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£Brazil

@Death has arrived

Naked prisoners were forced to carry the bodies of the dead. There is evidence that some of these body carriers were then executed. (The two in the photograph survived.)

@ **Folha da Tarde** – police during the massacre and obtained by the newspaper.

INTRODUCTION

On 2 October 1992 a rebellion erupted in the *Casa de Detenção* prison in São Paulo. Fighting broke out between prisoners who then seized control of Block 9 of the prison. Shock troops of military police stormed the prison to quell the rebellion. When they withdrew 11 hours later, 111 prisoners were dead.

“Police came in firing. They opened the door and told us to get out. We said we were unarmed. As one boy got up from the bed to go out a police officer shot at him three times from the doorway. He dragged himself across the floor. Then three more police entered. They fired a shot near the toilet area and killed another one. A police officer called out ‘there are some other ones alive here’ and three more police came in with machine guns and fired at the three that were near the toilet.” Six of the nine inmates of this prisoner's cell were killed. In the aftermath of the military police operation it became clear that defenceless prisoners had been massacred in cold blood. The survivors were forced to strip and made to run a gauntlet of military police who beat them with truncheons and set dogs on them. Wounded prisoners were shot dead, as were prisoners who had been ordered to remove the bodies from the cells.

The prison director, who had wanted to negotiate with prisoners, was physically prevented from doing so. As he approached Block 9 with a megaphone, the military police stormed the block, and other staff had to pull the director out of their way to prevent him being trampled underfoot.

Immediately after the massacre, military police destroyed evidence which could have determined individual responsibility for the killings. According to one prison official, “the military police were more interested in altering the scene of the crime than removing the wounded prisoners”. Although three judges were present, including the senior judge in charge of prisons, they made no effort to prevent this. They apparently accepted without question the military police's refusal to allow civilians to examine the upper floors of the block.

The police crime scene investigator did not inspect the cells where most prisoners had been killed until one week later. Vital evidence had vanished in the meantime. The investigator reported that he was unable to find a single bullet or spent cartridge. However, the investigator concluded from the remaining physical evidence that the majority of shots were fired from cells doors into the back and sides of cells, and were met with no resistance. This conclusion is consistent with Amnesty International's findings.

Many of the 108 prisoners with varying levels of injury from beatings, stab wounds, bullet wounds and dog bites had to wait for several days before they received medical treatment. One prisoner was left for 10 days before five bullets lodged in his body, one near his spine, were removed. The treatment of prisoners' families was cruel in the extreme. They waited outside the prison for 36 hours before a list of those killed was posted on the prison door. Even then they were not told which morgues the bodies of the dead had been taken to and some had to search several to find their relatives and identify them.

Over the past decade military police in the São Paulo area have frequently used lethal force. In 1991 a quarter of all violent deaths in São Paulo were caused by the police. Fourteen of the high-ranking officers in command of operations at the *Casa de Detenção* were facing military justice proceedings for a total of 148 cases

of homicide or attempted homicide. Previous military police operations to quell prison riots have also resulted in apparent extrajudicial executions, although not on the scale of the October 1992 massacre. Yet despite their record, the State Secretary of Public Security gave the military police absolute authority to crush the rebellion.

Eight separate inquiries into the massacre were established. All found that either "excesses" or "military crimes" had been committed and that most prisoners were killed while defenceless in their cells. However, none of the inquiries attributed individual responsibility for the massacre, although Amnesty International believes there was sufficient evidence to do so.

Nevertheless, the military justice prosecutor has brought charges against 120 military police officers and soldiers for homicide, attempted homicide and grievous bodily harm. The prosecutor described the massacre as "the largest slaughter recorded to date in a single prison in the world [where] detainees' prison sentences were arbitrarily and illicitly turned into death sentences".

This report is the result of an on-the-spot investigation by an Amnesty International fact-finding delegation within days of the slaughter. The delegates were able to compile a unique record of what had occurred in each of the cells in Block 9 of the *Casa de Detenção*. They were also able to evaluate the forensic evidence and document the grossly inadequate handling of ballistic evidence, which amounted to an attempted cover up by officials. Amnesty International's analysis of the events leading up to the massacre shows that the Governor and the Secretary of Public Security of São Paulo abdicated their responsibilities by handing complete control of the prison to the military police and were therefore responsible for what happened. This report concludes with a series of recommendations which Amnesty International believes are crucial to ensure that those responsible for the massacre are brought to justice, and to prevent future human rights violations. Amnesty International strongly recommends that investigations into the massacre are continued and vital ballistic testing is carried out. In the long term Amnesty International recommends that jurisdiction for common crimes by military police on duty is transferred from military to civilian courts, that an independent forensic service is set up, and that the federal authorities examine ways of taking over investigations and prosecutions of human rights crimes, whenever these have not been properly carried out by state authorities.

The massacre at the *Casa de Detenção* follows a history of impunity for extrajudicial executions of prisoners in previous prison riots and of civilians on the streets of São Paulo. Established techniques and practices for ensuring impunity for military police committing human rights violations were also put into operation during the aftermath and subsequent official inquiries, deliberately attempting to sabotage future criminal proceedings. In order to prevent future human rights violations these practices must not be allowed to prevail.

Amnesty International action

In response to initial reports of the death toll and of the circumstances of the killings, Amnesty International formed a two-person fact-finding delegation. This consisted of a staff member of the organization's International Secretariat, and Dr Mariano Castex, an Argentine forensic pathologist and member of the Argentine Academy of Sciences, who travelled to São Paulo from Buenos Aires. Between 6 and 16 October the delegates spent over 20 hours in the *Casa de Detenção*, interviewing prison service directors, prison functionaries, and prisoners, visiting the wounded in the prison's infirmary and visiting and examining prisoners and cells in Block 9. The delegation also met with the newly appointed Secretary of Public Security for São Paulo, Dr Michel Temer, responsible for both the police and prison service, a representative of the São Paulo Public Prosecution Service, Dr José Silvino Perantoni, the Special Adviser on Prison Affairs to the Public Security Secretariat,

Dr Antonio Filardi Luiz, the new Director of the House of Detention, Dr Amador Bueno de Paula, and the Rapporteur of the Federal Government's commission of inquiry, Dr Marcelo Lavenere, President of the Brazilian Bar Association. Meetings were also held with human rights groups, the São Paulo Bar Association and prisoners' relatives. The organization is grateful for the access it was afforded to visit the prison and meet with state authorities.

In London Amnesty International had meetings with the Brazilian Attorney General, Dr Aristedes Junqueira, and the Governor of São Paulo, Luiz Antonio Fleury Filho, in November and with the Foreign Minister, Professor Fernando Henrique Cardoso, in January 1993.

In connection with the events of 2 October Amnesty International members throughout the world sent immediate appeals to the State Governor of São Paulo urging him to constitute an Independent Commission of Inquiry to investigate the full circumstances in which 111 prisoners were killed in state custody. After the announcement that the São Paulo civil and military police would be carrying out inquiries, Amnesty International sent a communication to the Brazilian Minister of Justice expressing concern at the ineffectiveness of previous police inquiries into serious incidents in prisons involving police officers in different states of Brazil. It sought the appointment of an Independent Commission of Inquiry which, in accordance with the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, should be made up of individuals with recognized impartiality, competence and independence, and be given full powers to call witnesses and subpoena evidence.

News of the killings at the *Casa de Detenção* sparked a national and international outcry. The Brazilian press gave unprecedented detailed coverage of the massacre, investigating and following up aspects of the case over several months. Within Brazil eight inquiries were established: at the state of São Paulo level, a Civil Police Inquiry, a Military Police Inquiry, a Judicial Inquiry, a Prison Service Inquiry, a Public Ministry Inquiry, and an Inquiry by the State Legislature; at the federal level, a Federal Commission of Inquiry set up by the National Human Rights Council, and an inquiry by the Federal Council on Crime and Prison Policy. In this report Amnesty International draws on some of the evidence presented to and conclusions reached by a number of these inquiries. This includes the report of the São Paulo Criminalistic Institute and autopsies from the Forensic Medical Institute.

1 BACKGROUND

The prison structure

Brazil is a federal republic with 26 state governments and the federal district of Brasília. With the exception of one federal prison in Brasília, prisons are run by individual states. The total prison population in Brazil is 120,000. The prison population in São Paulo is 51,500, with roughly 31,000 prisoners being held in prison establishments and 20,000 distributed between police stations and public jails. According the São Paulo Secretary of Justice there are 128,166 prison orders not yet implemented in São Paulo. There are believed to be 350,000 such prison orders not yet implemented in Brazil. Amnesty International has for many years expressed concern to the Brazilian authorities about severe prison overcrowding in Brazil and human rights violations occurring within the prison system. (See AMR 19/05/90, *Beyond the law: torture and extrajudicial executions in urban Brazil*.)

In all Brazilian states, and in São Paulo state until 1991, the prison service falls directly under the administrative responsibility of the State Secretary of Justice, a separate secretariat from the police service. In March 1991 the incoming Governor of São Paulo, Luiz Antonio Fleury Filho, former Secretary of Public Security, transferred responsibility for the prison service to the Secretary of Public Security. At the time this move was strongly criticized by the São Paulo Bar Association and other human rights groups who argued that the joint responsibility

of prison and police services under the same authority could have fatal consequences. There is also judicial responsibility for prisons. The *Juiz Corregedor*, judge-inspector of prisons, is responsible for the welfare of prisoners in custody. Responsibility for overseeing the application of prison sentences lies with the *Juiz* or *Vara de Execuções Penais* – the judge or court of penal sentences. The Public Prosecutor's Office is also responsible for initiating investigations into excesses or deviations in the penal sentences. All these members of the judiciary are responsible for making regular visits to prison establishments and intervening in cases of abuses. There have been complaints throughout Brazil of the failure of these judicial officers to make frequent or adequate inspections of prison establishments.

There are also local prison councils, *Conselhos Penitenciarios*, nominated by the state Governor comprising experts in penal law and local community representatives. They too should inspect the prisons. At a federal level there exists the National Council for Criminal and Penal Policy, *Conselho Nacional da Política Criminal e Penal*, whose duties include inspecting and supervising penal establishments throughout the country.

Under the Law of Penal Sentences (7.210/1984):

“All authorities are responsible for the physical and moral integrity of condemned prisoners and those awaiting trial”.

Whenever there is disturbance at a prison the judge-inspector of prisoners and penal sentences judges are called to safeguard the integrity of prisoners and make decisions as to the type of action to be taken to resolve disturbances. In previous incidents the Secretary of Justice has also been present or played an active role in negotiations.

Previous incidents in São Paulo prisons

Over the past decade the conditions prevailing in Brazil's prisons have resulted in a spate of protests, riots and escape attempts. Most of the rebellions have been crushed by police, often with lethal force. Beatings are common in reprisals for prisoners' rebellions. There is also evidence that in the past the police have carried out extrajudicial executions in the aftermath of prison riots.

On 15 September 1986 a riot took place at the *Presidente Venceslau* prison, interior of São Paulo state. After failed negotiations military police stormed the prison on the morning of 16 September. Thirteen prisoners died. According to the official inquiry nine of them had not participated in either the hostage-taking or the riot. The cause of death in all cases was “blows to the head with a blunt instrument”. Brazilian television filmed police bludgeoning prisoners with rifle-butts as they lay on the ground, and this was broadcast on news bulletins. The inquiry's report noted:

“Military police and possibly prison guards were responsible for the deaths. It was not possible to determine individual responsibility.”

No disciplinary or penal action was taken against those responsible although the deaths were officially described as “homicides”.

Until 2 October 1992, the highest death toll in a prison uprising came in 1987 from São Paulo *Penitenciário do Estado*, state penitentiary. On 29 July an attempted escape developed into a two-day riot with prisoners taking hostages. Military police shock-troops were sent in on the order of the State Governor. Thirty prisoners and one prison guard were killed and over 100 prisoners wounded. There were reports that some prisoners were taken from their cells and deliberately killed after the riot was over and that others were savagely beaten. It was also alleged that vital evidence had been removed from the scene.

The official inquiry concluded that energetic police action had been necessary to rescue hostages. It did not categorically exclude the possibility that excesses might have occurred during the operation but stated that this was understandable,

as the police had faced a life-threatening situation. It also accepted that some of the prisoners may have been ill-treated after the riot by guards and military police:

“Excesses by the police are not ruled out, but it is not possible to evaluate them in the circumstances.”

The São Paulo Bar Association conducted its own inquiry. It concluded that most of the deaths had occurred after the prisoners had been subdued and the hostages released. The Bar Association report criticized the official inquiry for: insufficient forensic and autopsy examinations; not rapidly taking prisoners' and guards' statements; not protecting witnesses against coercion; not examining more than 100 wounded prisoners. No disciplinary or penal action was taken against anyone involved in human rights violations following the riot.

Despite a reply from the São Paulo Secretary of Justice in 1990 trying to minimize its implications, Amnesty International remained concerned at the serious questions raised by the Bar Association report and by the impunity granted for acknowledged human rights violations in these incidents. Amnesty International believes that this pattern of impunity for previous extrajudicial executions within prisons directly contributed to the attitudes prevalent during the storming of the *Casa de Detenção* on 2 October 1992.

The police structure

There are three main police services in Brazil. The federal police, responsible to the federal Ministry of Justice, deals with a limited number of crimes such as contraband, narcotics and cases with inter-state implications. At a state level there are civil police, responsible for investigating crimes, and military police, organized in battalions, responsible for maintaining public order. The latter normally carry out arrests and patrol the streets. Both these branches are responsible to the state Secretary of Public Security. Many human rights lawyers believe that the militarization of the police has led to a tendency to combat crime and public order problems with tactics more appropriate to a military operation. Under law, military police are answerable only to military courts. Military courts, which since 1977 have judged all cases involving military police on duty, have a record of dropping cases against military police for alleged human rights violations including extrajudicial executions and torture or for bringing acquittals in such cases. Military police are not on the whole suspended from active service pending such trials.

Use of lethal force by the São Paulo police

In the state of São Paulo there are 72,000 military police, 28,000 of these stationed in Greater São Paulo. Over the last decade there has been considerable concern at the frequent resort to the use of lethal force by certain sectors of the military police. Table 1 demonstrates the increase in fatal victims of police action over the last seven years, and compares it with the proportion of those injured by police, and police wounded and killed.

The São Paulo police forces face a very high crime rate and high levels of violent crime, and public concern about such crime is considerable. Nevertheless, a comparison of the number of annual homicides in São Paulo with the number of civilians killed by the police, indicates a worrying trend in increased official use of lethal force in recent years. In 1991, 25 per cent of violent fatalities in São Paulo were caused by the police (see Table 2).

The Federal Commission of Inquiry report on the *Casa de Detenção* massacre compared this record with that of the New York City Police Department, which fatally shot 27 civilians in the course of 1991. The São Paulo police killed 1,140 civilians that year. The New York police wounded more than twice the number of civilians it killed, while the São Paulo police killed three times the number of people it wounded. In September 1992 the newspaper *Folha de São Paulo* calculated, on the basis of these

official figures, rates of killings by police under the last three governor administrations. The rate had increased under the Fleury administration to an average of one killing by police in São Paulo every seven hours (see Table 3). Extrapolating from this average, military police in São Paulo could be expected to kill 111 people roughly every month.

Lack of prosecutions for alleged extrajudicial executions

According to the Federal Commission of Inquiry into the massacre, 14 high-ranking officers in positions of command at the *Casa de Detenção* had between them 148 military justice proceedings against them for homicide and attempted homicide, which the Commission described as "in those famous shoot-outs where almost always weapons 'appear' in the hands of the victims".

On 31 August 1992 the result of seven years' research by television journalist Caco Barcellos into official military police court records of lethal police shootings 1970-1992 was published in a book called *Rota 66 : The History of the Police who Kill (Rota 66: A Historia da Policia que Mata)*. The book drew attention to high level of lethal shootings employed by certain military police battalions, notably Battalion 1 – the *Rondas Ostensivos Tobias de Aguiar*, ROTA. By giving case details it suggested that many had been extrajudicial executions. Through examining court records on these cases the journalist concluded that in Greater São Paulo 57 per cent of victims of such shootings had no criminal record. He drew attention to high rates of impunity for such killings within the military justice system. The book gave examples of how officers accused of unlawful killings were appointed to investigate other officers accused of similar cases, pending their own trials. It also named a number of officers who had between 34 and 45 lethal shooting to their name. Some of these had been suspended from street duty from 1982-1991, but had returned to ROTA units in 1991 under the Fleury Administration. A number of these officers were given command of the storming of Block 9 on 2 October.

At two events to launch the book the journalist and his guests were menaced by a number of these named officers. One allegedly warned him to be careful as he had annoyed the high command. He was followed by some of these men in police vehicles as he left the launch. (See AMR 19/23/92) After reporting the 2 October prison massacre on a television news broadcast, Caco Barcellos was once again threatened, this time by military police interfering in the internal radio system of a company linked to the one he worked at. During the whole of the afternoon of 7 October the radio system of CBN radio was interrupted and journalists told, amid much swearing, that "Caco Barcellos should not come back to the *Casa de Detenção*", and that "We've got our eye on him, we're on top of him". Following this Caco Barcellos left the country temporarily for his own safety.

The police records of all the commanders involved in the storming of the *Casa de Detenção* (except commander in chief Colonel Ubiratan Guimaraes) were provided to the Legislative Assembly's Special Commission of Inquiry. This revealed the following number of officially acknowledged fatal shootings per officer (see Table 4).

In the light of the past record of these police officers and forces, the decision to send these units and, in particular, the ROTA into the *Casa de Detenção* to put down the disturbance on 2 October could have been predicted to have a bloody outcome.

2 THE MASSACRE

The *Casa de Detenção*

The *Casa de Detenção* was built in 1954 to house 3,500 prisoners on remand awaiting trial. It has progressively been used to house prisoners serving sentences, as well as those awaiting trial. On 2 October 1992, 7,257 prisoners were being held at the *Casa de Detenção*. The prison is divided into nine blocks. *Pavilhão 9/ Block 9*, holds *primarios*, those who are first time offenders but strictly speaking those who's first stay it is in the *Casa de Detenção* (they may have been held in other prisons

on other charges earlier), and some awaiting trial. The population of Block 9 mainly consist of young men between the ages of 18 and 25. It is noted as one of the more unstable blocks, where prisoners have not yet accustomed themselves to prison life. Dr Filardi Luiz from the Public Security Secretariat informed Amnesty International and others on 6 October that on 2 October Block 9 housed 2,076 prisoners, later official figures stated that there were 2,069 in Block 9 that night. They were distributed in 248 cells.

The disturbance at Block 9 of the *Casa de Detenção* before the massacre While it is not possible to confirm all the details of events leading up to the invasion of Block 9 the following account has been gathered from prisoners and prison staff.

Fifteen guards were on duty in the block with 2,069 prisoners. A fight between two prisoners broke out on the second floor at about 13.30. One of the prisoners was stabbed and the other violently hit over the head. The prisoners were separated and others witnessed three prison guards beating one of them. The two wounded prisoners were removed by guards for treatment. Guards tried to separate the two rival groups of prisoners supporting the original combatants and locked the gates to the first floor. These guards became caught between these rival groups and a third larger group of 500-700 prisoners returning to the block from the football pitch. Some of the prisoners told the functionaries to leave, as "this has nothing to do with you" and the functionaries abandoned the wing. Prisoners then took control of the block, breaking cell locks and began to make make-shift weapons from piping, knives, bits of wood and tiles.

The response of the civilian authorities to the disturbance

Prison guards reportedly rang the alarm at 14.15 alerting the perimeter guard. The Prison Director, Dr José Ismael Pedrosa, informed subsequent inquiries that he had also contacted the military police battalion charged with guarding the perimeter wall. He also contacted the Public Security Secretariat and the penal sentences judges. At 14.30 Colonel Ubiratan Guimaraes, Head of Metropolitan Policing for the city of São Paulo, arrived at the *Casa de Detenção* and summoned Battalions 1, 2 and 3 of the shock-troops. Battalion 1 includes the company of the ROTA, Battalion 2 is a shock-troop equipped with riot shields, used in public order control, Battalion 3 includes the kennels (16 police dogs), the Tactical Actions Group (GATE) which deals with disarming bombs and rescuing hostages, and the Special Operations Commando (COE) and Special Operations Group (GPOE). Within a very short time soldiers from all these battalions arrived, including a number of units of the ROTA who apparently arrived spontaneously. According to the military police inquiry, the total official number of military police involved in the operation was 347. Police were pictured at the prison with their name tags, which are worn on uniforms identifying each policeman, removed. At 15.00 the Adviser for Prison Affairs, Dr Antonio Filardi Luiz, and the Head of the São Paulo Prison service, Elio Nepomuceno, arrived.

The crucial question regards the chain of command and orders for military police to enter the block. Dr Antonio Filardi Luiz, from the Public Security Secretariat, told the Legislative Assembly that before reaching the prison he had ordered the Prison Director by telephone to pass command of the prison to Colonel Guimaraes. This order was reinforced by telephone by the then Secretary of Public Security for São Paulo, Dr Pedro Franco de Campos. This order was given before the arrival of the judges.

Contrary to the practice in previous prison disturbances, the Secretary of Public Security did himself not visit the prison at any stage during the operation. In previous cases both the Secretary of Justice and the Secretary of Public Security (both offices then filled by Dr Campos) were present to oversee operations. He maintained contact by telephone and radio with Colonel Ubiratan Guimarães. After passing the command to the military police, he did not apparently consult with any

of the civilian authorities present, not even the judges, to decide on a course of action. According to his own testimony he told Colonel Guimarães:

"You are in charge of the police operation, if in your evaluation of the situation you think it necessary to enter Block 9, you can enter."

When questioned at the Legislative Assembly, Dr Campos stated that he did not know or inform himself as to which military police battalions were deployed at the *Casa de Detenção*. Neither had he given any instructions about the minimum use of lethal force within the prison. The Secretary of Public Security had in effect given *carte blanche* to the military police.

When questioned about the massacre on 3 October he was reported in the press as having said: "In a case like this, the police have orders to shoot to kill. There's nothing absurd about them using machine-guns, after all the lives of law-men were at risk." (*Diario Popular*, 4 October 1992)

He also argued that the invasion was ordered because there was a risk of 7,500 prisoners escaping from the *Casa de Detenção*. Prison Directors are insistent that there was no escape attempt and no hostage-taking, and that this was made clear at the time.

While on previous occasions the State Governor has been directly involved in decision-making over how to deal with prison riots, the state Governor Antonio Fleury Filho was outside the city of São Paulo involved in election campaigning in Sorocaba that afternoon and stated to the press that he was only informed of the police storming of the block at 17.35, after it had occurred. The Secretary of Public Security told the Legislative Assembly that he informed the Governor of the disturbance at the prison at 15.30. By this time the command of the operation had already been passed to the military police. It is difficult to believe that the Secretary of Public Security did not inform the Governor that command of the situation had been passed to the military police. The Governor did not countermand this decision.

The Prison Director insisted to military police that he wished to negotiate with the prisoners and approached the block with a megaphone. Military police, with shields, were to provide cover for him against missiles. However, in evidence to the Legislative Assembly he stated that "I was physically prevented from negotiating".

Prison staff and other civilians told the official inquiries that just as the Prison Director was attempting to negotiate with the megaphone he was pushed aside by military police storming Block 9. Dr Antonio Filardi Luiz described it as "a cattle stampede". The Prison Discipline Director had apparently to pull the Prison Director back to avoid him being "crushed".

The police storming of the block was thus precipitated before the Judge-Inspector of prisons arrived and before any serious attempt at negotiations had been made. From this moment all civilians were prohibited from approaching the block, and firearms were allegedly pointed at them to prevent them doing so. Limited access was granted at 19.00 and at 22.30. Full control of the block was only passed back to prison staff and officials at about 3.00 on 3 October.

Prisoners in neighbouring Block 8 have subsequently stated that the first shots were fired by military police on the walls of the prison into Block 9 as the Prison Director and military police officers were running towards Block 9. This may have caused military police on the ground to assume that shots were being fired by prisoners inside Block 9. However, the commander of the perimeter guard stated to later inquiries that no shots were fired by his troops and said that ballistic tests on their weapons confirmed this.

The judges' account

The role played by the judges – the independent legal authority responsible for the prison service and for the physical and moral integrity of prisoners serving sentences and awaiting trial – is crucial. The two penal sentence judges arrived

at the prison at 15.45, Dr Luiz Augusto San Juan Franca, the Judge-Inspector of Prisons, arrived after the military police had stormed the block. The impression given by the three judges' report issued on 8 October is that they did not exert any kind of independent authority within the prison.

The judges give no detail as to who gave the order to storm the block. Nor do they describe any discussions between themselves, the prison director and the police to take the decision to invade, or establish procedures to ensure minimum use of lethal force. If, as it would appear, their attempt to negotiate was overridden by military police, the judges do not make this clear in their report.

After about an hour to an hour-and-a-half "when the military informed us that the rebellion had been dominated, but that civilians could not yet enter the block" the judges did not ask why they could not inspect the premises or insist on doing so, for which they had full legal authority, but went to one of the directors' rooms. According to subsequent evidence, one of the penal sentence judges left the prison at 18.30.

At about 19.00 the two remaining judges visited the ground floor of Block 9 accompanied by military police Colonel Wilton Parreira, Dr Filardi and Dr Nepomuceno. (Colonel Parreira was in charge of the entire operation from about 17.15 when Colonel Ubiratan had retired after being injured when a television exploded.) On the ground floor they saw hundreds of home-made knives, metal pipes, bits of wood, chains and stones thrown on the ground. They affirm "no firearms were seen there". They saw "many naked prisoners, sitting on the ground with their hands above their heads". They visited rooms on the ground floor that had been destroyed. They saw prisoners being taken in groups back upstairs to their cells. Instead of questioning prisoners, and insisting on making a thorough inspection of all the floors of the block, particularly in the light of the number of shots and machine-gun strafing heard, the judges state:

"The judges decided to stay on the ground floor, so as not to interfere with the job of putting prisoners back in their cells."

They went back to one of the directors' rooms in Block 6 and left the prison at 22.30. Before leaving they were informed by Lieutenant Colonel Edson Faroro, commander of the 2nd Battalion shock-troop, that the number of dead was higher than 50. They did not seek to see the dead or wounded or make any attempt to preserve the crime-scene. As judges they would have been in a unique position to initiate the instruction phase of any inquiry and in particular ensure preservation of evidence. It would appear from their report, however, that they had not even perceived that any crime had been committed. They were informed at 8.00 the next day by the Prison Director that 110 prisoners had been killed.

Police accounts

Military police commanders in statements to the official inquiries and the press alleged that they faced a fierce confrontation in which prisoners fired at them, attacking them with knives and bits of wood and piping. Although when questioned many of the commanders admitted that they had not actually seen prisoners firing, they maintained this version.

Military police denied that they stampeded Block 9 and claimed that if the Judge Inspector of Prisons had given them contrary orders they would have followed them. (They had not waited for the judge to arrive however.) While commanders claimed that the operation was orderly and that they had a clear plan to retake control of the block, they did not possess any plan of the block and had to ask a prisoner the way to the stairs. After the GATE troop entered to dismantle barricades set up by prisoners, squads of roughly 16 policemen from GATE and ROTA, commanded by an officer of the rank of captain, were assigned to regain control of each of the four floors of the block. The shock-troop was sent in last to check cells and organize the descent of prisoners to the central courtyard.

In statements to the Federal Commission of Inquiry and the Legislative Assembly, military police commanders, officers and soldiers made a number of contradictory assertions. For instance, a number of officers and all civilians present state that no shots were heard before the storming of the block and that no resistance was offered or shots fired by prisoners on the ground floor. Yet the commander of the operation asserted in evidence to the Federal Commission that shots were heard before the storming and that just as the troops entered the block they were fired on by prisoners. It seems clear, however, from the police version that as some of the police entered, objects were thrown at them including sticks, knives and metal piping. Police also claim that plastic bags containing urine and faeces were thrown at them, but this has not been confirmed. Prison staff suggest that the mass throwing of weapons out of cell windows into the central courtyard was in fact the customary signal of surrender, as once prisoners realized the shock-troops were going to enter the block, they did not want to be caught with incriminating weapons. The weapons were thrown down into the patio with some violence however and caused injury to police.

Officers commanding operations on each floor state that they were fired on by prisoners and that troops shot in the direction of gun sparks. Under questioning in the Legislative Assembly, police also gave contradictory versions of their actions. Some police stated in evidence that after dominating the prisoners, prisoners leapt out at them (from behind closed doors) attacking them with knives, that wounded prisoners attacked them from the floor, and that they were involved in hand-to-hand combat with prisoners and defended themselves with revolvers and machine-guns. The captain commanding the retaking of the first floor described hand-to-hand combat as follows:

Captain : "Hand-to-hand combat doesn't mean to say that they arrived and were already grappling with us. That's not body combat. Body combat is from the moment when the person is there and we perceive from two metres distance that this person is armed with a knife and is about to attack. And what is our defence? To fire.

Questioner : So you saw the person with the knives and you fired ?

Captain : Exactly."

Police wounded

The military police also provided contradictory information about the number of police who were wounded at the *Casa de Detenção*. The official number of wounded changed in the ensuing days between 22, 32 and 48, and the rank of officers on the list changed. Only on 10 October, eight days later, were nine lightly wounded officers presented to the press, six with bullet marks to the leg or arm, and three with knife marks. The wounded were apparently examined and treated in the military hospital, but the civilian Forensic Medical Institute, which examined wounded prisoners at the *Casa de Detenção*, was not given access to the wounded police to inspect and register their injuries formally. Under questioning in the State Legislative Assembly inquiry police on the wounded list revealed that one of them had been shot by a police sergeant, one had been wounded by a ricochet bullet, another had hurt his wrist with his own shield, and the groin wound of a fourth may have predated the *Casa de Detenção* incident.

Firearms found by police

At 21.00 on 2 October military police presented a trolley with 13 firearms, together with bullets supposedly fired by them, to the Prison Director and other civilian authorities as proof that the prisoners had fired at them. The ballistic report on these weapons stated that they all showed signs of rust and having been stored improperly. During subsequent inquiries, police officers were at a loss to explain where and by whom each weapon had been found – and were only able to account for seven of them. These seven were found by ROTA members only. The Prison Discipline Director questioned how they could have found exactly these weapons and the bullets

fired by them in the space of two hours when "the place was dark and full of water mixed with blood and detritus". No further such weapons were found by prison staff in the aftermath of the disturbance. According to the Prison Director, in the previous five years only two firearms had been found in the whole prison complex. Prisoners asserted that if they had possessed firearms there would certainly have been police fatalities. The Federal Commission of Inquiry went so far as to conclude:

"In other words these 'planted' weapons, are none other than the famous cabritos which in police jargon means weapons artificially placed at the scene of a crime to justify illegal [police] actions."

It recommended that military police should be charged under article 347 of the penal code for fabricating evidence.

A subsequent argument offered by police authorities to the press and the inquiries to justify the level of shooting was that troops were particularly scared at high rates of HIV infection in the prison. (The prison medical service estimated that 17 per cent of prisoners in São Paulo prison system are HIV positive.) Police, carrying revolvers and machine guns, allege that prisoners threatened them with blow pipes made of pen shafts and tooth picks dipped in their own blood. While it is credible that prisoners may have used the fear of AIDS to taunt police and try to prevent them approaching, the blow pipe theory is quite fanciful. Police troops were, however, genuinely afraid of being contaminated, and claim to have been told by officers before entering the prison that all the prisoners had AIDs. Some were allegedly also told that prisoners possessed machine-guns.

Prisoners' accounts

The prisoners, in statements to the inquiries and in interviews, were insistent that they had no firearms; that they had taken no hostages; that there was no escape attempt planned; and that the situation could have been resolved by negotiation. This version is supported by prison staff and directors.

Prisoners' accounts describe a series of separate waves of killings during the police operation in the following sequence:

1. Police shoot into corridors and galleries.
2. Police enter each floor killing prisoners inside cells.
3. Prisoners told to strip and run down stairs to courtyard. Some who slipped or were slow were shot. Some were bitten by police dogs. Prisoners made to run the gauntlet of police beating them with truncheons.
4. Prisoners sitting naked on patio, while some prisoners carry wounded and dead. Some wounded prisoners were called out for treatment, but believed to have been executed. Some of the body carriers were executed.
5. Police, inspecting wounded and dead, stab prisoners with knives to see if anyone alive hiding among the dead. Some of those found still hiding allegedly shot. Prisoners put back in cells.

Killings in the corridors and cells

The following (unless otherwise stated) is evidence collected by Amnesty International delegates interviewing prisoners and prison staff and inspecting cells and corridors in Block 9. In the tumult some of the prisoners took shelter in cells other than their own. This means that there is not always a direct correlation between those killed and the normal cell inhabitants. In some cases all the prisoners sheltering in a cell were killed, and thus there are no witness statements. Prisoners made to collect dead bodies from the corridors and cells have, however, given some information about the location and state of bodies they handled. Some of the prisoners stripped naked before police arrived as a way of showing that they had surrendered. Others were made to strip afterwards.

There are four floors in Block 9, each named a pavimento. Thus the ground floor

is Pavimento 1, the first floor Pavimento 2 and so on. Cells are numbered according to Pavimento and their position on the corridors. The letter I after a cell number indicates that it is internal, looking into the courtyard, and the letter E that it is external looking out into the prison grounds. Thus cell 351-I is a cell on the second floor looking into the courtyard.

The following are prisoners' accounts. These are followed by the Amnesty International delegates' physical observations of the cells concerned on 12 October.

First floor - Pavimento 2

Cell 252-I: The three inmates of the cell, who were the block's postmen, were all killed inside their cell on the bed. The cell is on the right hand side of the corridor directly after leaving the stair-well on floor 2. There are bullet marks in the wall at chest level.

Cell 284-E: Four prisoners died. This cell was not examined by Amnesty International.

Second Floor - Pavimento 3: The majority of killings took place on this floor.

Cell 385-E: There were apparently six prisoners sheltering in the cell. Five of them were killed and one survived. There are bullet marks at floor level and also fired from below into the make-shift bunks above the ceiling.

Cell 384-E: Two prisoners were killed, one in the toilet area and one on the bed. Four prisoners survived. There are bullet marks in the toilet area and on the wall between the floor and 80 centimetres from the floor.

Cell 383-E: There were six prisoners sheltering in the cell. All of them were killed inside the cell, one below the bunks and five on the mezzanine of bunks. There are 14 bullet marks marked out by the scene-of-the-crime team all over the ceiling above the bunks.

Cell 379-E: There were six inmates in the cell. Three of them were called out. The other three all were killed. (Prisoners told the Federal Commission that as they left the cell and walked down the corridor they heard shots into their and neighbouring cells.) There are bullet marks and blood stains in the toilet area and sheets covered in blood.

Cell 377-E: At least seven prisoners died in the cell out of the 10 men taking refuge in the cell, three from other cells. There are bullet marks at ground level and in the toilet area.

Cell 375-E: All 10 prisoners were killed. Their bodies were forgotten by police in the general removal of bodies. Thus the bodies were found by functionaries and prisoners on the morning of Saturday 3 October. The bodies were found sitting against the wall in positions of defence, with arms in front of faces or behind their heads as demonstrated in the photograph. The Prison Director of Discipline also confirmed that these bodies were found in a cell on the 3rd floor "all sitting with their hands on their heads, with powder burns on faces, and shots to the head, chest and throat." These bodies were carried down to the bathroom in the infirmary in Block 4, acting as a mortuary, where they were seen by two priests and a nun visiting the Block on 3 October, some with hands frozen through rigour mortis in positions of defence, such as behind their heads. Bullet marks can be seen along the back wall of the cell in positions consistent with the prisoners having been shot while sitting against the wall. There are also blood stains on the wall.

Cell 351-I: Two prisoners were killed on the bed. Their bodies were found by a cell-mate on the morning of 3 October. Their heads were slumped near bullet holes in the wall. They had also been stabbed. There are bullet holes and blood stains near the bed, consistent with the prisoners having been shot while lying down on the bed. There were also knife marks in a sheet or curtain.

Cell 350-I: The body of João Gonçalves da Silva curled up in the bath area was found by his cell-mate on the morning of 3 October, as shown in the photograph. (The autopsy shows he was shot with three bullets.) There are also bullet marks fired into the bunk bed from below.

Cell 349-I: Three prisoners were killed in the cell.

Cell 348-I: Three prisoners were killed sitting down. Prisoners who carried their bodies downstairs claim that they had many shots to the head at close range and that they had powder burns on their faces.

Cell 346-I: Four prisoners from the cell were killed. Possibly some in the corridor. There are blood stains on the ceiling in the corridor outside the cell and on the wall above the cell door. There are bullet marks and blood stains near one of the beds in the cell.

Cell 373-E: There were eight prisoners sheltering in the cell. Six were killed. Other prisoners relate that there was a pool of blood in the corner of the cell. Bullet marks can be seen at the level of the bed, also fired from below into the bunk above, and blood stains on three walls and on the ceiling.

Cell 331-I: Three prisoners from this cell were killed.

Cell 345-E: Five prisoners were in the cell. Four were killed, one survived. There are blood stains on the ceiling.

Cell 339-E: Six prisoners were killed in the cell. There are bullet marks on the walls near floor level and at chest level.

Cell 307-E: There were nine prisoners sheltering. Six were killed. According to Dionisio Paiva Filho:

"Police came in firing, they opened the door and told us to get out. We said we were unarmed. As one boy got up from the bed to go out, a policeman shot at him three times from the doorway. The boy had only arrived at the prison the Friday before. He dragged himself across the floor. Then three more police entered. They fired a shot near the toilet area and killed another one. A policeman called out "there are some other ones alive here" and three more police came in with machine-guns and gave a volley of machine-gun shots at the three that were near the toilet. They went out. We lifted the dead bodies onto ourselves and hid underneath. We put the dead on top of us and spread blood on ourselves to pretend to be dead. I spent an hour with a dead body on top of me, really scared. They came back after two hours and called out that if we were alive we had to leave, to take off our clothes and run out of the cell. There were six dead. One on the floor, one on a stool, three in the corner near the toilet and one on the bed. Two of the dead were Paulo Roberto de Luiz and José Martins de Vieira Rodrigues. Three of us survived."

There are sheets with bullet or knife marks, powder burns and blood stains.

Third floor - Pavimento 4

Four prisoners were killed on this floor. No cells were examined by Amnesty International.

Fourth Floor - Pavimento 5

Cell 512-E: There were 13 prisoners sheltering in the cell. Six prisoners were killed, four were wounded with bullets. Luis Carlos dos Santos Silva was wounded with five bullets, one in the back near his spine, two in his right leg, one in the buttocks and one in his left foot. Daniel Soares was shot twice in the groin. Aparecido Donizete Domingos had seven bullet wounds, three in the chest, two in the stomach and two in the arm. According to Luis Carlos dos Santos Silva:

"I was in my cell with my eight cell-mates and four others sheltering from other cells. They made us lie face down on the floor with our hands on our heads. One or two police came in and starting firing machine-guns inside the cell. They also fired from below into the bunks. Then they made us take off our clothes and run, if we didn't run they would kill us, they would shoot at us. They ordered us to take the clothes off the dead, but we couldn't manage it. We had to go down to the patio after all the firing. I spent more than two hours in the rain.

"Four of us wounded left the cell. I've only seen two of the others, one's missing, he was from my cell, I don't know where he is. There were some others that we left alive. A friend of mine, José Carlos dos Santos, was alive when I left, I heard

him talking, but he died later. I don't know if the rest survived.

The fourth wounded prisoner he could not locate is likely to have been José Ronaldo Vilela da Silva.

According to Antonio Carlos Beloso da Silva there were 13 in the cell at the time: "The police came past. We were already lying on the floor. Six died on the spot. Four were wounded with bullets, and three others survived unwounded. One survivor died, José Ronaldo Vilela da Silva, he went down stairs alive. He had a shot in his body. The cell was awash with blood all over the floor and wall."

According to the autopsy reports Stefano Ward da Silva Prudente was killed with 13 shots, José da Silva with eight shots, Elias Palmijiano with five and Olívo Antonio Luiz with four and José Ronaldo Vilela with six. There are bullet marks on the walls and near a bed.

Prisoners run the gauntlet and descend to the patio

A number of prisoners described how, after some of their companions had been killed in the cells, they were made to strip and run down the corridor and down the stairs to the patio below. The floor was very slippery. The block was awash with water from broken pipes and firehoses and prisoners had initially spilt oil on corridors and steps to make police access more difficult. The stairs themselves are in very bad condition and broken, and many of the prisoners slipped and fell. Military police lined the corridors and beat them with truncheons as they went past. Claudio de Abril, who 10 days after the massacre displayed severe bruising on his legs, back and stomach, said that as he ran the gauntlet of more than 100 police he received about 21 truncheon blows, including one on the face across the eyes.

Roberto Soares described to the Federal Commission of Inquiry how "he was walking along the corridor on the fourth floor in a line of naked prisoners, and that although he had his head down he saw a military policeman pull a bayonet out of his boot and stick it into the back of a prisoner three places in front of him, and then push him into the elevator shaft".

Some were bitten by police dogs as they came down the stairs. Dog bites were seen on some of the prisoners inspected by the Amnesty International delegates. The Forensic Medical Institute recorded between nine and 12 injuries which could have come from dog bites. The prisoners interviewed stated that the dogs were under police control on leashes when they were bitten by them.

Police allegedly did not refrain from beating the wounded. José Iran de Oliveira who had severe burns after being caught in a fire in the administration room on the ground floor recounted to Amnesty International how "They burst all the blisters and burns on my arms with truncheons and boots, various of them. It was worse if you cried out, they beat you more. I had to keep quiet and put up with it all. A man came and helped me".

Having been made to strip and come down to the ground floor prisoners were made to sit with their heads between their knees on the central patio of the Block, in the dark and rain for about two hours. They were allegedly told not to cough, or sneeze or they would be shot.

Alcides Carvalho Filho described to Amnesty International how while sitting on the patio he caught glimpses of what was going on:

"Everyone was on the patio, you had to put your head between your legs and keep your head down. Some who lifted up their heads were beaten. I raised my head and saw two prisoners carrying bodies, either dead or wounded. After about 10 minutes I raised my head again. I saw two dogs – German Shepherds – entering the barber's shop and heard them barking, and prisoners' low groans."

There are several unconfirmed reports that the wounded were taken into the barber's shop on the ground floor, and that dogs were let in to finish them off. The family of Claudio José de Carvalho have stated that when identifying the body of their relative, they noted several dog bites in the area of the genitals. The Forensic

Medical Institute found no evidence of injuries caused by dogs on the dead examined. "No mutilations or injuries caused by dog bites were observed."

Execution of the wounded

At one point police are said to have called out that if any of the wounded wanted treatment they should stand up. Two or three men stood up, and were taken away and allegedly killed.

"Some raised their hands and were taken by the military police to the gate and went upstairs and then a minute or a minute and a half later we heard shots above, making us believe they had been sacrificed."

"I carried various bodies of prisoners, whom I had seen alive and naked on the patio and then found dead."

Prisoners made to carry bodies and then themselves executed

A number of the prisoners were selected to carry dead bodies down from cells and corridors to a general pile in the corridor and sports room of the 1st floor, where they were later seen by prison functionaries and the crime-scene investigator. Police were apparently afraid of contracting AIDs from the dead and wounded and allegedly made prisoners carry the bodies for this reason. Several prisoners stated that some of the body carriers were executed afterwards, among those killed was a prisoner known as "Tubarão".

Milton Marques Viana said that he carried a number of bodies: "with shots in the chest, face, stomach and mouth. I saw that they had just gone and killed our wounded. Various of us who carried the bodies survived, but some were executed."

Gilberto Rosa Saldanha said: "They machine gunned six people who came up with us to carry the bodies, on the landing on the second pavimento." According to Genivaldo Araujo dos Santos, "They shot everyone, including an old man from 212-E who was carrying bodies".

Luiz Henrique Soares, another body carrier, in evidence to the Federal Commission of Inquiry recounted:

"I watched while one of the prisoners who was carrying bodies was shot in the head from a revolver, just after he had put down a body in the sports room. He fell with his eyes fixed, on top of the body he had just carried."

Many prisoners also recounted how police went around checking if there were people still alive hiding among the bodies in the cells and stabbed them with bayonets. According to one, "If you were wounded they checked with a bayonet to see if you were alive". Two of the prisoners examined by the Amnesty International delegates had stab wounds in their feet. Another had stitches in his head from what he said was a bayonet wound. One of the nurses stated that prisoners had also been stabbed in the buttocks. Genivaldo Araujo dos Santos was stabbed near the anus, sustaining a wound which required five stitches. Stab marks in the feet and buttocks suggest that prisoners were lying down when stabbed. The 2nd shock-troop battalion carried knives in their boots during the operation.

Prisoners witnessing summary executions during the police operation were allegedly told by police: "Look at how we kill bandits."

Treatment of the wounded

It would appear from testimonies that a number of the wounded were executed. The disproportionate number of dead to wounded appears to provide confirmation of this. This ratio was particularly commented on by representatives of the Federal Medical Council visiting the Casa de Detenção on 12 October.

Initial reports on 3 October stated that there were 35 wounded. Amnesty International delegates inspected some 18 wounded. While some were definitely in need of hospital treatment, none of these injuries were serious, causing risk to vital organs. The total number of injured examined by the Forensic Medical Institute (IML) from 12 October onwards was 108, of which there were 73 prisoners with wounds consistent with beatings, five with bullet wounds, between nine and 12 with dog bites, four

with stab-like wounds, and one suffering from burns. Of the prisoners inspected by Amnesty International more than five had bullet wounds. The IML doctors waited a full 10 days before inspecting the wounded. The IML considered of the 108 inspected only two prisoners had serious injuries. The ratio of 111 dead to two seriously wounded is extremely striking. If it is accepted that only five surviving prisoners had bullet wounds, this means that police shot 108 prisoners and killed 103 of them. The Director of Prison Discipline told Amnesty International delegates that he tried to check each of the wounded being taken out of the prison, and to insist that they were accompanied by prison staff. He was prevented from doing so by police pressing a machine-gun against his chest. According to him the first eight prisoners who were sent to the Santana Emergency Hospital left alive, some with wounds that did not appear to him to pose a risk to their lives. Nevertheless, they all died either shortly before or shortly after reaching the hospital. He said he believed that some of them had been executed on the journey to the hospital.

The Workers' Party dissident report on the Legislative Assembly inquiry cross-checked hospital records of the time of entry at the hospital of each prisoner and the description provided by the Prison Discipline Director of each as they left the prison. This indicated that two of the prisoners described by the Director as alive and talking when put in the police paddy wagon were José Ronaldo Vilela da Silva (from cell 512-E) and Antonio Marcio dos Santos Fraga (from cell 307-E). Amnesty International received testimonies from other prisoners describing these two as alive, the former walking down to the patio. According to autopsy reports, both prisoners died of shots through the lungs. Had the prisoners been wounded in this way before entering the police paddy wagon they would have been unable to walk or talk. It would be possible for the authorities to identify police in charge of particular paddy wagons delivering the wounded and dead to the Santana Emergency Hospital.

3 THE AFTERMATH

Medical treatment for the wounded

An Amnesty International delegate visited wounded prisoners in the infirmary in Block 4 on 6 October. Seven prisoners were in the infirmary, five lying on thin foam mattresses on the floor. They stated that they had received treatment from other prisoners acting as nurses under doctors' instructions.

José Iran de Oliveira was lying on a foam mattress on the floor, in clear need of hospital treatment. His entire face, neck and one of his arms had sustained first and second degree burns from being caught in a fire on the ground floor. He had not been taken to hospital. Some of the burns on his hand and elbow were suppurating. He said he had received no treatment. The only first aid material to which he had access was a bandage. He had removed it because it was dirty.

Luis Carlos dos Santos Silva had five bullets still lodged in his body – two in his right leg, one in his back near his spine, one in his buttocks and one in his left foot. He had been transferred to the Mandaqui hospital during the night of 2 October and lain on a stretcher for over 24 hours without being attended by anyone.

“They didn't do anything. They didn't take out the bullets. They didn't give me anything, not even a pill”, he said. He was returned to the *Casa de Detenção* on 4 October without the bullets having been removed. He was particularly concerned about the bullet near his spine and had asked his lawyer to try and secure treatment for him. The bullet near the spine was not removed until 12 October.

Prison doctors told Amnesty International delegates that it was common practice not to remove “non-serious” bullets. Following a visit to the *Casa de Detenção* on 25 October 1989 the São Paulo Bar Association and the Regional Medical Council reported that one prisoner, Claudemir de Oliveira, had been waiting for more than a year for an operation to remove a bullet from his spine. He was unable to stand erect or to walk. Amnesty International learnt that he died in December 1989 of

Aids. The bullet had not been removed.

Other human rights observers visiting the prison on 6 October gained access to the punishment wing in Block 6 where they reported seeing wounded prisoners from Block 9 in punishment cells. One, Luis Carlos Alves, said he was urinating blood and needed treatment. The authorities said that some of these men had been involved in the initial fight in Block 9 and were being kept in the punishment wing for their own protection.

The Amnesty International delegates made representations to the authorities, including Prison Service Directors, and the Secretary of Public Security, to provide proper medical treatment for the wounded prisoners. In a subsequent visit on 12 October the delegates noted slight improvements: prisoners had beds and were no longer on the floor and prisoners had fewer complaints. Treatment, nevertheless, left much to be desired.

According to prison doctors, wounded prisoners not moved to the infirmary in Block 4 remained in Block 9 and visited the infirmary daily or were sent medicines. Doctors attended to some 80 prisoners a day from the entire prison in this way. Treatment in general however was administered by prisoner nurses. Some of these nurses had previous training, others did not.

Any prisoners that needed hospital treatment had to be escorted to hospital by military police. In the case of those wounded on 2 October, it was entirely inappropriate for them, as witnesses to the massacre, to be transported by military police. Indeed prisoners were terrified of being given over into military police custody. In a meeting with the Secretary of Public Security for São Paulo on 21 October an Amnesty International delegate asked whether a special corps of prison security guards charged with escorting prisoners to hospital and courts could not be established. The Secretary answered that he was considering setting up a special prison security service, which would deal with all security matters in prisons, including prison disturbances.

In the light of these problems members of the Federal Medical Council had meetings with the Secretary of Health for São Paulo to suggest that doctors from outside the prison service visit the prison to help attend the wounded. Although this was agreed, the visit was not organized. José Iran de Oliveira did not receive hospital treatment. A team of doctors from the Emílio Ribas Institute did visit the prison, however, to carry out HIV testing on surviving prisoners who had requested tests following their fears that their open wounds and abrasions had been exposed to blood from other dead and wounded prisoners.

Medical provision at the ***Casa de Detenção***

Block 4 had been designed as a prison hospital or infirmary, but had been re-allocated to house prisoners (mostly those with privileges and those known as *justiceiros* – vigilantes, convicted of death-squad type killings). Some of these *justiceiros* served as prisoner nurses in the infirmary. Only one floor of Block 4 was dedicated to sick prisoners. This consisted of one sick-room with two beds (on 6 October), and floor space for other inmates, and a special wing for contagious and infectious prisoners including those with hepatitis, meningitis and AIDS. The operating theatre had been turned over to offices. Amnesty International was informed that there were 12 doctors, including one psychiatrist, employed by the prison to attend 7,300 prisoners.

Medical staff at the prison explained that they had several problems in trying to transfer prisoners for treatment at public hospitals. Public hospitals did not welcome prisoners for security reasons and there was the problem of military police escorts. In general military police used these opportunities to taunt prisoners and often, through delays, made prisoners miss fixed appointments, which then took months to rebook.

Medical staff in São Paulo prisons are subordinate to each Prison Director. Thus

professional doctors' judgements and budget requirements may be overruled by other considerations. Doctors and prisoner nurses complained of a chronic lack of equipment in the prison, there was one instrument for measuring blood pressure for 7,300 prisoners, no working stretchers or wheel-chairs. Shortly before 2 October a proposal for health infrastructure within the prison system to be transferred to the control of Director of Prison Health Services had been submitted to the State Governor for forwarding to the Legislature. This would have given the *Casa de Detenção* an autonomous health budget. Medical needs were projected to increase their share of the prison budget in this way from approximately one per cent to 10 per cent.

Official withholding of information and abuse of families

Although the number of 111 dead was known to military and civil authorities at the latest at 8.00 on 3 October, this was deliberately held back until an official announcement was made at 16.30, 30 minutes before the polls closed for the São Paulo municipal elections.

Throughout 3 October families waited outside the prison but were given no official information. One wife climbed up a wall, called out to the prisoners and passed messages back to families waiting below. They would give the names of their relatives and prisoners would shout back if they were alive or dead. This was how some relatives learned of the death of their loved ones.

The press was informed on the evening of 2 October that eight prisoners had died in internal gang fights in a rebellion at the *Casa de Detenção*. These were the prisoners taken to the Santana Emergency Hospital. When a lawyer from the São Paulo Bar Association tried on 2 October to exercise the constitutional right of lawyers to have access to prisoners, he was told by the Prison Director, "Listen my son, I can't authorize you to enter because on the orders of the Secretary of Public Security the military police are in charge here."

During 3 October priests and nuns working for the Catholic prison pastoral service were allowed to enter the prison and talked with traumatized prisoners and prison staff, many of whom were crying. The Block was still being washed down, and blood-soaked foam mattresses being disposed of.

On 4 October the list of 111 dead was posted on the prison door. Relatives had not been individually notified of the deaths. Relatives were allowed to visit the prison for two hours. Families learned from cell-mates how their relatives had met their fate. The press reported one mother entering in the belief that her son was alive, and finding out from other prisoners that he was dead – he had been shot for not coming out from under a bed where he was hiding. Lawyers from the São Paulo Bar Association were also allowed to visit Block 9 on 4 October.

As the list of dead did not indicate which morgues bodies had been sent to, families began a search of the city morgues to locate their relatives and identify them before burial. Some had to visit several morgues. There were a number of mistakes on the list of prisoners killed, with three prisoners listed as dead, who were alive.

By 6 October the prison authorities had still not published a list of the survivors to reassure waiting families. This, together with distrust of official figures and prisoners' accounts of more bodies leaving the prison secretly in garbage trucks, led to considerable distress for families who believed that their loved ones were also dead. On 5 October prisoners hung a banner from a cell window indicating that 280 had been killed. Prison staff also initially believed the death-toll to have been higher than 111. By 6 October official daily counting of prisoners had still failed to account for 36 prisoners from Block 9; these were only later apparently accounted for. Those relatives who had not reached the prison on the first Sunday were told they would have to wait until the following Sunday to visit and verify for themselves that their relatives were alive. Human rights lawyers considered presenting *habeas corpus* petitions so that the authorities would be obliged to present surviving prisoners and confirm they were alive. In the next few days human

rights lawyers cross-checked the official list of the dead with morgue lists and burial records. A number of lawyers visited the prison with lists of prisoners suspected missing, calling out each name to verify they were alive. Had the authorities acted more humanely this uncertainty would not have been necessary. Although a central record did exist, the authorities alleged that they could not have published the list of the living until 8 October, because the records from Block 9 had been burned in the uprising and because prisoners used various pseudonyms, which the authorities said families did not know. Each prisoner, however, has a prison number, usually known to families, but these were not published until 8 October. The authorities' cavalier disregard for keeping records of those held under state custody had been demonstrated in the past, and in previous riot situations. As early as 1987 the São Paulo Secretary of Justice had told an Amnesty International delegation that prison records would be computerized "very shortly", to facilitate internal control in such incidents and proper reclassification of prisoners due for remission or transfer to less strict regimes (a principal cause of complaint and of earlier prison disturbances). This had not been done at the *Casa de Detenção* in the five intervening years. Dr Filardi Luiz informed Amnesty International that the computers had arrived on 29 September 1992 and they were awaiting someone to train staff to use them.

Callousness towards relatives culminated in police (with identification tags removed) hitting and setting police dogs on families waiting at the prison gates on 3 and 5 October. One of the principle demands of prisoners visited by politicians and human rights observers on 6 October was that their families should be treated with respect.

Forensic evidence

Agencies responsible for collecting and examining forensic evidence, such as the Forensic Medical Institute, *Instituto Medico Legal*, and the Criminalistic Institute, *Instituto Criminalistico*, are subordinate to the Secretary of Public Security in each state. Amnesty International believes that these institutions should be separate from the police service in the interests of professional independence. International standards for the investigation of alleged extrajudicial executions recommend legal independence in such cases. During the period of military government (1964-1985) a number of forensic doctors signed false death certificates for political prisoners who had died under torture or been executed. For some years forensic doctors have campaigned for independence from police structures, and for greater resources and value to be given to their profession.

"Scene of the crime" evidence

In the immediate aftermath of the massacre military police altered the "scene of the crime" destroying valuable evidence which might have lead to attributing deaths to particular individuals. This is a crime under article 347 of the penal code. Civilians were barred from the upper floors of the pavilion while police ordered prisoners to move bodies from where they lay in the corridors and cells and to pile them on the first floor. Military police commanders claimed that the decision to move the bodies was taken in consultation with civilian authorities. The judges present certainly did nothing to try to preserve the crime-scene.

According to the Prison Director of Discipline, "For four hours the military police were more interested in altering the scene of the crime than removing the wounded prisoners".

No members of the state Public Ministry appeared at the scene to investigate or guarantee the rights of prisoners.

The police crime-scene investigator, Dr Oswaldo Negrini, sent by the nearest civil police station, arrived at 21.30 on 2 October. He made an examination of the ground floor and the first floor. He observed evidence of fires and a barricade on the ground floor. On the first floor he counted 80 to 85 bodies piled in the corridor.

He photographed the pile. He did not photograph bodies individually because, he stated, there was "a complete lack of security and hygiene and there was no electricity", nor did he collect any bullets or spent cartridges.

Instead of returning to the scene the following day the crime-scene investigator did not return to the block for another week. (He did attempt a visit on 7 October but because of an internal disturbance only visited the block on 9 October). Thus the first time he inspected the cells was on 9 October, when they had all been washed down and the prisoners had rearranged the cells to try to return to normal life. Absolutely vital information was lost in the interim. The investigator inspected corridors and 19 cells in which killings were alleged to have occurred. He said that "not a single bullet or spent cartridge was found in the place". Samples from apparent bullet cavities in cell walls were taken and tested for lead which would indicate the use calibre .22", .32" and .38" weapons, and tested for copper, indicating the use of machine-guns. 166 bullet cavities were confirmed in cell walls. These cavities were also tested for traces of blood, "when necessary". The investigator reported seeing splashes of blood still evident on the walls in only three locations. Nine areas tested positive for human blood. The Amnesty International delegates inspecting cells and corridors on 12 October, noted many more areas of blood splashes, and that only 50 per cent of the apparent bullet marks in the walls of cells had been marked and numbered by the criminological team.

The final criminalistic scene of the crime report stated:

"In all the cells examined the trajectory of projectiles fired indicate that those shooting were positioned in the doorway pointing their weapons towards the back and sides of the cells...No signs were observed that could denote the firing of weapons in the opposite direction to those described above, to indicate a confrontation between the target victims and those shooting at the front of the cells."

Having collected information from prison staff and prisoners the investigator estimated that approximately 85 prisoners were killed inside their cells and some 26 elsewhere.

The criminalistic report concludes that fuller conclusions were not possible given that "the scene was demonstrably violated making technical analysis unreliable". Prisoners, prison staff and the crime-scene investigator have stated that they saw police photographing and filming events inside Block 9. It is a practice of the Special Operations Group to film police operations to provide material for training. One military police officer reported collecting a video-tape for such a purpose, but the officer to whom this tape was handed denied that any filming was actually carried out. The Special Operations Group denied the existence of video film and refused to hand over tapes. However, a roll of film taken by police during the operation was obtained by the newspaper *Folha da Tarde*. Some of these pictures were made available to Amnesty International by the newspaper and can be seen in this document.

Ballistic evidence

The crime-scene expert mentioned that no bullets were found at the prison on 9 October, and that he had not picked up any on 2 October because it was dark. Of a total of some 5,000 bullets which were reportedly fired, 515 were found in dead prisoners' bodies. Military police had been very careful to destroy crime-scene evidence. However on 12 October prisoners showed Amnesty International a number of bullets which they had picked up off the ground.

On 12 October the Amnesty International delegates watched a bullet being retrieved from near the spine of Luis Carlos dos Santos Silva by a doctor. There was no evidence at the time of this bullet being recorded as part of the official inquiry. It may have been thrown away or kept as a souvenir by the prisoners. The ballistic sector of the Criminalistic Institute only logged one bullet removed from a wounded

prisoner.

The ballistic section of the Criminalistic Institute informed the heads of the civil and military police inquiries that because it would take 76 years for the section to complete the work involved in matching up projectiles taken from dead prisoners with the weapons used by the 347 military police during the operation, no such matching was possible, or would be attempted. This was tantamount to refusing to provide information to the courts.

It is known to the authorities which police units operated on which floors during certain periods, and which calibre of weapon they were using. Through testimony and some of the physical evidence it is also possible to determine in some of the cases where, and certainly on which floor, certain victims met their deaths. Through careful cross-referencing of evidence the extent of ballistic matching to be carried out could have been considerably reduced. Bullets extracted from particular prisoners could have been compared with the firearms of specific policemen operating on that floor. The ballistics section could have started with one or two cases (the case of the two prisoners allegedly executed on the way to Santana Emergency Hospital, or the three shot at close range are examples). Yet not even this limited investigation was attempted.

No consideration was given to calling on the assistance of other ballistic laboratories both within the country and internationally. Given the scale of the massacre under investigation and the level of international concern about it, such international co-operation would not have been impossible, had standard procedures for identifying and storing the bullets been maintained.

It took several days for the weapons used by the military police in the operation to be handed over to the Criminalistic Institute. These weapons were not preserved at the Institute but sent on to the military courts. The firing capabilities of all these weapons was tested, however. The bullets from these tests, properly separated and labelled, could at least have been compared with bullets retrieved from the prisoners' corpses and used to determine individual responsibility. The Head of the Criminalistic Institute informed a state deputy in February 1993, however, that these test bullets had all been "thrown away".

Ballistic matching would have been one of the most important ways of determining individual responsibility for unlawful killings carried out in the course of the police operation. The catalogue of omission by the ballistics section of the Criminalistic Institute is, at least, grossly negligent and incompetent and, at worst, deliberately intended to jeopardize the course of all further criminal proceedings related to the case.

Autopsies

Autopsies in Brazil are carried out to a standard format – the pathologist is asked five basic questions regarding the type of injuries and possible instruments causing them. The pathologist is required to give the physical cause of death, for instance cerebral trauma, but not to offer any elements contributing to a discussion of the legal cause of death, for example, natural, suicide, misadventure, homicide.

Crucial information relevant to future criminal proceedings is thus often lost, because more precise questions are not answered by the pathologist. This, it must be stated, is not the fault of pathologists who in many cases try to provide as much information as possible. It is because of the formulation of the tasks allotted to him or her and, therefore, the judicial procedures governing the provision of expert testimony.

Thus the professional experts worked without any guidance from the official investigation, and were limited to providing autopsy reports following a routine formula, on bodies that were not accompanied by any relevant information regarding the circumstances of the killings, and under the pressure imposed by the large quantity of bodies and limited time available.

Principles 12 and 13 of the United Nations Body of Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (see appendix) provide clear guidelines for the conduct of autopsies in such cases, which include provisions for pathologists to be given access to relevant information, the necessary time to conduct a thorough investigation and a recommendation for them to "take colour photographs of the deceased in order to document and support the findings of the investigation."

Possibly working under the constraints of time, the pathologists limited themselves to removing bullets which "in the opinion of the experts" were fatal. In the case of victims possibly fired on by more than one person, it is extremely important to log all bullets, their calibres, and the site from which they were extracted and to label and store each bullet separately.

When following the standard autopsy format, Brazilian pathologists are not routinely required to indicate the trajectory of bullets (although some did in this case). In a number of autopsies from the *Casa de Detenção*, pathologists mention "lack of information", "technical limitations" and effects "caused by the manipulation and transport" of the bodies which prevent them from "estimating the internal trajectory of bullets". No photographs were attached to the autopsy reports.

The autopsies were carried out by 23 forensic pathologists from four different Forensic Medical Institutes. They revealed the following statistical information: Of the 111 dead, 103 died of bullet wounds, seven died from knife wounds, one died from both bullet and knife wounds. Two prisoners had 16 bullet wounds, 16 prisoners had 15 bullet wounds, 19 prisoners had 13 bullet wounds. In other words more than 30 per cent of the prisoners killed were shot with more than 13 bullets. Of the 515 bullets found in the bodies, 176 had entered from behind. Forty-one individual prisoners were shot in the back. A number of shots in the buttocks and legs, apparently from above indicate that at least 12 of these were lying face down when shot in the back. Powder burns associated with bullet wounds indicate that three of the prisoners were shot at a close range (less than 50 centimetres). Twelve prisoners had classic "defence wounds" on their forearms and hands. Five were shot in the head from above; 49 were shot in the chest, near the heart; 37 were shot in the neck or back of the head; and 33 had bullet wounds in the face.

While there are witness statements that police stabbed prisoners with knives, and evidence that some police were armed with knives, it cannot be ruled out that atypical wounds in a small number of prisoners, indicating for instance stabbing in the throat, may have been caused by other prisoners in the initial tumult. A thorough investigation of the circumstances of each killing, would resolve such questions. The presence of multiple shots close together indicate that prisoners were immobile when shot or fired at with high velocity automatic firearms. Bullets removed from corpses were in a proportion of four .38" revolver bullets to every one machine-gun bullet. (However, as mentioned, in most cases forensic pathologists removed only what they considered to be the fatal one, leaving other bullets in the bodies). The high proportion of bullets in the thorax (34.2 per cent) and head (26.2 per cent) indicate that shots were fired with the objective of causing fatalities. As the Secretary of Public Security indicated to the press, "in a situation like this, orders are to shoot to kill". (*Diario Popular*, 4 October 1992)

Possible value of this evidence

Colonel Ubiratan gave evidence to the Federal Commission that "with the .38" revolvers used by the shock-troops, each revolver has individualized ammunition for each member of the troop, and with the machine-guns, each policeman has to sign a register for each gun that he takes out to take part in an operation, so that if a particular bullet is taken out of a corpse it would be possible to determine which individual fired it, as all the weapons are identified individually".

Given such clear procedures for identifying ammunition it would have been possible

to attribute individual responsibility for at least some of the killings in the *Casa de Detenção* on 2 October, had the Ballistics Section of the Criminalistic Institute acted properly.

While some of the technical reports could have been more complete, there remains a wealth of evidence available in the autopsy reports, the criminalistic reports and witness testimony which make it possible to hypothesize in some of the cases, the position in which a prisoner was shot dead. This would enable experts to determine whether the prisoner was in a position of surrender, already incapacitated when shot. This would enable a court to decide if a killing was lawful or not. For example, it is hard to construe an innocent explanation for a death by shooting in the back, in a cell.

Amnesty International believes that it is still not too late to reconstruct individual responsibility for some of the deaths through the careful analysis and interpretation of the evidence available and if the relevant ballistic matching is carried out.

The official inquiries

On 21 October the human rights organizations, Americas Watch, the Centre for Justice and International Law and the Teotonio Vilela Commission, lodged a complaint against Brazil before the Inter- American Commission on Human Rights for violation of Articles 4, 5, 8 and 25 of the American Convention on Human Rights (ratified by Brazil in September 1992) in relation to the massacre at the *Casa de Detenção*. In response the Secretary of Justice and Citizenship for the State of São Paulo issued a preliminary report on 11 November contesting that national remedies had not been exhausted. The report pointed out that the state Public Ministry had set up a Commission to provide legal assistance to victims' relatives pursuing compensation claims. It also reported that "not less than seven enquiry procedures are under way".

The following is an account of the results of these inquiries to date, including summaries of the published inquiry reports:

1. Civil police opened a *Civil Police Inquiry*, headed by Police chief Claudio Gobetti, which concluded in February 1993 that there had been: "excess and abuse of authority". It provided a list of police officers who said they had fired their weapons in defence of their lives. It did not recommend bringing charges against anyone.

2. The *Military Police Inquiry* conducted by Colonel Luiz Gonzaga de Oliveira was intended to establish responsibility for any military crimes committed by military police while on active duty. As military police are only answerable to military courts, the military police inquiry would be crucial to any attempts to bring those responsible for human rights violations to justice. Colonel Gonzaga concluded that there had been "excesses" by the police but that "it was impossible to determine individual responsibility as there was no proof as to who shot whom".

The general Commander of the Military Police for São Paulo, in sending the inquiry to the military justice prosecutor, concluded: "The tactical plan set up by Colonel Ubiratan Guimarães was in our view perfect. There were no excesses with regard to the police action related to the entry into the Block. However there may have been excesses during the police action, probably motivated by the excess of obstacles and resistance mounted by the prisoners, which relied on criminal acts.

"In conclusion, while the entry of the troops was totally necessary, the technical report suggests that there were excesses; evidence of shots fired inside cells suggests that military crimes were committed during the operation."

Following this conclusion, five of the military police commanders who had commanded the operation on 2 October, who had been suspended from office pending the inquiry were reinstated on active duty, although not to the same units they had previously commanded. Colonel Ubiratan Guimarães had already been retired.

3. The Prison Service (COESP) has established an *Internal Prison Service Inquiry*

into the events.

These three state level inquiries were monitored by members of the São Paulo state Public Ministry or Public Prosecution Service, which designated a prosecutor and an appeals court judge to be present at each of the three inquiries to be present during the taking of evidence, reportedly to ensure the independence of the inquiries. Human rights organizations were also invited to be observers. The results of the civil and military police inquiries were passed to the civil and military courts respectively.

Reports by the Prosecutors and Appeals Court Judges accompanying the civil and military police inquiries, published in February and March 1993 absolved the former Secretary of Public Security and civilians of any criminal responsibility for the massacre.

4. The São Paulo state Public Ministry has itself set up a *Public Civil Inquiry*. This is whereby serious breaches by the executive and violations of citizens' rights may be examined and recommendations made. However, since competence to deal with crimes of military police officers still remains with the military courts, the inquiry's findings in this regard can only be passed to the military court to add to the military police inquiry.

5. The São Paulo judiciary instituted a *Judicial Inquiry*. It did not find the judges present at the prison on 2 October responsible for any failure to fulfil legal obligations.

6. The *São Paulo State Legislative Assembly* opened a *Special Commission of Inquiry* with public hearings. The majority of deputies on the commission, belonging to the state Governor's party, concluded on 1 December that there had been "an excess which deserves our criticism and hope that it will not happen again". The report was widely criticized for failing to state that "a massacre" had occurred, or attribute responsibility.

Two state deputies of the Workers' Party, disagreeing with the majority report, published a "separate vote", which placed on public record a number of the documents viewed by the special commission and summarized and quoted several witness' statements. It concluded that there were no mitigating circumstances to justify the police action in law and recommended that police officers and soldiers should be prosecuted under certain articles of the military penal code. It also recommended that the Secretary of Public Security, his adviser, and the judges present should be charged with prevarication, which under the common penal code means failing to take an action for reasons of personal advancement. This separate vote was also signed by a PSDB deputy. A further separate vote was lodged by a PDS deputy, who was a former Secretary of Public Security, who argued that the police had killed the 111 prisoners "in legitimate defence in the course of their legal duty".

7. The *Federal Government's Council for the Defence of Human Rights*, a Ministry of Justice consultative body, created a Sub-Commission to investigate the massacre, made up of the Federal Attorney-General, the Head of the Federal Bar Association and a representative of the Brazilian Press Association. After studying the military police's record of fatal shootings in São Paulo, the report suggested that "the episode at the *Casa de Detenção*, was to some extent the natural result of this policy of violence established in the state of São Paulo", in which "torture" and "summary executions" were police "working methods".

The report, approved by the full Human Rights Council of the Ministry of Justice on 14 December, described the military police operation as "an action without adequate planning, without coordination, a criminal action, violent par excellence and irresponsible". It concluded: "The military police of São Paulo, through the members of its shock-troops, killed, without any justification, 111 prisoners under the custody and responsibility of the state, penal responsibility for which lies with the authors and civil liability with the state." It recommended that "There

should be no impunity for the massacre and that those directly and indirectly responsible should be exemplarily punished.”

However, the Ministry of Justice's Human Rights Council is only a consultative body and has no power to make sure its recommendations are implemented. At a meeting with Amnesty International in January 1993 the Brazilian Minister of Foreign Affairs, Fernando Henrique Cardoso, cited the *Casa de Detenção* as a case in point to illustrate that there was no mechanism whereby the Federal Government could ensure that those responsible for human rights crimes were brought to justice in individual states, or that Brazil's international human rights obligations were upheld within the states.

8. The *Federal Council for Crime and Prison Policy* issued a report on 20 October. The rapporteur, a former Secretary of Justice for the state of São Paulo, recounted that in the course of his inquiries he “met in judicial circles, people of extraordinary reputations and excellent training, wishing to forget the relevant legal process, who approved of the summary execution of 111 prisoners under state custody”. The rapporteur made recommendations for improved monitoring of conditions in prisons, including co-operative agreements between the Regional Medical Councils and the Prison Service, and improved parole procedures.

While the different inquiry reports varied in the interpretation of the facts, and the tone of their conclusions, none of the reports denied that either excesses or military crimes had occurred or that the majority of prisoners were killed while defenceless in their cells. These findings are consistent with Amnesty International's own investigation. Nevertheless, despite setting up eight different inquiry procedures, none of the above inquiries attributed individual responsibility for the crimes enumerated. This failure to attribute individual responsibility, when in the opinion of Amnesty International sufficient evidence was available to do this, indicates that the Brazilian authorities should re-examine inquiry procedures in such cases, in order to make their results more effective.

Judicial proceedings

On 2 March 1993 a civilian Criminal Justice Prosecutor brought charges against Lieutenant Colonel Edson Faroro for the common crime of “illegal coercion” for ordering prisoners to remove bodies of the dead from cells and corridors. Dr Ismael Pedrosa, former director of the *Casa de Detenção*, was also charged with “illegal coercion” for ordering prisoners at a second stage to carry these bodies out to trucks to be taken to the morgues.

A further civil police investigation was ordered to determine the responsibility for the crime of “abuse of authority” of three prison guards, reported to have beaten a prisoner at the start of the prison disturbance,

On 2 March the Military Justice Prosecutor Luiz Roque Lombardo Barbosa presented charges against 120 military police officers and soldiers for the “military crimes” of homicide, attempted homicide and grievous bodily harm, while on active duty. The prosecutor affirmed that the massacre was “the largest slaughter recorded to date in a single prison in the world [where] detainees' prison sentences were arbitrarily and illicitly turned into death sentences – 111 deaths.”

He described the first stage of the operation “the military police crazed and impelled by the *'animus necandi'* (intention to kill), proceeded to occupy all the floors of the block firing innumerable bullets at prisoners who remained inside their cells or ran desperately along the corridors.... There was no confrontation”. The Prosecutor also referred to evidence that prisoners “hung outside the windows sheets and bits of paper with words suggesting peace, as well as throwing onto the patio their knives and daggers, trying to show that they were not resisting the police”. When discussing the question of premeditation and intentionality the prosecutor stated: “It was discovered that various policemen took off their stripes, insignia and names from their uniforms, when they entered Block 9, demonstrating yet further

the previous criminal intention”.

The prosecutor charged Colonel Ubiratan Guimarães with all the killings and attempted killings in the Block. The Prosecutor argued that under his command “the disastrous operation proceeded, without any strategy or planning... It must be stressed that Colonel Ubiratan was perfectly aware of the sort of violence customarily used by some of the men he was commanding, but even so, he allowed them to enter the Block”. Colonel Guimarães was responsible under the doctrine of “foreseen harmful result”, being “responsible for the assuming, the risk of the result” under Article 33, I, 2 of the Military Penal Code. Thus, the Prosecutor argued, instead of stopping the action, even once it had started and its tragic consequences could be seen, the commander chose to allow it to proceed.

The prosecutor detailed the crimes committed on each floor and charged the military police commanders, officers and soldiers operating on these floors with the killings and attempted killing that took place on them. The prosecutor then detailed a second phase of the operation when prisoners were made to run the gauntlet of military police beating them, stabbing them and setting dogs on them. Military police in charge of police dogs and police soldiers involved in the “gauntlet” were charged. Military police commanders present during this phase were also charged for not preventing the abuses and therefore directly contributing to them.

The prosecutor sought a number of further steps to be taken to sustain the prosecution, among them that video-tapes of the operation should be handed over, and that the weapons apprehended should remain separate in the court for the duration of proceedings. Given the large number of accused, he also sought that legal proceedings should be expedited.

On 8 March 1993 the Judge of the First São Paulo Military Tribunal, Paulo Antonio Prazak, accepted the charges brought by the Prosecutor and indicted two military police Colonels, three Lieutenant Colonels, four Majors, nine Captains, 25 Lieutenants, 17 sergeants, 20 corporals and 40 soldiers.

4 CONCLUSIONS

There is compelling evidence that military police in operation at the *Casa de Detenção* on 2 October 1992 murdered prisoners in cold blood, the vast majority after they had surrendered. These killings were not accidental or regrettable excesses, but part of a deliberate and concerted action.

The massacre at the *Casa de Detenção* follows a history of impunity for extrajudicial executions of prisoners in previous prison riots and of civilians on the streets in São Paulo. Amnesty International believes that this pattern of impunity directly contributed to attitudes prevalent during the storming of the *Casa de Detenção* on 2 October 1992. Established techniques and practices for ensuring impunity for military police committing human rights violations were also put into operation during the aftermath and subsequent official inquiries, deliberately attempting to sabotage any future criminal proceedings.

The action undertaken seems to have ignored international codes of practice on the use of force and firearms since the disturbance in Block 9 at the *Casa de Detenção* on 2 October, which did not involve hostage-taking nor any escape attempt, did not pose an immediate threat to the lives of those outside the block. The proposed negotiations were sabotaged by the precipitous and unwarranted storming of the block by military police before any serious attempt had been made to establish dialogue. There is overwhelming evidence to suggest that the majority of prisoners, including the wounded, were extrajudicially executed by military police after having surrendered, while defenceless in their cells. Forensic evidence indicates that shots were fired from the doorways into the back and sides of cells, and no shots were returned. The high proportion of bullets (60.4 per cent) fired at the head and thorax of prisoners indicates no use of minimum force or restraint, but a clear intention to cause fatalities.

There is also strong evidence to suggest that a number of wounded prisoners were executed in various locations including on the 1st floor, and in a police vehicle on the way to hospital. Prisoners, including the wounded, were also beaten, bitten by police dogs and stabbed. There are consistent testimonies that a number of prisoners made to carry the bodies of the dead were subsequently executed. Surviving prisoners were treated with extreme cruelty and psychologically tortured, including by being forced to watch executions.

The Governor and the Secretary of Public Security of Sao Paulo abdicated their responsibilities for the life and welfare of prisoners in state custody by deciding to pass command of the *Casa de Detenção* on 2 October directly to military police before the arrival of the Judge Inspector of Prisons. The decision to send units such as the ROTA, and officers with a past record of multiple fatal shootings, to quell the disturbance at the *Casa de Detenção*, could have been predicted to have a bloody outcome. Furthermore, a failure to provide any guidelines for the minimum use of force by military police during their action within the prison precincts was tantamount to providing these units with license to kill.

Contrary to their responsibilities for the lives and welfare of prisoners in state custody and for upholding the rule of law, the judges present at the scene failed to exercise any independent authority to evaluate the situation, to direct military police to use minimum force, or to preserve vital evidence immediately after the massacre.

Commanding officers directing the operation exercised no restraint on their subordinates. In evidence to public inquiries, high-ranking officers made no mention of any role by them in supervising the operation during its course. By allowing military police to enter the block with their insignia and identification tags removed, commanders seem to have suggested that crimes could be committed with impunity, and that the intention to commit such crimes was understood.

This last conclusion is reinforced by the fact that evidence from the scene was deliberately tampered with or destroyed by military police in the immediate aftermath of the massacre. For example, bodies were removed from the places where they had fallen and other evidence was removed from the scene. Commanding officers gave orders for this action.

Both the prison service and civil medical community (civil hospitals and doctors) failed to provide adequate medical attention for the wounded. International standards such as the UN Principles on Medical Ethics, which recommend equal medical provision for prisoners to those not detained, were not adhered to. For instance, one prisoner with five bullet wounds was left unattended for 24 hours in a civil hospital; he then was sent back to the prison without the bullets having been removed, and these were only removed after 10 days.

There were disturbing delays in collecting forensic scene-of-the-crime evidence and evidence of injuries to the surviving prisoners. Cells in which killings had taken place were not inspected for one week, and wounded prisoners were not examined forensically for 10 days. In the interim much valuable evidence was lost.

However sufficient evidence remained, particularly of a ballistic nature, which could have lead to attributing individual responsibility for some of the deaths. The failure to even attempt ballistic matching of bullets taken from prisoners' bodies, with weapons used by military police, and the disposal of bullets from military police weapons tested, which might have been valuable for future matching, may well have jeopardized all future criminal proceedings. This handling of crucial evidence by the ballistic section of the Criminalistic Institute was, at best, grossly negligent and incompetent and, at worst, deliberately intended to cover up individual responsibility.

Families of victims were treated with extreme disrespect and not were individually informed of the fate of prisoners killed in state custody.

The failure of the military police investigation to attempt to attribute individual responsibility for at least some of the deaths in the *Casa de Detenção*, follows a pattern of previous unsatisfactory investigations conducted by military police and is further evidence of the unsuitability of assigning such investigations to the same force as those accused. The General Commander of Military Police's conclusion to the investigation, stating that the operation plan for storming the block was "perfect", and refusal to apportion any blame to commanding officers for failing to exercise restraint on their subordinates, is deeply disturbing. Indeed, the failure of any of the eight inquiries set up to investigate the massacre to attribute individualized responsibility calls into question the efficacy of such inquiry procedures.

However, the military justice prosecutor was able to draw on the wealth of evidence available in the civil and military police inquiries, to bring charges against 120 military police commanders, officers and soldiers for human rights crimes committed at the *Casa de Detenção* on 2 October. Amnesty International believes that if there is the political will to bring those responsible to justice, and adequate resources and expertise are made available to sustain prosecutions, it should not be impossible for the Brazilian authorities to ensure that there is no impunity for the massacre at the *Casa de Detenção*.

5 RECOMMENDATIONS

Amnesty International draws the attention of the Brazilian authorities to the attached appendix providing a compilation of some of the international standards, which have relevance to this case. The following recommendations should be considered in conjunction with these international standards.

1. Clear individual and chain of command responsibility for the extrajudicial executions and other human rights crimes committed at the *Casa de Detenção* on 2 October should be established and those responsible brought to justice.

Detailed investigations should continue in order to provide prosecutors with all the necessary evidence for sustaining individual prosecutions. In particular all avenues, including calling on international assistance, should be explored for ensuring that the relevant ballistic matching is carried out. Police weapons held at the military courts should be re-tested and projectiles taken from dead prisoners matched with these.

In addition, given the seriousness of the case under review, and the backlog of cases in the military courts, attempts should be made to expedite proceedings by, for example, assigning it exclusively to one of the new military tribunals recently set up in São Paulo.

All efforts should be made to safeguard witnesses and their families, from threats, coercion and violence.

2. Families and dependants of the victims killed in state custody should receive fair redress from the state, including financial compensation, without undue delay.

3. A thorough review of all operational plans for containing prison disturbances should be undertaken. This should seek to draw up guidelines for such operations ensuring that all possibilities of negotiations are exhausted before any use of force is employed, and that all international standards regarding the minimum use of force, and of firearms are complied with. Consideration should be given to setting up a register of trained negotiators.

The authorities should consider establishing a separate corps of prison security personnel, trained and enabled to act in prison disturbances, and to carry out operations involving security, such as prison searches and the transfer of prisoners from prison establishments to courts and civil hospitals.

4. In the light of the record of military courts in failing to condemn military police accused of human rights violations, including torture and extrajudicial execution, legislative consideration should be given to transferring jurisdiction

for common crimes committed by military police on active duty to ordinary civilian courts.

Without prejudice to their rights of defence, law enforcement personnel suspected of or charged with extrajudicial executions and other serious human rights abuses should be suspended from active duty, and in particular from street patrol, pending the outcome of investigations.

5. Consideration should be given to establishing an independent professional forensic service linked to the judiciary rather than to the police service.

6. Amnesty International welcomes the announcement by the Brazilian Minister of Justice that he will be setting up a review of the prison system within the Republic. A similar review was due to be completed in 1990. The organization recommends that the new review should set clear targets for implementation by prison services to comply with the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the UN Standard Minimum Rules for the Treatment of Prisoners, and Article 10 of the International Covenant on Civil and Political Rights which states that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

Improved record keeping and more efficient parole and remissions review procedures should be among the reforms targeted.

The principle of maintaining prison and police authorities separate should be respected.

7. Guidelines should be issued through the appropriate channels to ensure that individual judges are reminded of their obligations to supervise places and conditions of detention.

8. Steps should be taken to improve medical provision with the Brazilian prison service, and to ensure that provision is according to professional medical criteria. Consideration should be given to proposals for medical infrastructure and personnel within prisons to be subordinate to a health authority rather than a prison authority. Amnesty International welcomes proposals for Regional Medical Councils to play a more direct and supervisory role in relation to medical provision and practice within the prison service. Such Regional Medical Councils should examine ways for greater interchange between civilian hospitals and the prison service.

9. Amnesty International understands that Brazil is a federative republic in which individual states have jurisdiction over offences committed within their territory. Nevertheless the "federative principle" should never be allowed to justify persistent and notorious impunity for human rights crimes committed on Brazilian soil. The Brazilian Government is responsible for the implementation of international conventions and treaties ratified by that country. Amnesty International therefore recommends that the federal government studies mechanisms, in operation in other federal states, which allow the federal authorities and federal courts to assume (investigate and prosecute) cases of human rights violations, which have not been promptly, fully and impartially investigated by state authorities and the perpetrators brought to justice."

10. It should be made clear to all law enforcement personnel that human rights violations such as torture and extrajudicial executions will not be tolerated under any circumstances and that those committing them will be punished according to law.

Appendix : Selection of Relevant International Standards

The following international standards have particular relevance to the case under review.

The UN Code of Conduct for Law Enforcement Officials, Article 3, relates to the use of force by law enforcement personnel :

"Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty... Every effort should be made to exclude the use of firearms, especially against children. In general, firearms

should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged a report should be made promptly to the competent authority.

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials endorsed by the Eighth UN Congress on the Prevention of Crime and Treatment of Offenders on 7 September 1990 contains more detailed provisions.

The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, endorsed by the UN General Assembly in December 1989, are directly relevant.

Principle 2:

“In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for the apprehension, arrest, detention custody and imprisonment as well as those officials authorized by law to use force and firearms.

Principle 3

“Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extra-legal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.”

Principle 9

“There should be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. The Government should maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation should be to determine the cause, manner and time of death, the person responsible and any pattern or practice which may have brought the death about. It should include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation should distinguish between natural death, accidental death, suicide and homicide.”

Principle 11

“In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these principles.”

Principles 12-14 provide detailed recommendations for forensic standards

“The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred.”

“The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined

to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased, including any evidence of torture.”

“In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities”.

Principle 15 provides for safeguards for witnesses

“Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.”

Principle 18 obliges the Brazilian Federal Government to take certain measures to ensure that all those accused of carrying out such executions are brought to justice.

“Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or co-operate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.”

Principle 20 provides for compensation for victims' families

“The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.”

The principle that detainees and prisoners should have access to medical attention is outlined in the UN Standard Minimum Rules for the Treatment of Prisoners, Article 22

“Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.

Principle 1 of the 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 states:

“Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have the duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.”

Some of the prisoners were clothed when killed, others were naked, a sign that they had already surrendered. @ *Folha da Tarde* – photo taken by police during the massacre and obtained by the newspaper.

In all 111 prisoners were killed. @ *Folha da Tarde* – photo taken by police during the massacre and obtained by the newspaper.

According to the autopsy reports 60.4% of bullets were fired at the head and thorax, indicating that they were intended to cause fatalities. @ *Folha da Tarde* – photo taken by police during the massacre and obtained by the newspaper.

According to the autopsy reports 41 prisoners were shot from behind with 176 bullets. @ *Folha da Tarde* – photo taken by police during the massacre and obtained

by the newspaper.

Marks of shots fired into bunk beds from below in cell 385-E. Five prisoners were killed.

All ten prisoners sheltering in cell 375-E were killed. Prison staff found them the next morning "all sitting with their hands on their heads, with powder burns on faces and shots to the head, chest and throats". Other prisoners demonstrate the positions they found them in. Bullet marks against the wall indicate where shots were fired.

João Goncalves da Silva's body was found curled up in the bath area of his cell on 3 October by other prisoners, as demonstrated in this photograph by another prisoner.

Volley of machine-gun shots fired near ground level in cell 339-E. Six prisoners were killed in this cell.

Prisoners were made to run a gauntlet of police beating them with truncheons and sticks. Claudio de Abril said he received some 21 truncheon blows. These bruises were still evident ten days afterwards.

José Iran de Oliveira was caught in a fire on the ground floor and suffered first and second degree burns. He alleges "they burst all the blisters and burns on my arms with truncheons and boots. It was worse if you cried out, they beat you more". He did not receive hospital treatment.

Military police use dogs against families waiting for news outside the **Casa de Detenção**. @ Nellie Solitrenick/Agencia Globo.

The prisoners bodies were deliberately moved from the cells to a pile on the first floor. @ Instituto de Criminalistica de São Paulo -This photograph was taken by a civil police investigator after arriving at the prison at 21.00 on 2 October.

Bullet being removed from the back of Luis Carlos Santos Silva, in the prison infirmary 10 days later.

Prisoners at the **Casa de Detenção** leaning out of cell bars holding up a pamphlet on 'Human Rights'. @ André Penner/Abril Imagens.

Bodies of some of the 111 dead prisoners laid out at the Medical Forensic Institute. @ Marcos Rosa/ Abril Imagens.

Table 1

São Paulo: killings and woundings by and of police 1986-1992

COLUMNS(5), DIMENSION(IN), HGUTTER(.0555), VGUTTER(.0555), HGRID(Z_SINGLE), VGRID(Z_SINGLE), KEEP(OFF), L1(ROCO..ROC5)

HEADROW, HEADROW, HEADROW, HEADROW, HEADROW

Year, People killed by police, People wounded by police, Police killed on duty, Police wounded on duty

TABLE TEXT, TABLE TEXT, TABLE TEXT, TABLE TEXT, TABLE TEXT

1986 ,	357,	175,	34,	326
1987,	293 ,	164,	23,	249
1988,	411,	159,	22,	223
1989,	586,	167,	25,	241
1990,	588,	251,	21 ,	256
1991,	1,140,	225 ,	78 ,	165
Jan-Sept 1992,	1,264,	271,	52,	279

, , , ,

Source: São Paulo Public Security Secretariat

Table 2

São Paulo: homicides versus fatal shootings by police

COLUMNS(4), DIMENSION(IN), HGUTTER(.0555), VGUTTER(.0555), HGRID(Z_SINGLE), VGRID(Z_SINGLE), KEEP(OFF), L1(ROCO..ROC4)

HEADROW, HEADROW, HEADROW, HEADROW

Year, Number of homicides, Number of killings by police, Percentage of killings by police

TABLE TEXT, TABLE TEXT, TABLE TEXT, TABLE TEXT

1987,	4,462,	305,	7
1989,	5,546,	532,	10
1991,	4,556,	1,140,	25

, , ,

Source: São Paulo Public Security Secretariat

Table 4

Previous record of commanders directing operations on floors in Block 9

COLUMNS(3), DIMENSION(IN), HGUTTER(.0555), VGUTTER(.0555), HGRID(Z_SINGLE), VGRID(Z_SINGLE), KEEP(OFF), L1(ROCO..ROC3)

HEADROW, HEADROW, HEADROW

Officer commanding floor, Previous killings involving that officer, Number of deaths estimated in cells on that floor on 2 October 1992

TABLE TEXT, TABLE TEXT, TABLE TEXT

1st floor,	17,	7
2nd floor ,	40,	68
3rd floor,	28,	4
4th floor,	17*,	10

, ,

* This does not include alleged involvement in the killing of five out of 15 prisoners killed at the Casa de Detenção in 1982 and in the killing of six mentally ill prisoners at the Manicomio Judiciario Psychiatric Prison at Franco da Rocha in 1983.

Table 3

São Paulo: killings by military police 1978-1992

COLUMNS(3), DIMENSION(IN), HGUTTER(.0555), VGUTTER(.0555), HGRID(Z_SINGLE), VGRID(Z_SINGLE), KEEP(OFF), L1(ROCO..ROC3)

HEADROW, HEADROW, HEADROW

Governor administration, Years, One person killed by military police in São Paulo

TABLE TEXT, TABLE TEXT, TABLE TEXT

Paulo Maluf administration, 1978-82 , Every 30 hours
Franco Montoro administration , 1982-86, Every 17 hours
Orestes Quercia administration, 1986-91, Every 17 hours
Antonio Fleury Filho administration, 1991-92, Every 7 hours

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Source: Folha de São Paulo

KEYWORDS: EXTRAJUDICIAL EXECUTION1 / PRISON VIOLENCE1 / MILITARY POLICE1 / TORTURE/ILL-TREATMENT / INVESTIGATION OF ABUSES1 / POST MORTEM / MEDICAL TREATMENT / COMMON CRIMINALS / PRISONERS' TESTIMONIES / FAMILIES / AIDS/HIV / IMPUNITY / STATISTICS / MISSIONS / AI AND GOVERNMENTS / HUMAN RIGHTS INSTRUMENTS /