the law, or reluctance to implement it, was further compounded by institutional negligence or collusion at all stages of the criminal justice system. Each agency, including the police internal investigation units, Public Prosecutors' Offices, and the judiciary, said that another agency in the system was responsible. While many of those involved acknowledged the endemic use of torture, they did not see this as directly impacting on their work; prosecutors have regularly informed Amnesty International of the failure of police internal investigation units to properly investigate incidents of torture, but have rarely commented on their right to instigate investigations or to oversee police investigations to ensure prosecution.

Access to a lawyer

Basic rights, such as the right to access to family, a lawyer and a doctor are regularly flouted. The recent report by the UN Special Rapporteur on Torture states:

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[32] See Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001. E/CN.4/2001/66/Add.2. para 151.

> "During his visits to police lock-ups, the Special Rapporteur found that most of the suspects believed that their families had not been informed of their arrest and whereabouts and that in practice, persons arrested were very rarely assisted by a lawyer. On the contrary, it was reported that, in the few instances in which a detainee had a private lawyer, the latter had been prevented from seeing his/her clients until after the completion of the preliminary processing." [33]

Detainees from deprived sectors of society have little, if any, access to legal representation, although it is a requirement under the Constitution that the state should provide it. Very few states have set up public defenders offices [*defensoria pública*], as required under the Constitution[34] as well as under state law. Nevertheless, no matter what structures formally exist, the provision of legal defence is clearly inadequate. Where states do provide public defenders, such as Rio de Janeiro, these are understaffed and underfunded.

In some prisons in Rio de Janeiro, prison staff have reportedly been acting as legal advisors for the inmates, providing them with simple information on the status of their cases, in the absence of any other form of legal assistance. In those states that have not set up public defenders offices, other systems are in place. For example, in São Paulo, the *Promotoria de Assistência Judiciaria* (PAJ), Public Legal-Aid Service, is a unit within the *[Procuradoria Geral do Estado*, (PGE)] the state Office of the Advocate General. However, the Office of the Advocate General is responsible for representing the legal interests of the state, creating a possible conflict of interest, particularly in areas of compensation for torture victims, in as much as lawyers from the same agency act on behalf of both the defence and prosecution in cases of torture. However, lawyers of the PAJ denied that this was ever a problem in reality, as they acted in compensation cases and had never allowed their position to compromise their work.

Members of the PAJ, have told Amnesty International that given the lack of staff working in the PAJ and the large number of cases which were constantly passed to their office, lawyers find very little time to meet with their clients and discuss their cases. Normally the first meeting will take place minutes before facing the judge. Cases are sometimes only discussed with a client in a court toilet because no meeting rooms are available and lawyers of the PAJ rarely if ever have the opportunity to take time out from court to meet with clients in police stations or prisons. In most states where a Public Defender's Office exists, lawyers are paid less than public prosecutors, thus making it a much less attractive career prospect.[35]

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[33] Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001 E/CN.4/2001/66/Add.2. para 95.

[34] The Public Defender's Office is an institution essential to the State's jurisdictional function and responsible for legal advice to and defence of the needy at all instances, set forth in Article 5 LXXIV, of the Consitution of 1988.

[35] The UN Special Rapporteur on Torture's report stated that, "The Special Rapporteur was also informed by public defenders in Rio de Janeiro that there used to be a special Public Defender's Office *(Nucléo de Defensa de la Cidadanià*) providing assistance in police stations to those arrested in flagrante. The service operated 24 hours a day. Unfortunately, it had been closed down because no public defenders were willing to work for this service given the low wages and the fact that they would receive a higher salary as prosecutors. Practitioners and NGOs also indicated that public defenders rarely dedicate adequate time to the representation of their non-paying defendants. They were often reported to meet their clients during the first or even second hearings and not necessarily to speak in defence of their clients during trials." Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001 E/CN.4/2001/66/Add.2. para

Members of the PAJ stated that it was normal for most of their clients to allege that they had been tortured to extract "confessions". Lawyers informed Amnesty International that they had managed to have some "confessions" withdrawn as evidence. However, none of the lawyers had apparently made any further complaints or initiated investigations into allegations of torture. On top of this, legal aid in São Paulo is also provided by a body linked to the state Secretariat for Prison Administration. This body, called the Foundation for the Support of Imprisoned Workers [*Fundação de Amparo ao Trabalhador Preso* (FUNAP)], which only works within the prison system, is also massively under-resourced and understaffed.

Protection of victims and witnesses

Although there are a number of bodies to which reports of torture can be made, a large gap exists between the incidence of torture and the number of cases reported. Victims and witnesses of torture continue to be reluctant to come forward either out of fear of reprisal, ignorance of their rights, or a lack of faith in the criminal justice system. Those victims or relatives of victims who do manage to report acts of torture invariably place themselves at greater risk of further violence.

On 28 July 2000, detainees at the public jail in the town of Sorocaba, São Paulo state, a pre-trial detention centre staffed by members of São Paulo's civil police, were reportedly forced to walk in their underpants past two rows of policemen and prison guards [a punishment known as *corredor polonês*] while being punched, kicked and beaten with sticks, broom handles and electricity cables. The incident took place after knives were found hidden in some prison cells during an inspection. Sixteen prisoners suffered injuries. Relatives of the victims reported the incident to the local Public Prosecutor's Office where prosecutors took the unusual step of gathering evidence and bringing charges against the prison guards in one of the few indictments of its kind under the Torture Law.

Amnesty International has been informed that the alleged victims remained in the same detention centre after the investigation was opened, with no provisions made for their protection. However civil police officers, temporarily transferred from the public jail following accusations of involvement in the incident, were later transferred back, on the grounds that the jail had become understaffed and vulnerable to escapes. Public prosecutors working on the case informed Amnesty International that following this a number of victims called to withdraw earlier testimony. Civil police officers, interrogated before the presiding judge in this case, have alleged that the victims had beaten themselves up [*se-autoflagelaram*]. This is a common defence in torture cases.

Following an international campaign on behalf of the victims, the São Paulo authorities undertook to transfer them from the jail, to ensure their safety. Amnesty International has since been informed by the public prosecutors that the victims have been transferred to several different jails around the state. It is now incumbent on the presiding judge to request the testimony of each of the victims by "rogatory letter" [*carta precatoria*], which must be heard before a local judge in the district in which the detainee is held. Amnesty International has been informed by public prosecutors that this will further delay the prosecution, hindering the chances of them bringing the alleged perpetrators to trial.

Amnesty International was also informed that public prosecutors working on this case received death threats, ordering them to stop working on the case.. These threats reportedly stopped following an Urgent Action appeal from Amnesty International members.

Photo - man holds up bag of oil

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"A prisoner in the DEPATRI police station displays a bag of oil. Police officers and prison guards sometimes spread such oil on the floor to prevent victims from getting up or protecting themselves during beatings."
© Marilda Campolino.

Victims and witnesses of torture who do manage report abuses are increasingly at risk of reprisal, especially since there are no official measures in place to ensure their safety. After having reported an incident, victims and witnesses of torture often remain under the control of alleged perpetrators, or their colleagues. Victims and witnesses alike may often be transferred within the police or prison system, with no information of their whereabouts being passed to either family members or legal representatives, thus making it extremely difficult to contact them. Many victims retract statements or drop complaints, after returning to their detention centre, following threats or further torture or ill-treatment.

The government, in collaboration with non-governmental organizations, has set up a witness protection scheme, PROVITA. Amnesty International has welcomed this scheme as an important tool for ensuring the protection of witnesses in human rights trials. However, the scheme only functions in a few states and suffers from past underfunding. It also does not cover the majority of torture victims because it excludes all people with criminal records or those in preventive detention awaiting trial.[36]

Amnesty International was informed by the federal government that another scheme exists with the specific aim of protecting those who do have criminal records. This scheme, *[o Programa Federal de Assistência a Vítimas e a Testemunhas Ameaçadas,]* the Federal Program for Assistance to Victims and Witnesses under Threat, has the specific aim of offering protection to criminal suspects who testify in criminal prosecutions brought by the state. As such the scheme does not offer protection to torture victims, often people who do not have information to pass to the state. During a meeting with the head of the federal police's human rights department, an Amnesty International delegation was informed that the scheme did not and had never included victims of torture. What is more, it appeared that the federal police were not aware that torture victims could be accepted on this scheme.

Forensic and medical examinations

Forensic and medical examinations of victims are vital to support prosecutions of perpetrators of torture or ill-treatment. Access to doctors or medical staff, already severely limited in Brazil's detention system, is even less accessible to victims of torture. Amnesty International has received many reports that victims of torture or ill-treatment are often held incommunicado for long periods until their injuries have disappeared and doctors or family members cannot see the effects of the torture they have suffered.

Amnesty International regularly receives reports from detainees, their relatives or human rights defenders that victims are held incommunicado for long periods until all visible signs of torture are gone. Those victims who do gain access to a doctor receive scant if any treatment and cursory

[36] "Protection shall not be extended to individuals whose personality or conduct is incompatible with the restrictions on behaviour imposed by the programme, to convicts who are serving the sentence and to defendants or accused individuals under preventive detention in any of its modalities. Said exclusion shall not impede public security entities from eventually executing measures to preserve the physical integrity of those individuals." Law nº 9,807, 13 July 1999.

examinations which are unable to determine whether or not torture or ill-treatment has taken place. Doctors examining possible torture victims rarely have the training or the information to allow them to conclude whether or not injuries are consistent with acts of torture. Moreover, in most states, forensic doctors working for the *Instituto Médico Legal* (IML), Forensic Medical Unit, are either directly linked to the police, or are autonomous but still under the control of the State Secretariat for Public Security, thus limiting their impartiality. IMLs suffer from severe understaffing and under-resourcing, with little or no training in how to deal with torture cases, or the international standards regulating the investigation of torture cases, such as the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[37]

Photo - Man holding baby.
"Wander Cosme Carvalheiro and his son."
© Private.

Wander Cosme Carvalheiro was arrested, in São Paulo by civil police officers, on the night of 1 February 2001. The police had held his parents and his wife at gunpoint to find out his whereabouts. He was taken to DEPATRI, one of the main police stations in the city of São Paulo. Wander was then reportedly blindfolded, gagged and hung on the "parrot's perch" [*pau de arara*] while the policemen drank whisky. He alleged that his hands and feet were tied with electrical wires, and he was beaten on the soles of his feet with truncheons. He was allegedly kicked and punched, then covered in a wet cloth and given electric shocks all over his body, including his genitals. He also reports that an object was inserted in his anus. He stated that this abuse lasted for several hours. Following his torture, Wander Cosme was made to sign a confession which implicated him in a robbery in which a police officer had been shot. He was reportedly not allowed to read the confession before signing it.

Wander Cosme was then taken for examination to the Forensic Medical Unit (IML) of the largest hospital in São Paulo. He was accompanied on both occasions by his alleged torturers. He was reportedly never left alone with the doctor, nor did he even take his clothes off during the examination. Not only did the doctors fail to examine the detainee properly, but one of the doctors was reported to have asked him, "Did you get beaten up then, you crook?" [*Você apanhou ladrão?*] As he was still in the presence of his torturers Wander Cosme stated that he had not been beaten. The doctor allegedly replied, "Well go back and get your beating" [*Então volta para apanhar*]. On 2 February 2001, Wander Cosme's family, having received no information of his whereabouts, hired a lawyer. When he enquired at the DEPATRI as to the details of the charges against Wander Cosme, the lawyer was reportedly informed by the police that they did not have the key to the filing cabinet and could not access his file. Wander Cosme was held incommunicado until 7 February 2001 as the family and the lawyer were unable to gain access to the details of his case. The family hired a second lawyer, who reportedly informed them that on receipt of R$1,000 (approximately US$400), he could gain access to the police files through police contacts. The family did not have the money.

From the DEPATRI, Wander Cosme was transferred to the 77th police station. His cell mates there, A. F., E. A. Q. and A. S. testified to his injuries. His sister was allowed to visit him and told NGO representatives that he had bruises all over his body and wounds on his feet and mouth. Wander Cosme was then transferred to the provisional detention centre, Belém II, where on 4 March 2001 he was finally able to meet his family and his lawyer in private. There he informed them of the torture he had suffered. The family and the lawyer subsequently lodged a complaint about the incident with the civil police internal investigations unit and the Public Prosecutor's Office. The civil police internal investigations unit has reportedly opened an investigation,

[37] The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (also known as the Istanbul Protocol) which was submitted to the UN by an ad hoc coalition of professional and human rights bodies in August 1999.

although complaints made to the Public Prosecutor's Office by Wander Cosme's family have allegedly not been followed up. According to information received by Amnesty International, no police have been charged so far and those accused continue to be on active duty. The doctor who examined Wander Cosme is under investigation by the *[Conselho Regional de Medicina*] Regional Medical Council for possible negligence in this case.

Wander Cosme continues to suffer psychological problems as a result of the extensive torture he was subjected to. At the time of writing, Wander Cosme continues to be held in a pre-trial detention centre waiting for his case to come to court.

Amnesty International has received many reports of negligence or complicity on the part of doctors examining torture victims. Examinations regularly take place in the presence of the police officer or guard accused of having inflicted the injuries, making it impossible for the victims to provide a full account of the manner in which they received their injuries.[38]

Amnesty International has also received various complaints from members of the IML, public prosecutors, members of the judiciary as well as human rights defenders, that standardized forms for medical examinations of torture victims limit the examiner's ability to detail their findings and conclusions.[39] Forms which offer direct and limiting questions and checklists to fill out tend to deter findings that might indicate the use of torture, deprive the doctors of the freedom to fully express professional opinions, and contravene the Manual on the Effective Investigation and Documentation of Torture (Istanbul Protocol) of August 1999.[40]

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[38] The UN Special Rapporteur on torture stated the following on the IMLs in his report:
"According to NGOs and prosecutors, *delegados* or police officers accompanying a torture victim to an IML would often dictate to the doctor the content of his/her report. Furthermore, a number of detainees whom the Special Rapporteur met said that for fear of reprisals they did not complain about the treatment they had received when they were examined at an IML. Many complained of being brought to the IML by their torturers and allegedly intimidated and threatened during transport. A number of them are believed to have invented stories in order to respond to queries by doctors in order not to implicate any law enforcement officials. This is also said to be the case when the alleged torture occurred in a prison since in that case victims are accompanied by military police officers who are also involved in the surveillance of prisons in a number of states. The State Secretary for Social Defence of Pernambuco denied the allegations, often heard by the Special Rapporteur, that law enforcement officials were usually present in the IML examining room. It is also alleged that IML forensic experts only record external and visible injuries. Furthermore, medical reports by independent medical practitioners are said not to have the same probative value in court as IML testimony. While not in a position to assess the extent to which the above allegations reveal a generalized problem, it is evident that the problem is real enough in respect of a substantial number of IML officers. Moreover, as long as these officers remain under the same governmental authority as the police, doubts as to the reliability of their findings can only persist."
Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001. E/CN.4/2001/66/Add.2. paras 147 & 148.

[39] The specific question on the IML standardized form [*laudo de exame de corpo delito*] reads:
"[*a lesão*]...*foi produzida por meio de veneno, fogo, explosivo, asfixia, ou tortura, ou por outro meio insidioso ou cruel*? (*Resposta especificada*)"
"[the injury]... was produced by means of poisoning, fire, explosive, asphyxiation, or torture, or by other insidious or cruel method? (Specific response)"
Amnesty International has been informed that medical experts are reluctant to indicate injuries consistent with acts of torture, given the very specific nature of the question as stated.

[40] The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) states that:

Furthermore, Amnesty International has been informed by members of the IML and public prosecutors that medical examiners regularly called on to describe the extent of a victim's injuries are reluctant to define them as anything other than "light", [*lesão corporal leve*] since definitions of aggravated or extremely aggravated injuries [*lesão corporal grave ou gravíssima*] are excessively restrictive under the Penal Code.[41] Not only has this created a tendency to characterize torture injuries as being less serious than they often are, but it is also used as justification for the non-implementation of the Torture Law. This is because prosecutors and judges often insist that a medical examination must indicate either aggravated or extremely aggravated physical injuries to initiate a prosecution for torture. In fact this is not required under the Torture Law,[42] and would in effect mean that in cases where no evident signs of torture took place, such as in the case of mock executions or asphyxiation, no criminal case could be mounted against those responsible.[43]

"6b) The medical expert should promptly prepare an accurate written report. The report should include at least the following:
i. Circumstances of the interview: name of the subject and names and affiliations of those present at the examination; the exact time and date, location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house, etc.); and the circumstances of the subject at the time of the examination (e.g. nature of any restraints on arrival or during
the examination, presence of security forces during the examination demeanor of those accompanying the prisoner, threatening statements to the examiner, etc.); and any other relevant factor;
ii. History: A detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;
iii. Physical and psychological examination: A record of all physical and psychological findings on clinical examination including, appropriate diagnostic tests and, where possible, colour photographs of all injuries;
iv. Opinion: An interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and/or further examination should also be given;
v. Authorship: The report should clearly identify those carrying out the examination and should be signed."

[41] *Lesão corporal de natureza grave,*
§ 1E Se resulta: I-incapacidade para as ocupações habituais, por mais de 30 (trinta) dias; Vide art. 168, § 2E, do Código de Processo Penal. II-perigo de vida; III-debilidade permanece de membro, sentido ou função; IV-aceleração de parto:*
Pena-reclusão, de 1 (um) a 5 (cinco) anos.
§ 2E Se resulta: I-incapacidade permanente para o trabalho; II-enfermidade incurável; III-perda ou inutilização de membro, sentido ou função; IV-deformidade permanente; V-aborto: Pena-reclusão, de 2 (dois) a 8 (oito) anos.
[Aggravated injuries:
§ 1st Results if: I - incapacity to perform habitual tasks, for more than 30 (thirty) days; see art. 168 § 2nd, of the Procedural Penal Code. II - danger to life; III - permanent debilitation of a member, sense or function; IV - inducement of birth;
Sentence to detention, 1(one) to 5 (five) years.
§ 2nd Results if: I - permanent incapacity to work; II -incurable disease; III - loss or permanent incapacitation of member, sense or function; IV - permanent deformation; V- induces abortion: Sentence to detention, 2 (two) to 8 (eight) years.]

[42] II, § 3º If the crime results in aggravated or extremely aggravated physical injuries, the punishment shall consist of confinement for 4 (four) to 10 (ten) years... Law nº 9,455, of 7 April 1997, the Torture law [*Se resulta lesão corporal de natureza grave ou gravíssima, a pena é de reclusão de 4 (quatro) a 10 (dez) anos...*].

[43] This is also a contravention of the very definition of torture under article 1 of the UN Convention against Torture which states that torture can be either physical or mental, and thus not dependant on the severity of any

Photo - Woman in dark glasses
"Lucia Paiva de Almeida has been unable to leave her home in the suburbs of Rio de Janeiro, for four years. Lucia and her husband were arrested without warrant in 1996 by members of the Civil Police. Lucia was physically and sexually tortured in a small room in the police station as police tried to force her to implicate her husband in a number of thefts. She was then put out on to the street in the early hours of the morning. No one has been charged in connection with her torture. Lucia suffers from panic attacks and palpitations and has been receiving treatment from an AI funded project."

Oversight bodies

The creation of oversight bodies, within state institutions has been an important step towards broadening the external monitoring of the criminal justice system in Brazil. A few states have set up an Ombudsman's Office for the police and in some cases for the prison system as well. These work within the institution which they oversee and regulations governing their remits and the process of their appointment vary dramatically between states, greatly affecting their level of autonomy and independence. Amnesty International recognizes that some Ombudsman's Offices are engaged in important work, but believes that their role has to be broadened and that they must receive political support and adequate funding if they are to play an increasingly important role in denouncing acts of torture and ill-treatment and effectively monitoring police practices.

Police Ombudsman's Offices receive complaints and track the cases through the internal investigation units until a case is either archived, dealt with internally or passed on to the judicial system. They also compile data on abuses committed by the police and lobby the authorities on patterns of violations or individual cases. However, a Police Ombudsman does not have the power to investigate cases brought before them, neither do they have the power to pass cases directly on to the Public Prosecutor's Office or to follow cases once they have been sent to the Public Prosecutor's Office. Yet the Brazilian government in its report to the Committee against Torture states:

> "The Police Internal Affairs Division [sic] receives and investigates accusations of irregularities committed by civil and military police agents."[44]

São Paulo's former Police Ombudsman informed Amnesty International that his Office receivied around 45 complaints of torture a month. In 1999 the Ombudsman sent 134 cases of torture to be investigated by the police internal investigations unit. However, in 2000 Amnesty International was informed by the Public Prosecutor's Office that only 15 cases were being prosecuted under the Torture Law in the state.

Furthermore, many ombudsmen and women are subjected to threats against their office or their person while carrying out their work, as do human rights defenders working for the rights of detainees.

> In November 1997 Hildebrando Freitas, was reportedly beaten by members of the civil police in Belém,

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physical injuries: "... the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted..." Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 10 December 1994. Part 1, Article 1, para1.

[44] *As ouvidorias da polícia recebem, investigam e apuram denúnicas de irregularidades cometidas por agentes policiais civis e militares.* Initial report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submitted by the Government of Brazil (CAT/C/9/Add.16) 26 May 2000 para148.

capital of Pará state, who allegedly had links with one of his business rivals. One night, two police chiefs [*delegados*] and 10 police officers entered Hildebrando's bar, and threatened him if he did not close it. An argument ensued and he was arrested, on charges of "showing disrespect for authority" [*desacato à autoridade*].[45] Hildebrando Freitas was reportedly beaten in the police car as he was being taken to the police station.

When he arrived at the police station, he was reportedly beaten again on the genitals and then taken to a cell, where he was threatened with sexual assault -- "you are going to become a woman now" [*você vai virar menina agora*]. His family managed to arrange his release and immediately took him to a doctor for an independent medical examination. To this day Hildebrando Freitas still suffers from health problems resulting from his beatings. The Public Prosecutor's Office did not prosecute the case and it was later archived on the grounds that there was not enough evidence to identify the perpetrators.

Following pressure from human rights NGOs the case was subsequently reopened, but was again closed by the State Attorney General [*Procurador Geral de Justiça do Estado*]. However, the *Sociedade Paraense de Direitos Humanos* (SPDDH), a Belém based NGO, protested and put forward the testimony of three witnesses confirming Hildebrando Freitas' version of events. On 14 June 2000, two police chiefs [*delegados*] and four other police investigators were charged under the Torture Law. All of the accused continue to be on active duty, except for one of the police chiefs who has retired on a full pension. None of the accused have been disciplined by the internal investigations unit. The case is presently with the Public Prosecutor's Office and the original charges against Hildebrando Freitas are being contested in court.

The Police Ombudswoman [*ouvidora*], Rosa Marga Roth, tried to reopen the police investigation. She also tried to further publicize the case, giving several interviews to the local press. One of the police chiefs involved took out five separate law suits against her in an obvious attempt at intimidation. Furthermore, he attempted to instigate her dismissal. All the cases brought against her were rejected by a judge. However, the police chief has appealed on two of the suits, one for defamation, the other for allegedly interfering with a witness.

The practice of intimidating Ombudsmen or human rights defenders by pursuing law suits is common practice in Brazil. Other attempts have been made to close down Ombudsman's Offices or to reduce their already limited powers.

Internal investigation units

Internal investigation units exist for military and civil police, prison and detention centre guards, as well as for Public Prosecutors' Offices and the judiciary. The Brazilian government has itself acknowledged the fundamental problem with internal investigation units, stating in its report to the UN Committee against Torture:

> "Many of these crimes [of torture] remain unpunished, as a result of a strong feeling of *esprit de corps* among the police forces to investigate and punish officials involved with the practice of torture. The predominant *esprit de corps* that remains in the police force allows for impunity of those crimes." [46]

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[45] Note the UN Special Rapporteur on Torture comments on abuse of authority in his recent report on Brazil, see: Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001. E/CN.4/2001/66/Add.2. para 169 (p).

[46] "*Vários desses crimes ficam impunes, em decorrência de um forte sentimento de corporativismo nas forças policiais para apurar e punir os agentes envolvidos com a prática de tortura.* ***O dominante sentimento***

This frequently results in torture investigations being covered up, or full and impartial investigations into allegations of torture or ill-treatment not being initiated.

It is important to note that internal investigation units are made up of members from the same body that is being investigated. Many members of the police internal investigations unit will eventually return to normal duties within the police, sometimes alongside those they may have been investigating. The head of the police internal investigations department is a high-ranking member of the police hierarchy. Investigations are often carried out by members of the very barracks or police station where the alleged perpetrator is stationed. In its consideration of Brazil's report of 1996, the UN Human Rights Committee stated:

> "The Committee strongly recommends that all complaints of misconduct by members of security forces be investigated by an independent body and not by the security forces themselves. Formal mechanisms for receipt and investigation of such complaints should be established in all areas of the country and their existence publicized. Such mechanisms must make provision for effective protection of complainants and witnesses against intimidation and reprisals." [47]

On 11 September 2000, two *[lotação]* bus drivers, Marcos Silva Feitosa and Carlos Alberto Lima Ferreira, were detained by members of the military police who accused them of involvement in an armed robbery. The police officers reportedly produced a gun which they claimed to have found on one of the two men. The police officers then entered a nearby house where they reportedly arrested a third man, Juscelino Silveira Pinto, accusing him of complicity in the crime. Following their detention the men reported that the police took them down a small side street where they beat them with their truncheons and their guns.

The men were then taken to DEPATRI, one of São Paulo's largest police stations, where they protested that they had been beaten during arrest. However, the men stated that the police chief [*delegado*] would not accept their complaint. Although the victim of the robbery was unable to identify them as the men who robbed him, the men were then informed by the police that as they had previous criminal records they could be detained anyway for illegal possession of a firearm. On 24 October, over one month later, the men were brought before a judge, reportedly for the first time, where they described the alleged beatings they received at the time of their arrest. However, the judge reportedly took no steps to initiate an investigation into their allegations, although the men state that there were several witnesses to the events surrounding their detention.

An Amnesty International delegation reported the circumstances of the alleged beatings to the internal investigations department of the São Paulo military police. The delegation was informed that it would be sent to the very same police barracks where the alleged perpetrators were based. It was incumbent on that police barracks to initiate the internal investigation, and only when the internal investigations unit deemed that inquiry insufficient would they open a further investigation. Amnesty International has been informed that following an initial inquiry the case was closed, though no further details were given

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corporativista que permanece nas forças policiais deixam muitos desses crimes sem punição exemplar, o que certamente dificulta que novos atos como esses ocorram novamente." [Bold in original text] Initial report on the implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submitted by the Government of Brazil (CAT/C/9/Add.16) 26 May 2000 para 82.

[47] Concluding Observations of the Human Rights Committee: Brazil. 16/09/96. CCPR/C/79/Add.66; A/51/40, para 327.

Police officers under investigation are rarely if ever suspended from active duty,[48] often continuing to work in the same area or police station where the incident occurred, and where victims or witnesses are detained. Transfers are also used as a means of avoiding suspension, either by transferring the alleged torturer to office duties, or, as increasingly occurs, by transferring them to remote police stations where their inaccessibility can hamper the investigation. In a meeting with the head of the internal investigations unit of São Paulo's civil police, an Amnesty International delegation was informed that the transferral of police accused of torture to police stations in the suburbs was a common practice. Amnesty International has received information that as a result of such transfers many violent policemen will reportedly be located in rural police stations or small communities which can create situations where some police stations house several alleged torturers, further entrenching torture and impunity.

> Fifteen-year-old José (not his real name) left his home in Xinguara, Pará state, on the afternoon of 7 June 1999. His mother, Iraci Oliveira dos Santos, became concerned when he did not return that night and searched for him in local hospitals before going to the police station where she was told he had been detained.
>
> José told his mother that he had been followed by the civil police when he left home, and had become scared and fallen off his motorbike. He told her that the police stopped, aimed their guns at him, kicked him and threatened to kill him. They drove him to an unknown location where they beat and threatened him again. Finally he said that he was taken to the police station, accused of possessing a small amount of cannabis and a handgun. In the evening, the police took José into the corridor of the police station and beat him once again. Other boys held in the police station said that the beating was so severe they thought he would be killed. JosJ was reportedly forced to "confess" to previous arrests which had not taken place. Since his release JosJ has suffered from psychological problems and has been admitted to a psychiatric institution on several occasions for periods of one or two months. He continues to receive medical treatment today. Amnesty International has been informed that although the state government was instructed to pay for José's medical care as well transport for him and his mother to Belém where he receives the treatment, this has been slow in coming. José's mother has often been forced to borrow money in order to make the trip, a situation which has been extremely humiliating for her.
>
> Amnesty International has received reports that the police chief [*delegado*] of the local police station, the clerk [*escrivão*], and one of the policemen directly involved in torturing the boy had all been transferred to Xinguara from a nearby town following previous accusations of torture. As a result of an international campaign on behalf of José, a special prosecutor was assigned to investigate the case. However, Amnesty International has been concerned to hear that since then the police chief and both policemen accused of torturing the boy have been transferred to other police stations, where they reportedly remain on active duty.
>
> Amnesty International has recently been informed that following widespread international pressure, charges have been brought under the Torture Law against all the accused in this case.

Public prosecutors

Public prosecutors work within state Public Prosecutor's Offices, under the State Attorney General [*Procurador Geral da Justiça*]. Within the Public Prosecutor's Office they have guaranteed independence, under both the Constitution and the Public Prosecution Offices' Organic Law, to determine which line of prosecution each individual case should take. This can only be challenged by the presiding judge, who can send a case back to the State Attorney General for re-evaluation. While the autonomy of the prosecution service is vitally important to ensure the independence of the judicial

[48] During a recent meeting with the State Secretary for Public Security of São Paulo, Amnesty International delegates were informed that the work of the São Paulo police would come to a halt if all officers under investigation for alleged acts of torture or ill-treatment were suspended.

process, this should not act as a cloak to protect prosecutors from implementing the Torture Law. External control is needed to ensure that prosecutors are carrying out their duties appropriately.

Prosecutors can take on a case at two stages: either during the police investigation, when they are called in to oversee it, or after the police investigation has been presented to the judge and is then passed on to the Public Prosecutor's Office where it is generally allocated on a rotational basis. The public prosecution service has a key role to play in ensuring the implementation of the Torture Law. Under-resourced prosecutors faced with large workloads can sometimes take many months, even years, to decide whether a case will be prosecuted or not, in some cases even allowing the statute of limitations on a case to expire.

> The setting up of special prosecutor's offices to deal specifically with human and related cases has been an important step made by Public Prosecutor's Offices in certain states. States such as Minas Gerais and Goiás have been working with specially trained and dedicated prosecutors who automatically receive all the cases relating to human rights issues. This helps ensure that prosecutors assessing torture cases are increasingly prepared to initiate prosecution under the Torture Law, if appropriate, as well as identifying patterns of abuse. São Paulo and Pará states have also made commitments to create special human rights prosecutors. Amnesty International welcomes this move, and will continue to urge that the example is followed in all states.

Those cases of torture that are referred to the Public Prosecutor's Office, as opposed to the special human rights prosecutors, are rarely, if ever, prosecuted under the Torture Law, either because prosecutors are uncertain of the details of the law, or because they are intrinsically sympathetic with those public officials accused of perpetrating the crime. Most torture cases sent to trial are prosecuted on charges of abuse of authority [*abuso de autoridade*] or causing bodily harm [*lesão corporal*]. Rarely do prosecutors avail themselves of their power to oversee police investigations into torture accusations, or undertake investigations on their own initiative to ensure sufficient evidence for conviction. This can be a result of their own negligence or, as in some reported cases, because prosecutors are obstructed by members of the police.[49]

> The public prosecutors of the children and adolescents' department of the Public Prosecutor's Office in the state of São Paulo have the responsibility for monitoring the application of the [*Estatuto da Criança e do*

[49] The UN Special Rapporteur on Torture noted, in his recent report on Brazil:
"The Public Prosecutor's Office is responsible for overseeing prosecutions of all defendants. Article 129 of the Constitution provides that it is exclusively in charge, inter alia, with instituting public criminal action 'II. to ensure effective respect by the government branches and by services of public relevance for the rights ensured under this Constitution, taking the action required to guarantee such rights ... VII. to exercise external control over police activities [and] VIII. to request investigation procedures and the institution of police investigations, indicating the legal grounds of its procedural acts.' It must be noted that this has been interpreted as meaning that the Public Prosecutor's Office has the power to proceed with independent criminal investigations even in cases where no police inquiry has been opened or where a police inquiry is still pending or has been filed, and that it can indict law enforcement officials involved in criminal activities, such as torture. The police inquiry is therefore not an obligatory procedure in a case in which a prosecutor possesses enough prima facie evidence (indícios). Furthermore, no legal provision precludes the competence of this Office from gathering prima facie evidence through other means than a police inquiry, such as, for example, a civil or administrative inquiry. According to the prosecutors whom the Special Rapporteur met, this interpretation is the subject of one of the most serious current institutional struggles, as the police strongly resist this approach." Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001 E/CN.4/2001/66/Add.2. para 137.

Adolescente (ECA)] Statute of the Child and Adolescent of 1990 which codifies Brazilian legislation on the rights of children, bringing it into line with international standards.[50]

Since its introduction, the public prosecutors of this department have monitored the implementation of the Statute in São Paulo's notorious juvenile detention system, FEBEM. During this time they have systematically visited juvenile detention units where they have regularly spoken to the authorities, staff and detainees. They have ensured that on some of their regular visits they have been accompanied by members of the judiciary, forensic medical experts, as well as child psychologists. The prosecutors have consistently documented their visits, photographing and filming examples of torture and ill-treatment. Furthermore they have prosecuted the authorities of the FEBEM, on a number of occasions, for failure to apply the standards required under the Statute. Amnesty International has reported with concern how their legal attempts to force the authorities to ensure that the minimum standards required by Brazilian law are respected for juvenile detainees, though upheld by the juvenile courts, have been regularly overruled by the state appeals court.

Amnesty International has also noted with concern that the many detailed and documented reports of torture incidents collected by the prosecutors have not been taken up for criminal prosecution under the Torture Law by the criminal department of the Public Prosecutor's Office.

The judiciary

The failure to build up solid jurisprudence has consistently undermined attempts to push for full implementation of the Torture Law. Judges appear to be unprepared and untrained in questions of torture, especially regarding the levels of proof required for the prosecution of cases. When it comes to the question of proving an act of torture, the UN Special Rapporteur on Torture has recommended:

> "Where allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture or similar ill-treatment."[51]

Photo - Broken chair and tyre
An interrogation room in the DEPATRI police station, São Paulo. Members of the Federal Human Rights Commission, were informed by detainees that torture sessions took place here.
© Marilda Campolino.

While the Procedural Penal Code stipulates that confessions cannot be submitted as sole evidence in a case,[52] judges regularly accept the flimsiest of evidence to sustain a confession. A basic principle

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[50] UN Convention on the Right of the Child; UN Rules for the Protection of Juveniles Deprived of their Liberty; UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines); UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).

[51] Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001 E/CN.4/2001/66/Add.2. para 167 (i).

[52] *Código de Processo Penal, Capítuo IV- art 197: "O valor da confissão se aferirá pelos critérios adotados para os outros elementos de prova, e para a sua apreciação o juiz deverá confrontá-la com as demais provas do processo, verificando se entre ela e estas existe compatibilidade ou concordância."*
Procedural Penal Code, Chapt IV - art. 197: "The value of a confession will be dependent on the other criteria adopted for the other elements of evidence, and for its appraisal the judge must consider it with all other evidence included

of a fair judicial process is that evidence collected as a result of torture should clearly be inadmissible.

S.W.P., a 10-year-old boy, had a long record of truancy and petty crime. His grandmother had reportedly abandoned him, unable to cope, and he had escaped many times from the state children's home, where it was reported the other children had threatened to do him harm. On 20 August 1998, he was sentenced to spend several days in the cells of a police station by the local judge in São Francisco do Sul in the state of Santa Catarina. According to reports the local police chief [*delegado*] refused to hold the boy in the police station, claiming that it would contravene the Statute of the Child and Adolescent.[53] However, his protests were overruled by the judge. During his stay in the police station, the boy was detained with adult offenders. The boy was then reportedly tied up by other detainees, and led around the police station like a dog. He was also reportedly sexually abused by a number of detainees during his stay in the police station.

A formal complaint was made to the internal investigations department of the Santa Catarina Judiciary Office [*corregedoria Geral da Justiça de Santa Catarina*], initially by the police chief responsible for the police station and later by representatives of the UN Children's Fund (UNICEF). However, following an inquiry, the internal investigations department ruled that, given the boy's previous record and the fact that he had escaped several times from the state children's home, the judge had taken the proper course of action and the case was subsequently archived. The internal investigations ruling stated:

"...I insist, that while the Executive, at both levels, does not offer the minimum material conditions necessary for the required solution to the situation that they themselves have created (due to the lack of education, social services, housing etc.) that the attitude of the judge was totally acceptable. There was no other solution."

[...insisto, porquanto o Poder Executivo, nos dois níveis, não oferece as condições materiais mínimas para o enfrentamento da situação que eles próprios criaram (por deficiências de educação, do sistema de assistência social, de moradia, etc.) perfeitamente tolerável a atitude do Magistrado. Não havia outra solução. (Juiz Corregedor, 8 de dezembro 1998)]

Continued pressure by UNICEF to reopen the investigation against the judge has been hindered, especially since the boy has reportedly gone missing.

Judges consistently fail to initiate investigations into allegations of torture made before them in court by a victim or their legal representative. Rarely do judges challenge a public prosecutor's decision to archive a case or press lesser charges in torture related cases.

Judges routinely accept, without question, the testimony of a police officer in preference to that of a criminal suspect, as rulings such as the following indicate:

"To fail to take into consideration the impeccable past of an authority figure, as well as his laudable professional record, to give credence to the words of witnesses in

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in the trial, examining whether there exists compatibility or coherence between one and the other."

[53] *ART. 123 - A internação deverá ser cumprida em entidade exclusiva para adolescentes, em local distinto daquele destinado ao abrigo, obedecida rigorosa separação por critérios de idade, compleição física e gravidade da infração.* (Estatuto da Criança e do Adolescente - 13 junho 1990)
Art. 123. - Internment should be fulfilled at an entity exclusively reserved for adolescents, in a location that is separate from that reserved for purposes of shelter, with rigorous separation on the basis of criteria of age, physical build and temperament and the gravity of the infractions.

respect to this alleged torture which apparently took place in the back of an office, would result in the inverting of the weight of the evidence and in the very negation of procedural law." [54]

[*Desconsiderar o passado impecável de uma autoridade, bem como o seu elogiável perfil profissional, par dar credibilidade ao que disseram testemunhas a respeito da apologia `a tortura que teria sido feita no recesso de um gabinete, importaria na inversão do valor das provas e na própria negação do direito processual. (TJRJ – AC 9.376/1999 – (Ac. 04111999) - 2ª C.Cív. – Rel. Des. Sérgio Cavalieri Filho – J. 10.08.1999)*]

"The evidence provided by the statements of the policemen responsible for arresting the agent is valid, as the judge cannot, on principle, doubt those whom the very State charges with the responsibility of ensuring the security of the population." [55]
[*É válida a prova produzida pelos depoimentos dos policiais que participaram da prisão do agente, não podendo o julgador suspeitar, por princípio, daqueles que o próprio Estado encarrega de zelar pela segurança da população. (TJRJ – Acr 180/99 – (Reg. 200.599) – 1ª C.Crim. – Rel. p/o Ac. Des Ricardo Bustamente – j 23.03.1999)*]

The UN Special Rapporteur on Torture, notes that:

"According to public prosecutors who had dealt with torture cases, after hearing testimonies from both the alleged victim and law enforcement officials, judges would often act *in dubio pro reo*, and accept the latter's statement to the effect that they 'had not beaten a detainee, but only slapped him/her'. They would then plead guilty to a lesser charge. According to NGOs, many judges consider the punishment applicable for the crime of torture as too severe."[56]

The federal government

Brazil is a federal state whose constituent states still retain considerable powers. For example, criminal law is a matter of federal legislation.[57] However, its observance and administration is totally controlled by the state authorities. While federal crimes, such as drug trafficking, are dealt with at a federal level, by members of the federal police and the federal judiciary, the majority of crimes, including human rights crimes, are dealt with at state level. Each state is responsible for its own

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[54] Extracts from specific cases citing judges reasoning for a judicial decision. These quotes were cited by Dr Luciano Mariz Maia to illustrate the instinctive bias of judges; *Tortura no Brasil: a banalidade do mal*, Dr Luciano Mariz Maia, speech presented at National Seminar on the effectiveness of the Torture Law, December 2000, STJ, Brasilia.
TJRJ – AC 9.376/1999 – (Ac. 04111999) - 2ª C.Cív. – Rel. Des. Sérgio Cavalieri Filho – J. 10.08.1999)

[55] Dr Luciano Mariz Maia, *Tortura no Brasil: a banalidade do mal*, speech presented at National Seminar on the effectiveness of the Torture Law, December 2000, STJ, Brasilia. p. 23. *TJRJ – Acr 180/99 – (Reg. 200.599) – 1ª C.Crim. – Rel. p/o Ac. Des Ricardo Bustamente – j 23.03.1999)*

[56] Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001 E/CN.4/2001/66/Add.2. para 154.

[57] Penal Code (Decree-Law No. 2,848, of 7 December 1940), the Code of Criminal Procedure (Decree-Law No. 3,689 of 30 October 1941) and the Law on the Execution of Sentences (Decree-Law No. 7,210 of 11 July 1984).

military and civil police forces, as well as the state Public Prosecutor's Office and the state judiciary, with access to the federal courts as a final court of appeal. Furthermore each state has different institutions, so the legal process may vary from state to state.

Under international law the federal government is responsible for ensuring the full implementation of the Torture Law and the punishment of members of the security forces who perpetrate human rights violations.[58] In the light of these obligations, Amnesty International has repeatedly called for the prosecution of all serious human rights violations to be the responsibility of the federal criminal justice system as opposed to the criminal justice systems of individual states. At present a bill for this " federalization" of human rights crimes is in its final stage in Congress where its progress has, however, been stalled.

While Amnesty International recognizes that the initiative to "federalize" certain human rights crimes is an important tool in the struggle to end impunity for serious human rights violations, the organization has a number of concerns regarding the criteria for the selection of crimes normally under state jurisdiction which will be brought under federal jurisdiction, and about what extra resources will be provided to federal bodies to respond to any extra demands on their services. Although the federal police and prosecution services have relatively good records when it comes to the prosecution of human rights crimes, they sorely lack the resources to deal with what could amount to substantial increases in the demands on their services.

Following the recent recommendations made by both the UN Special Rapporteur on Torture and the UN Committee against Torture, the federal government has announced a number of new proposals to tackle the problem of torture and impunity. Some of these proposals should already have been put into practice by the time this report is released. Amnesty International welcomes the government's serious consideration of the recommendations made by the two UN bodies. However, given the gap that has existed for many years between the government's intentions and the human rights reality in the country, Amnesty International takes this opportunity to note some of its queries and concerns relating to these proposals, most of which have already been transmitted to the Brazilian government.

On receipt of the UN Special Rapporteur on Torture's report the government announced the following proposals:

- The launch of a publicity campaign against torture in the media, including radio and television, in July 2001;
- The setting up of a telephone hot-line [*disque denuncia*] run by members of NGOs which will receive anonymous complaints and forward them to the relevant authorities, NGOs will also use the information received to set up a database on the use of torture and ill-treatment in Brazil;
- The setting up of federal and state commissions to oversee the prosecution of torture cases. These bodies will monitor the progress of complaints of torture throughout Brazil and draw up

[58] Article 28 of the American Convention on Human Rights states *inter alia*: '"Where a State Party is constituted as a Federal State, the national government of such State Party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction. With respect to the provisions over whose subject matter the constituent units of the federal State have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfilment of the Convention."

suggested procedures to lend more efficacy to the mechanisms for the prevention and suppression of such crimes;
- The strengthening of the existing [*Commisão dos Direitos da Pessoa Humana* (CDDPH)] Council for the Defence of Human Rights, which is a federal body made up of politicians, government, and members of civil society;
- The setting up and strengthening of Police Ombudsman's Offices throughout the country and of an Ombudsman's Office for the federal police;
- The setting up of training schemes for the police to ensure greater professionalism, with the collaboration of the UN as well as foreign governments;
- The setting up of training schemes for the judiciary and the Public Prosecutor's Office to prepare them for dealing with torture victims and to give advice on how to secure interpretations of the law that will bring it into line with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 1), and ensure that the Public Prosecutor's Office fulfils its role to oversee police investigations;
- The funding of various projects to improve prison conditions, including the setting up of a monitoring scheme in São Paulo;
- The setting up of a special council to oversee the treatment of children under the Statute of the Child and Adolescent, as well as measures to follow the progress of detainees through the penitentiary system;
- The relaunching of the national human rights plan, since the first plan has largely not been implemented;
- The creation of public defenders offices in all states;
- Increasing protection of victims of torture held in detention, possibly by transferring them to other detention facilities.

While Amnesty International welcomes the sentiment behind these proposals some of them appear to lack the necessary elements that will ensure a full and effective prosecution of the perpetrators of torture and lack the essential measures needed to secure the end of such abuses. If proposals such as these are not supported by more fundamental reforms to ensure the prosecution of perpetrators of torture, there is a danger that they may be seen as little more than publicity exercises.

Amnesty International urges the Brazilian government to take into account the following concerns:

- Telephone hot-line: it will be necessary to make abundantly clear what steps will be taken to ensure that all reports of torture cases received are fully investigated and prosecutions opened where appropriate. According to information received by Amnesty International previous such telephone hot-lines have not resulted in increases in investigations and prosecutions in cases of torture or ill-treatment. Also of concern is the level of confidentiality and security such a hot-line could genuinely offer a complainant.
- Federal and state commissions on torture: once again the government has failed to detail what powers such bodies will have. Amnesty International is concerned that should such a body not be given full powers to investigate and follow cases, its remit will not substantially contribute to the prosecution of perpetrators of torture.
- Role of Ombudsman's Offices and internal investigation units: Amnesty International welcomes efforts to strengthen the role of the Ombudsman's Offices if they are empowered to follow cases of torture or ill-treatment through to their conclusion. However, Amnesty International is

concerned by the suggestion that steps will be taken to "strengthen police internal enquiries" [*corregedorias*],[59] especially in light of the UN Committee against Torture's concern at:

> "...the competence of the police to conduct inquiries following reports of crimes of torture committed by members of police forces, without effective control in practice by the Public Prosecutor's Office, with the result that immediate and impartial inquiries are prevented, which contributes to the impunity enjoyed by the perpetrators of these acts."[60]

The federal government is also responsible for ensuring the full implementation of the law in all states of the republic. The federal government has signed a number of international treaties including the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the American Convention on Human Rights, which explicitly hold them responsible for the observance of the commitments therein. It is imperative that the federal government develop mechanisms that allow them to comply with these treaties. A vital first step towards developing these mechanisms is the monitoring and collation of public information on the practice of torture and ill-treatment and on the implementation of the Torture Law. It is thus the responsibility of the federal government to monitor the success of the implementation of reforms, such as the introduction of the Torture Law, by collating regular and detailed statistics on the success of the application of reforms at state level, focusing on the areas in the system which are not working properly as well as ensuring that those that do are used as examples of good practice from which other states may learn.

Amnesty International will continue to monitor the use of torture and cruel inhuman and degrading treatment in Brazil, with special attention to the implementation of the Torture Law, and the success of the proposed reforms promised by the federal government.

Conclusions

Since Brazil's transition to a democratic government in 1985, Amnesty International has repeatedly acknowledged initiatives, programs and new legislation brought in by the authorities to improve the country's human rights record. However, while Amnesty International continues to support the intentions behind many of these proposals, it has consistently found a lack of political will to ensure their implementation. This in turn has created a large gap between the government's discourse on human rights and the reality of the situation in the country. As this report shows, institutional structures at present favour the continued impunity of those in the security forces who use torture and ill-treatment.

It is clear that if Brazil is to eradicate torture, the federal government must accept its responsibility, and fundamentally reform the criminal justice system and rigorously enforce those safeguards already in place, targeting all those elements and stages within the system which contribute to the

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[59] Answer 10 in the Brazilian government's reply to the UN Special Rapporteur on Torture, Sir Nigel Rodley's report on Brazil (E/CN.4/2001/164, 27 April 2001).

[60] Conclusions and recommendations of the UN Committee against torture - Brazil:16/05/2001. CAT/C/XXVI/Concl.6/Rev.1. 16 May 2001.

impunity of those responsible for human rights violations. It is not sufficient for the federal government to hold individual state governments responsible for the situation. The federal government must ensure that all of the country's 26 states and the Federal District [*Distrito Federal*] duly and effectively implement all of the reforms necessary. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 2.1) states that the federal government is bound by the responsibility to enforce all legislation on torture in all the country's states. This includes ensuring that all legislative, administrative and judicial structures are effective and are implemented. With this in mind Amnesty International will be following with care the results of the government's new campaign against torture, and the implementation of new legislation which is presently before Congress.

Recommendations

Police

- There should be a complete reform of recruitment, training, refresher training, funding, professionalization: training in investigation techniques, crime scene handling, basic forensic knowledge and use of force. The police should be given the resources and training needed to be able to do their job without resorting to human rights violations in order to get "results".

- Training programs for members of police forces should fully incorporate instruction in international standards such as the UN Code of Conduct for Law Enforcement Officials, the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the UN Standard Minimum Rules for the Treatment of Prisoners.

- It is essential that the authorities are unequivocal in their statements to public officials and law enforcement officials that human rights violations such as torture will not be tolerated under any circumstances and those committing them will be punished according to the law. Any law enforcement official against whom there exists credible evidence of involvement in human rights violations should be investigated and, if found guilty, punished.

- Although jurisdiction for prosecuting intentional homicide by on-duty military police officers has been transferred to civilian courts under law 9299/96, a wide range of human right violations carried out by military police, including torture, continue to fall under military jurisdiction. Human rights violations committed by military police should not only be investigated independently, they should also be prosecuted in civilian courts.

- Law enforcement personnel suspected of or charged with serious human rights abuses, such as torture, should be suspended from active duty pending the outcome of investigations. This can be done without prejudice to their defence rights. Suspension should amount to the temporary removal from active service and not transfer to an alternative post, as is often the case at present.

- Early warning systems should be established to identify and deal with officers possibly involved in human rights violations, including clear reporting systems and detailed records of every officer's conduct. These records should be available to an independent oversight body.

- All interrogations of criminal suspects should take place in the presence of a lawyer. A record of the interview must always be kept and where possible, tape recordings or video recordings of the interview should be made. The defence council of any detainee should have access to these records.

- The physical integrity of particularly vulnerable people (for example, the young, those who have a mental disability or suffer from mental illness) should be subject to specific safeguards.

- There should be a clear and complete separation between the authorities responsible for holding people in detention and those responsible for the interrogation of detainees. This would allow an agency not involved in interrogation to supervise the welfare and physical security of detainees.

- Pre-trial detainees and convicted prisoners should not be held in the custody of the Civil Police, but rather in pre-trial detention centres or penitentiaries, respectively, under the responsibility of the penal authorities.

Complaints

- Any victim of human rights violations, including detainees, should have access to an effective complaints procedure to allow all victims, including arrested or detained people, to register complaints about human rights violations without fear of reprisals. All such complaints should be officially passed to a special human rights unit in the Public Prosecutor's Office for investigation.

- Victims' families, legal representatives or human rights defenders working with those held in detention should also be able to register complaints directly with this specialist human rights unit, without any risk of threat or reprisal.

- Victims, relatives of victims, legal representatives or human rights defenders who make complaints must be kept informed of the progress of the complaint and have access to any enquiry or procedure opened as a result of it.

Protection of victims, witnesses, and human rights defenders

- All detainees must have guaranteed access to a family member and a legal representative throughout their detention.

- Steps should be taken to ensure the adequate protection of victims and witness of torture who are not eligible under any of the present witness protection schemes which exist in Brazil today.

- While Amnesty International recognizes the important step taken with the setting up of the PROVITA scheme in certain states, it has received many reports that it lacked funding in the past. For this reason steps should be taken to ensure the adequate protection of lawyers, prosecutors, officials and witnesses, and relatives of victims, involved in cases of human rights violations. The authorities must take steps to ensure that all states have in place a fully funded and effective witness protection scheme along the lines of PROVITA.

- The authorities should ensure that human rights defenders, including people working on behalf of those detained in prisons, jails, police stations and juvenile detention centres, receive the full protection of the law so that they can carry out their vital work. The authorities should also make public statements of support for the work of human rights defenders in order to demonstrate that threats, intimidation or attacks against them will not be tolerated in any shape or form.

Forensic and medical examinations

- Detainees should be examined by a doctor upon arrival at the place of detention, whenever necessary during the period of interrogation, on a frequent and regular basis through detention and imprisonment and immediately before transfer or release.

- The medical examination of alleged victims of torture or ill-treatment should only be conducted in the presence of independent witnesses: a doctor designated by the family; the legal representative of the victim; or a professional designated by an independent medical association.

- Forensic doctors should be provided with the training and resources necessary for the diagnosis of all forms of torture and other human rights violations.

- An independent well-resourced forensic service should be established that is linked to the courts rather than the security forces.

- Forensic medical reports, especially the specific forms used during an examination, should be restructured to allow examiners the space to provide a full, detailed and impartial report, in compliance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Legal representation

- In order to prevent "disappearances", torture and ill-treatment in police custody, all detainees should have access to relatives and a lawyer promptly after arrest and regularly throughout their detention or imprisonment.

- All state authorities should take steps to establish an adequately resourced public defenders office [*defensoria pública*] to provide legal representation for all criminal suspects.

- Public defenders must be fully trained in dealing with torture victims and in how to lodge a complaint of torture. Regular evaluations should take place to ensure that public defenders understand their duties and carry them out accordingly, especially when dealing with victims of torture.

Oversight bodies

- All states should set up a fully independent Police Ombudsman's Office. The mandate, resources and independence of those Police Ombudsman's Offices already active should be strengthened in order to guarantee the credibility of the institution in monitoring allegations of

individual abuses and patterns of abuses by police. The Ombudsman should be mandated to fully monitor all cases, through their whole passage in the criminal justice system, and to transmit complaints of human rights abuses directly to the Public Prosecutor's Office. Furthermore, where necessary, Ombudsman's Offices should be given the authority to request any and all official information to allow for the full and effective implementation of his duties.

- Steps should be taken to ensure that Ombudsmen carry out their work independently, without fear of reprisals, so as to allow them to perform their duties fully and effectively.

- Greater support and resources should be provided for all civil and independent oversight bodies, such as community councils, which include representatives of civil society, ensuring they have unrestricted access to places of detention and the power to collect evidence of official wrong-doing.

Internal investigation units

- Amnesty International calls for all human rights violations to be promptly, thoroughly and impartially investigated by a body other than that directly implicated. In the light of problems caused by the persistent failings in police enquiries, investigation procedures into lethal shootings, torture and ill- treatment, and other serious human rights abuses need to be urgently reviewed and reformed.

- Amnesty International recognizes the importance of the internal investigation units, with regard to internal disciplinary issues and establishing clear codes of conduct within the guidelines. However the internal investigation unit should play no role in the criminal investigation of allegations of abuses or criminal acts by state agents. In cases where state agents are accused of serious human rights violations the Public Prosecutor's Office or an investigating judge should have responsibility for conducting the investigation.

Public Prosecutor's Office

- The Public Prosecutor's Office or an investigating judge should be responsible for conducting investigations into allegations of abuses or criminal acts by state officials.

- Furthermore the Public Prosecutor's Office must ensure that in all cases of suspected torture, full and effective investigations are mounted, and that prosecutors are properly equipped and trained to perform such investigations. Moreover these investigations, where appropriate, should lead to prosecutions under the Torture Law.

- A specialist human rights unit should be established in the every state Public Prosecutor's Office to concentrate expertise and good practice with regard to the gathering of evidence in such investigations, collating information on patterns of abuses by state agents and mounting effective prosecutions of human rights violations under the appropriate law.

- The Public Prosecutor's Office should be open to external audit in order to ensure that prosecutors are aware of their duties and are carrying them out properly. Information relating to complaints filed, cases investigated, prosecutions mounted and convictions should also be collated in order to effectively monitor the functioning of the Public Prosecutor's

Office. All prosecutors should receive specific training in prosecuting human rights crimes.

The judiciary

- Steps should be taken to ensure that the judiciary has appropriate resources and training to order in-depth and effective investigations into human rights violations and the evaluation of the results.

- Internal court audits should be also be implemented to ensure that judiciary officials understand their duties and carry them out accordingly. Specific training should be provided to judges in relation to the exclusion of evidence elicited by torture or ill-treatment, action to be taken on receipt of a complaint of torture or ill-treatment, and the evidential elements necessary in the prosecution of alleged acts of torture or ill-treatment, as well as ensuring the reversal of the burden of proof in cases where there are allegations that a confession was extracted under torture.

- Judges must ensure that confessions or any evidence obtained as a result of torture are not admissible as evidence in criminal proceedings against the victim. Judges must immediately stop trials where allegations of torture are made, pending a separate investigation into all the allegations, overseen by a different prosecutor.

- The introduction of alternative sentencing legislation in December 1998 provides judges with a wider range of non-custodial measures. It is essential then when dealing with cases of minor or petty crime, judges should, when available, seek to issue alternative sentencing, avoiding incarceration wherever possible and appropriate.

Prisons, jails and police stations

- It is essential that the authorities review arrangements for the treatment and custody of all prisoners, to ensure that they are treated humanely and in conformity with Brazilian law as well as the UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, the UN Standard Minimum Rules for the Treatment of Prisoners, and Article 10 of the International Covenant on Civil and Political Rights (ICCPR), which states: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

- Different categories of prisoners should be separated within the detention system, depending on whether they are awaiting trial or sentenced, whether they are serving under an open/ semi-open, or closed regime, as well as by seriousness of offence.

- The authorities must ensure that all female prisoners are held separately from male prisoners. Male prison staff should be accompanied at all times by female officers inside women’s prisons. Adequate pre-natal and post-natal care should be available to pregnant women prisoners. Practices that discriminate against women prisoners should be abolished.

- All detention units for children and adolescents must immediately be brought into line with the standards recommended under the Statute of the Child and Adolescent and international standards. Furthermore children in detention should be separated by age and the seriousness

of the offence.

- Adequate funding for other areas, such as staff recruitment, salary, training and monitoring, and the establishment and enforcement of new procedures and codes of conduct for those working within the penal system, are essential if the persistent abuses observed at present, are not to be repeated in the new institutions.

- A dedicated, effective, independent, transparent, and adequately resourced federal and state prisons inspectorate, made up of judges, prosecutors, doctors, lawyers and other experts, should be created to carry out both routine and unannounced inspection visits of prisons and police stations.

Federal government

- In order to further combat impunity for human rights violations, it is necessary to monitor the progress of official investigations and prosecutions in relation to such human rights violations. Thus in addition to providing statistical information on the number of homicides, torture cases and other cases of human rights violations by agents of the state, Amnesty International believes that the federal government should provide information on the number and progress of investigations into such violations and into judicial proceedings.

- It is incumbent upon the federal government to ensure the compliance, throughout the country, with national and international law, as well as international conventions and treaties. This means that the federal government must use all means at its disposal to monitor and implement legislation for the protection of human rights.

- The federal government and Congress should use their legislative, financial and other powers to encourage, and if necessary require, states to comply fully with international standards for the protection of human rights.

- The federal government should call for a independent commission of inquiry into torture to be held at the soonest possible opportunity, so that a full investigation can be made into the use of torture and ill-treatment in all of the country.

Appendix

COMMISSION ON HUMAN RIGHTS

E/CN.4/2001
/66/Add.2

Fifty-seventh session
Agenda item 11 (a)

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF TORTURE AND DETENTION

Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43

Addendum

Visit to Brazil

III. Conclusions and recommendations

157. Brazil is a large complex South American country. It covers 8,531,500 square kilometres and has a population of 160 million persons. Most settlements are in the eastern part of the country adjacent or close to the Atlantic Ocean. The hinterland is more sparsely settled. The population is a mixture of Portuguese and other European immigrants, Blacks (mainly descended from the slave population of colonial times), mulattos and indigenous people.

158. It is the world's tenth largest economy, with 17.4 per cent of the population living below the poverty line. It is a federal State with strong powers vested in the individual states. While the criminal law is federal, the administration of justice in respect of crimes committed at the state level is wholly within the authority of the states, which are responsible for the organization and resourcing of the judiciary, the Public Prosecutor's Office, the police and so on. Moreover, strong centres of political-party power at the state level can severely limit the influence of the federal Government, especially in terms of the composition of Congress, which is also vulnerable to pressure from the law enforcement apparatus, of which prominent Senators and Deputies are former members. A period of military government from 1964 to 1985, characterized by torture, enforced disappearances and extra-legal executions, still looms over the present democratic dispensation. There is freedom of political association and speech, including a vigorous press and an increasingly active civil society. But despite the existence of Law 9140 of 1995 which granted reparations to families of some victims of the military regime, there has been no full official accounting for the crimes committed by that regime.

159. As the Special Rapporteur has found in several countries, there is widespread public disquiet about the level of ordinary criminality, breeding a pervasive sense of public insecurity leading, in turn, to demands for draconian official reaction, sometimes without legal restraint. There has been a practice of some politicians and political parties to exploit this fear for electoral purposes.

160. However, the Special Rapporteur has the impression that those presently in power at the federal level, as well as at the level of the states he visited, were willing to adopt a discourse that affirmed principles of the rule of law and human rights. Some, often showing courageous political leadership, were clearly committed to improving the corrupt and violent law enforcement machines they had inherited from previous administrations (see para. 61). Others seemed less disposed to translate the rhetoric into action (see para. 52).

161. Brazilian legislation has many positive aspects. The 1997 Torture Law has characterized torture as a serious crime, albeit in terms which limit the notion of mental torture by comparison with the definition contained in article 1 of

the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984. After 24 hours' detention in a police station, that is, once a judicial warrant for temporary or provisional detention has been issued, a person should be transferred to a provisional (pre-trial) or remand detention facility. Free legal assistance should be available to those who do not have their own. Testimony obtained by torture should be inadmissible against the victims. A forensic medical service should be able to detect many cases of torture. Various categories of persons should be separated from each other (e.g. pre-trial detainees from convicted prisoners). Conditions of detention and treatment of detainees should be humane and, for juveniles at least, an educational experience. The problem is that they are widely ignored, an often complaisant judiciary upholding states' departure from the requirements on various grounds, be they unavailability of resources to implement the obligations or by placing unsustainable burdens on complainants to prove their complaints. The Torture Law is virtually ignored, prosecutors and judges preferring to use the traditional, inadequate, notions of abuse of authority and causing bodily harm. The forensic medical service, under the authority of the police, does not have the independence to inspire confidence in its findings.

162. Free legal assistance, especially at the stage of initial deprivation of liberty, is illusory for most of the 85 per cent of those in that condition who need it. This is because of the limited number of public defenders. Moreover, in many states public defenders (São Paulo is a notable exception) are paid so poorly in comparison with prosecutors that their level of motivation, commitment and influence are severely wanting, as are their training and experience. Thus vulnerable, the suspects are at the mercy of police, prosecutors and judges many of whom are only too glad to allow charges to be brought and sustained under legislation allowing little scope for removal from custody for long periods of often petty criminals, numbers of whom have been coerced into confessing to having committed more serious crimes than they may have actually committed, if they have committed any at all.

163. Similarly, there is a wide range of positive initiatives and institutions designed to ensure law-abiding law enforcement and protect those in the hands of the authorities. These include access by the Catholic Prison Ministry, community councils, state human rights councils, police and prison ombudsmen and internal affairs departments. Again, the problem is reliance on primarily volunteer work in respect of the first three (in many places community councils and state human rights councils either do not exist or do not function), or they are starved of the resources (as with some *ouvidorias*) and sometimes of the genuine independence necessary to do effective work (as with some *corregedoria*s).

164. The exorbitant powers of heads of police station (*delegados*) in respect of the carrying out of investigations make most external investigation overly dependent on their goodwill and cooperation. Also, the split police system makes external monitoring of the military police, the body most frequently responsible for arrests in flagrante delicto, very difficult to monitor.

165. The training and professionalism of police and other personnel responsible for custody are often inadequate, sometimes to the point of non-existence. A culture of brutality and, often, corruption is widespread. The few rich suspects, if deprived of liberty at all or even convicted, can purchase tolerable or at least less intolerable treatment and conditions of detention than the many who are poor and usually black or mulatto or, in rural areas, indigenous.

166. Relatively few allegations arose in respect of the federal level or the Federal District. Torture and similar ill-treatment are meted out on a widespread and systematic[11] basis in most of the parts of the country visited by the Special Rapporteur and, as far as indirect testimonies presented to the Special Rapporteur from reliable sources suggest, in most other parts of the country. It is found at all phases of detention: arrest, preliminary detention, other provisional detention, and in penitentiaries and institutions for juvenile offenders. It does not happen to all or everywhere; mainly it happens to

[1] As far as the term "systematic" is concerned, the Special Rapporteur is guided by the definition used by the Committee against Torture: "The Committee considers that torture is practised systematically when it is apparent that torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice" (A/48/44/Add.1, para. 39).

poor, black common criminals involved in petty crimes or small-scale drug distribution. And it happens in the police stations and custodial institutions through which these types of offender pass. The purposes range from obtaining of information and confessions to the lubrication of systems of financial extortion. The consistency of the accounts received, the fact that most detainees still bore visible marks consistent with their testimonies and that the Special Rapporteur was able to discover in almost all police stations instruments of torture as described by alleged victims such as iron and wooden bars make it difficult to refute the numerous torture allegations brought to his attention. On two occasions (see above paras. 35 (São Paulo) and 84 (Pará)), thanks to the information given by detainees themselves, the Special Rapporteur was able to discover large wooden sticks on which had been engraved by law enforcement officials laconic comments leaving no doubt as to their use.

167. In addition, conditions of detention in many places are, as candidly advertised by the authorities themselves, subhuman. The worst conditions the Special Rapporteur encountered tended to be in police cells, where people were kept for more than the 24-hour legally prescribed period. The Special Rapporteur feels constrained to note the intolerable assault on the senses he encountered in many of the places of detention, especially police lock-ups he visited. The problem was not mitigated by the fact that the authorities were often aware and warned him of the conditions he would discover. He could only sympathize with the common statement he heard from those herded inside, to the effect that “they treat us like animals and they expect us to behave like human beings when we get out”.

168. Brazil is an open society with a vigorous press. These conclusions will come as no surprise to many in the country who are concerned to know the reality. The recommendations that follow are mainly a compilation of best practice to be found in the country itself, albeit in too sporadic and isolated measure. Indeed, several would merely require the authorities to obey existing Brazilian law.

169. In the light of the foregoing, the Special Rapporteur has formulated the following recommendations:

(a) First and foremost, the top federal and state political leaders need to declare unambiguously that they will not tolerate torture or other ill-treatment by public officials, especially military and civil police, prison personnel and personnel of juvenile institutions. They need to take vigorous measures to make such declarations credible and make clear that the culture of impunity must end. In addition to giving effect to the subsequent recommendations, these measures should include unannounced visits by them to police stations, pre-trial detention facilities and penitentiaries known for the prevalence of such treatment. In particular, they should hold those in charge of places of detention at the time abuses are perpetrated personally responsible for the abuses. Such responsibility should include, but not be limited to, the practice obtaining in some localities, according to which the occurrence of abuses during their period of authority will adversely affect promotion prospects and indeed should involve removal from office, which removal should not consist merely of transfer to another institution;

(b) The abuse by the police of the power of arrest without judicial order in flagrante delicto cases to arrest any suspect should be brought to an immediate end;

(c) Those legitimately arrested in flagrante delicto should not be held in police stations beyond the 24-hour period required for obtaining a judicial warrant of temporary detention. Overcrowding in remand prisons can be no justification for leaving detainees in the hands of the police (where, in any event, the conditions of overcrowding appear substantially to exceed those even in some of the most overcrowded prisons);

(d) Close family members of persons detained should be immediately informed of their relatives’ detention and be given access to them. Measures should be taken to ensure that visitors to police lock-ups, provisional detention facilities and prisons are subjected to security checks that are respectful of their dignity;

(e) Any person under arrest should be informed of his/her continuing right to consult privately with a lawyer at any time and to receive independent free legal advice where he/she cannot afford a private lawyer. No police officer shall at any time dissuade a person in detention from obtaining legal advice. A statement of detainees’ rights, such as the Law on Penal Execution (LEP), should be readily available at all places of detention for consultation by detained persons and members of the public;

(f) A separate custody record should be opened for any person under arrest, showing the time and reasons

for arrest, the identity of the arresting officers, the time and reasons for any subsequent transfers, in particular to court or a Forensic Medical Institute, and the time a person is released from detention or transferred to a remand detention facility. The record or a copy of the record should accompany a detained person if he or she is transferred to another police station or a provisional detention facility;

(g) The judicial provisional detention order should never be implemented in a police station;

(h) No statement or confession made by a person deprived of liberty, other than one made in the presence of a judge or a lawyer, should have probative value in court, except as evidence against those who are accused of having obtained the confession by unlawful means. The Government is invited to give urgent consideration to introducing video and audio taping of proceedings in police interrogation rooms;

(i) Where allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture or similar ill-treatment;

(j) Complaints of ill-treatment, whether made to the police or other service itself or the internal affairs department of the service (*corregedor*) or its ombudsman (*ouvidor*) or a prosecutor, should be expeditiously and diligently investigated. In particular, the outcome should not be dependent only on proof in the individual case; patterns of abuse should be similarly investigated. Unless the allegation is manifestly ill-founded, those involved should be suspended from their duties pending the outcome of the investigation and any subsequent legal or disciplinary proceedings. Where a specific allegation or a pattern of acts of torture or similar ill-treatment is demonstrated, the personnel involved, including those in charge of the institution, should be peremptorily dismissed. This will involve radical purging of some services. A start could be made by purging known torturers from the period of the military Government;

(k) All states should implement witness protection programmes along the lines established by the PROVITA programme for witnesses to incidents of violence by public officials, which ought to extend fully to cover persons with a previous criminal record. In cases where current inmates are at risk, they ought to be transferred to another detention facility where special measures for their security should be taken;

(l) Prosecutors should bring charges under the 1997 law against torture with the frequency dictated by the scope and gravity of the problem and request that judges enforce the law's provisions prohibiting bail of those charged. Attorneys-General, with the material support of gubernatorial and other relevant state authorities, should assign sufficient qualified and committed prosecutorial resources for the criminal investigation of torture and similar ill-treatment and for any appellate proceedings. In principle, the prosecutors in question should not be the same as those responsible for prosecuting ordinary criminality;

(m) Investigations of police criminality should not be under the authority of the police themselves, in principle, an independent body with its own investigative resources and personnel. As a minimum, the Office of the Public Prosecutor should have the authority to control and direct the investigation. They should also have unrestricted access to police stations;

(n) Positive consideration at the federal and state levels should be given to the proposal to create the function of investigating judge, whose task would be to safeguard the rights of persons deprived of liberty;

(o) If for no other reason than to bring an end to chronic overcrowding in places of detention (a problem that building more detention places is unlikely to be able to solve), a programme of awareness-raising within the judiciary is imperative to ensure that this profession, at the heart of the rule of law and the guarantee of human rights, becomes as sensitive to the need to protect the rights of suspects, and indeed of convicted prisoners, as it evidently is to repress criminality. In particular, the judiciary should take some responsibility for the conditions and treatment which befall those they order to remain in pre-trial detention or sentence to terms of imprisonment. When dealing with ordinary criminality, they should also be reluctant, when alternative charges are available, to proceed with charges that prevent the grant of bail, rule out alternative sentences, require closed-regime custody, and limit progression of sentences;

(p) For the same reason, the law on heinous crimes and other relevant legislation should be amended to

ensure that often long periods of detention or imprisonment are not imposable for relatively low-level criminality. The crime of "disrespecting authority" (*desacatar functionario publico no exercisio de sua function*)[2] should be abolished;

(q) There should be sufficient public defenders to ensure that legal advice and protection are available for every person deprived of liberty from the moment of arrest;

(r) Greater use should be made of and the necessary resources provided for such institutions as community councils, state councils on human rights and police and prison ombudsmen. In particular, fully resourced community councils, which include representatives of civil society, notably human rights non-governmental organizations, with unrestricted access to all places of detention and the power to collect evidence of official wrongdoing, should be established in each state.

(s) The police should be unified under civilian authority and civilian justice. Pending this, Congress should approve the draft law submitted by the federal Government to transfer to the ordinary courts jurisdiction over manslaughter, causing bodily harm and other crimes including torture committed by the military police;

(t) Police stations (*delegacias*) should be transformed into institutions offering a public service. The "clean police stations" (*delegacias legais*) being pioneered in the State of Rio de Janeiro is a model to be emulated;

(u) A qualified medical professional (a doctor of choice, where possible) should be available to examine every person on being brought to and on leaving a place of detention. He/she should also have the necessary medicines to meet the detainees' medical needs and the authority to have the detainees transferred to a hospital independent of the detaining authority if those needs cannot be met. Access to the medical profession should not be dependent on the personnel of the detaining authority. Professionals working in institutions of deprivation of liberty should not be under the authority of the institution, nor the political authority responsible for it;

(v) The forensic medical services should be under judicial or other independent authority, not under the same governmental authority as the police; nor should they have a monopoly of expert forensic evidence for judicial purposes;

(w) The appalling overcrowding in some provisional detention facilities and prisons needs to be brought to an immediate end, if necessary by executive action, for example by exercising clemency in respect of certain categories of prisoners, such as first-time non-violent offenders or suspected offenders. The law requiring separation of categories of prisoner should be implemented;

(x) There needs to be a permanent monitoring presence in every such institution and in places of detention of juveniles, independent of the authority responsible for the institution. The presence would in many places require independent security protection;

(y) Basic and refresher training for police, detention personnel, public prosecutors and others involved in law enforcement that would include human and constitutional rights subjects, as well as scientific techniques and other best practices for the professional discharge of their functions, needs to be provided urgently. The UN Development Programme's human security programme could have a substantial contribution to make here;

(z) The proposed constitutional amendment that would under certain circumstances permit the federal Government to seek Appeal Court authorization to assume jurisdiction over crimes involving violation of internationally recognized human rights should be adopted. The federal prosecutorial authorities will need substantially increased resources for them to be able effectively to discharge the new responsibility;

(aa) Federal funding of police and penal establishments should take account of the existence or otherwise of structures to guarantee respect for the rights of those detained. Federal funding to implement the previous recommendations should be available. In particular, the law on fiscal responsibility should not be an obstacle to giving effect to these recommendations;

(bb) The Government should give serious and positive consideration to accepting the right of individual

petition to the Committee against Torture, by making the declaration envisaged under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(cc) The Government is also urged to consider inviting the Special Rapporteur on extrajudicial, summary or arbitrary executions to visit the country;

(dd) The UN Voluntary Fund for the Victims of Torture is invited to consider sympathetically requests for assistance by non-governmental organizations working for the medical needs of persons who have been tortured and for the legal redress of their grievance.

CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE AGAINST TORTURE

BRAZIL:
16/05/2001. CAT/C/XXVI/Concl.6/Rev.1.

1. The Committee considered Brazil's initial report (CAT/C/9/Add.16) at its 468th, 471st and 481st meetings held on 8, 9 and 16 May 2001 (CAT/C/SR.468, 471 and 481), and adopted the following conclusions and recommendations:

I. Introduction

2.The Committee welcomes the initial report of Brazil, while noting that this report, which should have been submitted in October 1990, arrived with an excessive delay of 10 years.Brazil ratified the Convention on 28 September 1989, without making any reservation. The State party has not made the declarations provided for in articles 21 and 22.

3.The report was not drawn up in complete conformity with the Committee's guidelines regarding the preparation of initial reports of States parties. However, the Committee expresses its appreciation for the remarkably frank and self-critical character of the report, which was moreover drafted in cooperation with a non-governmental academic institution. The Committee also welcomes the additional information provided by the State party delegation in its oral presentation, and the constructive dialogue which took place.

GE.01-42151 (E)

II. Positive aspects

4.The Committee notes with satisfaction the following in particular:
(a)The political will expressed by the State party to combat the practice of torture, and its eagerness to cooperate with United Nationsbodies and regional organizations to this end;
(b) The frankness and transparency with which the Government recognizes the existence, seriousness and extent of the practice of torture in Brazil;
(c) The State party's efforts concerning the implementation of an education programme and the national human rights promotion campaign (scheduled for June 2001) aimed at sensitizing public opinion and the official protagonists concerned to action to combat torture. The Committee also welcomes the other measures taken by the State party to meet the concerns of the Special Rapporteur on torture following his visit to Brazil;
(d) The promulgation, in April 1997, of Law No. 9455/97 (Torture Act), which introduces into Brazilian criminal law the categorization of torture as an offence, with appropriate penalties;
(e) The establishment of various bodies intended to enhance respect for human rights, notably the Human Rights Commission set up by the Chamber of Deputies, the National Human Rights Secretariat set up by the Ministry of Justice, the Federal Procurator for Human Rights and the human rights commissions set up in some states;
(f) The legislation relating to refugees and the establishment of a procedure aimed at ensuring that an asylum-seeker is not returned to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture;
(g) The external monitoring of the police by the Public Prosecutor's Office and the State party's efforts to reinforce external and independent supervision through the appointment of police ombudsmen in several states;
(h) The contributions regularly paid by the State party to the United Nations Voluntary Fund for Victims of Torture.

III. Subjects of concern
5. The Committee expresses its concern about the following:
(a) The persistence of a culture accepting abuses by public officials, the numerous allegations of acts of torture and cruel, inhuman or degrading treatment - in police stations, prisons and facilities
belonging to the armed forces - and the de facto impunity enjoyed by the perpetrators of those acts;

(b) The overcrowding, lack of amenities and poor hygiene in prisons, the lack of basic services - and of appropriate medical attention in particular, violence between prisoners and sexual abuses. The Committee is particularly concerned about allegations of ill-treatment and discriminatory treatment, with regard to access to the already limited essential services, of certain groups, notably on the basis of social origin or sexual orientation;
(c) The long periods of pre-trial detention and delays in judicial procedure which, together with the phenomenon of prison overcrowding, have resulted in convicted prisoners and prisoners awaiting trial being held in police stations and other prisons insufficiently equipped for long periods
of detention, a fact which could, in itself, constitute a violation of the provisions set forth in article 16 of the Convention;
(d) The lack of training of law enforcement officials in general, at all levels, and of medical personnel as provided by article 10 of the Convention;
(e) The competence of the police to conduct inquiries following reports of crimes of torture committed by members of police forces, without effective control in practice by the Public Prosecutor's Office, with the result that immediate and impartial inquiries are prevented, which
contributes to the impunity enjoyed by the perpetrators of these acts;
(f) The absence of an institutionalized and accessible procedure to guarantee the victims of acts of torture the right to obtain redress and to be fairly and adequately compensated, as provided for in article 14 of the Convention;
(g) The absence, in Brazilian legislation, of an explicit prohibition of the use, as evidence in judicial proceedings, of any confession or statement obtained through torture.

IV. Recommendations
6. The Committee makes the following recommendations:
(a) The State party should ensure that the interpretation of the law on the crime of torture is effected in conformity with article 1 of the Convention;
(b) The State party should take all necessary measures to ensure that immediate and impartial inquiries are carried out, under the effective control of the Public Prosecutor's Office, in all cases of complaints of torture or cruel, inhuman or degrading treatment, including acts committed by members of police forces. In the course of these inquiries, the officers concerned should be suspended from their duties;
(c) All necessary measures should be adopted in order to guarantee to any person deprived of his liberty the right of defence and, consequently, the right to be assisted by a lawyer, if necessary at the State's expense;
(d) Urgent measures should be taken to improve conditions of detention in police stations and prisons, and the State party should, moreover, redouble its efforts to remedy prison overcrowding and establish a systematic and independent system to monitor the treatment in practice of persons arrested, detained or imprisoned;
(e) The State party should reinforce human rights education and promotion activities in general, regarding the prohibition of torture in particular, for law enforcement officials and medical personnel, and introduce training in these subjects in official education programmes for the benefit of new generations;
(f) Measures should be taken to regulate and institutionalize the right of victims of torture to fair and adequate compensation payable by the State, and to establish programmes for their fullest possible physical and mental rehabilitation;
(g) The State should explicitly prohibit the use as evidence in judicial proceedings, of any statement obtained through torture;
(h) The State should make the declarations provided for in articles 21 and 22 of the Convention;
(i) The second periodic report of the State party should be submitted as soon as possible in order to conform to the schedule provided for in article 19 of the Convention, and include in particular:
(i) relevant judicial decisions relating to the interpretation of the definition of torture;
(ii) detailed information on allegations, inquiries and convictions relating to acts of torture committed by public officials; and
(iii) information concerning measures taken by the public authorities to implement, throughout the country, the recommendations of the Committee, and also those of the Special Rapporteur on torture to which the State party delegation referred during the dialogue with the Committee.

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Law No. 9,455 of 7 April 1997

Defines torture crimes and makes other provisions

THE PRESIDENT OF THE REPUBLIC,

Let it be known that the National Congress decrees and I ratify the following law:

Art. 1. A torture crime is defined as:

I - constraining a person by using violence or serious threat which results in physical or mental suffering:

a) with the purpose of obtaining information, a declaration or confession from the victim or a third person;
b) to provoke criminal action or omission;
c) due to racial or religious discrimination;

II - submitting a person under someone`s responsibility, power or authority to intense physical or mental suffering, by his/her use of violence or serious threat, as a way of enforcing personal punishment or as a preventive measure.

Penalty - confinement of 2 (two) to 8 (eight) years.

Par. 1. The same penalty applies to those who submit a person who is imprisoned or subject to security measures to physical or mental suffering, by practising an action not contemplated by law or not resulting from a legal measure.

Par. 2. A person who omits himself/herself before that conduct, when he/she had the responsibility to avoid or investigate it, shall be liable to confinement of 1 (one) to 4 (four) years.

Par. 3. If the crime results in aggravated or extremely aggravated physical injuries, the punishment shall consist of confinement of 4 (four) to 10 (ten) years; if it results in death, the punishment shall consist of confinement from 8 (eight) to 16 (sixteen) years.

Par. 4. The punishment shall be increased by up to one third:
I - if the crime is committed by a public agent;
II - if the crime is committed against a child, a pregnant woman, an exceptional person and an adolescent;
III - if the crime is committed through kidnapping.

Par. 5. Conviction shall result in the loss of a public position, responsibility or employment and the responsible individual shall be prohibited from exercising those functions for double the period of the punishment established.

Par. 6. The crime of torture is not subject to bail, mercy or amnesty.

Par. 7. A person convicted for crimes contemplated in this law, except in the cases mentioned in paragraph 2, shall initially serve the sentence in a close regime.

Art. 2. The provisions in this law shall also apply when the crime has not been committed within the National Territory, provided that the victim is a Brazilian citizen or the aggressor is within an area under Brazilian jurisdiction.

Art. 3. This law shall become effective on the date of its publication.

Art. 4. Art. 233 of Law No. 8,069 dated 13 July 1990 - Statute of the Child and Adolescent - is hereby revoked.

Brasilia, 7 April 1997; 176th Year of Independence and 109th Year of the Republic.

FERNANDO HENRIQUE CARDOSO - NELSON JOBIM

National Council of State Attorney Generals -
Statistics on the implementation of law 9,455/97, the Torture Law.

STATES	DENOUNCIATIONS BY PUBLIC PROSECUTORS	ONGOING POLICE INQUIRIES	VERDICTS PRONOUNCED	PERIOD OF TIME
Acre	10	03	00	Not mentioned
Alagoas	11	00	01 conviction subject to appeal and 1 conviction (*res judicata*)	Not mentioned
Amapá	00	00	00	Not mentioned
Amazonas	00	00	00	Not mentioned
Bahia	24	05	01 (the convicted was granted the right set forth in article 77 of the Criminal Code)	Not mentioned
Ceará	16	00	00	Not mentioned
Federal District	07	11	00	Not mentioned
Espírito Santo	05	03	01 acquittal (*res judicata*)	Not mentioned
Goiás	22	00	01 conviction subject to appeal	1997 to 2000
Maranhão	02	01	00	Not mentioned
Mato Grosso	16	00	00	Not mentioned
Mato Grosso do Sul	13	00	03 convictions (*res judicata*)	Not mentioned
Minas Gerais	00	00	00	Not mentioned
Pará	03	00	00	2000
Paraíba	11	00	01 case was closed without verdict and 2 convictions (*res judicata*)	Not mentioned
Paraná	11	00	01 case was disqualified as torture and 2 convictions (*res judicata*)	From January to October 2000
Pernambuco	07	04	00	1998 to 2000
Piauí	00	00	00	Not mentioned
Rio de Janeiro	05	00	00	Not mentioned
Rio Grande do Norte	02	00	00	1998 to 2000
Rio Grande do Sul	62	00	00	1999 to 2000
Rondônia	14	09	00	Not mentioned
Roraima	01	00	01 case was disqualified as torture (it is the only case concerning a private agent)	Not mentioned
Santa Catarina	00	00	00	2000
São Paulo	14	20	01 conviction subject to appeal	Not mentioned
Sergipe	00	00	00	Not mentioned
Tocantins	02	00	00	2000

TOTAL	**258**	**56**	**16: 08 convictions (*res judicata*), 03 convictions subject to appeal, 01 acquittal, 04 other cases**	**1997 to 2000**