

BRAZIL

Commentary on Brazil's first report to the UN Committee against Torture

Amnesty International welcomes the Brazilian Government's first report to the United Nations' Committee against Torture (CAT). Brazil ratified the Convention Against Torture in September 1989. Amnesty International has long been calling for the Brazilian government to submit its first report, due in October 1990, and this step is recognised as an important move in the fight against torture. The purpose of Amnesty International's submission is not to analyse each response of the Brazilian Government in its report to the CAT - 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 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter the Convention)¹.

It is welcoming to note that Brazil's report is thorough and does not flinch from exposing the very serious human rights problem facing the country. However, while this openness before international fora is welcome, Amnesty International is concerned that there have not been similar improvements in the human rights situation within the country, as a result of the failure to provide the necessary political will to ensure the effective implementation of the essential reforms and legislation. Most notable has been how in the face of continued efforts of certain individuals, the institutions within the criminal justice system fail to effectively ensure the full implementation of law N° 9455, of 7 April 1997 (*hereafter the Torture Law*). This in turn has led to the perpetuation of the cycle of impunity that prevails within Brazil's police stations, detention centres and prisons, and contravening articles two and four of the Convention.

The Federal Government, during its six years in power, has undoubtedly changed the panorama for human rights in the country, creating a whole new discourse on human rights with the introduction of a National Programme for Human Rights, as well as specific laws, such as the Torture Law, to tackle human rights abuses. However Amnesty International is concerned that the government continues to be remiss in

¹ To this end Amnesty International also welcomes the report by the UN Rapporteur on Torture, Sir Nigel Rodley, following his recent visit to Brazil, '(Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001 E/CN.4/2001/66/Add.2'. Amnesty International recognises this report as an invaluable contribution to the analysis of the systematic practice of torture in Brazil.

providing the political will to ensure the effective monitoring and implementation of these reforms.

Brazil is a federal State, however its individual states are still vested with strong powers. A clear example of this is its criminal law, which in Brazil is determined under federal legislation², however its observance and administration is totally controlled by the states. Federal crimes, such as drug trafficking, are dealt with at a federal level, by members of the federal police and the federal judiciary. The majority of crimes, including human rights crimes, remain at state judicial level though. Each state is responsible for its own military and civil police forces, as well as the state public prosecutor's office and the state judiciary, with access to the federal courts as a final place of appeal. Furthermore each state has differing state legislation and state institutions.

It thus befalls the Federal Government to monitor the success of the implementation of reforms, such as the introduction of the Torture Law, by collating regular and detailed statistics on the success of the application of reforms at state level, focussing on the areas in the system which are not working properly as well as ensuring that those that do are used as examples of good practise for other states to learn from.

Furthermore Amnesty International recognises the initiative to federalise certain human rights crimes as an important tool in ending impunity for serious human rights violations. The law project is in its final stage in Congress, where it has been for some time. However there are many unanswered questions about the draft bill. Firstly about the criteria to select which crime, normally under state jurisdiction, will be brought under federal jurisdiction. Secondly, what extra resources will be provided to federal bodies to undertake any extra demands on their services. Though the federal police and prosecution services have relatively good records when it comes to the prosecution of human rights crime, they sorely lack the resources to undertake what could amount to large demands on their services.

Torture in Brazil

Amnesty International has long documented and publicised its concern at the widespread and systematic use of torture or cruel, inhuman or degrading treatment in Brazil. The use of torture today as a means to extract confessions, to dominate, humiliate and control those in detention, or increasingly to extort money or serve the criminal interests of corrupt police officials, continues on a regular basis. It is committed by agents of the state, especially members of the military or civil police forces as well as prison guards, or with the connivance or omission of agents of the state. This occurs at the point of arrest, in police stations, in prisons, as well as in youth detention centres. Crucially, it is a crime that persistently goes unpunished, either by internal disciplinary bodies, or more importantly in the criminal courts, under the appropriate law. This is especially so as the vast majority of victims are poor, under educated, criminal suspects, often of Afro-Brazilian descent, a sector of society whose rights

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

have been consistently ignored within Brazil. Furthermore, Amnesty International continues to find that at every level of the criminal justice system deep rooted problems exist which impede the full and effective implementation of the Torture Law.

On 16 March 2000, three women, were detained for shoplifting by the manager of a supermarket, in Vila Velha, in the state of Espírito Santo. Amnesty International received reports from local human rights defenders, that the three women, aged between 20 and 30 years, were taken into a back room by security staff of the supermarket, where they were reportedly made to kneel in the dark. They were then allegedly beaten with a truncheon and punches. After some time the women demanded that the police be called, and were informed that the police were on their way. However on the arrival of three military police officers the women state that the beatings intensified. The women state that the police officers made them take their clothes off, and one was forced to perform oral sex on a police officer. Her abuse was only stopped when she pretended to faint. After several hours the women were released, from the supermarket, and one of the police officers reportedly threatened to kill the women should they make a denunciation of the incident.

The women informed the police and an investigation was opened by the gender crimes unit of the civil police [*Delegacia da Mulher*], in Vila Velha. Amnesty International has received information that, following an investigation, charges have been brought against the staff of the supermarket and the military police officers for 'causing physical injury' [*lesão corporal*]. None of the police officers have been charged under the Torture Law.

Most examinations of torture in Brazil today, including the Government's own submission to the CAT, ascribe a great deal of importance to the country's heritage, citing the long history of slavery and subsequently the more recent period under the military regime, as having a fundamental influence on attitudes towards torture as well as its continued practise. Thus a general acceptance of torture, among both affluent as well as deprived sectors of society, is attributed to a cultural predisposition or at best an innate resignation towards the use of such violent and abusive practises.

Undoubtedly the long history of slavery has left its mark on a society, which remains extremely stratified, in terms of both wealth and race. It is a society where those from the more underprivileged sectors are routinely deprived access to their most basic civil rights as a matter of course. A society where the human rights violations they suffer at the hands of the police are rarely deemed worthy of investigation, let alone punishment, and those who challenge this are dismissed as 'defenders of criminals' [*defensor de bandido*], as Amnesty International delegations, in the company of local non-governmental organizations (NGOs), have witnessed.

During the military regime, of 1964-1985, the use of extra-judicial execution, "disappearance" as well as torture and ill treatment, became standard methods of practise for state agents. The methods of torture adopted during this period, including the 'parrot's perch' [*pau de arara*], 'the telephone' [*o telefone*], and electro-shock treatment [*electrochoque*]³

³ The 'pau de arara', or parrot's perch, involves handcuffing the victims hands beneath his/her feet and hanging him/her upside down, from which point they can be

among others, continue to be used regularly in police stations and prisons throughout Brazil. Moreover, many of those who served as members of the public security forces during the military regime continue to work in the police and security forces today, unhindered and unpunished. This has further consolidated a 'culture' of impunity among those who see violent and abusive methods of policing as the norm.

This 'cultural' attitude towards torture is best exemplified by the many people, be they members of authorities, lawyers, members of the public security forces, or even members of the general public who protested to Amnesty International delegates that torture was a thing of the past. These people consistently described torture as an act committed by the military regime against political activists, normally members of the white educated middle-classes. Yet few were able to equate these acts with the continued practise of torture or cruel, inhuman and degrading treatment which is consistently suffered by those from deprived sectors of society, predominantly poor, young, under educated, male criminal suspects, often of Afro-Brazilian descent.

Nevertheless the endemic use of torture or ill treatment by members of the police is not merely a 'cultural practice', which in turn needs a 'cultural solution'. Social and economic disparities have increased following the financial crisis of the 1980's and the subsequent restructuring policies implemented during the 90's. These events coincided with the rise of the drug trade in Brazil, and led to the dramatic increase in urban violence in most major cities around the country.

Popular fears, inflamed by sensationalist media coverage, have since driven both federal and state authorities to employ increasingly repressive measures to deal with rapidly rising crime figures. Amnesty International recognises the complexity and size of the social and economic difficulties that have confronted the authorities over recent years, particularly the rise of violent crime. However, the organization considers that the authorities have failed to take adequate steps to safeguard the fundamental rights of all of its citizens, and to ensure the eradication of the practice of torture, in its zeal to tackle public security issues.

The violent and abusive methods used by the police and within penal systems, with the complicity of the judicial system, will continue to breed further violence in the community, completing the cycle of violence.

beaten or electrocuted. The 'telefone', or telephone, involves simultaneous blows to both the victims ears, which causes intense pain. Electro shock treatment can either be administered directly from the mains to various parts of the body, or special machines are adapted for the specific purpose of torture.

A summary of Amnesty International's concerns:

- Systematic use of torture and ill treatment at point of arrest and during interrogation, to obtain confessions, information or for corrupt purposes.
- Cruel, inhuman and degrading conditions of detention in police stations, detention centres and prisons. Little or no external, independent and effective monitoring of places of detention.
- Widespread impunity of perpetrators of torture, compounded by the consistent non application of the Torture Law. Institutional failures of the criminal justice system, at state level, to ensure the implementation of the Torture Law .
- Failure of the Federal Government to ensure the full implementation of the Torture Law, by providing the necessary political will and support to ensure that it is fully monitored and implemented.

**Analysis of the situation of torture in Brazil
by article of the Convention.**

Article 2. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

Article 4. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

Amnesty International recognises the fact that Brazil has included in its constitution and in its legislation several safeguards to prevent or punish the practise of torture. The inclusion of torture in the 1988 constitution, its subsequent inclusion in the *Estatuto da Criança e do Adolescente (ECA)*, Children and Adolescent's Statute, law 8069 of 13

July 1990⁴, and most importantly the approval of the Torture Law in April 1997, codifying the crime in the penal code, have all marked important steps in the recognition of torture as a crime that must be punished under the criminal justice system.

The question remains about the effective implementation of these safeguards. Amnesty International is most concerned by the fact that since the introduction of the Torture Law in 1997, of the few cases of torture prosecuted and even convicted under the Torture Law, none have reportedly been upheld by judicial appeals bodies [a última instância], despite widespread denunciations of its practice. Most cases of torture which do make the courts are prosecuted under charges of either abuse of authority [abuso de autoridade] or the causing of physical injury [lesão corpora], which carry far less punitive sentences.

The Torture Law, while being the most important weapon to ensure the criminalisation of torture and the end to the widespread impunity enjoyed by those who practise it, fails to fully define the act of torture as described under article one of the Convention. Under the Torture Law torture is defined as:

“Article 1.

“1 - *constraining a person by using violence or serious threat which results in*

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

⁴ Note that the reference to torture in the ECA was revoked with the introduction of the Torture Law in April, 1997.

“11 - submitting a person under one's responsibility, power or authority to intensive physical or mental suffering, by his/her use of violence or serious threat, as a way of enforcing personal punishment or as a preventive measure.”

Under this definition the use of ‘violence or serious threat’ is necessary, meaning that the act has to be physical to be defined as torture. However under article one of the Convention it refers to ‘any act’, not necessarily requiring violence to inflict ‘severe pain or suffering, whether physical or mental’. Furthermore while the Torture Law states that torture may occur due to ‘racial or religious discrimination’, the Convention states that torture can be an act of ‘discrimination of any kind’, allowing for a much wider definition of discrimination, including for example discrimination for social or cultural reasons. It is further important to note that the Torture Law does not limit itself to acts of torture perpetrated by state officials⁵

⁵ See ‘Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001. E/CN.4/2001/66/Add.2. para 151’

Also of concern to Amnesty International, has been the widespread failure by members of the criminal justice system to implement the Torture Law, as it stands. During various research missions to Brazil⁶, Amnesty International delegates found a distinct ignorance of the details of the Torture Law or reluctance to implement it, among members of police internal investigation units [*corregedorias*] as well as public prosecutors [*promotores*] and even members of the judiciary. Delegates were invariably informed that the law did not define torture well enough, or rather that the incident had to include some formal act of torture with the intention of obtaining a confession or information, which clearly ignores Article 1, part II of the law, or that there has to be some form of 'intense suffering' [*sofrimento intenso*]. Furthermore delegates were informed that the law was excessively punitive, that the stigma of the word 'torture' was seen as too damaging to the police for it to be used, or that since victims were essentially criminal suspects, their word could not be trusted⁷.

It was further found that the ignorance of the law or the reluctance to implement it was further compounded by institutional negligence or collusion at all stages of the criminal justice system, with each agency, including the police internal investigation units [*corregedorias*], public prosecution offices, and judiciary, placing the responsibility on the

⁶ Amnesty International regularly visit Brazil, normally twice a year. During the last three years Amnesty International delegates have visited over 10 states, during which time they have visited around 40 centres of detention, including police stations, women's police stations, juvenile detention centres, pre-trial detention centres, prisons and women's prisons. During these missions delegates met with victims of torture, witnesses of torture, relatives of victims, human rights defenders, police ombudsmen [*ouvidores*], public prosecutor's [*promotores*], members of internal investigation units [*corregedores*], public defenders, judges, lawyers, state and federal deputies, as well as members of the state and federal authorities. The last two missions were in March 2000 and November 2000.

⁷ In a meeting with the head of the internal investigations unit [*Corregedoria*] of São Paulo's military police, on citing an extract from the Torture law as an example as to how it clearly covered situations of beatings by military police, at point of arrest, a delegate was told, '*O senhor esta fazendo uma interpretação muito literal desta lei*' (You are making far too literal an interpretation of this law).

other within the system. Furthermore while many actors recognised the endemic use of torture they did not see this as directly impacting their work. Thus prosecutors regularly informed Amnesty International delegations of the failure of police internal investigation units to properly investigate incident of torture, but rarely commented on their ability to instigate investigations or oversee police investigations to ensure prosecution.

Article 10. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

Police

Amnesty International recognises that some states, as well as the Federal Government, have invested in human rights education projects for police officers, however given the continued widespread practise of torture in Brazil it seems that this is clearly not enough. By failing to invest in a professionally trained, properly resourced and scientifically prepared police and prison service, the Brazilian authorities have allowed the widespread practise of human rights violations to continue unabated. As the Brazilian government itself states, in its report to the CAT, improvements in human rights will only result with the increased professionalisation of the police:

...[T]he police needs a structure which paves the way for investigation with basis on scientific methods, as torture is often used as a primitive and illegal form to provide answers to the society, which in turn demands an effective police.⁸

⁸ Initial report on the implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submitted by the Government of Brazil (CAT/C/9/Add.16) para 44.

Inadequately trained, poorly resourced police forces, under constant pressure to deal with mounting crime rates, continue to employ repressive policing methods which depend on widespread human rights violations. Torture and ill treatment are *de facto* replacements for scientific and professional investigation techniques, in all but a few cases.

A clear example of the failure of police to perform professional and scientific investigations, in lieu of extracting confessions under torture, is the case of 23 year old Alexandre de Oliveira. Alexandre was arrested on 12 January 2001, in Municipio de Bom Jardim, in the state of Minas Gerais, according to reports received by Amnesty International from local NGO's. He was charged with the rape of his one year old daughter, who had been hospitalised, as she was reportedly suffering from bleeding in her genital area.

Alexandre was taken to the police station at Bom Jardim, where he allegedly denied having raped his daughter. Members of the civil police then reportedly handcuffed Alexandre. The policemen reportedly beat the soles of his feet with a stick wrapped in sticky tape, and gave him electroshock treatment to the nape of his neck. He further reported that the police officers told him that the torture would stop upon his signing a confession. Alexandre signed a confession, though he stated that he was not given an opportunity to read its contents.

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

Meagre salaries and dangerous work conditions have meant that many police turn to other means to supplement their income, and consequently corruption within police forces is rife. The scale of the

problem has made it logistically and politically difficult for state governments, with so much invested in the police, to intervene and end the cycle of impunity. Political efforts to fully reform police forces, which adopt violent or corrupt methods of policing, are consistently compromised in the face of public and media pressure to resolve public security problems .

Attempts to reform policing in the state of Rio de Janeiro exemplify this. The governor of the state of Rio de Janeiro embarked upon a fundamental reform of the police, with the appointment of Dr Luis Eduardo Soares to the post of Public Security Coordinator to oversee the reforms. However, according to information received by Amnesty International from NGOs as well as those previously working within the State Secretariat of Public Security, a large part of the reforms were abandoned when high ranking members of the police began to place pressure on the state governor, informing him that should reform programs not be dropped crime figures would increase. Shortly afterwards Dr Soares was removed from office. According to widespread reports in the Brazilian press last year, Dr Soares has since moved to New York as he feared reprisal from reportedly corrupt elements within the police.

Amnesty International has long documented weaknesses in specific areas of policing, especially in human rights related cases. Mishandling or destruction of crime scenes, lack of scientific investigation techniques, and consistent use of excessive force, are some examples that clearly indicate how severely under prepared the Brazilian police are, for the task of gathering evidence to mount criminal prosecutions. Police authorities and police officers in various parts of the country have informed Amnesty

International delegates that the average period for the training of a police officer ranges between three or four months. Amnesty International delegates were further informed that should there be an urgent need for new officers, these training periods could be curtailed⁹.

Article 11. Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

⁹ By comparison Amnesty International has received reports that training periods in the US and some European countries can range from between nine to 19 months. However most importantly all these training periods depend on regular refresher training, to ensure that police officers continue to show aptitude in three specific areas: knowledge of the law, skills for the proper application of the law (i.e. the skills of how to arrest someone without having to use undue force), and the required attitudes conducive to professionalism and respect for human rights.

The failure within the criminal justice system in Brazil, from the public security system through to the judicial system and the penitentiary system, to ensure the fundamental rights of criminal suspects has also allowed for the continued and widespread practice of torture throughout Brazil. Amnesty International delegates were informed by victims, human rights defenders as well as lawyers and public prosecutors, that pressure placed on the criminal justice system to process an ever increasing number of criminal suspects, has seen the consistent flouting of legislation designed to safeguard detainees' rights¹⁰.

Interrogation

One of the most important areas of concern is in the question of interrogation techniques, since police lacking the training and resources required for a professional and scientific investigation, have come to accept signed confessions as the only means to ensure a prosecution. Detainees rarely if ever have access to a lawyer or a doctor before, during or after an interrogation. Interrogations often occur in isolated and secret places. Amnesty International has received reports, from victims as well as NGOs, of individuals held in solitary confinement or punishment cells during long periods of interrogation, and that criminal suspects are regularly interrogated without the presence of a lawyer. Amnesty International consistently received reports of detainees being forced to sign confessions. Even more alarming are the numerous reports, from victims, public prosecutors, lawyers, as well as human rights defenders, of bribes being requested in order to protect detainees from further torture, with the aim of forcing them to sign confessions to other, unrelated, charges.

¹⁰ The UN's Special Rapporteur on Torture reported that, 'The Special Rapporteur notes that he was given contradictory or inconsistent versions regarding various legal provisions, especially regarding those related to arrest and provisional (pre-trial) detention by his official interlocutors, including from the judiciary. This seems to support allegations by both detainees and representatives of civil society that guarantees established by law are not respected in practice, at least in view of the fact that they are not known by those supposed to implement them. (Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001 E/CN.4/2001/66/Add.2. para 90).

Amnesty International delegates met with Antonio Marcos Joaquim, in the *Centro de Detenção Provisória de Belém* (CDP), Belém pre-trial detention centre, in São Paulo on 23 November 2000. Antonio Marcos, a 21 years old man, informed the delegates that he could no longer speak as a result of the torture he had received following his arrest. This information was confirmed by other detainees who had been held with him. Antonio Marcos communicated with the delegates by signs and by writing.

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

Access to a Lawyer

Basic rights, such as the right to access to family members, a lawyer, and a doctor, are regularly flouted under the Brazilian criminal justice system. The recent report by the United Nations' Special Rapporteur on Torture states:

During his visits to police lock-ups, the Special Rapporteur found that most of the suspects believed that their families had not been informed of their arrest and whereabouts and that in practice, persons arrested were very rarely assisted by a lawyer. On the contrary, it was reported that, in the few instances in which a detainee had a private lawyer, the latter had been prevented from seeing his/her clients until after the completion of the preliminary processing.¹¹

¹¹ Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001 E/CN.4/2001/66/Add.2. para 95

Detainees from deprived sectors of society have little if any access to legal representation, though it is a requirement under the constitution that the state should provide it. Very few states have set up public defenders offices [*defensoria publica*], as required under the constitution¹², as well as under state law. Nevertheless no matter what structures formally exist the provision of legal defence is clearly inadequate. Of those states that do provide public defenders, such as Rio de Janeiro, these are under staffed and under funded.

In some prisons in Rio de Janeiro, prison staff had reportedly been acting as legal representatives for the inmates, providing them with simple information on the status of their cases, given the lack of any other form of representation. An Amnesty International delegation was informed that the majority of prisoners in detention in Rio de Janeiro, as in most states of the country, have not met with legal representatives. In those states that have not set up public defenders offices, other systems are in place. In São Paulo, *Promotoria de Assitencia Judiciaria* (PAJ) the Public Legal-Aid Service, is a unit within the *Procuradoria Geral do Estado*, (PGE) the state office of the Advocate General, the department responsible for representing the legal interests of the state. This has created a possible conflict of interest, particularly in areas of compensation for torture victims, in as much as lawyers from the same agency will act on behalf of both the defence and prosecution in cases of torture.

An Amnesty International delegation met with members of the PAJ, who informed them that given the lack of staff working in the PAJ and large number of cases which constantly passed to their office, lawyers find very little time to meet with their clients and discuss their cases. Normally the first meeting will take place minutes before facing the judge. Cases are often only discussed, with a client, in court toilets since there are no other places available as meeting rooms, and rarely if ever do lawyers of the PAJ have the opportunity to take time from court to meet with clients in police stations or prisons. Amnesty International also received reports from NGOs that often public defenders are reluctant to spend much time with clients¹³.

¹² “Constituição da República Federativa do Brasil” 1993

Art. 134. A Defensoria Pública é instituição essencial à função jurisdicional do Estado, incumbindo-lhe a orientação jurídica e a defesa, em todos os graus, dos necessitados, na forma do art.5.º, LXXIV.

[Article 134 [Public Defender's Office]

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

¹³ The UN Special Rapporteur on Torture's report stated that, ‘ *The Special Rapporteur was also informed by public defenders in Rio de Janeiro that there used to be a special Public Defender's Office (Nucléo de Defesa de la Ciudadaniã) providing assistance in police stations to those arrested in flagrante. The service operated 24 hours a day. Unfortunately, it had been closed down because no public defenders were willing to work for this service given the low wages and the fact that they*

When asked by the Amnesty International delegation if any of their clients informed them that confessions had been extracted under torture, members of the PAJ stated that most of their clients would allege that they had been tortured, it was normal. The lawyers informed Amnesty International delegates, that they had managed to have some confessions withdrawn as evidence, however none of the lawyers had apparently made any further denunciations or initiated investigations into allegations of torture. On top of this, legal aid in São Paulo is also provided by a body linked to the *Secretaria de Administração Penitenciária* (SAP) State Secretariat for Prisons Administration. This body, called *Fundação de Amparo ao Trabalhador Preso* (FUNAP), foundation for the support of imprisoned workers, which only works within the prison system, is also massively under resourced and under staffed.

Pre-trial Detention

would receive a higher salary as prosecutors. Practitioners and NGOs also indicated that public defenders rarely dedicate adequate time to the representation of their non-paying defendants. They were often reported to meet their clients during the first or even second hearings and not necessarily to speak in defence of their clients during trials.' (Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001 E/CN.4/2001/66/Add.2. para 94)

Conditions in pre-trial detention centres as well as in the penitentiary system are close to collapse as pressure is put on the judicial system to hold growing numbers of detainees. Pre-trial detainees suffer as a result of the extreme backlog of the judicial system. The pace of Brazilian justice is painfully slow, with cases often taking years to go through the courts. Amnesty International delegations visiting police stations and pre-trial detention centres regularly meet with detainees held for several months, sometimes years prior to their case being heard in the courts. Time periods established in the penal code to limit pre-trial detention of criminal suspects are routinely extended. A judge must be notified of detention within 24 hours, and total pre-trial detention should not exceed 81 days. This can be extended in extreme cases, but judges regularly extend this period¹⁴. Detainees, with no access to lawyers, and little education or understanding of the legal system, have no idea what stage of the legal process their case is at.

¹⁴ The UN's Special Rapporteur on Torture stated in his report '...it is reported that the Federal Court of Appeal has ruled that the 81-day period must not be considered strictly, and that the judge may apply the "reasonableness" principle in order to keep someone in detention if delays are justified by natural difficulties of criminal proceedings. The Court stated that "the case law construction that has defined the limit of 81 days to prove guilt in case where the defendant is detained, must be applied flexibly to take account of the principle of reasonableness. It is admissible to exceed this limit in adequately justified circumstances." Public prosecutors have drawn the attention of the Special Rapporteur to the fact that this jurisprudence was potentially extremely dangerous since it does not establish a threshold for the application of the "reasonableness principle". Persons in preventive detention are eligible for provisional release on bail.' (Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001 E/CN.4/2001/66/Add.2. para 108)

The ensuing backlog has meant that pre-trial detention centres are teeming with those waiting for court hearings, and police holding cells in effect become detention centres, often with thirty or more prisoners held in small cells. Conditions are generally described as subhuman¹⁵. Amnesty International delegations have consistently testified to the fact that police holding cells are illegally used as pre-trial detention centres due to the lack of other units to hold detainees. In some cases sentenced prisoners are held in police stations, or pre-trial detention centres as the penitentiary system cannot hold them. There is no separation of detainees, between first time offenders or extreme recidivists, or by their legal status, with pre-trial detainees being held with sentenced inmates.

In the State of São Paulo, the State Secretariat for Prisons Administration (SAP), has begun an important programme to build pre-trial detention centres (CDPs), to diminish the overcrowding in police stations across the state. While Amnesty International welcomes this initiative, it is concerned that prison building programmes are no longer enough to solve the problems of overcrowding. In a meeting with the Secretary for Prison Administration an Amnesty International delegation was informed that these units could not be built quickly enough to house the number of new detainees admitted each month.

¹⁵ The UN Special Rapporteur on Torture describes detention conditions in his recent report on Brazil, 'In addition, conditions of detention in many places are, as candidly advertised by the authorities themselves, subhuman. The worst conditions the Special Rapporteur encountered tended to be in police cells, where people were kept for more than the 24-hour legally prescribed period. The Special Rapporteur feels constrained to note the intolerable assault on the senses he encountered in many of the places of detention, especially police lock-ups he visited. The problem was not mitigated by the fact that the authorities were often aware and warned him of the conditions he would discover. He could only sympathize with the common statement he heard from those herded inside, to the effect that "they treat us like animals and they expect us to behave like human beings when we get out"' (Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001 E/CN.4/2001/66/Add.2. para 167)

Penitentiary System

Excessively punitive sentences have had their toll on the penitentiary system which can no longer cope with the numbers of prisoners it is already holding¹⁶. Prisoners are packed into dark, airless cells where they are exposed to life-threatening diseases, such as AIDS and tuberculosis, for which they receive little or no medical treatment. Prisoners are not separated according to their offence or their sentence (See Amnesty International Report, 'Brazil - Nobody here sleeps safely: Human rights violations against detainees. AI index AMR: 19/09/99, 23 June 1999').

Women, children and adolescents fare little better in detention. Many are crammed into filthy cells where they are at risk of violence and intimidation by police and prison guards. The system takes little or no account of the specific needs of pregnant women and mothers, or of the distress and disruption faced by families when women are separated from their children. Brazilian law, under article 122 of the ECA, states that minors should only be detained as a last resort. Despite this, children and adolescents can be picked up by police and interned for 45 days simply for being a nuisance, and children who commit a criminal offence are more likely to receive a custodial sentence than adults.

*Amnesty International has long been documenting the crisis which has overtaken São Paulo FEBEM juvenile detention system (see: 'Brazil: A waste of lives - FEBEM juvenile detention centres, São Paulo.' AI index: AMR 19/14/00, July 2000). Adolescents are frequently beaten, often at night. Some *monitores* [guards] keep a stash of iron bars and sticks for this purpose. Following beatings adolescents are often forced to take cold showers to reduce the appearance of bruises. Adolescents have been punished for "offences" such as speaking to each other during designated silent periods (eg. before, during and after meals and after lights out), and moving while watching television (they are expected to sit on their hands in absolute silence watching the same television channel for hours). Verbal humiliation by guards is also common, particularly insults relating to inmates' marginalised status, and towards their mothers.*

Public Prosecutors, working for the department of children and adolescents, continue to document

¹⁶ An Amnesty International delegation was introduced to an elderly lady, held in the Butãntãn woman's detention centre in São Paulo, who was sentenced for five years for having stolen an ice cream. Her sentence was upheld on appeal.

cases of torture and ill treatment of juvenile detainees. Amnesty International has received copies of some of these cases:

E.C.C. was reportedly beaten by various guards, in the Pinheiros detention unit on 29 May 2000. He was allegedly beaten with sticks, bottles filled with water, as well as being punched, elbowed and kneed. On the following day E.C.C. was transferred to the Franco da Rocha unit, where once again he reported that he was beaten, along with the other 47 boys in his wing, as the guards had found makeshift knives [*naiifas*] on some of the inmates. In September of 2000, the boy was transferred to Paralheiros unit, where on his arrival he was reportedly taken to a cell with other inmates and beaten by the guards, with kicks, punches. An inquiry was opened by the public prosecutors, into these allegations (PA 127/00).

Subsequently during a rebellion at the unit, on 3 and 4 November 2000, E.C.C. was shot in the abdomen, however rather than being taken to a hospital he was placed in the 'security cell' with scant medical attention, where inmates under threat from other inmates are kept. Another investigation was opened by the public prosecutors (PA 144/00). While still in the 'security cell' E.C.C. reported that a guard entered the cell, knowing that he was injured, and along with other inmates beat him, allegedly leaving him with severe swelling on the left side of his face. No medical assistance was reportedly afforded him. E.C.C. was finally taken to the emergency room, following repeated insistence for his mother. This case is representative of many similar cases received by Amnesty International, of torture and ill treatment suffered by juvenile detainees in São Paulo's FEBEM system. Amnesty International has received no reports of any FEBEM staff members being criminally prosecuted under the Torture Law.

Weekly riots and almost daily serious assaults indicate that in many prisons the authorities have lost control. Corruption is rife. Staff entrusted with the care and rehabilitation of prisoners do not have the resources to carry out their jobs. Prison guards do not receive professional training in important skills such as restraint methods, and themselves risk violence and illness. Despite the enormous responsibilities of their work, they have no official guidelines to direct them and are not effectively monitored.

The crisis in the Brazilian penitentiary system was noted by the United Nations Committee on Human Rights, in its 1996 report on Brazil:

The Committee is deeply concerned with intolerable conditions in prisons and jails. Such conditions include, first and foremost, overcrowding. The Committee deplores the fact that some convicted persons are not released immediately at the end of their imposed sentences and that fear of reprisals by prison authorities or individual warders inhibits complaints by prisoners and detainees.¹⁷

¹⁷ Concluding Observations of the Human Rights Committee : Brazil. 16/09/96. CCPR/C/79/Add.66; A/51/40, para 314.

Article 12. *Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.*

On rare occasions, victims of human rights violations, their relatives or human rights defenders manage to denounce acts of torture, to either an ombudsman's office [*ouvidoria*], the internal investigation departments of the police [*corregedoria*], the public prosecutor's office [*promotoria*], or sometimes to a defence lawyer. However for a denunciation to progress they will need to undergo a forensic medical examination, which indicates the possible use of torture or ill treatment.

In most states if an investigation is opened, it will normally be initiated by the police internal investigations unit [*corregedoria*]. The public prosecutor's office [*promotoria*] can also initiate an investigation, though this only occurs on rare occasions. Ombudsmen [*ouvidores*] cannot open investigations, but can pass on cases to the internal investigations unit [*corregedoria*], from where they will track its progress, or the lack of progress.

Once an investigation is complete the internal investigations unit [*corregedoria*] will then either: archive it, should they feel the allegations were unsubstantiated; recommend an administrative or disciplinary charge; or undertake both institutional and criminal proceedings against the suspected perpetrator. Should they decide to take criminal proceedings, the case will be passed to a judge with a recommendation as to how it should be prosecuted. If the judge accepts that criminal proceedings should occur he/she will pass it to the public prosecutor's office [*promotoria*], where in most states, it will be randomly

allocated to a prosecutor [*promotor*] who will decide on how to take the prosecution forward, if at all. The prosecutor [*promotor*] is not compelled to follow the recommendation of the internal investigation unit or the judge, however should the judge not agree with the prosecutor's decision to either archive the case, or prosecute it on lesser charges, the case can be sent back for re-evaluation.

Should the prosecutor decide to prosecute, the case will be heard by a judge, and can then be appealed at state and federal levels. Acts of torture which occur in prisons or detention centres will undergo the similar process, though the prison system has its own internal investigations unit and sometimes its own ombudsman .

However according to reports received by Amnesty International few cases denounced ever reach the stage of being properly investigated, let alone prosecuted.

Transfers and Suspensions

Police officers under investigation are rarely if ever suspended from active duty,¹⁸ often continuing to work in the same area or police station where the incident occurred, and where victims or witnesses are detained. Transfers are also used as a means of avoiding suspension, either by transferring the alleged torturer to office duties, or, as increasingly happens, transferring them to remote police stations where it is hoped that the charges against them will be forgotten¹⁹ . This consequently creates

¹⁸ During a recent meeting with the State Secretary for Public Security of São Paulo, Amnesty International delegates were informed that the work of the São Paulo police would come to a halt if all officers under investigation for alleged acts of torture or ill treatment were to be suspended.

¹⁹ In a meeting with the head of the Internal Investigations Unit [*corregedoria*] of São Paulo's civil police, an Amnesty International delegation was enthusiastically informed that the transferral of police accused of torture to police stations in the suburbs was a common practise.

centres of concentration of violent policemen, normally in rural areas or in the suburbs of large cities, where they are able to continue the practices of torture and ill-treatment with increased impunity.

Fifteen-year-old José (not his real name) left his home in Xinguara, Pará state, on the afternoon of 7 June 1999. His mother, Iraci Oliveira dos Santos, became concerned when he did not return that night and searched for him in local hospitals before going to the police station where she was told he had been detained.

José told his mother that he had been followed by the police when he left home, and had become scared and fallen off his motorbike. He told her that the police stopped, aimed their guns at him, kicked him and threatened to kill him. They drove him to an unknown location where they beat and threatened him again. Finally he said that he was taken to the police station, accused of possessing a small amount of cannabis and a small handgun. In the evening, the police took José into the corridor of the police station and beat him once again. Other boys held in the police station said that the beating was so severe they thought he would be killed. José was reportedly forced to confess to previous arrests which had not taken place. Since his release José has suffered from psychological problems and has been admitted to a psychiatric institution on several occasions for periods of one or two months. He continues to receive medical treatment today.

Amnesty International has received reports that the police chief [*delegado*] of the local police station, the stenographer [*escrivão*], and one of the policemen directly involved in torturing the boy, had all been transferred from a nearby town following accusations of torture. As the result of an international campaign on behalf of José, a special prosecutor was sent to investigate the case. Amnesty International has been concerned to hear that since then the police chief and both policemen accused of torturing the boy have been transferred to other police stations, where they remain on active duty. One of the policemen has been transferred to the special unit for crimes against women in Belém, the capital of Pará. Furthermore Amnesty International has been informed that the regional superintendent, the second highest

ranking police officer in the state, was also transferred to Belém, where further accusations of torture have been levelled against him.

Forensic and Medical Examinations

Forensic and medical examinations are vital to support prosecutions against the perpetrators of torture or ill treatment. Access to doctors or medical staff is already severely limited to those held in Brazil's detention system. Victims of torture or ill treatment have even less access to medical attention.

Amnesty International delegates regularly receive reports from detainees, their relatives or human rights defenders, that victims are held incommunicado for long periods until all visible signs of torture are gone. Those victims who do gain access to a doctor receive scant if any treatment, and cursory examinations, which are unable to sustain the possible use of torture or ill treatment. Doctors examining potential torture victims rarely have the training or the information to allow them to conclude that injuries might be consistent with acts of torture. Moreover in most states forensic doctors working for the *Instituto Medico Legal* (IML), Forensic Medical Unit, are directly linked to the police, though in some cases they are an autonomous body but still within the State Secretariat for Public Security, thus limiting their impartiality. IMLs suffer from severe under staffing and under resourcing, with little or no training in how to deal with torture cases, or the international standards governing the investigation of torture cases, such as the Istanbul protocol²⁰.

²⁰ The Istanbul Protocol, evolved in the drafting of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which was submitted to the United Nations by an ad hoc coalition of professional and human rights bodies in August 1999.

During missions to Brazil, Amnesty International delegates have often received reports of negligence or complicity on the part of doctors examining torture victims. Amnesty International has received many reports, from victims, relatives of victims as well as human rights defenders, that examinations regularly take place in the presence of the police officer or guard accused of having inflicted the injuries.

Wander Cosme Carneiro was arrested on the night of 1 February 2001 for the possession of a cannabis cigarette, in São Paulo, by civil police officers. The police had held his parents and his wife at gunpoint, directing their weapons at their heads, to find out his whereabouts. He was taken to DEPATRI, one of the main police stations in the city of São Paulo, and was later transferred to another police station. Wander was then reportedly blindfolded, gagged and hung on the parrot's perch [pau de arara], while the policemen drank whisky. He alleged that his hands and feet were tied with electrical wires, and he was beaten on the soles of his feet with truncheons, he was allegedly kicked and punched, then covered in a wet cloth and given electro-shock treatment all over his body, including his genitals and his anus. He stated that this abuse lasted for several hours. During his torture Wander was made to sign a confession, which implicated him in a robbery, in which a police officer had been shot. Wander was reportedly not allowed to read the confession before signing it.

Wander was then taken for examination to the Forensic Medical Unit (IML) of the largest hospital in São Paulo. He was accompanied on both occasions by his torturers. He was reportedly never left alone with the doctor, nor did he even take his clothes off during the examination. One of the doctors was reported to have asked him, 'Did you get beaten up then, you crook?' [Você apanhou ladrão?]. Wander, who was still in the presence of his torturers, stated that he had not been beaten. At which point the doctor allegedly added, 'Well go back and get your beating' [Então volta para apanhar]. On 2 February 2001, Wander's family, having received no

information of his whereabouts, hired a lawyer. On inquiring at the DEPATRI as to the details of the charges against Wander, the lawyer reportedly was informed by the police that they did not have the key to the filing cabinet and could not access his file. Wander was maintained incommunicado until 7 February 2001, as the family and the lawyer were unable to gain access to the details of his case. The family hired a second lawyer, who reportedly informed them that on receipt of R\$1,000 [one thousand reais], he could gain access to the police files through police contacts. The family did not have the money.

From the DEPATRI, Wander was transferred to the 77th police station where his cell mates, Antonio Fernandes, Eduardo Augusto Querino, and Alfredo Souza testified to his injuries. His sister who was able to visit him, testified to his having bruising all over his body and wounds on his feet and mouth. Wander was then transferred to the provisional detention centre, Belém II, where on 4 March 2001 he was finally able to meet his family and his lawyer in private. There he informed them of the torture he had suffered. The family and the lawyer subsequently denounced the incident to the civil police internal investigations unit and the public prosecutor's office. The Civil Police internal investigations unit [*corregedoria*] has reportedly opened an investigation, though denunciations made to the public prosecutor's office by Wander's family have allegedly not been followed up.

Amnesty International delegates have received various complaints from members of the IML, public prosecutors [*promotores*], members of the judiciary as well as human rights defenders, that standardised forms for medical examinations of torture victims limit the examiner's ability to detail their findings and conclusions, and tend to deter findings that might indicate the use of torture²¹. Forms which offer direct and limiting questions, as

²¹ The specific question on the IML standardised form [*laudo de exame de corpo delito*] reads: '[a lesão]...foi produzida por meio de veneno, fogo, explosivo, asfixia, ou tortura, ou por outro meio insidioso ou cruel? (Resposta especificada)' '[the injury]...was produced by means of poisoning, fire, explosive, asphyxiation, or torture, or by other insidious or cruel method? (Specific response)'. Amnesty International has been informed that medical experts are reluctant to indicate injuries consistent with acts of torture, given the very specific nature of the question as stated.

well as check lists to fill out, deprive the doctors from the freedom to fully express professional opinions, and go in contravention to the Principles on the Effective Documentation of Torture (Istanbul Protocol), of August 1999²².

²² The Istanbul protocol states that:

6b) The medical expert should promptly prepare an accurate written report. The report should include at least the following:

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

Furthermore, Amnesty International has been informed by members of the IML as well as public prosecutors [*promotores*] that medical examiners, regularly called on to describe the extent of a victim's injuries, are reluctant to define them as anything other than 'light' [*lesão corporal leve*] since definitions of aggravated or extremely aggravated injuries [*lesão corporal grave ou gravíssima*] are excessively restrictive under the penal code²³. Not only has this created a tendency to characterise torture injuries as being less serious than they often are, it is used as a justification for the non implementation of the Torture Law. This is because prosecutors [*promotores*] and judges often insist that a medical examination must indicate aggravated or extremely aggravated physical injuries, to initiate a prosecution for torture. Aside from the fact this is not required under the Torture Law²⁴, it contravenes the very definition of torture under article 1 of the Convention, which states that torture can be either physical or

²³ Lesão corporal de natureza grave,

§ 1º Se resulta: I-incapacidade para as ocupações habituais, por mais de 30 (trinta) dias;* Vide art. 168, § 2º, do Código de Processo Penal. II-perigo de vida; III-debilidade permanente de membro, sentido ou função;

IV-aceleração de parto:

Pena-reclusão, de 1 (um) a 5 (cinco) anos.

§ 2º Se resulta: I-incapacidade permanente para o trabalho; II-enfermidade incurável; III-perda ou inutilização de membro, sentido ou função; IV-deformidade permanente; V-aborto: Pena-reclusão, de 2 (dois) a 8 (oito) anos.

[Aggravated injuries:

§ 1st Results if: I - incapacity to perform habitual tasks, for more than 30 (thirty) days; see art. 168 § 2nd, of the Procedural Penal Code. II - danger to life; III - permanent debilitation of a member, sense or function; IV - inducement of birth;

Sentence to detention, 1(one) to 5 (five) years.

§ 2nd Results if: I - permanent incapacity to work; II - incurable disease; III - loss or permanent incapacitation of member, sense or function; IV - permanent deformation; V- induces abortion:

Sentence to detention, 2 (two) to 8 (eight) years.]

²⁴ II, § 3º If the crime results in aggravated or extremely aggravated physical injuries, the punishment shall consist of confinement for 4 (four) to 10 (ten) years... Law nº 9,455, of 7 April 1997, Defines torture crimes and makes other provisions [Se resulta lesão corporal de natureza grave ou gravíssima, a pena é de reclusão de 4 (quatro) a 10 (dez) anos...]

mental²⁵, and thus not dependant on a quantitative evaluation of physical injuries.

Oversight bodies [ouvidorias]

The creation of oversight bodies, within state institutions, has been an important step towards broadening the external monitoring of the public security system in Brazil. A few states have set up ombudsmen's offices for the police and in some cases for the prison system as well. The ombudsmen's offices work within the institution which they oversee, and regulations governing their remits and the process of their appointment vary dramatically between each state, thus greatly affecting their level of autonomy and thus independence. Amnesty International recognises that some ombudsmen's offices are doing important work but feels that their role has to be broadened, and they must be ensured of political support, if they are to play an increasingly important role in denouncing acts of torture and ill treatment.

Police ombudsmen [ouvidores] receive denunciations, track the cases through the internal investigation units [corregedorias] until a case is either archived, dealt with internally or passed on to the judicial system. They also compile data on abuses committed by the police and lobby the authorities to on patterns of violations or individual cases. However police ombudsmen do not have the power to investigate cases brought to them, neither do they have the power to pass cases directly to the public prosecutor's office or follow cases once they have been sent to the public prosecutor's office [promotoria]. Yet the Brazilian Government in its report to the Committee states:

²⁵ ...the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted... (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 10 December 1994. Part 1, Article 1, para1)

The Police Internal Affairs Division [*ouvidorias*] receives and investigates accusations of irregularities committed by civil and military police agents²⁶.

The police ombudsman [*ouvidor*] in São Paulo informed an Amnesty International delegation that his office was receiving around 45 denunciations of torture a month, in 1999 the ouvidoria sent 134 cases of torture to be investigated by the police internal investigations unit, however in 2000 an Amnesty International delegation was informed by the public prosecutor's office [*promotoria*] that only 15 cases were being prosecuted under the Torture Law in the state.

Furthermore, many ombudsmen and women suffer threats against their office or their person in the fulfilment of their work, as do human rights defenders working for the rights of detainees.

In November 1997 Hildebrando Freitas, was beaten by members of the civil police in Belém, capital of Pará, who reportedly had links with one of his business rivals, according to information received by Amnesty International from the police ombudswoman's office as well as local NGOs. One night, two police chiefs [*delegados*], and 10 police officers entered Hildebrando's bar, and threatened him if he did not close it. An argument ensued and he was arrested. As he was being taken to the police station Hildebrando was reportedly beaten in the police car.

On arrival at the police station he was beaten again, and then taken to a cell, where he was threatened with sexual assault, 'you are going to become a woman now' [*você vai virar menina agora*]. His family managed to arrange his release where upon they took him immediately to a doctor for an independent medical examination. Three years later Hildebrando still suffered from health problems as a result of the

²⁶ Initial report on the implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submitted by the Government of Brazil (CAT/C/9/Add.16) para148.

beatings he received. The public prosecutor's office did not prosecute the case and it was later archived, the conclusion being that the force used was only that necessary to maintain order.

The police ombudswoman [ouvidora], Rosa Marga Roth, tried to reopen the police investigation. She also tried to further publicise the case, giving several interviews to the local press. One of the police chiefs [delegado] involved took out five separate law suits against the police ombudswoman, in a clear attempt to intimidate her. Furthermore he attempted to instigate her dismissal from her position as ombudswoman. All the cases brought against her were rejected by the judge, however the police chief has appealed on two of the suits, one for defamation the other for tampering with a witness.

The practise of intimidating ombudsmen or human rights defenders with law suits is common practise in Brazil. Other attempts have been made to close down or reduce, the already limited powers of the ombudsmen's office.

Internal investigation units [Corregedorias]:

Internal investigation units exist for both the military and civil police, as well as those investigating prison and detention centre guards. By their very nature internal investigation units are corporatist bodies, which more often than not are complicit in covering up acts of torture or ill treatment. It is important to note that internal investigation units are made up of members from the same body that was being investigated. Many members of the police internal investigations unit will eventually return to normal duties within the police, often along side those they have been investigating. The head of the internal investigation department [corregedor] is a high ranking member of the police hierarchy. Furthermore, investigations are often performed by the very barracks or police station where the alleged perpetrator is stationed. In its consideration of Brazil's report of 1996, the United Nations Human Rights Committee stated:

The Committee strongly recommends that all complaints of misconduct by members of security forces be investigated by an independent body and not by the security forces themselves. Formal mechanisms for receipt and investigation of such complaints should be established in all areas of the country and their existence publicized. Such mechanisms

must make provision for effective protection of complainants and witnesses against intimidation and reprisals.²⁷

Many incidents of torture are presented, by the police, as having taken place when the victim was resisting arrest, thus transferring the status of victim to aggressor²⁸. Investigations can take many months, and family members or lawyers are often refused access to details of the investigation. Most cases are dealt with as matters of internal discipline rather than criminal acts. Rarely if ever do internal investigation units send alleged torture cases to the public prosecutors' office for criminal prosecution. However, if they do they are normally sent with a recommendation to be prosecuted under the lesser charges of abuse of authority [*abuso de autoridade*] or the causing of physical injury [*lesão corpora*]. Furthermore public prosecutors rarely if ever actively oversee police investigations, either due to obstruction on the part of the police, or due to lack of resources, negligence or collusion on the part of public prosecutors.

While the organization welcomes the introduction of law 9299/96, which allows for members of the military police, charged with murder, to be tried under Civil Justice, Amnesty International is

²⁷ Concluding Observations of the Human Rights Committee : Brazil. 16/09/96. CCPR/C/79/Add.66; A/51/40, para 327.

²⁸ An Amnesty International delegation was informed, by the police ombudswoman of Pará, that some police stations already had forms printed out with the heading 'resisting arrest' [*autos de resistência de prisão*], for the police to report incidents such as these. Thus when incidents of torture or ill treatment are officially reported they are allegedly automatically reported as incidents of 'resisting arrest', thus turning the victim into the aggressor.

still concerned that military police accused of torture continue to be investigated by military police and tried under military law.

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

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

An Amnesty International delegation made a denunciation of the incident to the internal investigations department of the São Paulo Military Police. On making the denunciation the delegation was informed that it would be sent to the very same police barracks from where the alleged perpetrators were based. It was incumbent on that police barracks to initiate the internal investigation, and only should the internal investigations unit deem that inquiry insufficient would they open a further investigation. Amnesty International has made several calls to the internal investigations department to find out the current status of the case, but have not

received any reply so far.

Public Prosecutors, [promotores]

Public Prosecutors work within the State Public Prosecutor's office [promotoria], under the State Attorney General [Procurador Geral da Justiça]. Within the public prosecutor's office they have guaranteed independence, under both the constitution and the public prosecution offices' organic law, to determine which line of prosecution each individual case can take. This can only be challenged by the presiding judge, who can send a case back for re-evaluation. While this is vitally important, to ensure the independence of the judicial process, it has also meant there has been no external control in ensuring that prosecutors implement the Torture Law.

Prosecutors can take on a case at two stages: either during the police investigation, when they are called in to oversee it; or after the police investigation has been presented to the judge and is then passed on to the Public Prosecutor's office where it is generally allocated on a rotational basis. The Public Prosecutor's office has a large role to play in ensuring the implementation of the Torture Law. Under resourced prosecutors faced with large work loads, can often take years to decide on whether a case will be prosecuted or not, sometimes even allowing the statute of limitations on a case, other than torture, to expire in the interim.

The setting up of special prosecutor's offices to deal specifically with human rights related cases has been an important step made by public prosecutor's offices [promotoria] in certain states. States such as Minas Gerais and Goiás having been

working with specially trained and dedicated prosecutors, who automatically receive all the cases relating to human rights issues. This helps ensure that prosecutors assessing torture cases are increasingly prepared to initiate prosecution under the Torture Law, if appropriate, as well as identifying patterns of abuse. São Paulo and Pará have also made commitments to create special human rights prosecutors. Amnesty International welcomes this move, and will continue to monitor its success.

Those cases of torture that do make it to the Public Prosecutors' Office [*promotoria*], are rarely if ever prosecuted under the Torture Law, either out of ignorance of the law, complicity with those accused of perpetrating the crime given an instinctive belief in the police and a disbelief in the criminal suspect, or due to the stigma attached to the concept of 'torture', in as much as it is still seen by many as uniquely related to the military regime . Most cases sent to trial are rather prosecuted under abuse of authority [*abuso de autoridade*] or causing of physical injury [*lesão corpora*], if at all.

Rarely if ever do prosecutors avail themselves of their power to oversee police investigations into torture accusations, or proactively undertake investigations to ensure sufficient evidence for conviction, either due to obstruction or negligence. The UN Special Rapporteur on Torture noted, in his recent report on Brazil:

'The Public Prosecutor's Office is responsible for overseeing prosecutions of all defendants. Article 129 of the Constitution provides that it is exclusively in charge, inter alia, with instituting public criminal action "II. to ensure effective respect by the government branches and by services of public relevance for the rights ensured under this Constitution, taking the action required to guarantee such rights ... VII. to exercise external control over police activities [and] VIII. to request investigation procedures and the institution of police investigations, indicating the legal grounds of its procedural acts.'" It must be noted that this has been interpreted as meaning that the Public Prosecutor's Office has the power to proceed with independent criminal investigations even in cases where no police inquiry has been opened or where a police inquiry is still pending or has

been filed, and that it can indict law enforcement officials involved in criminal activities, such as torture. The police inquiry is therefore not an obligatory procedure in a case in which a prosecutor possesses enough prima facie evidence (*indícios*). Furthermore, no legal provision precludes the competence of this Office from gathering prima facie evidence through other means than a police inquiry, such as, for example, a civil or administrative inquiry. According to the prosecutors whom the Special Rapporteur met, this interpretation is the subject of one of the most serious current institutional struggles, as the police strongly resist this approach.²⁹

The public prosecutors [*promotores*] of the children and adolescents' department of the public prosecutor's office in the state of São Paulo have the responsibility for monitoring the application of the *Estatuto da Criança e do Adolescente* (ECA), Children and Adolescent's Statute of 1990, which codifies Brazilian legislation on the rights of children, bringing it into line with international standards³⁰.

Over the last years the public prosecutors of this department have monitored the implementation of the ECA in São Paulo's notorious juvenile detention system, FEBEM. During this time they have systematically visited juvenile detention units, where they have regularly spoken to the authorities, the staff, and the detainees. They have

²⁹ Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001 E/CN.4/2001/66/Add.2. para 137

³⁰ UN Convention on the Right of the Child; UN Rules for the Protection of Juveniles Deprived of their Liberty; UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines); UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).

ensured that on some of their regular visits they have been accompanied by members of the judiciary, forensic medical experts, as well as child psychologists. The prosecutors have consistently documented their visits, photographing and filming examples of torture and ill treatment. Furthermore they have prosecuted the authorities of the FEBEM, on a number of occasions, for failure to apply the standards required under the ECA. Amnesty International has reported, with concern, how their legal attempts to force the authorities to ensure that the minimum standards required by Brazilian law are provided for juvenile detainees, though upheld by the juvenile courts were regularly overruled by the state appeals court.

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

Article 13. Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and the witnesses are protected against all ill treatment or intimidation as a consequence of his complaint or any evidence given.

Though the authorities have created numerous bodies or methods by which denunciations of torture can be made, victims and witnesses of torture continue to be reluctant to go forward either out of fear for their safety, ignorance of their rights, or a lack of faith in the criminal justice system. Those victims or relatives of victims who do manage to denounce acts of torture, either to ombudsmen [*ouvidores*], internal police investigation units [*corregedorias*], public prosecutors [*promotores*], in

rare cases legal representatives, or the police, invariably place themselves at greater risk of further violence.

Amnesty International has also noted with concern that proposals for structures to receive complaints of torture, such as anonymous telephone hot-lines, [*disque denuncia*], while of value in theory, have not been supported by moves to increase the investigation and prosecution of reported cases. If proposals such as these are not supported by more fundamental reforms, which will ensure prosecution of perpetrators of torture, there is a danger that they may be seen as little more than publicity exercises.

Protection of victims and witnesses:

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

The government, in collaboration with non-governmental organizations, has set up a witness protection scheme, PROVITA. However apart from only functioning in a few states, and being sorely

underfunded³¹, the majority of torture victims do not qualify for inclusion within the scheme. This is because the scheme excludes all people with criminal records, or those in preventive detention awaiting trial³². Furthermore, Amnesty International was informed by the Federal Government that another scheme exists with the specific aim of protecting those who do have criminal records. This scheme, *o Programa Federal de Assistência a Vítimas e a Testemunhas Ameaçadas*, the Federal Program for Assistance to Victims and Witnesses under Threat, has the specific aim of offering protection to criminal suspects who testify in criminal prosecutions brought by the state. However during a meeting with the head of the Federal Police's human rights department, an Amnesty International delegation was informed that the scheme was not and had never included victims of torture. What is more, it appeared that the Federal Police were not aware that torture victims could be accepted onto this scheme.

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

³¹ PROVITA is supposed to be funded by equal contributions from federal and state governments, however these contributions are not always forthcoming. In the state of Pará, an Amnesty International delegation was informed by the State Secretary for Public Security that he had to battle with the Federal Government, as they consistently failed to provide the necessary funds. Amnesty International has received similar reports of under funding from other states.

³² 'Protection shall not be extended to individuals whose personality or conduct is incompatible with the restrictions on behaviour imposed by the programme, to convicts who are serving the sentence and to defendants or accused individuals under preventive detention in any of its modalities. Said exclusion shall not impede public security entities from eventually executing measures to preserve the physical integrity of those individuals.' Law n° 9,807, 13 July 1999, *Establishes guidelines for the organization and maintenance of special programmes for the protection of victims and threatened witnesses*

indictments of its kind under the Torture Law.

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

Following an international campaign on behalf of the victims, the São Paulo authorities undertook to transfer them from the jail, to ensure their safety. Amnesty International has since been informed, by the public prosecutors, that the victims have been transferred to several different jails around the state. It is now incumbent on the presiding judge to request the testimony of each of the victims by 'rogatory letter' [*carta precatória*], which must be heard before a local judge, in the district in which the detainee is held. Amnesty International has been informed, by public prosecutors [*promotores*], that this will further delay the prosecution, hindering the chances of them bringing the alleged perpetrators to trial. What is more Amnesty International have received information, from members of the public prosecution service [*promotoria*], that the internal investigating judge [*juiz corregedor*], has taken the unusual step of providing contrary testimony to the presiding judge, alleging that the torture incident did not take place.

Article 15. *Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.*

The Judiciary

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

Where allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture or similar ill-treatment.³³

³³ Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on

Furthermore, while the Procedural Penal Code stipulates that confessions cannot be submitted as sole evidence in a case³⁴, Judges regularly accept the flimsiest of evidence to sustain a confession. Furthermore evidence collected as a result of torture should be inadmissible against victims.

Judges consistently fail to initiate investigations into allegations of torture placed before them in court, by a victim or their legal representative. Rarely if ever do judges challenge a public prosecutor's [promotor] decision to archive a case or press lesser charges in torture related cases. Amnesty International has received several reports not only of the complicity of members of the judiciary, but of their actively inciting acts of torture or ill treatment.

Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001 E/CN.4/2001/66/Add.2. para 167 (i)

³⁴ Código de Processo Penal, Capítulo IV - art 197: O valor da confissão se aferirá pelos critérios adotados para os outros elementos de prova, e para a sua apreciação o juiz deverá confrontá-la com as demais provas do processo, verificando se entre ela e estas existe compatibilidade ou concordância. [Procedural Penal Code, Chapt IV - art. 197: The value of a confession will be dependent on the other criterion adopted for the other elements of evidence, and for its appraisal the judge must consider it with all other evidence included in the trial, examining whether there exists compatibility or coherence between one and the other.]

S.W.P, a 10 year old boy, with long record of truancy and petty crime. His grandmother had reportedly abandoned him, unable to cope with him, and he had escaped many times from the state children's home, where it was reported the other children had threatened to do him harm. On 20 August 1998, he was sentenced to spend several days in the cells of a police station by the local judge, in São Francisco do Sul, in the state of Santa Catarina. This was in total contravention of the ECA³⁵. According to reports the local police chief [*delegado*] refused to hold the boy in the police station, claiming that it would contravene the ECA, however his protests were overruled by the judge. During his stay in the police station, the boy was detained with adult offenders. The boy was then reportedly tied up by other detainees, and led around the police station like a dog. He was also reportedly sexually abused by a number of the detainees during his stay in the police station.

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

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

³⁵ ART. 123 - A internação deverá ser cumprida em entidade exclusiva para adolescentes, em local distinto daquele destinado ao abrigo, obedecida rigorosa separação por critérios de idade, compleição física e gravidade da infração. (Estatuto da Criança e do Adolescente - 13 junho 1990)
[Art. 123. - Internment should be fulfilled at an entity exclusively reserved for adolescents, in a location that is separate from that reserved for purposes of shelter, with rigorous separation on the basis of criteria of age, physical build and temperament and the gravity of the infractions.]

Corregedor, 8 de dezembro 1998) [...I insist, that while the Executive, at both levels, does not offer the minimum material conditions necessary for the required solution to the situation that they themselves have created (due to the lack of education, social services, housing etc.) that the attitude of the judge was totally acceptable. There was no other solution.]

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

Judges regularly accept, without question, testimony of a police officer over that of a criminal suspect, as rulings such as these indicate:

Desconsiderar o passado impecável de uma autoridade, bem como o seu elogiável perfil profissional, par dar credibilidade ao que disseram testemunhas a respeito da apologia `a tortura que teria sido feita no recesso de um gabinete, importaria na inversão do valor das provas e na própria negação do direito processual. (TJRJ – AC 9.376/1999 – (Ac. 04111999) – 2ª C.Cív. – Rel. Des. Sérgio Cavaliere Filho – J. 10.08.1999)³⁶

[To fail to take into consideration the impeccable past of an authority figure, as well as his laudable

³⁶ 'Tortura no Brasil: a banalidade do mal.' Dr Luciano Mariz Maia, speech presented at 'National Seminar on the effectiveness of the Torture Law' December 2000, STJ, Brasília.

professional record, to give credence to the words of witnesses in respect to this alleged torture which apparently took place in the back of an office, would result in the inverting of the weight of the evidence and in the very negation of procedural law.]

É válida a prova produzida pelos depoimentos dos policiais que participaram da prisão do agente, não podendo o julgador suspeitar, por princípio, daqueles que o próprio Estado encarrega de zelar pela segurança da população. (TJRJ – Acr 180/99 – (Reg. 200.599) – 1ª C.Crim. – Rel. p/o Ac. Des Ricardo Bustamente – j 23.03.1999)³⁷

[The evidence provided by the statements of the policemen responsible for arresting the agent is valid, as the judge cannot, on principle, doubt those who the very State charges with the responsibility of ensuring the security of the population.]

The UN Special Rapporteur on Torture, in his recent report on Brazil, reports that:

According to public prosecutors who had dealt with torture cases, after hearing testimonies from both the alleged victim and law enforcement officials, judges

³⁷ 'Tortura no Brasil: a banalidade do mal.' Dr Luciano Mariz Maia, speech presented at 'National Seminar on the effectiveness of the Torture Law' December 2000, STJ, Brasilia. pg 23

would often act *in dubio pro reo*, and accept the latter's statement to the effect that they "had not beaten a detainee, but only slapped him/her". They would then plead guilty to a lesser charge. According to NGOs, many judges consider the punishment applicable for the crime of torture as too severe.³⁸

Conclusion

Since Brazil's transition to a democratic government in 1985, Amnesty International has repeatedly recognised initiatives, programmes and new legislation brought in by the authorities to improve the country's human rights record. However, while the organization continues to support the intentions behind many of these proposals, it consistently finds a lack of political will to ensure their implementation. This in turn has created a large gap between the government's discourse on human rights and the reality of the situation in the country.

It is clear that if Brazil is to eradicate the continued practice of torture, the Federal Government must face its responsibility, and fundamentally reform the criminal justice system, targeting all those elements and stages within the system, which contribute to the impunity

³⁸ Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/3. Addendum. Visit to Brazil. 30 March 2001 E/CN.4/2001/66/Add.2. para 154

of those responsible for violations against human rights, and rigorously enforce those safeguards already in place. Furthermore, it can no longer be sufficient for the Federal Government to hold the state governments responsible for the situation. The Federal Government must ensure that all of the country's 26 states and the Federal District [*Distrito Federal*] duly and effectively implement all of the reforms necessary. Thus, as stated in article 2.1 of the Convention, the Federal Government is bound by the responsibility of enforcing all legislation on torture in all the country's states, this includes insuring that all legislative, administrative and judicial structures are effective and are implemented.

Recommendations

Police

- A complete reform of recruitment, training, refresher training, funding, professionalisation: training in investigation techniques, crime scene handling, basic forensic awareness knowledge, use of force. Giving the police the resources and training to do their job without resorting to human rights violations for 'results'.
- Training programmes for members of police forces should fully incorporate instruction in international standards such as the UN Code of Conduct for Law Enforcement Officials, the UN Principles on the Effective Prevention and Investigation of Extra-Legal,

Arbitrary and Summary Executions, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the UN Standard Minimum Rules for the Treatment of Prisoners.

- *It is essential that the authorities are unequivocal in their statements to the public and law enforcement officials that human rights violations such as torture will not be tolerated under any circumstances and those committing them will be punished according to the law. Any law enforcement person against whom there exists evidence of involvement in human rights violations, should be brought to justice.*
- *Although jurisdiction for prosecuting intentional homicide by on-duty military policemen has been transferred to civilian courts, under law 9299/96, a wide range of human right violations practised by military police, including torture, continue to fall under military jurisdiction. Human rights violations committed by military police should not only be investigated independently, but also prosecuted in civilian courts.*
- *Law enforcement personnel suspected of or charged with serious human rights abuses, such as or torture, should be suspended from active duty pending the outcome of investigations. This can be done without prejudice to their defence rights. Suspension should*

amount to the temporary removal from active service and not transfer to an alternative post, as is often the case at present.

- Early warning systems should be established to identify and deal with officers involved in human rights violations, including clear reporting systems and detailed records of every officer's conduct. These records should be available to independent oversight body.
- All interrogations should take place in presence of a lawyer. A record of the interview must always be kept, and where possible tape recordings or video recordings of the interview should be made.
- There should be a clear and complete separation between the authorities responsible for detention and those responsible for the interrogation of detainees. This would allow an agency not involved in interrogation to supervise the welfare and physical security of detainees.
- Pre-trial and convicted detainees should not be held in the custody of the Civil Police, but rather in pre-trial detention centres or penitentiaries, respectively, under the responsibility of the penal authorities.

Complaints

- Any victim of human rights violations, including those held under the detention system, should have access to an effective complaints procedure to allow all victims, including arrested or detained people, to register complaints about human rights violations without fear of reprisals. All such complaints should be officially passed to a special human rights unit in the public prosecutor's office.
- Victim's families, legal representatives or human rights defenders working with those held under the detention system should also be able to register such complaints directly with this specialist human rights unit, without any risk of threat or reprisal.
- Victims, relatives of victims, legal representatives or human rights defenders who make complaints must be kept informed of the

progress of the denunciation and have access to any enquiry or procedure opened as a result of it.

Protection of victims, witnesses, and human rights defenders

- All detainees must have guaranteed access to a family member and a legal representative, throughout their detention.
- Steps should be taken to ensure the adequate protection of victims and witness of torture who are not eligible under any of the present witness protection schemes which exist in Brazil today.
- While Amnesty International recognises the important step taken with the setting up of the PROVITA scheme, in certain states, it has received many reports that it sorely lacks funding. For this reason steps should be taken to ensure the adequate protection of lawyers, prosecutors, officials and witnesses, and relatives of victims, involved in cases of human rights violations. The authorities must take steps to ensure that all states have a fully funded and functional, effective witness protection scheme, in place.
- The authorities should ensure that human rights defenders, including people working on behalf of those detained in *prisons, jails, police stations and juvenile detention centres*, receive the full protection of the law so that they can carry out their vital work. The authorities should also make public statements of support for the work of human rights defenders in order to demonstrate that threats, intimidation or attacks against them will not be tolerated in any shape or form.

Forensic and Medical Examinations

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

- The medical examination of alleged victims of torture or ill-treatment should only be conducted in the presence of independent witnesses: a doctor designated by the family; the legal representative of the victim; or a professional designated by an independent medical association.
- Forensic doctors should be provided with the training and resources necessary for the diagnosis of all forms of torture and other human rights violations.
- An independent well-resourced forensic service should be established linked to the courts rather than the security forces.
- Forensic medical reports should be restructured to allow examiners the space to provide a full, detailed and impartial report, in compliance with the Istanbul protocol.

Legal representation

- In order to prevent “disappearances”, torture and ill-treatment in police custody, all detainees should have access to relatives and a lawyer promptly after arrest and regularly throughout their detention or imprisonment.
- All state authorities should take steps to establish an adequately resourced public defenders office [*defensoria publica*] to provide legal representation for all criminal suspects.
- Public defenders must be fully trained in dealing with torture victims, and into how to make a complaint of a torture incident. Regular evaluations should take place to ensure that public defenders understand their duties and carry them out accordingly, especially when dealing with victims of torture.

Oversight bodies.

- All states should set up a fully independent police ombudsman's office [*ouvidoria*]. *The mandate and independence of those police ombudsmen, already active, should be strengthened in order to guarantee the credibility of the institution in monitoring allegations of individual*

abuses and patterns of abuses by police. The ombudsman should be mandated to fully review all cases, to their legal conclusion, and to transmit complaints of human rights abuses directly to the public prosecutor's office [*promotoria*]. Furthermore, where necessary, ombudsmen's offices should be given the authority to request any and all official information to allow for the full and effective implementation of his duties.

- Steps should be taken to ensure that ombudsmen carry out their work independently, without fear of reprisals, so as to allow them to perform their duties fully and effectively.
- Greater support and resources should be provided for all civil and independent oversight bodies, such as community councils which include representatives of civil society, ensuring they have unrestricted access to places of detention and the power to collect evidence of official wrongdoing.

Internal investigation units

- Amnesty International calls for all human rights violations to be promptly, thoroughly and impartially investigated by a body other than that directly implicated. In the light of problems caused by the persistent failings in police enquiries, investigation procedures into lethal shootings, torture and ill- treatment and other such serious human rights abuses need to be urgently reviewed and reformed.
- Amnesty International recognises the importance of the internal investigation units [*corregedorias*], with regard to internal disciplinary issues and establishing clear codes of

conduct within the guidelines. However the internal investigation unit should play no role in the criminal investigation of allegations of abuses or criminal acts by state agents. In cases where state agents are accused of serious human rights violations the public prosecutor's office [promotoria], or an investigating judge should have responsibility for conducting the investigation.

Public Prosecutor's Office [promotoria]

- *The public prosecutor's office or an investigating judge should be responsible for conducting investigations into allegations of abuses or criminal acts by state officials.*
- *Furthermore the public prosecutor's office must ensure that in all cases of suspected torture full and effective investigations are mounted, and that prosecutors are properly equipped and trained to perform such investigations. Moreover that these investigations, where appropriate, lead to prosecutions under the Torture Law.*
- *A specialist human rights unit should be established in the public prosecutor's office to concentrate expertise and good practice with regards the gathering of evidence in such investigations, collating information on patterns of abuses by state agents and mounting effective prosecutions of human rights violations, under the appropriate law.*
- *The public prosecutor's office should be open to external audit in order to ensure that promotores are aware of their duties and are carrying them out accordingly.*

Information relating to complaints filed, cases investigated, prosecutions mounted and convictions should also be collated in order to effectively monitor the functioning of the public prosecutor's office. All Promotores should receive training in the particularities of prosecuting human rights crimes.

Judiciary

- Steps should be taken to ensure that the judiciary has appropriate resources and training to order in-depth and effective investigations into human rights violations, and the evaluation of the results.
- Internal court audits should be also be implemented to ensure that judiciary officials understand their duties and carry them out accordingly. Specific training should be provided to judges in relation to the exclusion of evidence elicited by torture or ill-treatment, action to be taken on receipt of a complaint of torture or ill-treatment and the evidential elements necessary in the prosecution of alleged acts of torture or ill-treatment, as well as ensuring the reversion of the burden of proof in cases where there are allegations that a confession was extracted under torture.
- Judges must ensure that confessions or any evidence obtained as a result of torture should not be admissible as evidence in criminal proceedings against the victim. Judges must immediately stop trials where allegations of torture are made, pending a separate investigation into all the allegations, overseen by a different prosecutor.
- The introduction of alternative sentencing legislation in December 1998 provides judges with a wider range of non-custodial measures. *It is essential then when dealing with cases of minor or petty crime, judges should, when available, seek to issue alternative sentencing, especially avoiding incarceration where possible, while respecting the principal of equality before the law.*

Prisons, jails and police stations

- It is essential that the authorities review arrangements for the treatment and custody of all prisoners, to ensure that they are treated humanely and in conformity with the UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, the UN Standard Minimum Rules for the Treatment of Prisoners, and Article 10 of the International Covenant on Civil and Political Rights (ICCPR), which states: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”
- Proper rehabilitation programs for convicted criminals should be implemented in all prisons in accordance with international guidelines and Brazil's own legislation.
- Different categories of prisoners should be separated within the detention system, depending on whether they are awaiting trial or sentenced, whether they are serving under an open/ semi-open, or closed regime, as well as by seriousness of offence.
- The authorities must ensure that all female prisoners should be held separately from male prisoners. Male prison staff should be accompanied at all times by female officers inside women's prisons. Adequate pre-natal and post-natal care should be available to pregnant women prisoners. Practices that discriminate against women prisoners should be abolished.
- All detention units for children must immediately be brought into line with the standards recommended under the ECA. Furthermore children in detention should be separated by age and seriousness of the offence.
- Adequate funding to other areas, such as staff recruitment, salary, training and monitoring, and the establishment and enforcement of new procedures and codes of conduct for those working within the penal system, is essential if the consistent abuses, observed at present, are not to be repeated in the new institutions.
- A dedicated, effective, independent, transparent, and adequately resourced federal and state Prisons Inspectorate, made up of judges, prosecutors, doctors, lawyers and other experts should be created to

carry out both routine and unannounced inspection visits of prisons and police stations.

Federal Government

- In order to further combat impunity for human rights violations, it is necessary to monitor the progress of official investigations and prosecutions in relation to such human rights violations. Thus in addition to providing statistical information on the number of homicides, torture cases and other cases of human rights violations by agents of the state, Amnesty International believes that the Federal Government should provide information on the number and progress of investigations into such violations and into judicial proceedings.
- It is incumbent upon the Federal Government to ensure the compliance, throughout the country, with national and international law, as well as international conventions and treaties. This means that the Federal government must use all means at its disposition to monitor and implement legislation for the protection of human rights.
- The Federal Government and Congress should use their legislative, financial and other powers to encourage, and if necessary require, states to comply fully with international standards for the protection of human rights .