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BRAZIL

'NO ONE HERE SLEEPS SAFELY'
Human rights violations against detainees

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INTRODUCTION

On 10 December 1998,² while the world was celebrating the 50th anniversary of the Universal Declaration of Human Rights, police pulled 400 terrified prisoners from their cramped cells in Osasco public jail in São Paulo, on the pretext of conducting a cell search. Instead, prisoners were subjected to eight hours of violence and humiliation, forced to run through a gauntlet of policemen who kicked and beat them. The judge who had authorized this "operation" looked on. As they delivered their blows the policemen shouted: "Today is human rights day, and this is what prisoners' rights are!"³

Approximately 170,000 ordinary prisoners are currently incarcerated in Brazil,⁴ in more than 500 prisons, thousands of police stations, and municipal jails.⁵ Many of these penal facilities are violent, life-threatening places. Prisoners live in constant fear of assault by other prisoners. Every year, scores of deaths in custody occur as a result of violence on the part of police and prison officers, denial of medical care, and negligence on the part of the authorities in preventing violence between detainees. The vast majority of these deaths in custody go uninvestigated and undocumented. Prisoners are also at risk of being beaten or tortured by prison officers and police. In a number of notorious cases, military police reacted to a prison disturbance, such as a riot or escape attempt, with excessive force and brutality, shooting prisoners dead, and injuring others. Special police forces sent in to search cells and contain disturbances have created a climate of terror, shooting randomly, beating and humiliating prisoners, and destroying their few possessions.

Torture is widespread in Brazil's police stations. The civil police routinely resort to torture and ill-treatment as means of extracting confessions. Beatings and intimidation are also employed in prisons and police stations as means of controlling an ever-growing number of detainees. The system itself offers little protection to those prisoners who complain of serious human rights violations.

The Brazilian prison system is in crisis. Weekly riots and violent incidents suggest that prisons and police lock-ups are not being effectively administered, and that the authorities are not in full control of these penal establishments. Convicted prisoners remain in cramped, insanitary conditions in police stations for months, their transfer to prison delayed due to lack of space, inaction by the judiciary or corruption. Conditions of detention in many of Brazil's prisons and police stations are appalling, and amount to cruel, inhuman and degrading treatment and punishment. Detainees run the risk of contracting potentially lethal medical conditions such as tuberculosis or HIV, and those who suffer from such conditions are not adequately treated. Paraplegic prisoners have died in custody from medical neglect. Staffing levels are very low, and armed police are often used in place of trained, professional prison officers.

The conditions in which children and women are held are not much better. Some also suffer the violence of police and prison officers. The administration of the prison system is not geared to some needs specific to women prisoners, such as pre-natal care, and does not take account of their primary care responsibilities in the family. Children may be picked up by police who deem them to be at risk, or suspect them of having committed a crime. A 45-day wait in a filthy and cheerless juvenile detention centre is often followed by a custodial order leading to detention in conditions similar to those described above for adult criminal suspects.

THE HUMAN RIGHTS OF CRIMINAL SUSPECTS AND ORDINARY PRISONERS

Criminal suspects and ordinary prisoners are the forgotten victims of human rights violations in Brazil. Out of sight, locked up behind the walls of a prison or police station, they are also out of mind to the general population. The contempt expressed by many for criminals and suspected criminals serves to justify the most appalling treatment by police. Several politicians have even run for office on the slogan “the only good criminal is a dead criminal”. Such an attitude runs counter to the fundamental principles of the Universal Declaration of Human Rights: every human being has basic rights which cannot be taken away from them. Convicted prisoners and criminal suspects do not forfeit their human rights, even when they forfeit their liberty. They have the right not to be beaten, tortured and ill-treated by police and prison officers. They have the right to adequate medical care. They have the right to a fair trial and to legal representation to prepare a proper defence. They have the right to decent conditions of detention such as enough room to lie down to sleep, access to water to drink and wash with, fresh air, natural light, and toilets which do not become blocked with waste.⁶ A convicted prisoner told Amnesty International: “I’ve committed a crime and I’m paying the price for it. But nobody deserves to be treated like this, like an animal”, a sentiment echoed by many other prisoners who spoke to the organization’s delegates.

Ordinary prisoners held in such conditions suffer violations of their basic human rights every day. In addition, the atmosphere of violence and intimidation, combined with degrading conditions of detention, also affects the prison staff and police officers, and the surrounding community. Offenders often escape, putting the local population at risk. Visitors and staff have been taken hostage, and some hostages have been killed or injured. Riots and other disturbances are met with a violent police reaction. Infectious diseases such as HIV and tuberculosis spread beyond the prison walls.

Brazilian society has a legitimate desire to reduce levels of crime. However, many prisons, particularly those that do not separate categories of prisoners, are considered to be “schools for crime”. The stated goal of the prison system is “the harmonious social re-integration of the offender”.⁷ Not only does it currently fail, in large part, to achieve this goal, but the penal system also inflicts terrible human rights violations on many who pass through it.

In recent years human rights groups and government bodies have expressed increasing concern about the management of the Brazilian prison system, and the widespread disregard for prisoners’ rights. Human rights groups around Brazil have begun to monitor their local police lock-ups and prisons, while many of those who work within the system, such as prison officers, doctors, prison governors and police chiefs, genuinely want to improve the lot of prisoners and reduce the inevitable climate of violence and tension that results from understaffing, under-resourcing and overcrowding. The federal government set up a Parliamentary Commission of Inquiry (CPI) into the prison system which reported in 1994 and this has since been followed by similar inquiries at state level, conducted by the Human Rights Commissions in a number of state legislatures. The federal government has embarked on a prison building program with a number of state governments which have in turn instituted reforms to their system of detention. There is now a lively debate in Brazil about the penal system. The intention of this report is to contribute to that debate, not just by detailing the many serious human rights violations that occur within prisons and police stations, but also by making concrete suggestions for the protection and promotion of the fundamental and inalienable rights of those individuals who are in state custody.

THE GULF BETWEEN GOOD INTENTIONS AND BAD ADMINISTRATION

The Brazilian federal government has ratified a number of international human rights instruments which, if put into practice, would help to protect the human rights of all prisoners, including women and children. However, Brazil has not submitted any of the periodic implementation reports required under the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified in 1989: reports due in 1990, 1994, 1998), or the UN Convention on the Rights of the Child (ratified in 1990, reports due in 1992, 1997), or the UN Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1984: reports due in 1985, 1989, 1993, 1997). Amnesty International understands that these reports are currently being prepared and hopes that they will be submitted to the relevant treaty body without undue delay in order that

Brazilian society and the international community may debate and assess Brazil's policies in these areas.

Brazilian law provides wide guarantees for the protection of human rights. The rights of detainees are enshrined in the Brazilian Constitution. Article 5(III) states that "no one shall be submitted to torture or to inhuman or degrading treatment". Article 5 (XLIX) declares, "Prisoners are ensured of respect for their physical and moral integrity." The federal government's National Human Rights Program, launched in 1996, although comprehensive in many other aspects, does not mention ordinary prisoners as a category of individuals whose rights require special protection. However, it does set out a number of reforms, some of which have been partially implemented. Brazil's Prison Law sets out the rights and duties of prisoners and states clearly: "Assistance to the prisoners is a duty of the state, in order to prevent crime, and help the offender return to society" (Article 10). Brazil has produced its own guidelines closely based on the UN Standard Minimum Rules for the Treatment of Prisoners.⁸ Children's rights are protected by Brazil's Children and Adolescents Statute. However, these laws, constitutional rights and administrative guidelines are not respected, enforced or implemented in many penal facilities.

A major challenge facing the federal government is, therefore, that of encouraging greater adherence in practice to these ideals and principles. The prison system, judiciary and police are all organized at state level, and thus each state government⁹ has some autonomy in introducing reforms concerning the maintenance of jails, funding, staffing, disciplinary matters, and the investigation of possible abuses.

PURPOSE AND SCOPE OF THE REPORT

This report examines the most serious human rights violations carried out within the Brazilian prison system or in police custody. It is not a comprehensive overview or analysis of the Brazilian penal system or all the problems it faces. That is the task of the various governmental bodies who have the power to inspect prisons and report on conditions. However, this is not the first time that Amnesty International has investigated human rights violations in prisons and police stations, nor the first time it has made detailed recommendations to the Brazilian government on this subject. Amnesty International reached very similar conclusions about cruel and inhuman conditions of detention, violence and torture in places of detention in its 1990 report, *Brazil: Torture and extrajudicial execution in urban Brazil*. The organization also carried out an exhaustive investigation into the mass killing of 111 prisoners by military police in the São Paulo House of Detention in October 1992.¹⁰ Many of the recommendations contained in these and other communications with both state and federal authorities have not yet been fully addressed or implemented.

This report details the findings of two Amnesty International visits in 1998, during which the organization's delegates¹¹ visited 33 penal facilities in 10 states in five regions.¹² Visits were made to a diversity of detention centres: police stations; prisons for adult male prisoners (including maximum security, closed and semi-open regimes); pre-trial detention centres; women's prisons; and juvenile detention centres. The delegates spoke to a wide range of those involved in the prison system: prisoners, prison officers, police, prison governors and police chiefs, doctors, administrators, and local human rights organizations. The report also incorporates secondary information from government documents and inquiries¹³, media reports, and individual cases of abuses documented by human rights groups in Brazil.

However, it is important to emphasize that respect for the human rights of prisoners is achievable, and not necessarily at great extra cost. This report highlights throughout examples of good practice, of prisons which appear to be well run, and of individual, successful reform initiatives. It also outlines current government policy which has evolved in response both to periodic and well-publicized serious human rights violations in Brazil's prisons and police stations, and to the criticisms and recommendations of human rights organizations.

A further challenge, then, facing both the state and federal governments is that of identifying, analysing and learning from these positive experiences in order to reproduce them within government

policy. The encouragement of best practice would allow well-administered prisons, where prisoners may serve their sentences and sleep safely, to become the rule, rather than the exception.

SUMMARY OF CONCERNS

- * The federal and state authorities do not systematically document and investigate deaths in custody.
- * Inquiries into deaths in custody, and allegations of torture or ill-treatment, rarely result in those responsible being disciplined or prosecuted in a court of law.
- * Police have carried out extrajudicial executions and employed excessive use of force in responding to disturbances and critical incidents
- * There is a clear pattern indicating the wide-spread use of torture and ill-treatment in police custody, in prison establishments and in juvenile detention centres.
- * State authorities have not taken sufficient action to prevent prisoner-on-prisoner violence.
- * There is currently no adequate complaints procedure that protects the prisoner and witnesses from reprisals.
- * The Forensic-Medical Institute, which conducts autopsies and medical examinations on prisoners who allege torture or ill-treatment, is linked to the police service and is not truly independent or impartial.
- * Conditions of detention for most adult and juvenile detainees amount to cruel, inhuman or degrading treatment or punishment.
- * Pre-trial and convicted prisoners are held for long periods in police stations, violating the principle that prisoners should not be guarded by those who arrest, interrogate and charge them.
- * Many prisoners' right to an adequate defence is undermined by the lack of adequate legal aid.
- * Medical care in places of detention is poor to non-existent. Some detainees have been deliberately denied medical care.
- * Staffing in prisons is inadequate and does not conform to the UN Standard Minimum Rules for the Treatment of Prisoners. Staff are poorly trained.
- * There are few established clear policies and procedures governing use of force.
- * Monitoring and inspection of prisons, police stations and juvenile detention centres are ad hoc, infrequent and uncoordinated.
- * Inspections currently carried out by governmental bodies do not result in published reports.
- * A number of police stations and prisons officials have denied access to representatives of civil society, and to local and international human rights NGOs.
- * Some women detainees in police stations are held in the vicinity of male prisoners.
- * Women detainees with mental health problems do not receive adequate and appropriate health care.
- * Prisons and police stations do not provide adequate pre- and post-natal care
- * Suspected juvenile offenders are often detained for excessively long periods pending a court's decision.
- * Juvenile offenders are subject to excessive incarceration.

1. DEATHS IN CUSTODY

“Everyone has the right to life, liberty and security of person.”

Article 3 of the Universal Declaration of Human Rights

Every year, detainees die in state custody from a variety of causes. Some die as a result of severe beatings or torture in custody. Others are extrajudicially executed by police called in to end a disturbance. Many prisoners, even those with a life-threatening condition, are deliberately denied medical care and die as a result. Some inmates are killed by other prisoners, whose reign of intimidation and violence is unhindered, or even encouraged, by the state authorities.

There is no comprehensive data currently available on deaths in custody, at state or federal level. One study noted that at least 59 people had died, and 374 had been injured in “critical incidents”, that is, riots, disturbances, and hostage-taking episodes which occurred on a near weekly basis in the

police stations and prisons of São Paulo state between 1994 and 1997.¹⁴ However, these figures are based only on press reports, and do not include prisoners who have died as a result of denial of medical care or of acts of violence perpetrated by prison officers or other prisoners which were not categorized as a critical incident.” Effective government policy to protect prisoners’ integrity depends on the availability of complete data and a detailed and thorough analysis of all deaths in custody.

1.1. EXCESSIVE USE OF FORCE AND SUMMARY EXECUTIONS

Specialized police units are frequently sent in to deal with critical incidents, such as riots or escape attempts. In some cases they have carried out extrajudicial executions of prisoners who had already surrendered, have used excessive force, and have tortured and ill-treated prisoners.

On 2 October 1992 a riot broke out in the House of Detention prison in São Paulo when fighting started between prisoners who then seized control of Block 9 of the prison. Military police shock troops stormed the prison to quell the rebellion. When they withdrew 11 hours later, 111 prisoners were dead and 108 injured. Evidence clearly showed that defenceless prisoners were massacred in cold blood, and the survivors forced to strip naked and made to run a gauntlet of military police who beat them with truncheons and set dogs on them. Wounded prisoners were shot dead by the police, as were prisoners who had been forced by the police to remove the bodies from the cells, thus destroying witnesses and evidence.¹⁵

On 24 December 1997, 23 prisoners started a riot in the Paulo Sarasate prison in Fortaleza, Ceará, and took four hostages. During an initial confrontation with military police, one prisoner was shot dead. The prisoners demanded four getaway cars and guns. Shortly after leaving the prison, taking the hostages with them, one car crashed into a tree, killing one prisoner. Another car broke down. Two women hostages testified that six prisoners then surrendered and were summarily executed by the police. One of the women, Eunisia Barroso of the Catholic Church’s Prison Pastoral service, then began receiving anonymous telephone death threats and was forced to move to a safe location. A civil police inquiry was shelved in March 1999 as the public prosecution service alleged that the witnesses were suffering from “Stockholm Syndrome” (in which hostages begin to sympathize with their captors) and should thus be considered unreliable. Amnesty International is concerned that the full truth about the shooting and killing of the prisoners may never come to light as a result.

1.2. TORTURE AND ILL-TREATMENT

Otávio dos Santos Filho died in the police lock-up of the São Paulo Crimes against Property Police Department (DEPATRI) on 13 October 1997, allegedly as a result of police beatings and deliberate denial of emergency medical care. Nineteen fellow inmates claim that police and prison officers repeatedly beat him and slammed his head against the metal bars and walls of the cell. Police took him several times to the nearest hospital emergency room to have his injuries treated, further ill-treating him en route. After a severe beating on 9 October he was left alone, pleading for medical help. When police finally took him to the health post, four days later, he was already dead. His body was released to the family in a closed coffin. However, at the funeral they discovered that his body had extensive bruising, and a stitched head wound. The official autopsy report gave the cause of death as septicaemia, a conclusion inconsistent with the evidence of the report. The police chief claimed: “According to the police report, he beat up and injured himself, either due to drugs, sexual frustration or some other reason.”

There is evidence to suggest that some detainees have simply “disappeared” in police custody. On 8 June 1998 George de Assis and Guilherme Henrique were arrested and taken for questioning to the Theft and Robbery police station in Belo Horizonte. Witnesses have testified to the public Prosecution service that the two were tortured. Neither has been seen since, although the authorities claim that they were transferred to the prison in Ribeirão das Neves and then released. Days after his arrest a civil police car reportedly stopped in front of George de Assis’ house and a police officer told his mother that her son had gone to “the cemetery of peace”. Wellington da Silva Ferreira was arrested for questioning on 25 November 1998 and also taken to this police station. He has not been seen since. Two friends arrested with him and later released claim that they heard his screams, then silence. His mother and sister waited all night outside the police station, and in the morning were informed via the judge inspector’s office that he had “escaped”.

1.3. PRISONER-ON-PRISONER VIOLENCE

The Brazilian state has a duty to ensure the physical integrity and well-being of those in its custody. It is obliged to protect detainees from violence and serious human rights violations whether committed by police, prison officers or fellow prisoners.

With such low levels of staffing and high levels of overcrowding, the state authorities have effectively lost control of the prisons in many areas. Many prisons are in effect run by a small and violent group of inmates. In the São Paulo study cited above, the majority of the victims in critical incidents are detainees, and fellow prisoners are responsible for over 80% of these deaths in custody. Prisoners may be at risk for a number of reasons, such as drug-related prison debts, gang rivalries, or the nature of the crime which they committed. Generally, these prisoners will ask to be placed in a separate cell for protection. However, not only do these prisoners often suffer worse conditions of detention as a result, but many have been dragged by other inmates out of so-called “safe cells” and killed, according to the São Paulo study.¹⁶ Many Brazilian prisoners live in a constant state of insecurity, never knowing where violence may break out next. In many large jails the accommodation blocks are no-go areas for prison officers: trustee prisoners have responsibility for locking cells and for notifying prison officers if an inmate is ill and needs attention.

In March 1999 the São Paulo state prosecution service recommended criminal charges against two senior officials in the prison administration for failing to act to stop a gang of violent prisoners operating in a number of prisons and police stations, despite allegedly having full knowledge of their activities since February 1997. The so-called Primeiro Comando da Capital organized riots and prison break-outs, ordered and carried out murders of fellow inmates, and trafficked in drugs and weapons.

In the first three months of 1998, 15 prisoners were reportedly murdered by fellow inmates in the prisons of Espírito Santo state. None of these deaths has been fully investigated. In an incident in February 1998 prisoners in a rooftop protest in Linhares prison threw a prisoner to his death, a common form of protest in Brazilian prisons in which inmates kill other prisoners one by one in a so-called “lottery of death”. The day before Amnesty International’s visit to Vila Velha prison in March 1998 the body of a prisoner had been discovered on the rubbish tip behind the jail. Prisoners had full run of the jail and there was only one guard on duty. In February 1999 the newly elected governor sent in 440 military police to regain control of four of the state’s eight prisons.¹⁷

On 29 May 1998 a fight broke out between rival gangs of prisoners in the Barreto Campelo maximum security prison in Pernambuco, leaving 22 prisoners dead and 13 injured. Nine were burned alive. Those targeted had allegedly committed homicide, robbery and rape in the prison. An incident two days earlier had left three dead and 20 injured. The state Secretary of Justice later commented that such an incident was “run of the mill” and blamed the violence on overcrowding, and understaffing: 23 prison officers and nine military police had been on-duty in a prison holding more than 1,000 maximum security prisoners, double its capacity.

Prisoners in the Céu Azul wing of the men’s penitentiary in Manaus alleged that the prison administration was using certain inmates to beat and punish others:

“Since the new prison governor took charge, he has given many privileges to the inmates who work in the kitchen... he also allows them to unlock certain cells and beat up the inmates..., which is causing unrest among the locked-down prisoners who get very bad quality food. When they complain, they are beaten by the kitchen “trustees” with the support of the governor. The governor keeps saying that he ‘prefers to kill the snake with its own poison, so he doesn’t get his hands dirty’. They have even stabbed other prisoners because he allows them to have weapons.”¹⁸

On 29 July 1997 eight prisoners in, the Roger Prison in João Pessoa, capital of Paraíba state, were brutally killed after they had taken hostages in a failed escape attempt. The military police stormed the prison before negotiations had been completed; the hostages escaped and police shot and wounded the hostage takers. The police then withdrew shouting that they had “won a war”. Prison officers and a number of “trustee” inmates from the kitchens then took over, and used crowbars and knives to murder the injured prisoners. Most of the bodies were left with multiple stab wounds, slit throats and crushed skulls. One prisoner had been shot three times in the groin, another had his eye gouged out. This incident was followed by more violence in the prison, leaving 11 dead and scores injured over a

three-month period. During a riot on 8 September 1997, 89 prisoners had been stabbed and beaten by other inmates.

Prisoners are also at risk of sexual assault. On 2 July 1997 a prisoner in the Roger Prison was raped by six inmates. He reportedly began to suffer nightmares and could not sleep at night, for fear of being attacked again. During the riot which broke out on 9 September 1997, at least one prisoner was raped by fellow inmates.¹⁹

In many prisons and police stations, categories of prisoners are not separated. Pre-trial prisoners are held with convicted prisoners, and those charged with minor misdemeanours may share a cell with a violent offender. On 7 February 1999, 13 detainees died when a fight broke out between two rival gangs in one of São Paulo's new prisons, in Pirajuí, opened in September 1998. The victims were beaten and stabbed to death, and their bodies wrapped in thin mattresses and set on fire. It is alleged that the state authorities had failed to separate different categories of prisoners, housing some prisoners alongside their sworn enemies, and had not taken sufficient precautions to safeguard the security of all the prisoners.

1.4. DENIAL OF MEDICAL CARE

Poor quality medical care, or deliberate denial of medical care, can have serious and even fatal consequences for detainees. Edson Soares da Silva, a tetraplegic, died on 1 June 1997 after his state of health had progressively deteriorated during his period of detention. He had never been transferred to a public hospital or to his family home in Campinas, where the university hospital had offered him medical care. Vivaldo Cordeiro dos Santos, also tetraplegic, died on 23 June 1997. A number of other paraplegic prisoners held in the Central Hospital of the State Penitentiary had also been deliberately denied medical care, resulting in serious injury and death, according to a March 1999 investigation by the São Paulo state prosecution service.²⁰

In a letter of 17 March 1997, 35 paraplegic prisoners crammed into damp vermin-ridden cells in the basement complained: "We are treated like worms by these bastards." The 17 doctors working in the Central Hospital refused to treat the paraplegic prisoners, alleging that they "feared for their own safety".²¹ Records showed that one paraplegic had not been seen by a medical professional for over two years. Responsibility for care fell to untrained fellow prisoners with no access to medical supplies. Improvised "treatment" for the bedsores from which all suffered consisted of applying a mixture of coffee powder and sugar to the open flesh wound, and cutting away the decomposing flesh. The bedsores worsened over time, with flesh rotting right down to the bone. All of them used a home-made type of urinary drain, consisting of a plastic tube running from the penis to a plastic drink bottle held together with adhesive tape. Infection of the urinary tract was very common. In March 1999 the state public prosecution service brought criminal charges against 21 doctors, 18 nurses and auxiliaries, three prison officers and senior administrators of the São Paulo prison system and prison health service for deliberate denial of medical care to paraplegic prisoners.

1.5. GOVERNMENT POLICY AND EXAMPLES OF GOOD PRACTICE

Making data on deaths in custody available increases transparency and accountability in the prison system. Figures on deaths in custody in Rio Grande do Sul have been made public through the state assembly's human rights commission, which noted that 61 prisoners died in custody in 1997.²² Seven of these are identified as suicides, two as murders, one unexplained hanging and the rest as death through natural causes. However, state authorities seeking to provide full and reliable data on deaths in custody must also analyse the cause and manner of death. It is impossible to know, without an inquest, how many of the prison deaths in Rio Grande do Sul could have been prevented with better medical care, or improved supervision of prisoners.

São Paulo state adopted in 1996 a comprehensive strategy for the management of critical incidents in the prison system.²³ The strategy places great emphasis on the use of negotiation to resolve such incidents. To the state authorities' credit, only one person has died since, although there have been weekly riots, escapes, and hostage-taking episodes. Amnesty International is urging other states to adopt similar policies.

The federal government has also recognized that large prisons are very difficult to control and are conducive to prisoner-on-prisoner violence. The new ones are being built to conform to UN

recommendations and hold around 600 inmates. São Paulo state intends to close down the House of Detention, currently the largest prison in Latin America, which holds over 7,000 inmates.

2. TORTURE AND ILL-TREATMENT

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Article 5 of the Universal Declaration of Human Rights

“On 24 December 1997, after the incident, we were all taken to the prison football pitch and made to strip naked. Then we were forced to crawl through the filth from a sewage outlet, while the prison officers beat us with truncheons and kicked us in the ribs. Then they made us drink the filth and sewage, and we had to shuffle on our knees back to the prison. If we stopped they came and beat us brutally. When we got back to our cells, our knees were raw and bleeding and we were fainting. We have been here over three months and some days the prison director does not let us eat. For a month and a half we were tortured by the police riot troops, on alternate days. They would drag us out of our cells, make us strip and kneel down, force us to beat one another, and then to insert our finger into the other guy’s anus. Once, when our families sent us food, the riot troops dragged us out and beat us and when we went back to our cells, the food was mixed with faeces.”²⁴

Letter from a prisoner in the Céu Azul section of the men’s penitentiary in Manaus, one of several smuggled out to an Amnesty International delegation in April 1998.

The use of torture and ill-treatment is widespread in Brazil’s police stations and prisons. Criminal suspects arrested by the military police are frequently beaten and ill-treated in custody. Once transferred to civil police stations, their alleged involvement in a crime is investigated prior to charges being brought. The civil police frequently resort to torture as a means of extracting confessions. Torture and ill-treatment are also used to intimidate and exert control over prisoners crammed into overcrowded penal facilities.

2.1. OBTAINING CONFESSIONS

“Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings...”

Article 15 of the Convention against Torture

The civil police regularly use torture to extract information or confessions. Very few prosecution cases have been thrown out of court, however, on the grounds that a confession was obtained under torture. Some prisoners interviewed by Amnesty International reported that, after torture, they would be kept incommunicado for several days until their injuries healed. Certain methods allegedly used by the Brazilian police, such as asphyxiation, electric shocks and near-drowning, leave few visible external signs. The complaints procedures available to prisoners, and the mechanisms for investigating allegations of torture are extremely weak and as a result the defence is unlikely to have credible evidence to present to the court to support allegations of confessions extracted under duress.

Military police in Fortaleza, Ceará, took José Wilson Pinheiro da Silva from his home on 15 August 1996. He had become drunk and abusive and his family asked the police to take preventive action. However, once in the custody of police, he was subjected to a severe beating, during the course of which his right eyeball was burst. A police inquiry has been opened into the incident. Meanwhile, he has been charged with “obstruction of justice”.

Jorge Natale was arrested on 10 November 1998 and taken to the Theft and Robbery police station in Belo Horizonte, Minas Gerais, for questioning about a break-in at the company where he works. According to the records of the Police Ombudsman’s office, to whom he gave a deposition, he was taken by civil policemen, including the station chief, “to a sort of bathroom where, after they made him strip naked, they tied his arms and legs and hung him from a metal pole over a trestle. Then they took a piece of rubber tied to a stick, beat him on the soles of his feet and on his head. Then they applied electric shocks to his scrotum, his buttocks, ribs, head, chest and arms. Then they soaked his shirt and wrapped it around his head so that he nearly suffocated, especially when they pushed his head under the shower... in consequence of which he confessed to having taken part in the crime.”

2.2. INTIMIDATION AND COERCION

Amnesty International has received many reports in which armed civil or military police special squads have entered a prison or police station apparently in order to intimidate prisoners rather than resolve an immediate security problem.

In November 1998 Amnesty International delegates visited the Theft and Robbery and Vehicle Theft police stations in Belo Horizonte. Both had been the subject of a number of inquiries into torture and ill-treatment. Many detainees described a bathroom on the ground floor of the Theft and Robbery police station in which they claimed that torture was carried out, including electric shocks using wires from the light fixture, near-drowning using water from the shower, and suspension from the “parrot’s perch”, methods consistent with Jorge Natale’s testimony above. Many bore visible marks on their bodies consistent with their allegations and the delegation found a room which corresponded closely to their description. An unoccupied cell, also allegedly used for torture, was found in the Vehicle Theft police station.

Detainees in the Theft and Robbery police station also claimed that on Fridays, while their cells were being searched, guard herded them naked into the internal courtyard of the jail and soaked them with water from a firehose, a practice they called the “Indian shower”. None of the designated fire boxes the delegation saw in the jail contained fire-fighting equipment, although the firebox behind the prison officers’ desk did contain a metal bar wrapped in plastic bags which the prison officers said was used for testing the cell bars. Prisoners in both stations also alleged that they were regularly beaten on the head, soles of their feet and palms of their hands with a large strip of rubber cut from a car tyre. While Amnesty International delegates were talking with detainees, the prison officers attempted to intimidate the delegates and the prisoners by their constant and overbearing presence. A number of prisoners expressed their fear of reprisals, a concern which Amnesty International immediately communicated to the authorities.

In the Cariacica police precinct in Espírito Santo, around half the prisoners made a number of consistent and credible allegations that the Superintendent of the Prison Police (SPP) in Vitória visited the station on Mondays, took prisoners away to be tortured, and returned them later with the full acquiescence of the station chief, who would then refuse victims medical treatment. Victims claimed to have been beaten with a baseball bat, stripped, soaked and subjected to electric shocks with bare electric wires, teargassed, and made to wear a plastic or leather hood. One prisoner was said to suffer daily fainting fits after being suffocated with a plastic bag. These allegations were corroborated by prisoners in the police precinct of Laranjeiras,²⁵ who described a “VIP lounge” at the SPP headquarters: reportedly a dark room with a table in it, with blood stains on the walls and floor. One prisoner with a high fever had asked to be taken to the doctor, but was taken instead to this “VIP lounge” where he was beaten on the soles of his feet and palms of his hands. Most of the 100 or more prisoners in the Vila Velha prison in Vitória alleged that they had been tortured in the custody of a number of different police stations.

2.3. COLLECTIVE PUNISHMENT

Torture is also used as a punishment. Amnesty International has received numerous reports of prison officers and military and civil police brutally beating, torturing and ill-treating detainees en masse for real or perceived disciplinary infractions, such as hiding knives or contraband, or attempting to escape. Police and prison officers have taken the law into their own hands and applied illegal collective “punishments”, most commonly by stripping, beating and humiliating prisoners, destroying or contaminating their food, denying them access to food and medicines brought in by visitors, denying access to medical care, and by terminating or restricting visits. All of these forms of punishment are illegal and contravene international standards.

On 24 December 1997 a fight broke out between prisoners in the Céu Azul wing of the men’s penitentiary in Manaus, and the kitchen “trustees” who were alleged to have previously beaten the Céu Azul prisoners with the acquiescence of the prison governor. The civil police riot squad, who were called in to end the disturbance, subjected the prisoners to the brutal experience described at the beginning of this chapter. The prison authorities alleged the prisoners had tried to escape, which the prisoners deny.

In February 1998 members of the civil police's Special Armed Unit for the Prevention of Robbery entered DEPATRI in São Paulo and allegedly beat many of the 356 prisoners held there, resulting in welts, lacerations, bruising and broken bones. This unit had allegedly raided the jail at night on a weekly basis, masked and armed, firing shots into the cells, destroying personal effects, ordering prisoners to strip, and inflicting torture such as "Russian roulette" (in which a revolver allegedly containing a single bullet is fired at the prisoner's head) and the "telephone call" (in which the ears are struck between the torturers hands, causing intense pain). After complaints by human rights group, nearly 130 prisoners had their injuries recorded by the Forensic Medical Institute. A police investigation is currently underway.

2.4. GOVERNMENT POLICY AND EXAMPLES OF GOOD PRACTICE

Torture is forbidden by the 1988 Federal Constitution, and was formally characterized as a crime in law in April 1997. Brazil is also a state party to the UN Convention against Torture.

A number of key safeguards for detainees are set out in Article 5 of the Brazilian Constitution: however, they are often not adhered to. Despite the widespread use of torture by the police, few of them have been prosecuted for this crime. The International Committee of the Red Cross has begun to provide technical assistance and training to the military police, for example, in the correct use of force and of firearms. The civil police also require training, both in the principles of human rights and in non-coercive methods of investigation and interrogation.

State forensic services are currently linked to the police apparatus, and are thus not independent. Many prisoners are afraid to make formal complaints about torture for fear of reprisals. The Minas Gerais Legislative Assembly's members (CP) asked the police and forensic services to seal off an area of a police station allegedly used for torture. However, the area was not closed, valuable evidence was removed, and the initial report by two forensic experts was tampered with and replaced. As a result, criminal charges were brought against the head of the Forensic Medical Institute. The state Parliamentary Commission of Inquiry has since proposed a constitutional amendment in order to attach the forensic services to the courts rather than the police. If this measure is approved and implemented, it would represent an important advance in providing safeguards against torture.

3 CONDITIONS OF DETENTION

"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

Article 101, International Covenant on Civil and Political Rights

"We... are angry at the court's decision to prevent you from entering ... and want to tell you how our constitutional rights are being violated. The courts are so slow in dealing with our cases that the prisoners become angry and hostile, and then behave that way. This place is worse than a pigsty. The water tanks are in such bad condition that disease spreads at an alarming rate, even affecting the local community who live near the prison. Solitary confinement is used indiscriminately. You'd be lucky to get out alive: conditions here pose serious risks to the mental and physical health of the prisoners, quite apart from the torture inflicted by completely untrained prison officers. The solitary cells have no running water or enough room for all the prisoners thrown in there. They are damp and unhealthy with no ventilation. Punishment consists of over two weeks in these cells, stripped naked and being ill-treated. There is no medical or dental treatment and there have never been any work training programs."

Letter passed to Amnesty International from prisoners in the Roger prison in João Pessoa, Paraíba in April 1998 after the organization was prevented from entering and speaking to detainees.

The letter above describes conditions and treatment typical of the majority of prisons visited by Amnesty International. An unhealthy living environment, lack of medical care, arbitrary application of punishment, a complete lack of educational, recreational and work training programs, and a disregard for the prisoners' dignity and integrity, taken in conjunction, constitute conditions that amount to cruel, inhuman and degrading treatment. Life in these penal facilities is unhealthy, undignified and

precarious. There are frequent protests, jail breaks and hostage-taking episodes, often ending violently, either through the actions of the authorities or the prisoners themselves.

3.1. OVERCROWDING AND POOR FACILITIES

The Brazilian prison system does not have sufficient capacity for the number of prisoners it holds. According to 1997 figures, some 170,000 prisoners are being held in the prison system and in police stations. However, only 74,000 places are currently available in the prison system, leaving a deficit of over 96,000 places. This results in overcrowding either in the prisons, the police stations or both. This problem is particularly acute in the police stations. In the Cariacica police station in Espírito Santo, 92 men were crammed into a single holding area with only two toilets and 16 bunks. The rest slept in the yard which was open to the rain. Many prisoners sleep on the concrete floor, on a filthy foam mattress or a blanket. Where there is not even enough floor space to allow all the prisoners to lie down, inmates resort to a number of ingenious methods such as a rota system, hammocks or tying themselves to the bars in order to sleep. Sometimes prison officers and police have forced large numbers of prisoners into a few cells following riots or escape attempts in police stations, as a form of collective punishment.

In very large prisons, such as the São Paulo House of Detention in Carandiru, which currently holds 7,200 prisoners, powerful inmates form gangs. In such surroundings an internal prison economy develops in which prisoners can buy “privileges” which should be rights — a decent cell, for example. Those who cannot afford this, who have made enemies within the prison, or are being punished, are generally placed in worse conditions. In one wing of the São Paulo House of Detention Amnesty International delegates saw up to 10 prisoners confined 24 hours a day in cells designed to hold a single inmate. Most air and natural light were blocked out by a metal plate fixed over the window, through which airholes were drilled, and the atmosphere was fetid and dank. In one occupied cell, the wastepipe that passed through the cell had broken, spilling human waste from the cells above. An open and overflowing sewer containing human waste ran outside a number of inhabited cells on one side, causing an unbearable stench. The state authorities took these cells out of use shortly thereafter, and they remained unoccupied when Amnesty International returned for a second visit in November 1998.

Sanitation is often so inadequate as to constitute a health hazard. Toilets generally consist of a hole in the floor. The overhead shower consists of a pipe on the wall. When the water supply is cut off for days at a time sanitary conditions worsen considerably. Many prisons and police stations visited were filthy, with rubbish and discarded food strewn all over the perimeter grounds and in the communal yards, attracting rats and cockroaches. The physical installations appear poorly or inappropriately designed, with exposed electrical wires, cracked and crumbling walls, and rainwater pouring into cells and corridors. Sewers were often blocked, broken or overflowing.

Many prisoners do not get adequate exercise, due to lack of facilities or understaffing. Pre-trial detainees held for long periods in the police stations get none. In some states food is prepared by outside contractors, in others by detainees in the prison kitchen, and in some facilities prisoners cook food brought in by relatives or purchased from a “store” run by inmates. In Rio de Janeiro, prisoners complained that food delivered in unrefrigerated trucks often arrived spoiled by the heat. Prison staff also allegedly made prisoners wait for hours for a meal, which they distribute spoiled or cold. In a number of police stations, prisoners alleged that civil police, during searches for weapons and other illicit items, would destroy their dry food stores by strewing them on the floor.

Prisoners are sometimes arbitrarily denied access to basic items which would improve their conditions of detention, especially in the police stations. Detainees in DEPATRI were prevented by the authorities from receiving medicine, soap, cleaning materials and other articles from their families. Visits from family members were also suspended for an indefinite period as a collective punishment, contrary to a number of recommendations in the UN Standard Minimum Rules for the Treatment of Prisoners. Restriction of visits, and humiliating and routine strip searches of all visitors in many prisons and police stations also feature high on prisoners’ lists of grievances.²⁶ In the Theft and Robbery police station in Belo Horizonte, the station chief explained that prisoners could not have even plastic sandals because they were “a security risk”, as razor blades and other prohibited items could be hidden in them. He then admitted that his intention was to keep conditions as bad as possible in order to force the authorities to transfer the prisoners into the prison system.

3.2. INADEQUATE MEDICAL CARE

Such extreme levels of overcrowding are also conducive to the spread of diseases. HIV infection levels are high, up to 20% in certain areas. However, there is no program of voluntary testing, and so many cases may remain undiagnosed. Levels of tuberculosis infection reportedly reach 80% in some of São Paulo state's prisons.²⁷ Visitors, staff and released prisoners can act as vectors for tuberculosis between the prison and the outside community. Some estimates suggest that each active tuberculosis case infects 20 more if not isolated and treated.

Prisoners have the right to adequate physical and mental health care. However, no health care is provided within the system for the thousands of prisoners in police detention who rely on a police escort in order to be treated at a local health clinic. Inmates in the prison system can, in theory, see a specialist in a public hospital. However, requests for medical treatment are often refused if the authorities consider the request unfounded or if an escort is not available. In other cases reported to Amnesty International, prisoners never reached the hospital, or were beaten by police en route and returned in a worse state of health than when they left. Police escorts have also refused to transport HIV positive prisoners. One detainee in the São Paulo state men's penitentiary missed 35 hospital appointments in two years for an operation on his leg because of problems with the police escort. Many prisoners arrive in custody with gunshot wounds which never receive medical treatment. In Cariacica police station the Amnesty International delegation observed several prisoners with bullets lodged in various parts of their body. This condition can result in disablement and disfigurement of limbs.

Health provision in prisons is also poor. The installations themselves are generally of low quality, with an extremely limited range of medicines. Few prisons have an on-call doctor. In some cases, prisoners with very serious conditions are cared for by prisoners with no medical knowledge or training even in basic procedures such as giving injections, changing dressings and attaching drips and catheters. In the Barreto Campelo maximum security prison in Pernambuco, a number of mentally ill prisoners were looked after informally by a "trustee" prisoner with no psychiatric nursing training who slept in their wing. A visit by human rights groups in February 1998 revealed that over 1,000 prisoners relied on one volunteer doctor. AIDS prevention work is carried out in a number of prisons, often very creatively, with the support of the health ministry. However, detainees in police stations, and in other prisons, are untouched by these programs, and many detainees even in the advanced stages of AIDS do not receive adequate treatment. The AIDS hospital attached to the São Paulo prison system is cleaner and better run than most prison facilities seen by Amnesty International. However, it continues to be under-utilized. Some prisoners may not have been transferred for treatment due to lack of a police escort or proper diagnosis. Some prisoners with AIDS are also transferred back into the prison system. Prisoners in the terminal stages are not routinely granted compassionate release or parole as the Federal Congress' Commission of Inquiry into the prison system recommended in 1995.

3.3. GOVERNMENT POLICY AND EXAMPLES OF GOOD PRACTICE

The Brazilian federal government is attempting to reduce overcrowding, remove pre-trial and convicted prisoners from the custody of the police, and improve the conditions of detention by building new prisons in conjunction with the state governments. The Ministry of Justice's Zero Deficit Project will create 16,440 new places in 52 new prisons at a cost of US\$470 million. In May 1998 the state of São Paulo signed a US\$109 million agreement with the Ministry of Justice to build nine new jails to replace the Carandiru House of Detention. The state government is also building 15 other prisons which will provide a total of 18,380 places.

However, as these new places are not sufficient to eradicate current overcrowding, the federal government has also declared itself in favour of confining custodial sentences to those guilty of serious offences. A November 1998 law on alternative sentences expanded the range of non-custodial sentences available to judges. Applicable to non-violent offenders who would otherwise receive a prison sentence of under four years, these would also reduce pressure on the prison system, release some 20,000 prison places and reduce the running costs of the penal system. The estimated average cost of imprisoning an offender is US\$350 a month, versus US\$53 a month to implement non-custodial sentences. It is also claimed that the rate of reoffending is much lower, under 13%, compared to a national average of 48% among incarcerated offenders.²⁸ Non-custodial sentences are currently very unevenly applied. Some states, such as Rio Grande do Sul and Mato do Grosso do Sul have been

pioneers in this regard, while others, such as Rio de Janeiro, hand down a mere 3% of non-custodial sentences.

A number of smaller prisons, mainly institutions run by charitable foundations, have shown that it is possible to administer a prison based on the rehabilitation of the offender and respect for fundamental human rights even with resource limitations.²⁹ Amnesty International visited three such prisons, the Itaúna men's penitentiary in Minas Gerais, the Patronato Lima Drummond in Porto Alegre, and the Penitenciária Juiz Plácido de Souza, Caruaru, Pernambuco. The latter prison is very overcrowded (202 in a space built for 50) with some cells occupied by up to 15 prisoners, and many sleep on the floor. There is no legal aid lawyer or staff doctor — local volunteers provide these services — and two prison officers work each shift. Nonetheless, the prison administration has managed to reduce tension and violence by introducing a number of programs aimed at the rehabilitation of inmates. Most of the inmates work producing regional handicrafts which they sell. Others participate in a prison work program recycling rags for cleaning cars, in order to earn remission. There is an educational program, with basic literacy classes, and computer training. All the installations were clean and well-maintained. The incidence of reoffending is also claimed to be very low, in most cases below 10% compared to a rate of up to 70% elsewhere.

Perhaps the chief innovation is the effort made by the administration to support prisoners' relationships with their families. The prison environment is made as welcoming as possible, and special children's days are organized with art and theatre workshops with the active participation of the fathers. The prison officers even accompanied inmates and their children on a visit to the local zoo. It would seem that ill-treatment and deaths in custody are greatly reduced when the facility is run on the principle of what is termed "dynamic security", that is, when staff are able to interact with prisoners who are kept active with work and education. Making prisons a safe environment for all who live and work in them is one of the most powerful ways of guaranteeing human rights in detention.

The involvement of non-governmental organizations (NGOs) and community groups in these pioneering penal establishments demonstrates that change is possible even with limited resources and low staffing levels. It also promotes greater transparency and encourages communities to take responsibility for the good administration of the prison.³⁰

4. A PENAL SYSTEM IN CRISIS

Serious human rights violations are, in part, the result of structural and administrative problems in Brazil's penal system: the long-term incarceration of both pre-trial and convicted prisoners in police custody, rather than in prisons; dangerously low levels of staffing and undertrained prison staff; inadequate medical care; and a shortfall in the provision of legal aid to poor detainees. Low quality and insufficient human resources, corruption and maladministration are major contributory factors to the violence and human rights violations in places of detention.

4.1. LONG-TERM DETENTION IN POLICE STATIONS

The authorities responsible for detention should be separate from those in charge of interrogation (Amnesty International's recommendations for the prevention of torture and ill-treatment)

A chronic problem in the Brazilian penal system is the number of pre-trial and convicted prisoners held in long-term detention in police station lock-ups. In a number of states this exceeds the number of prisoners held in the prison system. The Minas Gerais CPI discovered in 1997 that 2,309 convicted prisoners were serving their term in prisons, while some 7,000 others convicted detainees were being held in civil police stations, along with a further 3,241 prisoners awaiting trial.³¹ Criminal suspects should remain in the custody of the civil police only for the period legally allowed for investigations to be carried out and charges brought. Thereafter they should be transferred to a jail or house of detention to await trial. Long-term detention in police stations creates a number of problems. Convicted prisoners are deprived of many of the rights to which they are entitled and which are better guaranteed in prison. The civil police are unable to carry out their regular policing functions, as they have become de facto jailers. The apparently regular use of torture in police stations, both to interrogate criminal suspects, and to intimidate prisoners, underlines the importance of separating the authorities responsible for interrogation of suspects and those responsible for detention.

Most of the Brazilian states have formally separated these two functions. However, there appears to be insufficient collaboration between the Secretary of Justice (generally responsible for prisons) and the Secretary of Public Security (responsible for police stations and public jails). This impedes the transfer of detainees into the prison system and, in some cases, encourages corruption, as some prisoners pay officials for transfers. In some states the prison system actually had spare capacity. In Minas Gerais in 1997, the public jails were 380% overcrowded, while the prison system had 1,940 unfilled places, some 46% per cent of total capacity. Such corruption and black market trading in prison places acts as a major obstacle to an eventual permanent transfer of all convicted and pre-trial prisoners into the prison system.

“...It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial...”

Article 9(3) International Covenant on Civil and Political Rights

Detainees awaiting trial are entitled to specific legal safeguards, and should be held in conditions at least equivalent to those of convicted prisoners. However, pre-trial detainees are held in some of the worst conditions, especially in police stations. Reducing the number of detainees in pre-trial custody and the length of their wait, transferring prisoners to appropriate pre-trial facilities, and providing improved legal aid would alleviate certain aspects of this problem.

4.2. PRISON OFFICERS

The number and quality of prison staff affect the conditions of detention, and the treatment accorded to prisoners. Very low levels of staffing can result in the authorities losing control of the prison, thus exposing the prisoners to violence and intimidation by fellow inmates. Understaffing also increases the likelihood that prison officers will resort to excessive and arbitrary force, ill-treatment and torture as means of maintaining control. The House of Detention in Vila Velha in Espírito Santo had just one guard on duty for 120 prisoners. On an average day in Latin America's largest prison, the House of Detention in São Paulo, one guard on duty would have responsibility for 300 to 600 prisoners, all out of their cells and circulating within huge accommodation blocks which house between 350 and 2,200 men. Prison officers are vulnerable to attack and hostage-taking by prisoners when they do enter the accommodation blocks, and some have been killed on duty. The daily fear of attack raises the stress levels of staff, leading to mental health problems. In addition, prison officers do not always wear uniforms, and in Mato Grosso do Sul during one escape attempt the military police fired on prison officers by mistake.

Many prison officers suffer exposure to infectious disease. In the Paulo Sarasate prison in Ceará, Amnesty International visited the prison officers' quarters: the filthy toilets were broken and leaking and prison officers slept on improvised hammocks. Health care for staff is also very poor. Both police and prison warders earn extremely low salaries, thus increasing the likelihood of corruption. Reports on the prison system in Minas Gerais, São Paulo and Espírito Santo revealed a number of unexplained escapes from police stations, including examples of drug dealers who allegedly paid up to US\$500,000 to escape. Prison officers often take on second jobs, for example as security guards, on their days off. The resulting overwork, combined with the stress of the job itself, leads to high levels of alcoholism, drug abuse and suicides. The director of the São Paulo House of Detention believes that many cases of excessive use of force, ill-treatment and torture of prisoners stemmed from such factors.

Prison staff must also be subject to thorough vetting, training and a proper code of discipline governing their working procedures and professional standards. It was discovered in late 1998 that 241 of the more than 1,000 prison officers employed by the São Paulo House of Detention had a criminal record. Of those, 38 had been charged in police investigations, 171 were currently being tried on criminal offences, three had served a sentence and 29 had gotten their criminal convictions set aside. The majority of criminal charges and convictions were related to their prison work, for example, drug smuggling, threats, assault and assisting escapes. The state prison administration, in possession of this information, did not dismiss or suspend the prison officers in question.

Only specialized and trained personnel should work inside prisons. Staff shortages and security concerns have led to the use of military police as prison officers within prisons, whereas previously they had guarded the perimeter only. In Espírito Santo, prison officers have been progressively

removed and “converted” into police officers who report to the Secretary of Public Security, not the Secretary of Justice. The bulk of the staff guarding 2,000 remand prisoners in the Anibal Bruno prison in Pernambuco are military police, 50 of whom work inside the accommodation blocks. The 13 prison officers carry out more administrative duties. In Ceará, the Paulo Sarasate prison was occupied by 600 armed military police in January 1998, who were only recently withdrawn. In Rio Grande do Sul, military police have been used to staff larger prisons for some time.

4.3. MEDICAL PERSONNEL

“Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standards as is afforded to those who are not imprisoned or detained.” Principle 1, UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Amnesty International is concerned about the professional standards of conduct of some medical personnel linked to the prison system or police service. Some Brazilian prison doctors allegedly refuse to touch their patients, and conduct only cursory visual examinations. Other have also neglected or refused to treat patients in their care. Medical staff from the São Paulo State Penitentiary Central Hospital are now facing criminal charges for neglecting paraplegic prisoners in their care: two died as a result. In another case, a doctor in the public health service told a prisoner that a bullet would be extracted from his body without anaesthetic. In São Paulo many medical staff do not turn up to work, especially before public holidays and on Fridays, a day when demand actually rises, as police stations transfer prisoners. They have been repeatedly warned but rarely disciplined. In the absence of health professionals, the care of sick prisoners is left in the hands of largely untrained “trustee” prisoners. Prisoners may play some role in providing unskilled nursing care in prison but a doctor should always regularly supervise the care of prisoners, including the issuing of prescriptions.

Some medical professionals working in the Forensic Medical Institute, generally linked to the public security apparatus, have given apparently inaccurate or misleading information and conclusions on autopsy reports in cases of deaths in custody, possibly to disguise what could be deaths resulting from torture and ill-treatment, or from extrajudicial executions. José Leandro Correa died in police custody on 25 January 1997 in João Pessoa, Paraíba, after being severely beaten by police. He had been drunk when he was arrested and taken to the First Police Precinct, where he was allegedly kicked in the stomach and ribs. He died four hours later. The autopsy report concluded that the death was natural and the result of “disease”, in spite of the presence of massive bruising and internal haemorrhage. The public prosecution service ordered the body to be exhumed; a second autopsy report gave the cause of death as “a blow with a blunt instrument” and the first report was partially withdrawn.³²

Brazil’s professional regulatory bodies, the regional and federal medical councils, play an important role in upholding professional and ethical standards, and in disciplining medical personnel who fall short of those standards. They have explicitly drawn attention in their ethical guidelines to the duty of medical professionals to promote respect for human rights. Doctors from the Regional Medical Council carried out an expert evaluation of the facilities in the Central Hospital of the São Paulo state penitentiary at the request of the courts, although they were initially denied access by the authorities. Commitment to human rights and condemnation of medical professionals’ collusion with torture is evidenced in the hearings which began in March 1999 against 26 doctors who collaborated with torture under the military regime, either by monitoring the victim’s state of health, reviving them to be tortured again, or by giving misleading or incorrect information on death certificates. A number have already had their licences to practice medicine revoked. Amnesty International is not aware of any current proceedings by the medical councils against prison doctors or Forensic Medical Institute staff for recent professional misconduct.

4.4. LEGAL AID

The Brazilian prison population is socially skewed: the majority of inmates are young men, from the poorer socio-economic classes. Some 90% of the prison population are functionally illiterate. Over 80% cannot afford to hire a lawyer and many are thus denied their basic right to an adequate defence, which is an integral part of a fair trial.

According to the 1988 Constitution, all states should offer legal aid to prisoners who cannot afford a private defence lawyer. Most do, but the service is woefully under-resourced and unable to meet demand. Ceará state had a total of 10 legal aid lawyers to deal with over 3,600 prisoners.³³ In Rio de Janeiro state, as of March 1998, the state employed 700 prosecutors and 425 active legal aid lawyers. The state had 180 unfilled places for the latter, although some of the shortfall has been made up by Bar Association lawyers and other volunteers. Detainees can wait for months, or even years, before their case comes to trial, and they are allocated a defence lawyer. Many defence lawyers offer only a cursory defence, due to time limitations. Many prisoners are not transferred to a lighter prison regime at their due date or do not receive parole because of the lack of legal representation and a shortage of other vital personnel such as judges, public prosecutors and professionals, who are required to give expert opinions on the prisoner's progress. Some prisoners even serve a term longer than their original sentence because the paper work needed to release them is delayed, resulting in effect in illegal imprisonment. Lack of legal aid and extreme slowness in considering requests for transfers or entitlements is a major source of frustration to prisoners, and a complaint commonly voiced during protests.

In states such as Pernambuco, which has no legal aid office, or others where there is a serious deficit, law students make up some of the shortfall, and work on a voluntary basis with local human rights organizations to review prisoners' legal situation and see whether they are eligible for release, parole or transfer. The Ministry of Justice has encouraged a nation-wide effort, anticipating that 16,000 prisoners illegally detained would be released. In October 1997 Rio de Janeiro state transferred 486 convicted prisoners from the police stations to the prison system, and eight wrongfully arrested detainees were released.³⁴ In Pernambuco, GAJOP, a human rights NGO coordinated voluntary legal aid in three prisons in 1997/1998 in conjunction with the Secretary of Justice. However, they noted that they had encountered resistance and obstruction from prison employees, demonstrating that, while such voluntary action may be a useful short-term measure, it is not a permanent solution.

4.5. GOVERNMENT POLICY AND EXAMPLES OF GOOD PRACTICE

Although the federal and state governments are currently building new prisons, and prisoners are gradually being transferred out of the police stations, equal importance should be accorded to investment in human capital and to increasing the quantity, quality and accountability of the personnel working within the prison system. The federal government allocated nearly US\$ 456 million to the prison system in 1995-1997, but spent only 57% of that budget allocation. Of the US\$540,000 earmarked for staff training, reportedly none was spent.³⁵

A number of states are now recruiting more prison officers to staff the new prisons. Ceará has just contracted 100 more, while São Paulo state is in the process of hiring 7,200 new staff. A new cohort of staff entering the system offers an opportunity for them to receive better quality training based on human rights principles and practical techniques which can be applied on the job. The director of the São Paulo House of Detention admitted that staff were not issued with a detailed procedures manual, claiming that they used their "common sense" when it came to determining the appropriate use of force. This lack of clear guidelines governing the treatment of prisoners by staff opens the door to abuses, excessive use of force and, ultimately, impunity. By contrast, the Juiz Plácido de Souza prison in Pernambuco does issue its staff with an operating manual which gives clear guidelines on such matters as searching cells, escorting prisoners, staff responsibilities and so forth. It also contains explicit instructions on the treatment of prisoners. For example, on cell searches it states: "As a rule, the prisoner may not be held naked, or in an embarrassing position, during the search."

Training is one area in which international assistance would be most useful, in order to share the good practice refined and adopted in other countries. São Paulo state had been planning a training program for its new prison staff in conjunction with an international NGO, Penal Reform International. However, it was cancelled due to lack of funds in Brazil. The Secretary of Prison Administration

assured Amnesty International that funds would be secured in order to facilitate such an exchange in the future.

Recruiting additional prison officers, medical personnel and lawyers is clearly vital. However, in a well-managed prison, the prisoners themselves can provide valuable human resources. In the small number of prisons run by charitable bodies, inmates take on considerable responsibility for the daily maintenance of the prison, preparation of food, even the training and education of other prisoners. These very positive examples also underscore the importance of involving the local community, which contributes with material assistance and practical skills.

5. INSPECTION, COMPLAINTS PROCEDURES AND IMPUNITY

Grave violations of prisoners' human rights persist in Brazil in large part because the safeguards within the system are not adequate or effective. There is no routine and comprehensive data collection on deaths in custody, and most go uninvestigated. Almost complete impunity enables police and prison officers to continue inflicting torture and ill-treatment on those in their custody. Prisoners are left with nowhere to turn to report such gross human rights violations, because prisons and penal establishments are very rarely inspected, and a number of prisons and police stations have limited or denied access both to relatives and to human rights organizations. Many prisoners fear reporting torture or ill-treatment or asking for medical treatment because the Forensic Medical Institute is structurally linked to the public security apparatus. In some cases, prisoners have suffered reprisals and further violence as a result of making a complaint. It is, therefore, very rare for human rights violations committed in a prison or police station to result in a properly concluded investigation, a criminal prosecution or the conviction and punishment of those responsible.

Prisoners' rights and conditions of detention could, however, be considerably improved, in some cases at little or no additional cost, if prisons were regularly and effectively inspected. Such inspections should be carried out both by a government body and by representatives of the local community and human rights groups. The examples of good practice cited throughout this report demonstrate that many positive changes can be introduced when prisons are run in a transparent and accountable manner, with respect for the human rights of the inmates, and the active involvement of the local community and judiciary.

5.1. GOVERNMENT INSPECTION OF PRISONS AND POLICE STATIONS

Prisons are by nature closed institutions and thus it is especially important that they should be subject to regular inspection. Internal inspection by officials who report to the head of prison administration, or of the police, is not sufficient. Internal affairs departments within the prison administration system, for example that in São Paulo, cannot, by definition, carry out truly impartial investigations into allegations of abuse, human rights violations or maladministration. It is crucial that there be some system of inspection independent of the police and prison system, and which reports to an authority beyond the prison and police administration.

Several government bodies have a limited remit for inspection of places of detention, but they have not been able to bring about significant reforms in the system because they work in isolation and duplicate efforts, the results of inspection are not made public, and prison/police station inspection is regarded as secondary to other official duties which receive priority and which may create a conflict of interest. Individual officials may show considerable commitment to monitoring prisons, but they are often constrained by a lack of staff and resources.

Within the Ministry of Justice both the National Prisons Department and the advisory National Council on Penal Affairs are empowered to inspect prisons, as are the state level Councils on Penal Affairs. Neither their annual report nor their schedule of visits are routinely made public. As these councils also process prisoners' requests for parole and other benefits, this creates such an excessive workload that prison inspection cannot be carried out in any in-depth or routine manner.

Within the judiciary, a judge inspector of prisons is expected to carry out monthly inspections of prisons and order investigations of malpractice. In São Paulo state, the judge inspector and 12 assistant judges, are responsible for monitoring prisons in the Greater São Paulo area and investigating complaints of ill-treatment and maladministration, as well as for overseeing the sentences of some 50,000 prisoners, and processing requests for parole, remission, pardons and so forth. This combined

responsibility leaves little time available for inspecting the prisons in the Greater São Paulo region. In some states, however, the offices of the judge inspector of prisons and the judge who oversees the serving of sentences are separate. Not only does this decrease the workload, allowing the judges to carry out their duties with greater efficiency, but it also eliminates the potential for conflicts of interest. At present a number of bodies with powers to inspect prisons, such as the Councils on Penal Affairs, the judges responsible for overseeing the serving of sentences, and the public prosecution service, also decide on aspects of the prisoners' sentence. As a result, prisoners may not have confidence in the independence of these bodies. Where states have only the office of the sentencing court judge, judges may restrict themselves to processing the prisoners' cases, rather than taking an active interest in prisoners' well-being. Amnesty International was effectively denied access to the Roger Prison in Paraíba (see below) by the judge responsible for overseeing the sentences, the state Council on Penal Affairs, and the local legal aid lawyers, all of whom decide on important aspects of the prisoners' sentences. Several prisoners had been killed and dozens more injured during violent episodes in the preceding nine months.

As thousands of pre-trial and convicted prisoners continue to be held for long periods of time in civil police stations, it is also important to strengthen the mechanisms currently available for monitoring and inspection of the police. Here too, a number of different governmental bodies have some limited but insufficient powers to monitor the police.³⁶ Within the security forces the internal affairs departments of the military and civil police investigate disciplinary offences. São Paulo, Ceará, Minas Gerais, Rio de Janeiro and Pará states have now established an Ombudsman's office, linked to the executive branch and independent of the security forces, with powers to receive reports of police malpractice on their hotline and to gather data. However, it has no powers to discipline a police officer, remove him from duty or initiate an investigation: this is done internally by the police force itself.

The judge inspectors of civil police have responsibility for monitoring the treatment of all detainees in police custody. However, the bulk of their daily workload consists of investigating criminal malpractice in the conduct of police inquiries. According to the judge inspector in São Paulo, he and his team of eight staff have responsibility for checking the progress of some 55,000 police investigations a year, leaving little time available for inspecting police stations or investigating complaints by prisoners. At the rate of one visit a month, each police station under their charge would be visited less than once every three years. In reality, they visit only police precincts about which they have suspicions or have received complaints. Upon receiving complaints from a prisoner's relative, they interview prisoners who have alleged torture or ill-treatment in an attempt to verify the police doctor's examination. However, the judge has no medical training, no medical expert is available to give a professional assessment, and no photographs or other records are kept of the injuries.

The judge inspectors have no powers to prosecute: all material is handed on to the public prosecution service, which may also inspect prisons and police activity since its powers and remit were extended by the 1988 federal Constitution. São Paulo's constitution gives the prosecution service officials attached to the court which oversees the serving of sentences explicit power to inspect prisons, public jails and police stations on a monthly basis. This does not happen because of a shortage of staff. Their other responsibilities, which involve putting the prosecution case when a prisoner requests parole, or transfer, also raise a conflict of interest.

Brazil does not yet have any truly effective, transparent and independent system of inspection either for the prison system or for the police. What is required is a dedicated body that would carry out regular visits, using a consistent methodology, with well-defined objectives. Such a body should preferably be composed of penal experts, and the aim of inspection would be to prevent abuse and encourage good daily practices. Visits should be both routine and unannounced. Inspection should also be quite distinct from the investigation of complaints, which is a matter for the judiciary and for the police.

5.2. COMMUNITY INVOLVEMENT

Local NGOs and prisoners' relatives can play an important part in raising public confidence in the prison system by providing an external check on the administration of individual prisons, or police stations, particularly if involved as part of an inspection team. In Brazil those entitled to enter a prison establishment at will include lawyers,

representatives of the Brazilian Bar Association, members of Congress, judges and members of Community Councils. The latter are legally constituted groups of community representatives with the power to visit prisons and assist prisoners. However, the judge of the local court which oversees the serving of sentences has the sole legal powers to set up a Community Council, and in most areas has not done so.

A number of prisons and police stations have denied access to human rights groups. The Governor of Ceará decreed in January 1998 that no NGO could enter the Paulo Sarasate maximum security prison without his express permission. Two NGO representatives had been taken hostage there in December 1997. The ban was lifted shortly after Amnesty International's visit. In May 1998 the Secretary of Justice in Pernambuco refused to allow GAJOP, a local human rights organization, to enter the Barreto Campelo prison after 22 prisoners were killed in a gang fight

The authorities of Paraíba state in 1998 refused international human rights organizations access to the Roger prison in João Pessoa on the basis of a habeas corpus petition filed by the legal aid lawyers which sought to prevent "foreign organizations" from "interrogating" prisoners in private and thereby denying them the right to have a lawyer present. The state Council on Penal Affairs prevented the delegate from entering and insisted that she might only interview a maximum of five prisoners in the presence of a 14-strong committee appointed by the Council and a legal aid lawyer. The Secretary of Justice and the judge both refused to meet the delegate, or to provide written authorization, each alleging that the other had the final power to authorize entry. This was the only penal establishment to which Amnesty International was denied access outright.

5.3. COMPLAINTS PROCEDURES AND IMPUNITY

There are no clear and safe complaints procedures available to prisoners in Brazil. Everyone whose rights have been violated, including those in detention, has the right to an effective judicial remedy. Certain prisons and police stations have been the subject of repeated complaints of human rights violations and, in some case, multiple investigations. However, very little appears to change. Inspection visits are infrequent and tend to take place only after complaints about ill-treatment have been received. Reports are not made public, and even judges' orders to close down certain places of detention have been ignored.

If prisoners complain to prison officers or police, they are often targeted for reprisals, which can involve beatings and torture. Those who complain of torture will be escorted to the Forensic Medical Institute, possibly by their tormentors, and many claim to have been beaten en route and suffered further torture as a result. The Institute itself is linked to the police, and a number of autopsies and technical/medical reports have reached conclusions later contradicted by a second opinion or independent study.

Prison or police officers suspected or known to have committed serious abuses, such as torture, are often punished with nothing more than dismissal from their job. A police chief convicted in Belo Horizonte for torturing to death Sidney Cangussu in 1995 received a two-year suspended prison sentence and a community service order. He was later reportedly promoted.

When complaints are registered, an official investigation is launched and criminal proceedings are initiated, cases can drag on for years, even the most notorious high-profile cases. In 1998 the Brazilian government was strongly criticized by the Inter-American Commission on Human Rights for its continuing failure to bring to justice those responsible for two massacres in São Paulo's penal system. In 1989, 18 prisoners died of asphyxiation in the 42nd Police Precinct in São Paulo, after 51 prisoners were beaten and forced into a small cell without windows or ventilation. No one has ever been fully brought to justice.³⁷

In March 1998, 85 of the 122 military police involved were charged in connection with the 1992 São Paulo House of Detention massacre. However, the police officers remain on active duty and the courts are currently deciding whether the officer in command of the operation should face criminal charges. He is arguing that the police acted in self-defence, were following higher orders, and had no alternative course of action. In both cases, in order to avoid an Inter-American Commission report critical of the Brazilian authorities, the federal government acknowledged responsibility, thus obliging the state authorities to compensate the victims' relatives.

5.4. GOVERNMENT POLICY AND EXAMPLES OF GOOD PRACTICE

Where they are supported by the local community and the courts, for example in Bragança Paulista in São Paulo, Community Councils have proved a great success. Contact with the outside world and links between the prison and the surrounding community help to reintegrate prisoners into society on release. It may also help reduce fears in the community about the presence of the prison, helps to safeguard prisoners' rights, and perhaps help prisoners to make a contribution, through labour, to the community. After Amnesty International expressed concern for the safety of prisoners in the Theft and Robbery police station in Belo Horizonte, the local judge carried out an inspection visit, had a number of prisoners transferred, some sent for medical examinations following allegations of torture, and set up a local Community Council. Promotion of these councils is recommended by the government's National Human Rights Program. However, none exist in many parts of the country. Council members, as well as the local judiciary, would also benefit from relevant training.

6. WOMEN

Women comprise about 5% of the prison population in Brazil. In some places of detention, they suffer torture and ill-treatment by police and prison officers. Women held in police stations endure extreme overcrowding and lack of privacy, decent sanitary facilities and medical care. Amnesty International also has a number of concerns specific to women prisoners' particular health care needs in prison, particularly those related to pregnancy and childbirth and to their family responsibilities. The incarceration of women creates a unique set of social consequences, yet Brazilian penal policy and practice fail to address these factors with any consistency.

6.1. PROFILE OF WOMEN PRISONERS

No national data on the characteristics of women in custody are currently available. The information in this section is based on Amnesty International's interviews with prison staff, administrators and women prisoners, and on case studies of individual prisons.³⁸

Women imprisoned in Brazil tend to be poor and badly educated. More than half the women prisoners in Porto Alegre, and 77% of those in São Paulo, had not completed primary school education. Around 20% of the women prisoners surveyed in the Tatuapé women's prison had spent several years in state juvenile detention and care institutions.

Most women incarcerated in Brazil have care responsibilities as heads of household. In Tatuapé prison, 65% of women were single, the majority had children, and over half were the principal breadwinner in the family. When a woman is imprisoned, children are placed in care or with relatives. Women prisoners cite separation from their children as their greatest source of anxiety. Family breakdown is one of the consequences of incarceration; women receive fewer family visits and conjugal visits than do male prisoners. Sentencing policy does not appear to take into account women's particular role as carers and heads of household. However, the introduction of alternative sentencing legislation in December 1998 provides judges with a wider range of non-custodial measures. Women convicted of petty and non-violent offences, such as theft, would be eligible. At present many such offenders receive custodial sentences.

6.2. TORTURE AND ILL-TREATMENT

Although the only men generally employed in women's prisons are the armed prison officers on the gates and the military police guarding the perimeter, Amnesty International has documented a number of beatings of women prisoners, carried out by male prison staff or by the Civil Police "special squad" responding to disturbances in prisons and police stations.

On the night of 8 March 1998, International Women's Day, male prison officers in Tatuapé beat a prisoner with metal bars after she banged on the door to ask to be let out to use the toilet. The beating occurred just hours before an official visit by a commission from the state assembly. An internal inquiry was opened, and two male prison officers were dismissed.

During a March 1998 visit to the Talavera Bruce women's prison in Rio de Janeiro the Amnesty International delegation asked to visit the punishment cells. The assistant prison governor first denied their existence, then claimed they were empty and finally opened them at the insistence of the delegation. In fact, all were occupied by women who were distressed and showed signs of mental health problems. They had been held there for a month following an incident in which the prison escort service of the prison department, having been sent in response to an alleged escape attempt, had broken lights and fired shots along the corridor. Ten women, including one who was several months pregnant, had allegedly been beaten by the police and two male prison officers on night duty. Amnesty International had received previous reports of ill-treatment in this prison. In July 1996 Amnesty International wrote to the governor of Rio de Janeiro about Sharon Smith, a United Kingdom citizen, who was allegedly beaten on 4 July by three prison officers using a broom-handle and a studded shoe, causing serious bruising to her head, back and waist.³⁹

On 12 January 1997, 80 women prisoners were beaten by male civil and military police during a protest in the Santa Rosa de Viterbo prison, Altinópolis, São Paulo, after an inmate was refused permission to attend her grandson's funeral. A woman reportedly suffered a miscarriage as a result of the beatings, another sustained a broken arm, and another required 10 stitches to her head. Women prisoners in the Women's Penitentiary in the state capital of São Paulo were allegedly beaten by male prison officers on 11 March 1997, and at least 15 women suffered injuries. Some of the women reportedly vomited blood as a result of the beatings.⁴⁰

In April 1997, two women were taken into custody in the Theft and Robbery police station police station in Belo Horizonte in connection with a police investigation into a kidnapping. Both women were three months pregnant and reportedly miscarried as a result of being beaten by police.⁴¹

6.3. CONDITIONS OF DETENTION

Conditions of detention for women vary enormously. The relatively small number of female prisoners means that women's penal establishments are sometimes improvised, and housed in inadequate installations. The Tatuapé women's prison was set up in a former youth detention centre, closed down because of its substandard facilities. Cells in only two accommodation blocks have toilets; the rest of the prisoners use communal facilities and must ask the prison officers to let them out of the cell during the night. Very little natural light or fresh air enters the cells through the narrow windows. In summer the overcrowding and lack of ventilation make the cells hot and suffocating.

Police stations for women detainees are often severely overcrowded. On 14 February 1999, 48 female inmates reportedly lit bonfires and took six hostages at the Seventh police precinct in São Bernardo do Campo, São Paulo state, in protest at overcrowding: the jail had been built to accommodate 16 prisoners. On 18 March 1999 legal aid lawyers visiting the 20th police precinct in Rio de Janeiro found 153 women prisoners, double the official capacity. Of these, three were in the advanced stages of AIDS and one had tuberculosis, 15 were pregnant, with one going into labour, and another with heavy bleeding. In March 1998 the Amnesty International delegation visited the 26 women prisoners held in the Seventh police precinct in Rio de Janeiro. The women were held in four cells, all of which were dark and damp, the walls covered with mould and dripping water. The water pipes were broken, bare electric wires hung from the ceiling, and the cells afforded no privacy, as one wall consisted of bars. The only open air area was a narrow corridor outside the cells, covered in water. One prisoner, who was five months pregnant, had not yet received any pre-natal examination. The duty police chief claimed that he had to take prisoners to the health posts in his own car. It is not known why the convicted women in the Seventh police precinct and the 19 in the 20th police precinct had not been transferred to the Talavera Bruce prison, which was not over-crowded and which offered considerably better facilities.

In some police stations women are held in the same facility as men, although in separate cells. Amnesty International spoke to four women prisoners held in the Theft and Robbery police station in Belo Horizonte in a cell measuring approximately 5m x 3m. They had no beds or privacy. The toilet and cold shower at the back were partitioned off by a plastic curtain. As the women's cell was located

next to the prison officers' room, male warders and staff could see through the bars as they passed to reach the other cells.

Both the Brazilian Prison Law and the Constitution state that women's prisons should provide facilities for inmates to care for their children following childbirth, and for them to maintain regular contact with older children. However, provision is extremely variable. The Madre Pelletier prison in Porto Alegre and the Talavera Bruce prison have crèche facilities for children up to the age of five. In São Paulo state, the Butantã women's prison is the only facility which allows women to remain with their babies until they are six months old.

Prisoners in Brazil are entitled by law to receive conjugal visits, and many male detainees do, even in some of the most overcrowded police stations. However, many women detainees do not as a result of discriminatory practices. In São Paulo state, women prisoners may do receive conjugal visits. In the Madre Pelletier prison in Porto Alegre, only a minority (13%) are entitled to receive such visits as it appears that women must meet more stringent conditions than men. In Rio Grande do Sul, a male prisoner is required only to supply a written note from his female partner confirming their relationship, and this then entitles him to up to eight visits a month. The partners of women prisoners, on the other hand, have to attend during family visiting hours for four months and the final decision on the granting of conjugal visits rests with the prisons governor. Conjugal visits are then permitted only twice a month.

6.4. INADEQUATE HEALTHCARE

General health services for women in detention are inadequate. Prisoners in the Talavera Bruce prison complained of a lack of adequate medical treatment for conditions such as anaemia, dengue, ulcers and sinusitis. Women held in police stations have minimal access to medical care because of a shortage of police escorts and vehicles to take them to the nearest public health clinic. Pregnant prisoners face a care lottery. Those who end up in a prison generally receive some pre- and post-natal care; those held in the police precincts and jails (two thirds) receive none. Only half of the women in Tatuapé had received a medical check on entering the prison: this should be routine.

Amnesty International delegates met a number of women prisoners who were regarded by staff and other prisoners as having mental health problems, because of their particular characteristics, including aggression, self-mutilation, and epilepsy. A number had abusive or dysfunctional family backgrounds, had lived on the streets, and passed through the juvenile justice system. In Tatuapé prison, 38% of women prisoners surveyed had received some form of psychiatric or psychological treatment.

In April 1998 Amnesty International met a woman who was being held in a single cell in the hospital wing of the male penitentiary in Manaus, Amazonas. Although she had served two years for homicide, and should have been released, the judge had ordered another year in prison in order for her to be treated for her epilepsy and behavioural problems. In prison she had apparently been victimized by the other prisoners because of her epilepsy, repeatedly getting into fights. She had also been put naked into the prison punishment cell for four days before being moved to the hospital. Inadequate medical or mental health services have in this case resulted in a woman continuing to be incarcerated for lack of alternatives.

6.5. GOVERNMENT POLICY AND EXAMPLES OF GOOD PRACTICE

In 1985 Brazil ratified the UN Convention on the Elimination of All Forms of Discrimination against Women, which recommends that states parties should refrain from engaging in all acts or practices of discrimination against women (Article 2(d)). The federal Ministry of Justice published in 1997 a strategic action plan for promoting the rights of women prisoners and of prisoners' wives. This advocates the gathering of specific information relevant to women offenders, and the improvement of state health services to women in prison, among other recommendations.⁴² However, it is not yet clear how these recommendations will be put into action.

The UN Standard Minimum Rules for the Treatment of Prisoners recommends that "No male member of staff shall enter the part of the institution set aside for women unless accompanied by a woman officer." In addition, under Brazilian law, no male staff, with the exception of specialized technical personnel, are supposed to work in women's prisons.⁴³ However, a number of women in

prison have reported beatings by male prison officers or police, and the majority of prison officers in police stations are men. One solution might be to train female prison staff in techniques for dealing with minor incidents or for restraining aggressive prisoners without causing injury. This problem also underlines the importance of transferring women detainees as soon as possible out of police stations and into the prison system to await trial and serve their sentences.

The Madre Pelletier women's penitentiary in Porto Alegre, which Amnesty International visited in December 1998, has established a number of good working practices. Set up by a religious order after the Second World War, the prison has generous and airy crechê facilities where the children can remain with their mothers until the age of five. Work is provided by private sector businesses to most of the prisoners who want to work. Both remission and wages can be earned, and both are carefully recorded for the prisoner's benefit. The cells are clean, relatively spacious and well ventilated.

7. CHILDREN IN DETENTION

"States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth..."

Article 40(1), Convention on the Rights of the Child 44

Children convicted or suspected of committing a crime suffer many of the same human rights violations as adult detainees in Brazil. When they are picked up and questioned by police, they are frequently beaten and humiliated. Their legal rights are often ignored: their parents are not informed of their whereabouts; they may be held longer than the 24 hours in police custody the law allows; and they are sometimes held in cells with adults. Suspected juvenile offenders may be detained at a juvenile facility for up to 45 days pending a juvenile courts decision. A number of children have apparently been arrested for activities which are not, in fact, against the law. Custodial sentences for children, which should be applied as a last resort, are overused by some courts. Many juvenile detention centres are effectively prisons, and are overcrowded and chronically understaffed, with cramped, filthy cells and little to offer by way of education or training. Amnesty International has received many allegations of ill-treatment and beatings by members of staff. Some boys have been subjected to violence, including sexual abuse, by older juvenile detainees.

7.1. PROFILE OF CHILDREN IN DETENTION

Young offenders are defined by Brazil's Children and Adolescents Statute as children between the ages of 12 and 17 who have committed any criminal act under the adult penal code. Children do not receive a criminal sentence, but rather one of six types of "sociol-educational" correctional orders: warning; reparation of damage; community service; probation; day release; and detention. Amnesty International visited two types of custodial institutions for young offenders: holding centres, where suspected juvenile offenders are held for up to 45 days pending a decision by the juvenile courts; and closed detention centres, where children serve custodial orders. There are 74 holding and detention centres in Brazil, most are linked to the state secretariats of labour, social welfare, justice, children or the family.

The average age of those in juvenile institutions is 17. Juvenile offenders who commit a crime while under the age of 18 may serve a custodial order in a juvenile institution up to the age of 21, at which point they are released. More than 96% have not completed primary education, and more than 15% are reported to be completely illiterate. The vast majority of juvenile offenders (66%) have committed crimes against property. Only 8.5% are being held for serious violent crimes, such as rape and murder; while the total of those in custody for all crimes against the person is just over 20%.⁴⁵

7.2. DEATHS IN CUSTODY

"States Parties shall ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment..."

Article 37, Convention on the Rights of the Child

The state has a duty to maintain a certain standard of care for children in custody. Juvenile offenders or suspected offenders must be protected from harm, whether inflicted intentionally, or as a result of omission or neglect, whether perpetrated by state employees or by other detainees.

This duty has clearly been breached by a number of state authorities. On New Year's Eve 1996, in the juvenile holding centre Instituto Padre Severino (IPS) in Rio de Janeiro, two boys set fire to a mattress in a dormitory. The 190 boys held there had been locked up early by the 20 members of staff, who then held a party in another part of the building. In panic as the fire spread, boys broke down part of the walls and doors and managed to escape. Military police and members of staff gave chase, dragging those they caught back to the IPS. One boy's badly burned back clearly showed the imprint of the boot of a military policeman who had deliberately stamped on his burns. In the first 24 hours after the fire, many of the teenagers were refused medical assistance and were kept in the IPS. At least 45 boys suffered third-degree burns, one died the day after the fire, and five more in the ensuing days. The survivors of this horrific incident were returned to the IPS, despite their injuries and trauma. Their families have so far received no compensation and such urgent medical care as was provided came from local human rights groups.

7.3. TORTURE, ILL-TREATMENT AND NEGLECT

“All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment...”

Rule 67, UN Rules for the Protection of Juveniles Deprived of their Liberty.

Amnesty International has received a number of reports of ill-treatment of children by police. Boys in the Senador Raimundo Parente juvenile holding centre in Manaus, Amazonas, told Amnesty International delegation that they had been kept in police detention longer than the 24-hour legal limit, and had been tortured, beaten, tortured and otherwise ill-treated. When transferred to a special children's police station, their injuries were not recorded and by the time they saw the nurse at the holding centre, marks of beatings had disappeared. Some suspected juvenile offenders, are held illegally in police detention. According to the director of the juvenile detention centre in Cariacica, Espírito Santo, children often remained for months in police custody owing to a shortage of police vehicles and escorts. One 15-year-old claimed that he had spent eight months in police station, and two months in another.

Some members of staff in juvenile detention centres allegedly use force to maintain order. In São Paulo, youngsters in the FEBEM, a juvenile detention centre said that at night staff frequently slapped, punched and beat them with sticks and iron bars kept outside the main gates. Amnesty International delegates found items which fit this description. On 5 November 1997 a riot and mass break-out in FEBEM was ended by the arrival of the military police riot squad. Human rights groups report that the boys were made to line up nearly naked and were left for several hours under the blazing midday sun, with no food or water. The report of the Parliamentary Commission of Inquiry into FEBEM held by the São Paulo state assembly documents a number of cases of ill-treatment, as well as poor conditions and a lack of legal aid.

A number of juvenile institutions now employ military police, rather than specially trained staff. The Paratibi holding centre in Pernambuco is staffed by a mixture of military police, private security guards and employees of a child welfare organization. Some boys complained to Amnesty International of ill-treatment by the director (a military police captain) and by private security guards, who allegedly beat them with sticks kept in the downstairs bathroom. In 1997 the military police took control of the FEBEM detention centre for offenders aged 18-21 in Porto Alegre, after a spate of riots and escapes. They are now being gradually withdrawn, and the low velocity scatter-shot rifles carried by some members of staff are being phased out.

Amnesty International is also concerned about the use of punishment cells and solitary confinement as forms of punishment for disciplinary offences. Solitary confinement should be used as seldom as possible, and should not be employed repeatedly or for indefinite periods. In the FEBEM unit for older juvenile offenders in Porto Alegre, a number of boys in solitary confinement said that release from solitary confinement was at the staff's discretion. In the Senador Raimundo Parente centre, the Amnesty International delegation came across five boys being led by the staff out of a

punishment cell. Most of the boys interviewed claimed to have been kept in this cell for days at a time, with up to six in the cell and no mattresses.

In order to minimise the possibility of children being abused or influenced by others, young offenders should be separated by age and by the seriousness of their offence but this often does not happen. In March 1996 evidence came to light that boys in the João Luis Alves juvenile detention centre, Rio de Janeiro, were being sexually abused by a group of older boys, convicted of violent offences. These older boys ran a “parallel administration” within the school, entering and leaving at will, with access to drugs. They acted in league with a warder, who lent them his gun and took photos of the sexual abuse of the younger boys.

7.4. CRUEL, INHUMAN AND DEGRADING CONDITIONS OF DETENTION

“While in custody, juveniles shall receive care, protection and all necessary individual assistance — social, education, vocational, psychological, medical and physical — that they may require in view of their age, sex and personality.”

Rule 13(5), UN Standard Minimum Rules for the Administration of Juvenile Justice

The juvenile justice institutions visited by Amnesty International delegates resembled adult prisons in the main, and were poorly maintained, understaffed, and under-resourced. Medical care is poor to non-existent. Overcrowding is a problem in many states. Children in holding centres have few possessions and nothing to do to occupy their time: they do not attend school classes because of the relatively short time they are held. Some 30% of children in custody do not receive any education.⁴⁶

Some 140 boys were moved to a former adult prison, Muniz Sodré, in Rio de Janeiro in December 1997 after a riot destroyed the João Luis Alves juvenile detention centre. At the time of Amnesty International’s March 1998 visit, 362 boys were crammed six to a cell: the prison has capacity for 160. There were few mattresses and the floor was frequently flooded. Boys were not separated either by age or seriousness of crime. The overcrowding was continuing to mount, to the frustration of the institution’s director, because the judge responsible for juvenile cases persisted in issuing several more custodial sentences a day. The prison was seriously understaffed, and there were allegations that on certain shifts staff resorted to violence to maintain order. The João Luis Alves school has been rebuilt and reopened, but has a capacity for only 100 boys.

The juvenile detention centre in Cariacica, Espírito Santo was badly understaffed. On the Saturday of Amnesty International’s visit, the boys were locked up all day, as only one staff member was on duty. The cells were unpainted, damp and filthy, with open bars facing onto a corridor. Many were without water or electricity, with blocked drains. Boys were crammed in five to a cell with a hole in the ground for a toilet. Most had skin complaints and some were suffering from dengue fever. The boys complained that they were kept locked up, had nothing to do all day, that food was often spoiled when it arrived, that no legal aid lawyers were available to move their case along, that their Sunday visits had been cut without reason, and that during visits their mothers were strip searched by military policemen.

7.5. EXCESSIVE INCARCERATION

“The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.”

Rule 19(1), UN Standard Minimum Rules for the Administration of Juvenile Justice

Amnesty International is concerned about the excessive degree to which children are held in detention. Police have wide powers to pick up children whom they consider to be “at risk” or to have committed some offence. These children are then routinely deprived of their liberty for up to 45 days. The families of some of the boys in the Senador Raimundo Parente centre had apparently not been informed of their whereabouts. The report on FEBEM in São Paulo criticizes the lack of legal aid lawyers available to provide a defence for children in the juvenile court.

The Brazil’s Children and Adolescents Statute states that the decision to detain children pending a court decision “must be well-founded and based on sufficient evidence of involvement in the crime, and the absolute necessity of this measure must be made clear”.⁴⁷ In Brazil many adult

first-time offenders are not held in detention awaiting trial. There appears to be no good justification for routinely detaining young people in this manner, particularly given the appalling conditions and the violence which often occurs within these institutions.

Children are also more likely than adults to receive a custodial sentence for the same criminal offence. Article 122 of the Statute permits a custodial sentence to be imposed in only three circumstances: if a crime is committed with violence, if the offender commits a second serious offence, or if the offender has repeatedly broken the terms of previous correctional orders. In some juvenile courts, for example in Rio de Janeiro, judges routinely apply custodial orders in these circumstances, although they are considered a last resort in the Statute. This is partly because all states in Brazil have juvenile detention centres whereas only 74% have functioning day release and probation schemes. Community service schemes exist in only half of Brazil's states.⁴⁸ Appeals against the judge's decision rarely succeed. Legal aid lawyers in Rio de Janeiro requested non-custodial orders for 160 boys in the Muniz Sodré prison: all were turned down by the juvenile courts.

Children also receive custodial and other correctional orders for activities which do not appear as criminal acts in the country's penal codes, such as "vagrancy ("vadiagem") and "walking the streets" ("perambulagem"). These appear to be used to pick up and detain children who live or work on the city streets and whose presence may be inconvenient to traders and their customers.⁴⁹

7.6. GOVERNMENT POLICY AND EXAMPLES OF GOOD PRACTICE

Three bodies have the power to inspect governmental and non-governmental institutions which take on the care or correction of children: the courts; the public prosecution service; and the Guardianship Councils which are composed of local representatives of civic groups. The Councils have the task of protecting children's rights as laid out in the Statute. In theory the police should inform the local Council when a child is arrested; in practice, many towns have no Council to inform. The members of all three bodies should be given adequate training in juvenile justice issues, and should be made aware of their responsibility to inspect juvenile facilities regularly.

Brazil is a state party to the UN Convention on the Rights of the Child, and many of its principles were incorporated into the guidelines for the treatment of young offenders laid out in Brazil's progressive Children and Adolescents Statute in 1990. This replaced the Minors' Code and recast juvenile offending as a welfare, rather than a criminal justice, issue. However, a gulf persists between the guidelines on paper and actual practice. The National Human Rights Program commits the government to setting up Guardianship Councils throughout the country, and to setting up structures to develop socio-educational measures for young offenders. A number of working groups linked to the Ministry of Justice and Office of the Secretary of State for Human Rights, have been set up to analyse current provision for young offenders, and to make concrete recommendations.

A number of state authorities have instituted reforms in their juvenile justice system. In Rio de Janeiro, Amnesty International visited the João Luis Alves school which was being rebuilt following a fire which destroyed it in 1997. The school is intended to house boys under custodial orders and has been redesigned with an integrated social welfare approach, according to its director. It has an on-site juvenile court which provides 24-hour legal aid lawyers, public prosecutors, magistrates and social workers in order to reduce the time children spent in detention awaiting a decision, and to cut the number of custody orders. The FEBEM centre in Porto Alegre, Rio Grande do Sul, also had an on-site fast-track juvenile court.

8. AMNESTY INTERNATIONAL'S RECOMMENDATIONS

International commitments

Amnesty International calls on The Brazilian federal authorities to:

1. Submit without delay to the international monitoring bodies implementation Brazil's overdue reports required under the Convention on the Rights of the Child, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Elimination of All Forms of Discrimination against Women, in order that its track record in putting these principles into practice may be scrutinized and debated by the international community.
2. Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

3. Declare, under Article 22 of the Convention against Torture, that it recognizes the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation of the Convention. This would allow victims of torture in Brazil recourse to international human rights protection mechanisms where the Brazilian authorities fail to take prompt and effective action to prevent and investigate torture. Amnesty International calls on the Brazilian federal government and all state governments to implement the following recommendations with respect to the prevention of deaths in custody, extrajudicial executions, torture and cruel, inhuman or degrading treatment of all detainees — men, women and children — in the custody of state authorities.

Deaths in custody

4. Existing laws, guidelines and regulations pertaining to the treatment of detained persons should comply with relevant international standards, in particular the UN Standard Minimum Rules for the Treatment of Prisoners, the UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

5. Every death in custody should be the subject of a full, prompt and impartial inquiry to ascertain the cause and manner of death in accordance with UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, which include situations in which deaths occur in custody.

6. Police, judicial and medical investigations of deaths in custody should be guided by relevant international standards.⁵⁰

7. 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.

8. Relatives should be informed immediately when a family member is arrested, and should be kept informed of their whereabouts throughout their detention.

Prevention and investigation of torture and ill-treatment

9. A detainee or prisoner should have prompt access to a doctor when an allegation of torture or ill-treatment is made, or when there is suspicion that torture or ill-treatment has taken place. Such access should not be dependent on the initiation of an official investigation into torture allegations and the examining doctor should be independent of the authorities responsible for custody, interrogation and prosecution of the individual.

10. An independent medical examiner’s office should be established with full administrative autonomy, to examine prisoners who complain of torture or ill-treatment, and to carry out autopsy reports on detainees who die in custody.

11. Detainees should be medically examined upon arrival at the place of detention, every 24 hours during the period of interrogation, on a frequent and regular basis through detention and imprisonment and immediately before transfer or release.

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

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

14. Confessions obtained as a result of torture should not be admissible as evidence in criminal proceedings against the victim.

15. Prison staff and police officers alleged to have participated in torture or ill-treatment should be suspended from duty pending a full and impartial investigation, including a criminal investigation.

Cruel, inhuman and degrading conditions of detention

Amnesty International calls on the Brazilian federal government and all state governments to implement the following recommendations for the prevention of cruel, inhuman or degrading conditions of detention:

16. There should be a clear and complete separation between the authorities responsible for 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.
17. Pre-trial and convicted detainees should not be held in the custody of the Civil or Judiciary Police.
18. The use of punishment cells and other cruel, inhuman or degrading treatment in all detention centres and prisons should be immediately and effectively eliminated.
19. Proper rehabilitation programs for convicted criminals should be implemented in all prisons in accordance with international guidelines and Brazil's own legislation.
20. Different categories of prisoners should be separated within the prison system.

Reform of the penal system

21. Staffing within prisons should be in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners.
22. Prison, police officers and medical staff working in custodial facilities should be formally required to comply with the relevant national laws and international pertaining to the treatment of prisoners.
23. All prison staff and policy officers should be properly trained in the appropriate use of force in responding to incidents involving detainees.
24. In order to ensure an adequate defence — a key element of a fair trial — all state governments should provide adequate free legal assistance to defendants without resources. Interpretation should be available for non-Portuguese speaking defendants in state custody.
25. Detainees and prisoners should receive regular medical examinations performed by independent professionals under the supervision of a professional medical association.
26. Prisoners and all detained persons should have access to the highest attainable standard of physical and mental health care, including access to the health services available in the country.
27. Prison medical services should be dedicated to the effective and ethical delivery of medical care to prisoners and should be under professional control.
28. Decisions about a prisoner's health should be taken only on medical grounds by medically qualified people.
29. Disciplinary action should be taken against medical personnel treating prisoners who do not perform their duties in accordance with ethical and professional standards.
30. Federal and state governments should encourage medical professional participation in bodies having an overview of prisons functions. State medical councils should nominate candidates to serve on prison councils and should encourage interchange between civilian and prison medical services.

Inspection and monitoring

31. The Brazilian federal government should set up an dedicated, effective, independent, transparent and adequately resourced federal and state-level system of inspection for prisons and police stations to carry out both routine and unannounced inspection visits.
32. Reports on prison inspections should be made public.
33. The Brazilian government and judiciary should encourage the setting up of Community Councils in every area where there are prisons or police stations.
34. State governments should revise existing legislation or practice to ensure that human rights groups and religious representatives are not effectively barred from entering the penal institutions and communicating with prisoners.
35. An effective complaints procedure should be set up to allow prisoners to complain about human rights violations or maladministration without fear of reprisals.

Women in custody

36. Penal policies and prison staff training should take into account women's specific needs and rights.
37. Female prisoners should be held separately from male prisoners.
38. Male prison staff should be accompanied at all times by female officers inside women's prisons.

39. Adequate pre-natal and post-natal care should be available to pregnant women prisoners.
40. Physical and mental health care should fully meet the specific needs of women prisoners.
41. Practices that discriminate against women prisoners should be abolished.
42. Data collection on the Brazilian prison population should be disaggregated by gender in all aspects.

Children in custody

43. Children should not be charged or detained in connection with offences that do not exist in the Penal Code. Any children currently in custody for such offences should be released immediately.
44. Guardianship Councils should be established in all municipalities.
45. Juvenile courts should be set up in such a way as to reduce to an absolute minimum the amount of time during which juveniles may be held in detention.
46. The government should examine ways of reducing the number of suspected young offenders detained pending a court's decision.
47. The government should examine ways of reducing the number of children who receive custodial sentences for petty and non-violent offences.
48. Alternatives to custodial sentences for children should be developed as a matter of urgency.
49. Children detained pending a court's decision should be separated from those already convicted of an offence.
50. Children in detention should also be separated by age and seriousness of the offence.

APPENDIX

Amnesty International's recommendations for the prevention of torture and ill-treatment

Official condemnation

The highest authorities of every country should demonstrate their total opposition to torture and condemn it whenever cases arise. They should make clear to all members of the police, military and other security forces that torture will not be tolerated under any circumstances.

Access to prisoners

Governments should ensure that all prisoners are brought before a judicial authority without delay after being taken into custody and that relatives, lawyers and doctors have access to them without delay and regularly thereafter. Effective judicial remedies should be available at all times to enable prisoners, relatives and lawyers urgently to ensure a prisoner's safety and for relatives and lawyers to find out immediately where a prisoner is held and under what authority.

No secret detention

In some countries torture takes place in secret locations, often after the victims are made to "disappear". Governments should ensure that prisoners are held only in publicly recognized places of detention and that accurate information about their arrest and detention is made available immediately to the courts and to relatives and lawyers.

Safeguards during detention

All prisoners should be told of their rights immediately, including the right to lodge complaints about their treatment. The authorities responsible for detention should be separate from those in charge of interrogation. Judges should have the right and duty to supervise effectively the detention of prisoners. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

Prohibition in law

Governments should ensure that acts of torture are punishable offences under the criminal law. The prohibition of torture and the essential safeguards for its prevention must not be suspended under any circumstances, including states of war or other public emergency.

No use of statements extracted under torture

Governments should ensure that statements and other evidence obtained through torture may not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made.

Investigation

All complaints and reports of torture should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. The methods and findings of such investigations should be made public. Officials suspected of committing torture should be suspended from active duty during the investigation. Complainants, witnesses and their families should be protected from intimidation and reprisals.

Prosecution

Those responsible for torture should be brought to justice. This principle should apply wherever they happen to be, wherever the crime was committed, whatever the nationality of the perpetrators or victims and no matter how much time has elapsed since the commission of the crime.

Compensation and rehabilitation

Victims of torture and their dependants should be entitled to obtain fair and adequate redress from the state, including appropriate medical care, financial compensation and rehabilitation.

Training

It should be made clear during the training of all officials involved in the custody, interrogation or medical care of prisoners that torture is a criminal act. They should be instructed that they have the right and duty to refuse to obey any order to torture. An order from a superior officer must never be invoked as a justification for torture.

Ratification of international treaties

All governments should ratify international human rights treaties containing safeguards against torture, including the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment with declarations providing for individual and inter-state complaints. Governments should comply with the recommendations of intergovernmental organizations for the prevention of torture.

International responsibility

Governments should use all available channels to intercede with the governments of countries where torture is reported. They should ensure that transfers of equipment, know-how and training for military, security or police use do not facilitate torture. No one should be forcibly returned to a country where he or she risks being tortured.

ENDNOTES

1 The director of the Barreto Campelo maximum security prison in Pernambuco, to an Amnesty International delegation.

2 This happened one week after an Amnesty International delegation had concluded a visit to prisons and police stations in São Paulo state.

3 Subsequent medical examinations revealed that 132 inmates sustained injuries.

4 Figures from the 1997 prison census, withdrawn shortly after publication. An updated version is in preparation.

5 Due to overcrowding in the prison system, thousands of prisoners, pre-trial and convicted, are incarcerated for months or years in police stations which are even more seriously overcrowded.

6 These rights are set out in a number of international human rights instruments, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners, and the International Covenant on Civil and Political Rights.

7 Brazilian Prison Law, Article 1.

8 Ministry of Justice, Regras Mínimas para o Tratamento do Preso no Brasil, Brasília, 1995.

9 There are 26 states, plus the Federal District.

- 10 Amnesty International, Brazil: "Death has arrived" — prison massacre at the Casa de Detenção São Paulo (AI Index: AMR 19/08/93), 1993
- 11 Composed of Amnesty International staff and Professor Roy King, professor of criminology and criminal justice at the University of Wales, and advisor to the United Kingdom and a number of Eastern European governments on matters relating to imprisonment.
- 12 São Paulo, Rio de Janeiro, Espírito Santo, Pernambuco, Paraíba, Ceará, Mato Grosso do Sul, Amazonas, Minas Gerais and Rio Grande do Sul.
- 13 The National Prisons Department and the National Council on Penal and Criminal Affairs supplied very little information, despite repeated verbal and written requests, on current guidelines and policies.
- 14 Revista do ILANUD No. 9 Incidentes prisionais — Principais características e formas de evitálos, São Paulo, 1999. These figures include prison officers and non-detainees.
- 15 Amnesty International, Brazil "Death has arrived": — prison massacre at the Casa de Detenção, São Paulo. (AI Index: AMR 19/08/93).
- 16 Revista do ILANUD No. 9, *ibid*.
- 17 Veja, 10 February 1999, p. 49, "Polícia não entra".
- 18 Testimony No.5 of a number of handwritten letters handed in confidence to an Amnesty International delegation in April 1998.
- 19 O Norte, 3 August 1997, and Correio da Paraíba, 12 September 1997.
- 20 The medical condition of many paraplegic prisoners is the result of gunshot wounds sustained during arrest.
- 21 Report on the visit by doctors of the Prison Service Medical Department on 9 April 1997.
- 22 Data provided by the state prison administration to the Human Rights Commission in the state assembly.
- 23 Revista do ILANUD No. 5 Gerenciamento de Crises no Sistema Prisional, São Paulo, 1997.
- 24 Testimony No. 1of a series of handwritten letters handed in confidence to an Amnesty International delegation in April 1998.
- 25 This police station held 71 prisoners in a space for 16, 20 of whom had already been convicted.
- 26 The government's National Human Rights Program states that searches of prison visitors should be conducted in a more humane and less degrading manner.
- 27 According to 1995 data of the health department of the São Paulo secretariat for prison administration, the tuberculosis bacillus was present in 80% of male prisoners, and 90% of women prisoners, of which 5% would develop the illness in a three-to-five-year period.
- 28 Revista do ILANUD No. 7, 1998, p. 9.
- 29 The majority are administered by organizations inspired by APAC (Association for the Protection and Welfare of Prisoners), active in a number of cities in Brazil.
- 30 See International Centre for Prison Studies, Human Rights in Prison: A training manual for prison staff prepared on behalf of the UN Office of the High Commissioner for Human Rights. London, 1999.
- 31 In Espírito Santo, data for May 1997 show 966 detainees under the jurisdiction of the Secretary of Justice and Citizenship (in prisons), and 1,470 under the jurisdiction of the Secretary of Public Security (in police stations).
- 32 Two civil police have been charged with his death. One of them was also implicated in a previous death in custody.
- 33 Associação dos Defensores Públicos do Estado do Ceará, Análise da Assistência Jurídica aos Encarcerados no Ceará, March 1998.
- 34 Folha da Defensoria, Year III, No. 14 1997.
- 35 INESC, Informativo, April 1998.
- 36 The military police also commit many human rights violations, and are subject to a parallel system of internal investigation, military courts and prosecutors. However, the military police do not hold detainees, and so here discussion is restricted to the civil police, who do.
- 37 One civil policeman has been convicted. However, he fled before the trial and has never been imprisoned. A second civil policeman is appealing against his conviction. Twenty-seven military police still await trial in civilian courts.
- 38 Grupo Cidadania nos Presídios, Casa de Detenção Feminina do Tatuapé; Samantha Buglione and Livia Pithan, A Face Feminina da Execução Penal: mulher e o poder punitivo reproduced in the

Relatório Azul 1997, Comissão de Cidadania e Direitos Humanos, Assembléia Legislativa do Rio Grande do Sul.

39 Amnesty International never received a reply to its letter.

40 Amnesty International wrote to the São Paulo authorities asking for a full inquiry.

41 Estado de Minas, 11 April 1997.

42 Revista do Conselho Nacional de Política Criminal e Penitenciária, July-December 1996.

43 Brazilian Prison Law Section III, Chapter VI, Art. 77, para. 2.

44 The other UN instruments on juvenile offenders are the Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the Rules for the Protection of Juveniles Deprived of their Liberty, and the Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines).

45 Mario Volpi, Os Adolescentes e a Lei, ILANUD/European Commission, 1999.

46 Mario Volpi, op. cit.

47 Article 108, para. 1

48 FONACRIAD, O sistema de Atendimento Sócio-Educativo ao Adolescente Autor de Ato Infracional no Brasil, Secretaria do Trabalho e Ação Social, Rio Grande do Norte, 1997, p. 14.

49 This is confirmed by data from Espírito Santo, where children have been detained pending a court order for offences which include “walking in the street”, “no reason” and “living on the street”.

50 See Appendices in Prescription for Change: Health professionals and the exposure of human rights violations, Amnesty International, May 1996, AI Index: ACT 75/01/96; and UN Manual for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, New York, 1991.

Captions

Cover photograph: Police officers stand over naked prisoners crouched in a prison corridor while police conduct a cell search in the Roger prison in João Pessoa, Paraíba state. November 1997.

© Norte

Prisoners crammed into the 3rd Police Precinct in São Paulo © 1998 Giuseppe Bizzarri/Tom Keller & Associates LLC

The body of Otávio dos Santos Filho lies in a coffin. He died after allegedly receiving a severe beating by police and jail guards in the Crimes against Property Police Department, São Paulo. October 1997 © Private

An inmate threatens to shoot a prison officer taken hostage during a riot in the Vila Velha prison in Espírito Santo in May 1997. Prisoners were in control of the prison until military police were sent in to restore authority in February 1999. © Reuters

A paraplegic prisoner suffering from bedsores in the São Paulo state penitentiary. A number of paraplegic prisoners were denied medical treatment for over two years resulting in serious illness and two deaths. 1997 © Pastoral Carcerária - São Paulo

A prisoner in the Vehicle Theft police station in Belo Horizonte, Minas Gerais. He had been held handcuffed for 24 hours and left to urinate where he sat. November 1998 © AI

Prisoners crammed into a tiny cell in an isolation wing of the São Paulo House of Detention. Prisoners may be held in these conditions for months without leaving their cells. April 1998

© AI

The Vehicle Theft police station in Belo Horizonte, Minas Gerais. The only light and ventilation in the cells comes from the window at the end of the corridor. November 1998

© AI

At the Itaúna men's penitentiary in Minas Gerais inmates are given the opportunity to produce and sell regional handicrafts. November 1998 © AI

Prisoners crammed into a small local police station in São Paulo state, November 1997. Overcrowding in Brazil's crumbling prisons means that thousands of pre-trial and convicted prisoners are held in civil police station lock-ups where some of the most serious human rights violations occur. © Reuters

Prison guards often work in appalling conditions. In the Paulo Sarasate prison in Ceará, sleeping and sanitary facilities for guards are little better than those of the prisoners.
April 1998 © AI

Prisoners speak with their lawyers in the São Paulo House of Detention. Some wait for months, or even years, for a lawyer to be allocated to their case. November 1998 © AI

A prison guard watches a woman holding her six-month-old baby. The prison system takes little or no account of the specific needs of pregnant women or mothers. March 1998
© Folha de São Paulo

A youth is hospitalized with severe burns following a fire at the juvenile holding centre Instituto Padre Severino in Rio de Janeiro. January 1997 © Associação São Martinho

A boy huddles in the corner of his cell in the Muniz Sodré juvenile detention centre in Rio de Janeiro.
November 1998
© Custódio Coimbra, O Globo

Military police rounding up a group of children in the streets of Manaus, Amazonas State.
April 1997. © Antonio Menezes, A Crítica