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Commentary on Brazil's First Report on Implementation of the International Covenant on Civil and Political Rights.

The purpose of the following commentary is not to analyse each response of the Brazilian Government in its March 1995 Report - many of which are full and informative - but to provide supplementary and updated information on Amnesty International's concerns and the problems of implementation of the International Covenant on Civil and Political Rights in Brazil, where this may be useful.

Brazil is at a turning point in terms of its human rights situation. Brazil continues to face alarming levels of extrajudicial executions by police on and off-duty, and death squads, in some states with direct official backing, and torture remains endemic in police investigations. Impunity for human rights violations remains the rule. This serves to perpetuate human rights violations and illicit police practices. Tackling impunity in Brazil is important not only to preserve human rights but also to bring police forces under the control of the elected authorities. The government needs to take determined action to agree, negotiate and implement concrete measures to tackle a situation that has escaped control.

In the twenty months since Brazil submitted its Report on the status of implementation of the International Covenant on Civil and Political Rights¹, (published March 1995), there has been an increase in rural conflict, with excessive use of force and extrajudicial executions by police forces (including the August 1995 Corumbiara massacre in Rondônia and the April 1996 Eldorado de Carajás massacre in Pará) and increased fears for the safety of indigenous communities following new legislation changing procedures for the demarcation of indigenous lands.

In recent years Brazil has become progressively more integrated into the international community by ratifying international instruments and playing a more prominent role in international human rights fora. Brazil's forthright Report on the status of implementation of the International Covenant on Civil and Political Rights is a credit to the openness with which Brazil now treats the issue of human rights. The report is thorough and does not flinch from exposing a number of very serious human rights problems facing the country. The move towards open debate about such issues is very much welcomed, however, moves to implement reforms that might address these problems have been slower in coming. The report mentions a series of advances in the 1988 Constitution which need to be translated into ordinary legislation or changes in the civil and penal codes. Unfortunately in the eight years since the new

¹ Brazil's Report was submitted to the Human Rights Committee in November 1994 under the government of President Itamar Franco. A new government under President Fernando Henrique Cardoso took office on 1 January 1995. New state governments in all 27 Brazilian states were also inaugurated in January 1995.

Constitution was promulgated, a number of measures, which were then considered urgent, have not been passed into legislation.

Since November 1994 there have been further developments related to human rights policy in Brazil. On 13 May 1996 President Cardoso launched Brazil's National Human Rights Program, following the 1993 UN World Conference on Human Rights' Platform for Action recommendation that states draw up National Action Plans on Human Rights. Brazil was one of the first countries to do so, following a series of workshops in different cities in which non-governmental organizations were invited to submit suggestions. The Human Rights Program contains a number of proposed reforms which may contribute to reducing the incidence of human rights violations and impunity. Amnesty International's principal misgivings with regard to the Human Rights Program are that it lacks a timetable for implementation, and lacks any clarity as to which body will be responsible for executing and seeing through certain reforms, and as to what means will be available. Thus the Program appears, so far, to be more a list of intentions than a fully fledged plan of action with measureable targets. It is hoped, however, that the Program will be further developed and implemented.

Fears about delays in implementation and the real level of priority given by the Brazilian Government to the National Human Rights Program are heightened by recent obstacles obstructing legislation concerning key reforms outlined in the Program. For example :

- In the week before the Program's launch, under the apparent direction of Government Party leaders, the Senate drastically altered legislation designed to transfer jurisdiction for common crimes by military police from military to civilian courts. This legislation had already been passed by the Chamber of Deputies and supposedly had government support. The original legislation has now been shelved and discussions are being held in the Chamber of Deputies about drawing up new drafts.
- Another key element of the National Action Plan was to be the setting up of a National Witness Protection Program, to assist in combatting impunity for human rights violations. Legislation on this was presented to Congress by the government in November 1994, but withdrawn in May 1996 ostensibly for improvements. The Chamber of Deputies' Human Rights Commission has protested that improvements could have been incorporated in Congress, and that by withdrawing the legislation, 18 months' of progress through various committee stages in Congress has been lost. Contrary to prior expectations, the final May 1996 Human Rights Program does not commit the Federal Government to setting up a National Witness Protection Program with federal police assistance. It merely commits the government to supporting the creation of witness protection programs in the states. In cases where state police forces are accused of human rights violations, the need for federal police protection of witnesses is apparent. Federal coordination is also likely to be necessary for the transfer of witnesses from one part of the country to another for their own safety.

Implementation of International Human Rights Standards and the Federal Question

Amnesty International has long been concerned that the 'federative principle' has acted as a barrier to the full implementation of human rights obligations undertaken by Brazil. The federal government is responsible for ensuring that Brazil abides by its human rights obligations under international law. Individual states of the Federative Republic have jurisdiction over offences committed within their territory. The 'federative principle' - that individual states have autonomy - is one that has at times obstructed full investigation into human rights violations and has contributed to persistent impunity for such violations and high levels of non-observance of human rights in individual states.

Amnesty International has repeatedly urged the Brazilian authorities to create mechanisms for the federal investigation and prosecution of human rights violations when states have failed to do so promptly and impartially. In repeated cases of massacres by police in the states, Amnesty International has urged that federal authorities take over investigations to prevent the obstruction, manipulation and loss of vital evidence in the course of state police investigations. In many such cases the federal authorities have limited themselves to mounting 'parallel' investigations, which may provide interesting information, but which have no formal status, and no access to or control over physical evidence.

The possibility of federal intervention in member states for non-observance of human rights (paragraph 20²).

The federal government has been extremely reluctant to intervene in individual states in cases of persistent human rights violations, using the mechanisms available to it cited in its March 1995 Report. The only example of federal intervention for this purpose that Amnesty International is aware of, regards intervention in the state of Alagoas November 1993- March 1994 after the Alagoas Secretary of Public Security asserted that military police were responsible for up to 80% of homicides committed in the state. Amnesty International visited Alagoas in September 1994 after the end of federal intervention. Whilst the number of killings involving state police had declined, the new State Secretary of Public Security complained that federal intervention had done nothing to investigate those responsible or facilitate their being brought to justice.

The Ministry of Justice has announced that human rights violations will be 'federalized'. The National Human Rights Program proposes that federal courts judge human rights violations and that the mechanisms for invoking federal jurisdiction would be the declaration of an interest by a federal human rights organ - either the National Human Rights Council or the Federal Public Ministry (Public Prosecution Service). There has been some debate as to whether some kind of typification of what constitutes 'human rights crimes' will also be necessary in order to be able to invoke federal jurisdiction. The government has now presented draft legislation on this matter to Congress for consideration.

It is not clear, however, if the federal government is committed to federal investigation of such crimes and to the use of Federal Police, rather than local state police, to conduct such investigations. Whilst the Human Rights Program mentions the creation of a human rights

Paragraph numbers referred to are those in Brazil's March 1995 Report of the status its implementation of the International Covenant on Civil and Political Rights.

division within the federal police, the federal government has not made a specific commitment to federal investigations (as opposed to prosecutions) of human rights crimes. As with the question of Witness Protection, there appears to have been a down-scaling of expectations with regard to Federal Police participation in human rights protection. This may stem from resistance within the Federal Police to this area of work.

Article 6 Right to Life

The right to life continues to be violated by the state on a large scale in Brazil with alarming levels of extrajudicial executions carried out by police on duty and in death squads. Different states have at different times adopted measures to curb these killings. However a persistent level of impunity for such human rights violations remains, which in turn stimulates further abuses. High ranking authorities in a number of states have been implicated in stimulating such killings.

Military Justice (paragraphs 73, 211-214)

The Report explains how crimes, including human rights violations, by military police against civilians are subject only to military courts. It further describes how these courts have a record of not bringing convictions and how the build up of cases before them has meant that the statute of limitations is applied to many offences before they come to trial. As mentioned above, legislation to transfer jurisdiction for such crimes from military to civilian courts was thwarted in the Senate reportedly by government party leaders in May 1996. Further proposals for bringing about such a change in jurisdiction are being mooted in the Chamber of Deputies.

External control of the police (paragraph 74)

The Public Ministry (Public Prosecution Service) does have the Constitutional powers and obligation to maintain external control of the police. Such external control has not been exercised in a systematic fashion, however, and the National Human Rights Program proposes increased supervision in this area. Some states have begun to assign public prosecutors to oversee investigations into crimes where police are themselves implicated. This has increased the effectiveness of such investigations.

Genocide (paragraphs 80-83, & 239)

There has been one conviction under Law 2.889/56 on Genocide. On 6 June 1994 Manoel Lucindo da Silva was convicted of genocide and sentenced to 15 years imprisonment for coordinating the killing, 21 years earlier, of members of the Owin sub-group of the Uru-eu-wau-wau Indians in São Tomé-Guajará Mirim, Rondônia in 1963, on land he wished to claim as his own. Whilst the full numbers of those killed were not confirmed, a hunting party directed by Manoel Lucindo da Silva was believed to have killed up to 31 Indians and abducted up to 28 others including women and children. He is appealing the conviction in liberty, and as he is over 70 years old is unlikely to serve a custodial sentence.

"Disappearances" (paragraph 84)

After unprecedented national debate, legislation to recognise the death of 136 people who had "disappeared" after being taken into custody by state agents between 1961 and 1979, was passed in Congress in November 1995 (Law 9.140/95). A Special Commission was established to decide on compensation for families, to examine relatives' claims in relation to others who had died in police or military custody 1961-1979, and to take steps to locate the remains of the "disappeared". The legislation did not provide for a full investigation of the circumstances of these human rights violations, or for those responsible to be identified or brought to justice.

With regard to locating remains of the “disappeared” the legislation disturbingly placed a large burden on the families. Relatives are asked to provide indications as to the locality of remains, in order that the Commission might decide on whether there is sufficient evidence to proceed with investigations into these locations. In the case of “disappearances” it is exactly the state, rather than the relatives that has possession of such information.

On 13 May the first award of compensation to a family of one of the 136 recognised “disappeared” was made during the launch of the National Human Rights Program. Compensation awards are set between US \$ 100,000 and US\$ 160,000 and decided on the criteria of the age and profession of victim at the time of death. The Commission also has the duty to examine cases of political dissidents who died in official custody 1961- 1979 and to decide on State responsibility for these deaths and appropriate compensation for relatives. Between January- April 1996 the Special Commission examined the deaths of 75 political dissidents and accepted that there was state responsibility for 73 of them. Relatives have expressed concern that a restricted interpretation of Law 9.140 means that cases of extrajudicial executions which may have taken place outside official precincts may be excluded.

During the 1990s there has been a noted increase in cases of “disappearances” in Rio de Janeiro and other cities in the course of a police “war against crime”.

One of the most notorious of these “disappearances” was that Jorge Carelli, an employee of the state-owned Oswaldo Cruz Medical Foundation, who allegedly "disappeared" in August 1993 after being detained by the police in the shanty town, *favela*, of Varguinha in the outskirts of Rio de Janeiro. The police denied having detained Jorge Carelli, but witnesses reportedly saw him being detained and beaten by the members of the Anti-Kidnapping Division who were conducting a raid in the *favela*. In September 1995 a witness testified that she had seen Jorge Carelli, being tortured inside a city police station in August 1993. Twenty-two members of Rio de Janeiro's Anti-Kidnapping Police Division had previously been acquitted of his abduction. New proceedings were initiated against eight officers in the case, and the witness, Lindalva dos Prazeres, received death threats. On 11 March 1995 Alexander Santo Cunha, aged 19 and José Francisco do Rosário Filho aged 32 "disappeared" after reportedly being taken into custody by uniformed military policemen in Belford Roxo, Rio de Janeiro.

Excessive use of Force by Police and Extrajudicial Executions (paragraphs 91-94)

The Report admits to the lack of information on a nationwide basis for fatal shootings by police.

In order to address the range of situations in which human rights are at risk it is necessary to have systematic collection of information on human rights violations in the states of the federation. The publication of this information would allow authorities to identify and monitor patterns of human rights violations, to track improvements and take remedial action in critical areas. The Human Rights Program provides for the drawing up of Maps of Violent Conflict in Urban and Rural areas, and for the collection of information on violent deaths of children and adolescents and on violence against indigenous peoples.

However, in order to proceed to eliminate impunity for such human rights abuses, it is also necessary to monitor the progress of official investigations and prosecutions in relation to such human rights violations. Thus in addition to providing statistical information on the number of homicides, torture cases and other cases of human rights violations by agents of the state, Amnesty International believes that state governments should also be required to provide

information on the number and progress of investigations into such violations and into judicial proceedings.

Paragraphs 91-94 refer to fatalities caused by police forces. Whilst these are described as deaths resulting from confrontations, there is evidence that many cases have been extrajudicial executions of people who are either unarmed, or have surrendered. The reality of extrajudicial executions, and the police expectation of impunity for them, was starkly demonstrated on 4 March 1995 when the criminal suspect Cristiano Mesquita de Melo was shot dead by a military police corporal while being held to the ground of Rio-Sul shopping centre in Rio de Janeiro. The execution took place in front of television cameras, and was broadcast nationally and internationally. This was an exception, since such cases normally occur well away from the glare of publicity.

The new **São Paulo** administration has continued implementing measures, mentioned in the Report, to decrease the number of fatal shootings by police. Police officers involved in fatal shootings are transferred to different districts, given psychological assistance and professional retraining, including in human rights concepts, for a six-month period. Police fatal shootings fell from 60 in September 1995 to 13 in October 1995 and remained at a monthly average of 9.9 in the first three months of 1996. While these figures remain high by international standards they are a significant drop from the 111 monthly average in 1992. Multiple killings and massacres in the periphery of the city of São Paulo have increased, however, with some concern that in addition to drugs-related violence these may include vigilante-style killings with police involvement.

The **Rio de Janeiro** police has started publicly reporting the number of fatal shootings in which its forces are involved whilst on duty. This has revealed a disturbing and dramatic increase in the use of lethal force on duty, and in particular, since the current Secretary of Public Security, General Nilton Cerqueira took office in May 1995. Whilst from January to May 1995 Military Police reportedly killed an average of 3.2 people each month, since General Cerqueira took office on 18 May 1995 this monthly average has increased to 20.55, an almost 700% increase.

Police authorities almost universally state that these killings all take place in the context of confrontations with heavily armed criminal suspects, mostly linked to the drugs trade. Amnesty International and other human rights organizations have received reports of several cases indicating that unarmed persons in shanty towns were extrajudicially executed.

In May 1995 fourteen residents of the Nova Brasília shanty town in Rio de Janeiro were killed by civil police during a drugs raid. There was medical and witness evidence to suggest that some had been extrajudicially executed after offering no resistance. Thirteen residents from the same shanty town had been killed by military police in October 1994 in similar circumstances.

An analysis of 201 such killings January 1995 - February 1996 by the newspaper *Jornal do Brasil*, has shown that 75% of the killings occur in shanty towns; that in the majority of cases the victims are not identified other than being classified as “*marginais*”, “marginals” or “*criminosos*”, “criminals”. In 14 such cases, there was no mention of the victims being in possession of either weapons or drugs.

A number of public declarations by Rio de Janeiro’s Secretary of Public Security indicate that excessive use of force and extrajudicial killings are being directly stimulated by the highest authorities in the state. For example in September 1995, General Cerqueira was reported as

declaring, “*O policial tem que dar o primeiro tiro. Depois confere*³”, “The policeman has to fire the first shot. Then he checks”. Colonel Marcos Pães, the commander of the 9th Military Police Battalion of Rocha Miranda, the battalion responsible for the highest number of fatal shootings in shanty towns, declared, “*Nosso desafio é exterminar os santuários do crime.*⁴” “Our challenge is to exterminate the sanctuaries of crime”. Colonel Helmo Dias, military police officer in charge of planning the combatting of crime declared in November 1995, “*A ordem agora é o enfrentamento. É nossa missão Constitucional*⁵”. “The order now is confrontation. It is our Constitutional mission”.

In November 1995 the Rio de Janeiro State Government introduced decree 21.753 whereby police involved in exceptional acts of bravery are decorated with medals and given a pay increase of between 50% and 150%. Since then, in monthly public ceremonies, the Secretary of Public Security, the Commander of Military Police and the Chief of Civil Police read out citations, award medals and pay-rises to police involved in armed confrontations. These citations invariably end with the total of civilians killed by the individual receiving the award. From November 1995 to March 1996 257 such medals were awarded.

Prison massacres (paragraphs 95-98)

120 military police have been charged in relation to the October 1992 São Paulo Casa de Detenção prison massacre of 111 prisoners in cold blood after they had surrendered. The case remains stalled whilst a decision is awaited as to whether the case falls under civilian or military court jurisdiction. Military prosecutors involved in pursuing the case have received constant death threats. Whilst some relatives of the 111 prisoners killed have begun to win compensation claims, a chamber of the São Paulo Appeals Court (*Tribunal de Justiça do Estado de São Paulo*) ruled in May 1996 in one case that no compensation was due since the Military Police were only exercising their duty.

Two Civil Police officers were sentenced in 1994 in connection with the suffocation of 18 detainees at the 42nd São Paulo police precinct in February 1989. None of the 18 Military Police charged have yet been brought to trial.

There have continued to be numerous prison riots in the state of São Paulo, mostly protesting prison conditions and delays in processing remission claims and other judicial benefits. In 1995, in marked contrast to previous years, the new state administration negotiated the end of several prison riots without resort to unnecessary force, although two prisoners and one guard were killed in a riot in Hortolândia prison in June. In April 1996 a long prison siege and hostage-taking in the state of Goiás focused attention on prison conditions once more. In order to end the siege the authorities ceded to prisoners’ demands for escape vehicles.

Death squads

Killings by death squads and so-called extermination groups continue to be reported in cities such as Salvador, Rio de Janeiro, Recife and Manaus. These are largely made up of off-duty police officers, although there has been evidence of official direction of such activities by

Jornal do Brasil 18 April 1996

Jornal do Brasil 16 April 1996

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high-ranking state officials in some cases. In Rio Grande do Norte an extermination group within the state civil police was reportedly responsible for 18 killings as well as torture, death threats and other crimes, with the alleged support of a high-ranking official within the Public Security Secretariat. In Mato Grosso do Sul a death squad operating near the border with Paraguay was reportedly responsible for scores of killings. In Sergipe a death squad operating under the previous administration was disbanded in 1995. A number of reforms were introduced into the police operations, and attempts were made to promote respect for human rights in the state, although no-one was brought to justice for crimes committed by the death squad, members of whom remained in active police service. A death squad in the city of Manaus, has been attributed responsibility for 22 killings in April and May 1996.

Violence against children and adolescents (paragraphs 99-104)

Statistics for killings of children and adolescents in Brazil are notoriously incomplete. Investigations into such killings are rudimentary, if carried out at all, and much information is missing. The figures often do not indicate the circumstances in which the children and adolescents died. For example, whether as a result of private confrontations, gang fights, confrontations between police and armed drugs gangs, or in extrajudicial executions by death squads or the police. In the majority of cases there is no information about the perpetrators of the killings. Nor do the figures indicate the social origins of the children - for example, whether or not they are street children. However, complementary studies by both the courts and non-governmental organizations have shown that street children make up only a small proportion of those killed - the vast majority of those killed are poor adolescents who live at home - and that the majority of victims are aged between 15 and 17.

Despite the difficulties in gathering information, figures from the 2nd Branch of **Rio de Janeiro's** Child and Adolescent Court (*2ª Vara da Infância e Adolescência do Tribunal de Justiça do Rio de Janeiro*) confirm a trend of increased violence. This court provides global figures for violent deaths of children and adolescents in the state of Rio de Janeiro which include deaths from other causes such as traffic accidents, drowning and suicides. In 1992, 450 homicides of children and adolescents were registered in Rio de Janeiro. Homicides were previously included as a separate category, but since 1994 this is no longer the case. In the absence of the category of homicide, figures for death by gunshot may provide the nearest equivalent. The 2nd Branch of Rio de Janeiro's Child and Adolescent Court affirms that of 1,138 violent deaths in 1995, 55.18% were from gunshots - giving a total of 628. This represents an increase on the 1994 figures: of 1,226 violent deaths in 1994, 46% or 574 were from gunshots.

On 29 April 1996 one Military Policeman was found guilty of participating in the Candelária massacre of seven street children and one youth in Rio de Janeiro city in July 1993⁶. This can be seen as a small crack in the wall of impunity for such crimes. Eight others implicated in the crime have not yet been brought to trial. Only two of these remain in detention.

Rural Violence (paragraphs 105-107)

There has been no significant impact on the level of impunity for political killings of community and trade union leaders involved in land disputes since the data provided in the Report. Indeed in the state of Pará the number of "escapes" of those either awaiting trial for such crimes, or the

6. Military police soldier Marcus Vinicius Borges Emanuel received a 309 year prison sentence on 30 April 1996 having been found guilty of co-participation in six homicides, two fatal woundings and five serious woundings. On 27 June 1996, following an automatic re-trial, he was acquitted of four of the homicides and two fatal woundings and his sentence was reduced to a total of 89 years.

exceptional few serving sentences for them, has reached dramatic proportions. Investigations have shown these “escapes” to have involved police participation. The persistent failure to implement arrest warrants for known gunmen and those that commission them, and the continued occurrence of ‘escapes’ from detention, place trial witnesses in increased danger.

There has been a recent increase in conflict over land in Brazil, with frequent reports of excessive use of force, ill-treatment, torture and extrajudicial executions by Military Police. Such violence by state agents appears to have recently superseded the level of violence by private hired gunmen contracted by landowners to eject peasants from land they also claim. Reports suggest that this violence, together with the harassment of rural leaders, may be part of a pattern of intimidation of those campaigning for land reform.

Within less than nine months Brazil has been witness to two brutal massacres of landless peasants by Military Police in the states of Rondônia and Pará. These were the killing of 9 peasants by military police evicting 500 squatter peasant families from the Santa Elina Estate in Rondônia⁷ on 9 August 1995 and the killing of 19 peasants by military police clearing the PA 150 road at Eldorado de Carajás of 1,500 protesting landless peasants on 19 April 1996. There are disturbing similarities between both incidents. In both cases, Military Police action was precipitated before negotiations were completed. In both cases despite initial confrontations, there is evidence that a number of landless peasants were extrajudicially executed after surrender. In both cases the wounded were beaten and acts of extreme barbarity were carried out by Military Police. In both cases attempts were made to obstruct investigations through manipulation and destruction of evidence. In both cases the federal and state authorities said there would be no impunity. Brazilian society and the international community awaits to see whether these promises are fulfilled.

Article 7 Prohibition of Torture

Torture in police stations and prisons continues to be reported. Much evidence of torture was brought to light in 1995 through a national campaign to include torture in the penal code, coordinated by the Chamber of Deputies' Human Rights Commission, with legislative assemblies in several states holding public sessions at which cases of torture during 1995 were presented. This confirmed suspicions that torture continues to be widespread as a common method of extracting information from criminal suspects and a form of extortion.

There have been several cases of deaths in custody, including the death in Federal Police custody in Ceará state of criminal suspect José Ivanildo Sampaio in October 1995. Federal Police went to great lengths to avoid being attributed with causing his death through torture.

On 31 October 1994 the federal government signed an agreement with the State of Rio de Janeiro for the Armed Forces to be given control of the “fight against arms and drugs traffic” in the state for a renewable 60 day period. Several reports were received of the torture of residents of the Borel shanty town on 25 November 1994. Medical reports indicated that those examined had

7. The death toll from the Santa Elina estate eviction in Rondônia, has increased in succeeding months. On 9 August 1995 two military policemen and nine peasants were confirmed dead. The body of Sergio Rodrigues Gomes, last seen in police custody on 10 August was found 10 days later in the river Tanaru. Darli Martins Pereira was also last seen in police custody on 10 August and remains “disappeared”. Two other peasants died within two months of injuries they sustained that day. This provides a current total of twelve peasant and two military police fatalities and one peasant who remains “disappeared”.

sustained injuries. Nevertheless military sources repeatedly denied that any such torture had occurred.

Torture (paragraphs 108-115)

As previously mentioned, legislation to include torture as a crime in the penal code has not yet been passed in Congress. Such legislation was passed in the Chamber of Deputies on 3 July and now awaits consideration in the Senate. The 1990 Children's Statute provides penalties of one to five years' imprisonment for those responsible for torturing minors. Amnesty International is unaware of any such prosecutions to date.

Of the 20 torture cases in Ceará referred to in the Report's paragraph 123, nine have apparently not been investigated and only two have resulted in police officers being dismissed from the force.

Amnesty International greatly welcomes the measure, referred to in paragraph 125, for compulsory medical examinations of prisoners before and after they are detained. The organization has never heard of this measure being implemented in Brazil and would appreciate further information as to where it is in practice.

Article 9 Right to liberty and security of person

Amnesty International is concerned at the practice of arbitrary detentions that may facilitate the practice of ill-treatment and torture, contribute to violation of the right to a fair trial and to the detention of prisoners of conscience held for the peaceful exercise of their trade union activities or political beliefs.

Of particularly serious concern to Amnesty International are reported delays in the hearing of *habeas corpus* petitions by judges, particularly in rural areas. In many cases judges delay considering such cases and even allow weeks to pass before ruling on their merits.

The charge 'forming a criminal gang' (formação de quadrilha ou bando), under article 288 of the Penal Code, appears to be increasingly used as a means of harassment against those campaigning for agrarian reform. In the past this charge has also been used against urban trade unionists leading strikes, in which there has been reported damage to property.

Increasing numbers of people have been detained in different parts of the country and charged with 'forming a criminal gang' for their part in land occupations and campaigns for agrarian reform. In São Paulo two members of the Movimento Dos Trabalhadores Rurais Sem Terra, MST, Landless Rural Workers Movement, Diolinda Alves de Souza and Márcio Barreto were held in custody in high security prisons for two weeks in November 1995, charged with 'forming a criminal gang', in what appeared to be a manoeuvre to force other peasants to leave an estate they were occupying in the interior of the state. Similar charges were issued against 11 others. In November 1995 four peasants were detained in Xamboia, Tocantins state, for occupying land that since March 1995 had reportedly been expropriated for settling peasants under the government's agrarian reform program. On 27 November 1995 Frei Anastacio Ribeiro, a Franciscan priest, was detained in the municipality of Conde in the north-eastern state of Paraíba, charged with 'forming a criminal gang'. His arrest was in connection with the occupation by some 300 landless rural workers of the Fazenda Jacumã e Tabatinga. He was also charged with 'ill-treatment of children'

on the grounds that encouraging land occupations put children in precarious and unhygienic conditions.

Diolinda Alves de Souza was again detained on 25 January 1996 and held for 48 days on charges of ‘forming a criminal gang’, together with three other MST members in Alvares Machado, in the interior of São Paulo state. Their detention appeared to be less connected to any evidence linking them to a specific crime than to an attempt to force her husband, José Rainha Junior, an MST leader to surrender himself to the courts. (A policeman indicated to them in the presence of the detaining judge, that they would be released if her husband gave himself up). The Brazilian courts failed to rule on the merit of four *habeas corpus* petitions presented on their behalf for 48 days. The Higher Court of Justice, *Superior Tribunal de Justiça*, finally ruled on 12 March that the criminal charge of ‘forming a criminal band’ was not applicable to involvement in land occupations and ordered that they be released and that charges against several members of the MST, including José Rainha Júnior, be dropped.

Jurisprudence is not binding in Brazil. The courts in Paraíba have continued in 1996 to use the charge of ‘forming a criminal gang’ to detain and prosecute those linked to land occupations.

Amnesty International adopted Antônio Batista de Macedo, rubber tapper and environmental campaigner as a prisoner of conscience after he was sentenced in September 1995 to 16 months’ imprisonment related to his peaceful labour and environmental activities in the state of Acre. He was charged with disobeying a judicial order. The charge related to an incident in which a rubber tapper community refused to obey an eviction order, and move from land they had worked for 60 years. Antônio Macedo claimed to have never visited the community in question and to have been nowhere near the incident when it happened. He continued to appeal against the conviction after he was conditionally released into two years’ compulsory community service.

Arbitrary detention (paragraphs 148-156)

The Report describes legal guarantees against arbitrary detention - that all arrests must be *in flagrante delicto* or based on judicial warrant. In practice many arrests do not fulfill these requirements and are arbitrary and illegal.

During Operation Rio November 1994 - May 1995 (see Article 7 above), in which Armed Forces took over some policing functions in the state of Rio de Janeiro ‘a pattern of illegal searches, arbitrary and prolonged detentions and abusive treatment of detainees’ was noted by Human Rights Watch/Americas⁸. Federal prosecutors monitoring the operation have expressed concern at the practice of army personnel carrying out detentions with identification tags removed and wearing ski-masks to hide their identity.

Amnesty International is further concerned that legislation regulating detention without charge, may facilitate the practice of ill-treatment and torture, contribute to the violation of the right to fair trial and to the detention of possible prisoners of conscience.

Law 7.960 of 29 December 1989 regulates **Temporary Imprisonment**, which is a form of detention without charge to facilitate further investigation of a crime. A person may be so detained for five days, renewable for a further five days on the orders of a judge. The judge can make the first temporary detention order on request from a police or prosecuting authority, and

must also review any request for extension of such detention without charge. The legislation does not provide for automatic medical examination prior and post detention, as stated in the Report. It allows the judge to order such a medical examination either on his own accord or at the request of the prosecution service or a lawyer, to examine any ‘*corpus delicti*’.

Law 8.0702 of 25 July 1990 concerns prosecution and penalties for **Heinous Crimes**. These include extortion and kidnapping resulting in death, rape, sexual assault, causing epidemics, public poisoning, and genocide. Other crimes, such as drugs trafficking, have been defined in subsequent legislation as falling within the scope of this law. It establishes (Article 2) that such crimes, as well as torture, drugs trafficking and terrorism are not susceptible to amnesty, pardon or bail. Under Article 3 it extends the period of ‘temporary imprisonment’ - ie. detention without charge - from 5 days to 30 days, renewable for a further 30 days. Thus for the purposes of a police inquiry a suspect may be held for up to 60 days without charge, under judicial supervision.

José Teixeira Castilho, a director of the Rural Workers Trade Union of Eldorado de Carajás was detained first under the Law of Temporary Imprisonment and then under the Law of Heinous Crimes from 10 February to 8 April 1994. A sufferer from Hansen’s disease (leprosy) he initially had his access to daily drug treatment for the disease obstructed. His father-in-law, Arnaldo Delcidio Ferreira, the former President of the Rural Workers Trade Union of Eldorado de Carajás, and a campaigner against environmental destruction in the region, had been assassinated at home in bed on 2 May 1993 by a gunman. José Teixeira Castilho was held on suspicion of involvement in an attack on the ranch of a landowner who had been implicated in the killing of Arnaldo Delcidio Ferreira. In January 1994 shots were fired into the house where José Teixeira Castilho lived with his wife and five children. This was reported to the police but apparently not investigated. To date no-one has been detained in relation to the former Trade Union President, Arnaldo Delcidio Ferreira’s killing. The trade union director, José Teixeira Castilho, was released after 60 days in detention. He now faces charges of ‘forming a criminal gang’, invasion of property, arson and murder, against all of which he protests his innocence.

Article 10 Prisoners’ right to be treated with humanity and dignity

The Brazilian prison system is at breaking point with overcrowding affecting both prisons and public jails to an extent that conditions often amount to cruel inhuman and degrading treatment or punishment. In addition there are frequent reports of ill-treatment and torture taking place within prisons, police stations and public jails.

Respect for prisoners’ physical and moral integrity (paragraphs 157-182)

The report describes the serious problems of overcrowding and subsequent conditions facing the Brazilian prison system. Ways of reducing the prison population through alternative sentencing policies have been debated and are being experimented with amongst the judiciary. A recent pardon for prisoners with sentences under six years and good behaviour is expected to result in several thousand releases.

Another critical problem is the overflow of prisoners from prisons into police stations. In the state of São Paulo (the state with the largest prison population) out of a total prison population of 60,000 some 28,000 prisoners are detained in police cells and public jails. This means that convicted prisoners, remand prisoners and those briefly detained may all share the same cells. The city of São Paulo now holds some 7,000 remand and convicted prisoners in 93 police districts. Each police district holds on average 150 prisoners, in a space designed for 28, with on

average one guard. There are frequent rebellions and break outs, as well as reports of abuse by overworked staff. Police complain that public prosecutors and judges do not visit prisoners in police stations as they are obliged to do.

Article 19 Freedom of Expression

Amnesty International is concerned at the practice of publicly prosecuting human rights activists under criminal charges of libel, slander and defamation, in what appear to be attempts to inhibit their work.

Freedom of expression (paragraphs 236-240)

Libel, slander and defamation are all criminal offences in the penal code prosecuted by the public prosecution service. These charges have been used against human rights defenders in a number of cases.

On 7 April 1993 Helena Greco, the then 76-year-old president of the Minas Gerais Branch of the Torture Never Again Movement (*Movimento Tortura Nunca Mais*: MTNM) was convicted of calumny and defamation and given a one year suspended prison sentence. The public prosecution against her had been triggered by a doctor named in a list of 12 forensic pathologists which the MTNM had submitted to the Minas Gerais Regional Medical Council in 1991. MTNM had sought an investigation of their role in signing death certificates ratifying official versions of the deaths of political prisoners from "suicide" or "armed confrontations", when it was believed they may have died under torture. Although the Minas Gerais Regional Medical Council never acted on the list and closed the file, two doctors took out criminal actions against the human rights group for its request for an investigation. The one year suspended prison sentence was handed down, even though Helena Greco had no prior knowledge of the legal proceedings opened against her.

The charge of calumny has been used against other human rights defenders - Frei Beto a Dominican priest had such charges brought against him in 1992, and later dropped, for an article published in the *Estado de São Paulo* newspaper in which he referred to high levels of killings by Military Police in the state at that time. Father Julio Lancelotti was prosecuted and given a suspended prison sentence for similar statements about the level of police violence in São Paulo. Darci Frigo, a human rights lawyer in the state of Paraná, was prosecuted and given a suspended 14 month prison sentence, which was later overturned, for alleging that a political candidate had once employed slave-labour on an estate in which he was a director.

Article 22 Freedom of Association

Amnesty International is concerned that the use of the charge of 'forming a criminal band' '*formação de quadrilha ou bando*' (see cases described under Article 9 above), against members of legal trade union and social organizations may constitute, in some cases, an attack on the right of freedom of association.

Article 26 Equal protection of the law

Equality before the law (Paragraphs 316-326)

The Report states that all citizens are equally entitled to the protection afforded by the law. However there remain chronic problems in the administration of justice in Brazil and in the access to justice by poorer sectors of the population and in rural areas. The level of impunity for killings of peasants and rural community leaders related to land conflict provides an indicator of the seriousness of this problem. In the decade since the return to civilian rule in 1985 there have been 922 such killings. In the same period 1985-1995 only 36 cases of rural killings, including cases from the 1964-1985 period, have come to trial. Of these 36 cases, 23 have resulted in convictions and 13 have resulted in acquittals. Whilst many of the problems in such cases stem from failings in police investigations of such crimes, a perceived lack of impartiality of the judiciary is also a factor. In rural areas judicial officials are often dependent on the local mayor and landowners for accommodation and other infrastructural costs.

Delays in ruling on *habeas corpus* petitions particularly in rural areas are also of concern (see Article 9 above).

The President of the Supreme Court has recognised the need for an independent body to monitor the effectiveness of the judiciary. Indeed the creation of a National Justice Council is one of the reforms announced in the National Human Rights Program, although this is not universally welcomed within the judiciary.

Paragraphs 209-215 go some way to describing resource problems with the judiciary. Whilst not imminent, reforms to the Code of Penal Procedures to remove excessively lengthy judicial procedures, are promised in the long term. The initiative of setting up small claims and petty crimes courts has been taken in some states, to alleviate the backlog in judicial cases, and ensure that the most serious crimes receive more rapid consideration.

Article 27 Minorities' rights

Respect for minorities (paragraphs 327-340)

Amnesty International and many other human rights organizations, and indigenous organizations and groups have expressed concern at the implications for the safety of many indigenous communities in Brazil of **Decree 1775/96 of 8 January 1996**, which revises procedures for the demarcation of indigenous lands.

It is feared that by throwing the demarcation of over 344 indigenous lands into doubt, the government has paved the way for the invasion of indigenous lands. Amnesty International's previous research has shown that indigenous groups are most at risk when there is uncertainty about the demarcation of their lands⁹. In the past this has resulted in massacres, selective killings, abductions, threats and assaults on indigenous people. Since the decree was passed, on 8 January 1996, several new invasions of indigenous lands have been reported.

It is of utmost concern that the new decree makes no provision for the protection of isolated indigenous groups (paragraph 332), which are particularly at risk. Under the previous Decree 22/91 there was a procedure for the government's indigenous agency FUNAI to interdict lands where such groups were detected (to prevent further logging), while relevant studies were done. This is omitted in Decree 1775/96.

FUNAI field staff now have no recourse to interdictions to prevent wholesale logging and destruction in areas where non-contacted groups may be facing the onslaught of logging and mining teams. Massacres have occurred in the past against such groups (which are often very small) in order to prevent any chance of such lands being recognised as indigenous and thus later demarcated, and legally exempted from logging and mining. (Once the group is wiped out there is no need for the land to be recognised as indigenous). The Akunsu/Abipiá suffered such a massacre in the Igarapé Omoré in Rondônia state in 1985, before they were officially 'discovered' and contacted in September 1995. Isolated groups Canoé, Akunsu/Abipiá and Uru-eu-wau-wau indians in Rondônia state are currently in this perilous situation (although a local federal judge has issued temporary injunctions on their behalf).

Having initiated the decree, the Executive has an increased responsibility to ensure that it does not have negative consequences for the human rights of members of indigenous communities. The government should make explicit what concrete steps it is taking to protect the physical integrity of members of indigenous communities.

The government's indigenous agency FUNAI would be expected to take the lead on this, calling on Federal Police for assistance. However, resources allocated to FUNAI have allegedly not been passed on but retained by the Ministry of Justice. This has had a direct effect on the protection of indigenous groups from incursions. In early March 1996 the only FUNAI helicopter monitoring the Yanomami reserve was withdrawn for lack of funds. Since then renewed and larger scale invasions by *garimpeiros* (miners) have been reported. Latest reports indicate there are several illegal flights a day taking miners into Yanomami lands.¹⁰ Long-term plans for the surveillance of the Yanomami area by FUNAI appear to have been suspended. There is no evidence that the government has set up promised Federal Police flying-squads to send to other areas of conflict or potential conflict.

Impunity for human rights abuses against indigenous people remains almost universal. Since Amnesty International brought out its report *We are the Land : Indigenous Peoples' Struggle for Human Rights*, AMR 19/32/92, in January 1993, only two of over 30 cases examined have reached the courts. They concerned the assassination of Guarani Indian leader Marçal de Souza Guarani in 1983, which resulted in the acquittal of the defendant, since overturned in 1996, and the genocide conviction of Manoel Lucindo in Rondônia, which is currently being appealed. No-one has been brought to trial for the massacre of 14 members of the Ticuna tribe in Amazonas in 1988, and for the massacre of 14 members of the Yanomami village of Haximu on the Brazilian Venezuelan border in July 1993. Such impunity can only encourage further violence.

In recognition of the likely hostility between local economic interests and indigenous interests the implementation of indigenous policy has been entrusted to federal organs and federal courts. Since crimes against indigenous people are specifically within federal jurisdiction, the blanket impunity for them to date does not bode well for the proposed federalization of crimes against human rights, unless the political will and necessary resources are dedicated to ensuring that impunity does not prevail.

Garimpeiros have reportedly invaded dozens of sites along the Parima, Catrimani, Couto Magalhães, Cuimata, Maulau and Aracaca rivers, all within the demarcated Yanomami area.

Conclusions

Brazil's March 1995 Report on its implementation of the International Covenant on Civil Political Rights was a laudable effort to describe outstanding human rights problems facing the country. The foregoing comments seek to supplement these efforts.

Since then the new administration has been involved in drawing up a National Action Plan on Human Rights with proposals to address a number of these problems and such a Program was launched on 13 May 1996. The continuing high level of human rights violations in Brazil, including extrajudicial executions, "disappearances" and torture, make it imperative that the government gives the highest priority to the passing relevant legislation and implementing measures outlined in the Program. Recent obstacles and delays encountered by such legislation in Congress, give rise to some concern that the Government may not have accorded the legislation the priority it deserves. Careful monitoring of the implementation of the Program is essential to ensure that the commitments made in it are transformed into more than paper ones.

One of the commitments made in the National Human Rights Program is to ratify the Optional Protocol to the International Covenant on Civil and Political Rights.