

Brazil

Submission to the UN Universal Periodic Review

First session of the UPR Working Group, 7-11 April 2008

In this submission Amnesty International provides information under sections B, C and D:

- Under section B, Amnesty International raises concern over shortcomings in the creation and implementation of human rights related legislation, including in relation to the ICC and measures to address impunity.
- In section C, we describe concerns related to systemic human rights violations under the public security system, and concerns related to access to land issues and working conditions in the agricultural sector.
- In section D, Amnesty International makes a number of recommendations in the areas of concerns listed.

B. Normative and institutional framework of the State

Human rights legislation

Since the creation of its new constitution in 1988 Brazil has boasted some of the most progressive laws for the protection of human rights in the region. The introduction of legislation to combat racism (1989), protect children and adolescents (1990), prosecute military police in civil courts in homicide cases – *lei Bicudo* (1996), combat torture (1997) and combat domestic violence (2006) have all been recognised as essential benchmarks for the protection of human rights. However, there remains a huge gap between the spirit of these laws and their implementation. Several attempts by authorities have been made to reduce protections under some of these laws. This is especially clear in relation to the Children and Adolescents Statute (ECA) though this has occurred against a background of persistent reports of torture, ill-treatment and cruel, inhuman and degrading conditions within juvenile detention centres right across the country. Similarly though the *lei Bicudo*, the torture law and the newly created *Maria da Penha* law on domestic violence, mark important victories for the human rights and women's movements, they continue to lack the infrastructure, resources and political will to be effectively implemented.

National Human Rights Institution

In 2004, the 9th National Human Rights Conference, voted to reform the Council for the Protection of the Human Being into the National Human Rights Council, a body to be made up of 50% civil society 50% authorities. This fell short of the aim of much of the human rights movement to create a national human rights institution in line with the Paris Principles. In 2006 draft legislation was placed before Congress to create the Council.

Some efforts have been made to combat slave labour in Brazil with the creation of the roving inspection unit, the *Grupo Movei*, in 1995 under the Ministry of Labour. This unit has so far released over 20,000 workers from degrading work conditions. However, a proposed strengthening of anti-slavery legislation to include confiscation of land where slavery has been practised has so far been resisted by a pro-landowner block in both houses of Congress. It is important to note that the members of the inspection unit, made up of prosecutors with support of federal police officers, have been threatened personally and politically, and some of them have suffered attacks and even killings. This combined with political pressure from a Senate landowner lobby has put the work of the unit at risk and the Ministry of Labour has decided to temporarily suspend its activities.

Implementation of the Rome Statute of the International Criminal Court

Amnesty International is concerned that nearly five years after the beginning of the process of implementing in its national legislation the Rome Statute, this process now appears to have stalled. After submission of draft legislation to the office of the Presidential Chief of Staff in 2003, several constitutional concerns were raised. A second document with the revised draft and the legal memorandum was completed in November 2006. In August 2007, the Military Prosecutor's office published the final version of the legislation; however, it still remains to be submitted to Congress.

Impunity

Impunity of human rights violators continues to be a major concern in Brazil. Amnesty International has identified some profound flaws in the criminal justice system in relation to the involvement of law

enforcement agents during the reporting, investigating and prosecution of human rights violations, especially in relation to extra-judicial executions and torture. These include:

- **The lack of independent bodies** to receive and investigate complaints. A few states do have police ombudsmen, but none of these are independently selected or have the power to follow up on cases reported to them;
- **The lack of independent and properly resourced forensic investigation units.** In most states these continue to be linked to the police or the state government and most lack the staff and resources to ensure fully effective investigations. Rarely, if ever, do forensic units investigate scenes of suspected human rights violations committed by the police as in the case in June 2007 when 19 criminal suspects were killed during a massive police operation in Rio de Janeiro;
- **Limited protection for victims or witnesses of human rights violations.** Brazil has created a witness protection scheme, but the system does not address the security needs of most of those reporting cases of human rights violations by the police;
- **Limited access to justice.** The majority of victims of human rights violations at the hands of law enforcement officers have extreme difficulties in accessing the justice system as invariably they come from socially excluded classes and suffer severe social and racial discrimination. The judicial process is extremely slow making it difficult to sustain cases that can take years or decades to come to court. Furthermore, victims or relatives of victims are often faced with prosecutors or judges who display pronounced discrimination and prejudice towards their cases. Similarly, families of victims can go for years through the court to receive only minimum compensation from the state for losses.

Brazil remains one of the few countries in the region not to have challenged the law on amnesties. The law, which was passed in 1979 to benefit those who took up arms against the military government, was later interpreted as applicable to members of the regime accused of acts of extra-judicial execution and torture by the Federal Supreme Court. A civil case taken up by the family of a victim against the head of the military intelligence during the military regime and accused of torture threatens to challenge this interpretation and the impunity it has sustained. Furthermore, although some efforts have been made to open files from the dictatorship era, the federal government still has a long way to go in terms of full disclosure of the facts and those responsible for human rights violations. As a result, relatives continue to search for the remains of victims disappeared by the state during the dictatorship years.

C. Promotion and protection of human rights in Brazil

Public Security

Brazil is suffering from extreme levels of criminal violence, with exceptionally high numbers of crimes against life. The vast majority of homicides, especially gun-related killings, are concentrated in socially excluded areas where there is a lack of state presence. These communities suffer some of the highest homicide rates in the world. For several decades the state has responded to this by adopting a military-style policing. This has seen police adopt a conflict mentality against whole communities, effectively criminalising all residents within those areas. The tactics used involve: violent short-term incursions into communities; random firing of high-powered weapons putting all residents including women and children at risk; the misuse of military equipment such as armoured vehicles to intimidate communities; the use of intimidating, violent and corrupt practices against residents; the lack of proper judicial warrants for what are effectively invasions into private homes; and the consistent attempt to cover-up human rights violations and the lack of any proper investigation of these. Far from protecting the communities the process has effectively led to the "criminalisation of poverty".

Though federal and state governments have recognised the perpetration of human rights violations by elements in the police, in many cases they continue to support this style of policing. This situation was most apparent in Rio de Janeiro where successive governments, including the present one, have promoted a discourse and a policy based on combating and containing crime in socially excluded communities. The President of the Republic, in an apparent gesture of political support to the governor of Rio de Janeiro, repeatedly defended the use of such tactics despite the extensive reports of human rights violations being committed during these operations. The federal government also provided members of the elite 'National

Public Security Force' (FNSP) to support police operations in the run-up to the 2007 Pan-American games. The FNSP are still serving in Rio de Janeiro at time of writing. Federal police announced they were investigating allegations that members of the FNSP were receiving bribes from drug traffickers

Operations in the Complexo do Alemão - a cluster of 21 communities in Rio de Janeiro's north zone housing some 180,000 people - as well as in neighbouring Vila da Penha - resulted in scores of people killed and injured. Thousands more faced the closure of schools and health centres as well as cuts in power and water supplies. During the operations there were reports of extra-judicial executions, beatings, vandalism and theft. Community members alleged that the *caveirão* (armoured vehicle) was used as a mobile cell, with police administering beatings and electric shocks inside the vehicle. Police actions culminated in the "mega-operation" at the end of June 2007 involving 1,350 civil, military and federal (*Força Nacional*) authorities. The operation left 19 dead and 13 injured. Thirteen weapons were seized; no one was arrested. Independent investigations by the Rio de Janeiro Bar Association and the Special Secretary of Human Rights of forensic reports pointed to strong evidence of summary executions. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, who visited Rio de Janeiro in November 2007, criticised the lack of investigation into the killings and concluded that the operation was politically driven.

Short-term political interests, corrupt practices and a complete lack of civic duty have seen federal and state governments persistently neglect the area of public security policy. This has led to decades of mass human rights violations and extreme levels of violence, especially in socially excluded communities effectively controlled by armed criminal gangs and abandoned by the state. In 2007, the federal government launched National Public Security and Citizenship Program (*Programa Nacional de Segurança Pública com Cidadania*, PRONASCI), to combat violence.

Police killings

Since 2000, thousands of people are killed annually by police in situations described as "resistance followed by death", a term which invariably turns the victims into aggressors. Most of these cases have not been investigated, crime scenes are invariably tampered with, witnesses are intimidated and the authorities fail to follow up on reports of violations.

Statistics for police killings in Rio de Janeiro have increased dramatically since 1999, reaching a peak in 2007 and strongly indicating a clear policy decision to adopt combative and violent methods against drug factions in shanty towns. In 2006 police killings were equivalent to 14% of all 7,594 killings in the state, made up of 6,3323 homicides, 208 robberies ending in death 1,063 acts of resistance. In the state of São Paulo between 12 and 20 May, members of the First Command of the Capital (*Primeiro Comando da Capital*, PCC), a criminal gang born in the state's prison system, took to the streets in a massive display of organized violence, allegedly to protest against prison conditions and the transfer of their leaders to the RDD system.¹ Criminals shot over 40 law enforcement officers, burnt more than 80 buses, attacked police stations, banks and a metro station, and co-ordinated revolts and hostage-taking in around half of the state's prisons. In response, police reported that they had killed over 100 "suspects".

In several incidents in poor communities across the state of São Paulo, countless other people were killed by masked men in situations suggesting extrajudicial executions or "death-squad" style revenge killings. State authorities only provided the names and details of those killed by the police following a threat of legal action by the public prosecutor's office. At the height of the violence, 117 people died in firearms-related incidents in a single day, many, it was believed, as a direct result of the conflict. Federal and state government responses to the violence were widely criticized for focussing on political point-scoring prior to upcoming elections rather than on finding a solution to the violence.

Prison conditions

Severe overcrowding, poor sanitary conditions, gang violence and riots continue to blight the prison system, where ill-treatment, including beatings and torture are commonplace. Figures released by the prison system

¹ The RDD, (*Regime Disciplinar Diferenciado*) or Exceptional Disciplinary Regime, and the lesser RDE (*Regime Disciplinar Especial*), or Special Disciplinary Regime, are special punishment regimes modelled on the Super-Max style prison regime of the United States.

showed that 30% of all inmate deaths were as a result of homicide – six times the rate in the wider population. In August, 25 inmates were burnt to death in the Ponte Nova in Minas Gerais after factional fighting. In Espírito Santo state, amid accusations of torture and ill-treatment, the government barred entry to prison cells to the Community Council (*Conselho Da Comunidade*), an officially mandated body, which under state law has the duty to monitor the prison system. In the Aníbal Bruno prison in Pernambuco, at least three died and 43 were injured after a riot broke out in November 2007. Chronically understaffed and three times over capacity, the prison has long been subject to allegations of torture and ill-treatment. Over 60 deaths were reported in the Pernambucan prison system in 2007, more than 20 of them in the Aníbal Bruno prison.

Amnesty International also received extensive reports of human rights violations against women in detention. While women make up only a small percentage of the prison population their numbers are growing. However, little or nothing has been done to address their special needs. Human rights groups in São Paulo did extensive work documenting torture, ill-treatment and cruel, inhuman and degrading conditions suffered by women in the state's detention system. In November 2007 a 15 year old girl suffered extensive sexual abuse while held in a police cell with 20 adult men for a period of a month, in the northern state of Pará.

Torture and ill-treatment

Amnesty International continues to receive reports of widespread and systematic practice of torture and ill-treatment. The use of torture has been widely recognised and condemned by the federal and some state governments. Several steps have been taken to combat its continued practice including the criminalisation of torture in 1997 and most recently the creation of independent monitoring groups to comply with the requirements of the Optional Protocol to the Convention against Torture. Nevertheless, there is still some way to go to eradicate its practice and the lack of effective mechanisms to report, investigate and prosecute torture cases has meant that many perpetrators still go unpunished.

In November 2007 in the northern state of Pará, military and civilian police officers launched an operation "peace in the countryside", with the objective of clamping down on armed militias reportedly working for local landowners. However, during the operation police officer tortured a number of landless agricultural workers who were occupying a part of the *Complexo da Forquilha* farm in November 2007. The workers informed the Agricultural Workers Union at Redenção and the State Program for the Protection of Human Rights Defenders that officers reportedly beat, punched, kicked, drowned and asphyxiated them while questioning them on the whereabouts of guns.

Land disputes

Violent disputes between landowners and landless rural workers, indigenous peoples or *quilombolas* (runaway slave community residents) over access to land remain widespread. Of particular concern are the activities of private security companies or gunmen hired by landowners and multinational companies, who operate with impunity in many states. Forced evictions, often involving threats and intimidation, have increased. There are also serious concerns over exploitative working conditions in land clearance, charcoal production and the growing sugar cane sector.

In November 2007, workers occupying a farm near the town of Santa Teresa do Oeste in Paraná state came under attack from 40 gunmen, reportedly hired by the Swiss-based multi-national company which owns the farm. They killed landless leader Valmir Motta de Oliveira, shooting him in the chest at point blank range, and injured eight others. The killing fits into a long-standing pattern of violence and intimidation perpetrated by rural militias in Paraná state.

Over a thousand workers in conditions analogous to slavery were released from a sugar plantation owned by ethanol producer Pagrisa in Ulianópolis, south of Pará state in June 2007.

Violence against indigenous peoples

Delays in land ratification have put indigenous groups at risk across Brazil. The state of Mato Grosso do Sul remains the focal point for violence against indigenous peoples, with threats and killings of those fighting for their constitutional right to ancestral lands:

- In January 2007, Kuretê Lopes, a 69-year-old Guarani-Kaiowá indigenous woman, died when she was shot in the chest by a private security guard during an eviction from farmlands that the Guarani-Kaiowá claim as ancestral.
- In June 2007, the indigenous leader Ortiz Lopes was shot by a gunman reportedly hired by a land owner when he answered the door of his house in Coronel Sapucaia. An active defender of Guarani-Kaiowá land rights, Lopes had previously received death threats.
- In November 2007 members of the *Grupo Movei* released 831 Guarani-Kaiowa from situations analogous with forced and indentured labour working on a sugar farm and refinery in Brasilândia, Mato Grosso do Sul. Conditions were described as extremely shocking by members of the inspection group.

Elsewhere, particularly in Mato Grosso, Roraima and Maranhão, indigenous lands are being overrun by illegal loggers, gold prospectors and ranchers, generating further violence. Lack of state protection means some indigenous territories degenerate into lawless zones.

D. Achievements, best practice, challenges and constraints

Achievements

Since the mid-1990s, the Brazilian federal government has on the whole embraced the concept of human rights and cooperated with international human rights bodies. It was one of the first countries to draw up a National Human Rights Plan (1994), in accordance with the Vienna Conference. It was also quick to extend an open invitation to Special Rapporteurs; in recent years Brazil has received numerous visits, e.g. the Special Rapporteur on Torture, Violence against Women, Extrajudicial, Summary and Arbitrary Executions. Brazil introduced a National Human Rights Defenders Plan in 2004 and recently created an independent body for the prevention of torture in line with the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The government has recently launched its PRONASCI public security plan, which they claim will target both social as well as security elements contributing to the extreme levels of criminal violence in the country.

While Brazil has made many important steps in recognising the pervasive levels of human rights violations practiced by state officials and has put in place many legislative protections, it has still a long way to go to see these effectively implemented. Time and again short term political objectives, corruption and social discrimination have undermined the process of provision and protection of the human rights of all Brazilians and especially of those belonging to the most marginalised communities.

Recommendations

Public security

- The government of Brazil must ensure a multi-sectoral approach to the creation and implementation of all public security policies. The central objective of such policies should be the reduction of criminal violence, especially homicide, and should include human-rights based policing; a reduction of police lethality; thorough and impartial investigation of all crimes, including unlawful police killings; a review of policing operations in Rio de Janeiro; and the further control of the spread of arms.
- The government should continue to take measures to reduce levels of urban violence, including through implementation of its new plan PRONASCI;

Police killings and torture

- The government must ensure thorough investigations of all allegations of torture and reports of killings, including killings by police described as “resistance followed by death”, make the findings of the investigation public, and bring to justice those responsible in accordance with international standards for fair trial.

Land issues

- The government must discharge its duties under constitutional law to introduce meaningful land reform; to speed up the process of ratification of ancestral indigenous lands, and provide adequate protection for existing indigenous territories;
- The government must thoroughly investigate human rights violations against land activists and indigenous Brazilians, especially the activities of private security companies operating as rural militias.

Appendix: Amnesty International additional documents for further reference

- *'From burning buses to caveirões': the search for human security*, AMR 19/010/2007, 2 May 2007;
- *"We have come to take your souls": the caveirão and policing in Rio de Janeiro*, AMR 19/007/2006, 13 March 2006;
- *They coming on shooting": policing socially excluded communities*, AMR 19/025/2005, 2 December 2005;
- *Briefing on Brazil's Second Periodic Report on the Implementation of the International Covenant on Civil and Political Rights*, AMR 19/021/2005, October 2005;
- *"Foreigners in Our Own Country": Indigenous Peoples in Brazil*", AMR 19/002/2005, 30 March 2005
- *Prison rape exposes increasing abuse of women*, AMR 19/022/2007, 23 November 2007;
- *Amnesty International welcomes ruling in indigenous land case*, AMR 19/017/2007, 29 August 2007;
- *Government must work with communities to tackle security crisis*, AMR 19/015/2007, 6 July 2007;
- *EU-BRAZIL Summit: neglect of poor causing extreme violence*, AMR 19/014/2007, 4 July 2007 ;
- *Irene Khan urges government collaboration to end violence*, AMR 19/008/2007, News Service No: 042, 6 March 2007;
- *Further criminal attacks in São Paulo*, AMR 19/025/2006, 14 July 2006;
- *Amnesty International condemns recent killings of police in São Paulo*, AMR 19/002/2006, 13 January 2006;