

Brazil

Briefing on Brazil's Second Periodic Report on the Implementation of the International Covenant on Civil and Political Rights

October 2005

Amnesty International is submitting this briefing to the United Nations Human Rights Committee (HRC), prior to its consideration of Brazil's second periodic report on the implementation of the International Covenant on Civil and Political Rights (ICCPR). This briefing does not aim to analyse and respond to all of the Brazilian government's report. It aims at providing supplementary and updated information in some areas in which Amnesty International considers that Brazil has failed to fulfil its obligations under the ICCPR.

It is notable that, as with its initial report submitted in 1995 (CCPR/C/81/Add.6), the Brazilian government has been informative and full in many of its responses. However, nine years after its first submission this important appraisal of the human rights situation belies the lack of political and financial investment made to effectively change the consistently poor human rights situation in Brazil today.

Summary of concerns

Amnesty International's concerns on Brazil include:

- Extra-judicial and summary executions by the police, excessive use of force and killings by "death squads";
- The widespread and systematic use of torture as a means of punishment, investigation, and method of extortion.
- Cruel, inhuman or degrading conditions, severe overcrowding and deaths in custody in prisons, detention centres and police stations.
- Killings, attacks, threats and harassment of those fighting for their right to land, including landless activists and indigenous peoples.
- Human rights defenders suffer harassment and threats. Some also suffer attacks and killings.
- *Overview*

In its 1996 submission to the HRC, Amnesty International stated that Brazil was at a "turning point" in relation to its human rights situation.⁽¹⁾ At that time, it was felt that the open language on human rights adopted by the then government and the creation of the National Human Rights Plan indicated a serious interest in addressing the profound level of human rights violations suffered by so many in the country. During those intervening years, some important achievements have been made towards consolidating human rights protection mechanisms in Brazil. These include: the criminalization of torture under Law 9455/97; the transfer of certain crimes by members of the military police and armed forces, namely culpable homicide, from military jurisdiction to civil jurisdiction; recent legislation allowing for the possible federalisation of human rights crimes; the submission of a number of long overdue reports to UN treaty monitoring bodies and the issuance of a standing invitation to all UN Special Rapporteurs.

The increased presence of the international community, represented by figures such as UN Special Rapporteurs and treaty monitoring bodies, with the support of a dynamic civil society, has undoubtedly contributed to a wider recognition and discussion of human rights throughout the country. Today in Brazil, cases of torture and of summary executions by law enforcement officials are regularly covered in Brazil's media and there exists a recognition by government that such crimes are not acceptable.

Nevertheless, these advances have consistently been undermined by the fact that a large proportion of the population continues to suffer systematic human rights violations at the hands of state officials, predominantly law enforcement officers. While some slow progress has been made towards investigating these crimes and bringing to justice those responsible, the vast majority of perpetrators continue to enjoy impunity. Of great concern has been the consistent reluctance by both federal and state governments to invest effective political will and financial support in long term strategies for ending human rights violations and punishing those responsible.

In 2005, two emblematic cases have highlighted national and international concern at the extent of violations and underlined the reactive nature of governmental responses. Firstly, the killing of the Catholic nun, Sister Dorothy Stang, on 12 February in Pará; followed by the killing of 29 residents of socially excluded communities in the Baixada Fluminense district on the outskirts of Rio de Janeiro, in April 2005, which clearly indicated the continued and active presence of police "death squads" in Brazil's urban centres.

In the wake of both these atrocities, federal and state governments publicly condemned the killings, promising to bring those responsible to justice. However, both cases occurred in areas with long patterns of similar crimes and in the context of persistent impunity and inaction by federal and state authorities in the face of systematic human rights violations. As such, human rights organizations and those close to the victims have not expressed much confidence in federal and state government pronouncements.

Amnesty International's concerns, expressed in its submission of 1996, that the Brazilian government lacked an apparent strategy, timetable and oversight mechanisms for the introduction and implementation of proposed human rights reforms, especially the national human rights program, have proven to be right. Promises by all federal governments since that time to address human rights issues have been predominantly limited to publicity orientated campaigns, which are rarely effective in combating levels of human rights violations.

While the federal government has launched a number of human rights campaigns, such as the 2001 anti-torture campaign and the more recent human rights defenders campaign, these have largely failed to offer effective solutions to serious human rights related problems in the country, focussing on proposals such as brief television and radio campaigns, the publication of leaflets or telephone hotlines, as opposed to properly supported strategic plans and political reforms.

As such, it is of particular concern that the space which was gained for human rights at federal level has been diminishing. The widely reported decisions to cut the budget of the Special Secretariat for Human Rights shortly after the government came to power and, more recently, to withdraw its ministerial status, have reduced government intervention into this area. This has underlined the sporadic and inconsistent nature with which human rights concerns continue to be addressed at both federal and state government levels.

Time and again, governments have failed to invest political or financial capital into human rights reforms preferring to concentrate on short term political and economic goals which are often seen to be contrary to these. This has been symbolised by the consistent way federal government has avoided addressing the profound problems facing the country's public security systems, central to the systemic violation of human rights, but widely seen as a sensitive issue with electorates. As such, the federal government's reform package, set out in the National Public Security Plan, appears to have been effectively abandoned given, for example, the government's publicly announced decision to cut the National Public Security Fund's budget from R\$412 million to R\$170 million in April 2005, among other things.

Article 1 – The Right to Natural Wealth And Resources (Paragraphs 11-14 of the state report)

Indigenous Peoples (Paragraph 14)

Despite the clear constitutional obligations the Brazilian state has towards indigenous peoples, they remain among the most vulnerable groups in Brazilian society. Overall, in spite of some advances, such as the April 2005 ratification of the Raposa Serra do Sol territory in Roraima state, the process of demarcation of indigenous land has proved slow and subject to continuous judicial challenges.

When full demarcation of indigenous land has taken place, there is often a failure to protect the territory in question, or its inhabitants. Indigenous leaders are also attacked and criminalised as a result of their activities. During the month of July 2005 in the Truká indigenous territory in Pernambuco state, the indigenous leader Adenilson dos Santos Truká and his son were shot and killed during a public celebration, reportedly by military police in plain clothes. His brother, Aurivan dos Santos Truká, *cacique* (chief) of the Truká, was arrested when he voluntarily presented himself to give information to the federal police about Adenilson's murder, which he witnessed. He was arrested on the basis of charges dating back several years on the accusation of *formação de quadrilha* (forming a criminal gang) and *robo de gado* (theft of cattle). Both charges, believed to be used in order to harass and destabilize the Truká leadership, date back to the time, beginning in the mid nineteen-nineties, when the Truká peacefully reoccupied their land - subsequently demarcated in their favour.

There are consistent attempts to block the demarcation process in the courts. Even when the full consultation prior to final presidential ratification of a territory has taken place, occupants and invaders of indigenous land continue to oppose the will of the government. As a result, Brazil's highest federal courts have made several rulings in favour of such occupants. These rulings block the demarcation process and unless overturned, leave the indigenous community in question at risk of eviction. This has occurred in 2005 in the context of territories claimed by the Guarani Kaiowá indigenous people in Mato Grosso do Sul state, who currently live crammed into some of the smallest, poorest and most densely populated indigenous areas in Brazil. For example, the Nhandaru Marangatu indigenous territory was ratified by President Luiz Inácio Lula da Silva on 28 March 2005. This ratification was later suspended by a ruling of the Federal Supreme Court on 28 July 2005, and the future of the hundreds of Indians living on the territory is now uncertain, pending an appeal against this decision. If evicted they will face almost certain poverty and destitution. Such evictions often lead to violence, such as that which occurred on the Takuara territory on 12 January 2003, during which internationally renowned Guarani-Kaiowá leader Marcos Verón was beaten to death.

There is also currently particular concern for the safety and survival of "isolated" Indians living in the states of Mato Grosso and Rondônia, who are facing invasion of, and expulsion from, their land by individuals involved in extractive industries.

Article 6 – Right to Life (Paragraphs 57 – 133 of the State report)

Police Killings (Paragraphs 74 -77)

In the context of extreme levels of criminal and especially armed violence, every year hundreds if not thousands of civilians continue to die at the hands of Brazil's public security forces according to figures published by state secretariats for public security. Extra-judicial executions, unlawful killings and excessive use of force by police officers are rife. Young poor Afro-Brazilian males are the predominant targets for such killings, which occur in the context of high rates of armed criminal violence which pervade Brazil. These killings are often committed by police officers involved in corrupt and criminal activities such as involvement with "death squads", reportedly responsible for acts of social cleansing and organised crime.

Certain state governments have defended the use of strong or even repressive policing as a means of combating high levels of crime. The use of this discourse has consistently been matched by a rise in the number of killings by police and reflects the clear lack of political will to address issues of public security reform and lethality by the police within the framework of international human rights standards.

Official figures quoted in the states of Rio de Janeiro and São Paulo, the only states to regularly publish such figures, show a dramatic rise in killings by police officers up to 2003, with São Paulo registering 915 killings and Rio de Janeiro 1,195 in 2003. According to information received by Amnesty International, these figures are automatically registered as "resistance followed by death" [*resistência seguida de morte*] or "records of resistance" [*autos de resistência*], thus appearing to transform the victim into an aggressor prior to any investigation of the circumstances surrounding the killing. In 2004, São Paulo registered a decline in the official numbers of "resistance followed by death" to 663, while in Rio de Janeiro the decline was more negligible to 983. (2)

Separate studies by São Paulo's police ombudsman's office and the *Instituto de Estudos da Religião* (ISER), Institute of Studies of Religion, a research centre in Rio de Janeiro have found that the majority of victims in cases of "resistance followed by death" were unarmed, shot several times predominantly from behind, and many had no previous criminal record.(3) Investigations of such incidents, when they occur, are invariably flawed. Often relatives of victims do not report such incidents, either out of fear, lack of knowledge about how and where to report cases, or from a lack of faith in the justice system. Amnesty International has spoken to families who only reported killings several weeks or months afterwards, believing they had to gather evidence themselves to prove that the victim was not a "criminal" and thus unjustly killed.

It is notable that in 2004 homicide numbers reportedly dropped by 8.2%, the first such drop since 1992, according to health department figures published by the federal government. The federal government attributed the drop to its widely welcomed 'Disarmament Statute',(4) which has controlled the carrying of guns. Amnesty International has also been informed of alternative and community based security projects, by both municipal authorities and civil society, which have also contributed to the decline in homicide rates through systemic, multi-sectoral approaches to criminality and violence without resorting to repressive means. According to reports, in the city of Diadema, on the outskirts of São Paulo, the municipal government managed to reduce homicide rates by 47% through targeted policies aimed at violence "hot-spots". In Jardim Angela, a region in the south of São Paulo, visited several times by Amnesty International, government statistics show that homicide rates dropped 73.3%. In Jardim Angela, the persistent efforts of civil society and the Catholic Church to ensure the authorities find alternative means to address the problem have been emblematic and undoubtedly contributed to this reduction.

Killings in Rural Areas (paragraphs 126-129)

Similarly in rural areas, patterns of killings against land activists and indigenous peoples as a result of their fight for land continues to be of extreme concern. In 2003, killings of land activists and indigenous peoples increased notably. These killings often occur either with the participation, knowledge or acquiescence of state law enforcement officials. The majority of perpetrators remain unpunished. According to the Pastoral Land Commission figures, in 2003 only five people were in prison for 976 killings of land activists committed between 1985 and 1996. Causes for the sudden increase in killings are varied. However, long term impunity, slow and controversial land reform procedures and complicity of state authorities with powerful land owners have contributed to the levels of these killings.

On 12 February 2005, Sister Dorothy Stang, a nun who had long campaigned on ecological and land issues in the Amazonian state of Pará, was killed by hired gun men. Sister Dorothy was killed only two days after having met the then Special Secretary for Human Rights of the federal government informing him of death threats against her. (See section on federalization of human rights crimes).

"Death Squads"

Killings by "death squads" continue to be of major concern in Brazil. Prior to the visit of the UN Special Rapporteur on Extra-Judicial and Summary Executions in September 2003, the federal government published figures which stated that there were indications of "death squad" activity in at least 15 of the country's 27 states. "Death squads", largely made up of police officers and former police officers, are believed to be involved in the killing of criminal suspects on the request of small business owners, but many reports indicate their involvement in organised crime, including drug and gun trafficking as well as assassinations.

On 31 March 2005, 29 people were shot and killed by a group of people believed to be members of Rio's military police force. The group drove around the areas of Queimados and Nova Iguaçu in the Baixada Fluminense district in the suburbs of Rio de Janeiro. Members of the group, who in some cases wore masks and hoods, reportedly fired indiscriminately from their cars on passers-by. The victims were aged between 13 and 64 years old and included

numerous school children. In the wake of the killings, the state secretary of public security stated publicly that corrupt members of the military police were involved. A joint federal and state police investigation was initiated, which led to the preventative detention of ten police officers and one former police officer. By checking records of "records of resistance" the civil police investigation has linked at least 15 prior killings to the massacre suspects. The Baixada Fluminense has suffered a long history of "death squad" activity, and while there are no clear indications as to why the shooting took place, they clearly fit the long pattern if not the scale of similar crimes attributed to them.

A major victory against "death squad" activity was achieved in November 2004, following a decision by a federal court to prohibit the *Escuderie Detetive Le Cocq* organization, officially a police benevolent fund, but believed to be the front for a "death squad" which dominated organized crime in the state of Espírito Santo for many years.⁽⁵⁾ However, joint federal and state investigations into organised crime, assassinations and extra-judicial executions in the state of Espírito Santo, following reports that sections of the executive, legislative and judicial branches of the state were involved in organised crime, have been slow. Most notable have been the failures by the authorities to make headway with the investigations into several high profile murders, such as that of lawyer Marcelo Denadai, killed in April 2002. According to information received by Amnesty International, several of the witnesses in this case have been killed.

Witness protection

The Brazilian government has set up a witness protection program, PROVITA, run by non-governmental organizations and jointly funded by federal and state governments, cited in paragraph 76 of its report. While the creation of this program is an important step forward and one that this organization was calling for in its 1996 submission to the HRC, Amnesty International has consistently been informed that it is limited in its scope and vulnerable to the inconsistency of its funding. The level of police involvement in killings and organised crime is best exemplified by the fact that the majority of those in PROVITA are being protected from members of the police who are being investigated or have been charged. In the state of Espírito Santo, widely criticised by the UN Special Rapporteur on Extra-Judicial and Summary Executions as well as the former Minister of Justice among others for extensive "death squad" activity, Amnesty International was informed by local NGOs that at least 90% of those under protection were testifying in cases involving members of the state's police forces.

Investigations

Amnesty International has consistently received information that police involved in such incidents follow a process reportedly aimed at hindering any possible investigation. This includes removal of dead bodies from the scene of the crime in an apparent attempt to "rescue" them, planting of guns on corpses, removal of bullets, shells and other evidence, among other things. Threats, intimidation and attacks against witnesses are also consistently reported.

Today in Brazil, there continue to be no means of independent investigation of human rights violations committed by members of the police. This is due to a number of reasons. Firstly, forensic examinations of such cases are deemed to be limited at best, as forensic investigation units lack independence, being either directly linked to the state civil police or to the state secretariat responsible for public security, or due to the lack of resources available to them. Secondly, investigations are done either by the civil police or by the internal investigations unit of the relevant police force. Thirdly, though some states do have police ombudsman's offices, cited in paragraph 4 r of the state report, these have extremely limited powers, being neither able to investigate reported incidents or to initiate judicial proceedings. They also have been shown to have limited independence, with their appointment and their funding reportedly controlled by state governments in certain states.⁽⁶⁾ Ombudsman's offices have been most effective when documenting systematic patterns of human rights violations by police and by denouncing these publicly. Public Prosecutors, who do have the power to investigate, rarely if ever investigate such killings and do not have the resources to do forensic examinations.

Impunity

Even following legislative reforms which have allowed for cases of killings by military police to be tried in civil courts and following the creation of a witness protection program, successful prosecutions of police are limited. This is due to a number of reasons, including those cited above as well as the incredible slowness of the judicial system, the reluctance by some judges and prosecutors to take on such cases, and above all by the lack of access to justice suffered by many marginalised groups as expressed by the Special Rapporteur on the Independence of the Judiciary.⁽⁷⁾ Also of concern has been the increasing practice of some courts to declare the proceedings "*in camera*", severely limiting the victim's family the right to a fair trial.

It is notable that of the four internationally known massacre cases from Brazil, involving members of the military police, none of the judicial processes has been completed satisfactorily. Regarding the massacres of Candelaria and Vigário Geral, both of which took place in Rio de Janeiro in 1993, only a very few of the numerous police officers charged were convicted while some prosecutions are still pending. In relation to the massacre of 19 land activists in Eldorado dos Carajás, which took place in the state of Pará in 1997, and the massacre of 111 detainees in the Carandiru prison in São Paulo in 1992, only the commanding officers have been convicted though none are detained while they appeal the sentences.

What is more, in the case of Carandiru the commanding officer was elected as a state deputy while appealing against his prison sentence of over 600 years. In relation to lower ranking police officers, both prosecutions have been hindered by the inability of forensic investigations to ascertain individual responsibility for the killings. Thus, in both cases these prosecutions are still pending.

Federalisation of human rights crimes

In its submission presented to the HRC in 1996, Amnesty International again reiterated its call for a process that would allow for the federalisation of investigations and prosecutions of human rights violations where the state authorities

have shown a persistent failure to do so effectively. Since then, the federal authorities have made important steps in this direction. Firstly, under presidential decree [*medida provisória*] nº 27 of 24 January 2002, the federal police were given powers to investigate, among other things, cases of human rights violations where the federal government was deemed responsible under its international human rights obligations.

Under this decree, federal police are allowed to investigate possible human rights violations, including cases of possible extra-judicial executions, in collaboration with state police forces. However, under this decree all crimes that are not federal crimes, such as torture and murder, still fall under the jurisdiction of the state judicial system. As a result, federal police have participated in investigations in cases such as the massacre which took place in the Baixada Fluminense in Rio de Janeiro in April 2005 and also following systematic denunciations of "death squad" activity and state governmental links to organised crime in the state of Espírito Santo in conjunction with state police and judicial authorities.

While the involvement of federal police in human rights cases has been an important step, Amnesty International has received reports from local human rights organization expressing concern at reluctance shown by elements within the federal police force to intervene in human rights related cases, especially the protection of human rights defenders. In May 2004, the Federal Police made a legal appeal to overturn orders that they provide protection to Roberto Monte, Ruy dos Santos and José Veras Junior, on the basis that they were not federal employees and as such should be protected by the state.

Roberto Monte, who works at the *Centro de Direitos Humanos e Memória Popular*, Centre for Human Rights and Collective Memory, based in Natal, Rio Grande do Norte, presented Amnesty International with copies of the judicial ruling favoring the federal police's appeal. According to the latest information received by Amnesty International, he continues to receive threats as a result of his denunciation of local 'death squads'. In a letter, dated 12 April 2005, the Brazilian Committee of Human Rights defenders wrote to the National Secretary of Human Rights stressing that such action by the federal police was contrary to Law Nº 10.446 of 8 May 2002(8), which specifically deals with their responsibilities to protect human rights defenders.

In November 2004, a process for the federalization of investigations and judgements of human rights crimes was voted as a law through Congress as part of the package for the reform of the judiciary. As with the above presidential decree, it allows for the transfer of a case from state jurisdiction to federal jurisdiction in cases of grave human rights violations where it is felt that the federal government's responsibility under Brazil's international treaty obligations is not being complied with. Under this procedure cases are submitted or selected by the federal attorney general who will then submit them for the approval of the *Superior Tribunal de Justiça* (STJ) federal superior court.

The killing of Sister Dorothy Stang, in February 2005, was the first case to be submitted for federalisation. It was submitted in the context of the high levels of killings of land activists and human rights defenders in the state of Pará and the impunity that sustains this. The STJ ruled that the case did not match all necessary criteria, namely that the state had shown inability or reluctance to handle the case, deeming it too soon to prove this. It is clear that this process will depend on a case by case evaluation and it remains to be seen whether it will be implemented effectively by the federal attorney general and the STJ.

Public security Reform

In 2003, the newly elected government of President Luiz Inácio Lula da Silva set out a policy of public security reform, under its National Public Security Plan, based on human rights principles and controlled through the transfer of federal funds. This included mechanisms for strengthening investigative policing; introducing community based policing and improving oversight mechanisms of the police. However, two years later these reforms have not effectively been implemented and senior members of the federal government have done little to counter this impression, avoiding questions of public security reform as much as possible.

Reforms by the government to control the carrying of weapons as well as a proposed referendum to control the sale of arms are important steps in trying to combat levels of armed violence. However, illegal trafficking of arms and continued misuse of firearms by law enforcement officers need to be addressed if a serious decline in firearm related lethality is sought.

Article 7 – Torture (Paragraphs 134-145 of the State report)

Torture by state agents remains widespread and systematic. The majority of cases continue unreported, uninvestigated and unpunished. The Brazilian government has recognised that torture is often used as a method of investigation, punishment or extortion by members of the law enforcement forces.⁽⁹⁾ It is carried out at the point of arrest, in police stations, juvenile detention centres and prisons. Victims continue to be mainly poor, young black or mixed race males who are alleged criminal suspects.

Despite the introduction of the 1997 Torture Law, only a few prosecutions have taken place in relation to the number of reported cases, with even fewer resulting in convictions. Information about prosecutions of state agents for torture, as well as other human rights violations, is difficult to obtain, as much of the information about such cases is held as confidential by the courts. The Torture Law is unusual in that it also applies to non state actors. Information presented to Amnesty International about prosecutions under this law indicates that these are more likely to be successfully brought against private individuals, and not state employees. This fact also makes the scant data that does exist on prosecutions of limited value as it does not differentiate between prosecutions against state actors and private individuals. Impunity continues to be the norm. In 2004, an opinion poll showed that 24% of those interviewed in São

Paulo city thought that torture was an acceptable means of criminal investigation, a rise of 4% over a similar opinion poll conducted in 1997. (10)

In 2001, Amnesty International launched a campaign against torture in Brazil. This campaign was directed against shortcomings of the criminal justice system, which have contributed to the continued practice of torture and the impunity of those who perpetrate it. Such shortcomings can be identified at every stage of the system. While law enforcement agencies are largely responsible for acts of torture, those bodies responsible for investigating and reporting acts of torture, including internal police investigation units [*corregedorias*], forensic medical units [*institutos medico legais*], the public prosecutors office [*ministerio público*], and the judiciary have for the most part failed to do this either due to lack of resources, negligence or complicity. Certain dedicated public prosecutors have proven to be a notable exception to this rule, as are those working in the human rights department in the state of Minas Gerais, and those prosecutors responsible for monitoring São Paulo's juvenile detention system the *Fundação Estadual do Bem Estar do Menor*, (FEBEM) Foundation for the Well-Being of Minors, where systematic work has contributed to increased prosecutions.

Those states that have police ombudsman's offices have to some extent managed to document the extent of the crime. However, given the limited powers bestowed to the offices, especially the lack of investigative powers, the lack of any real independence both financial and institutional, and the ineffectiveness of those in office, they have also failed to contribute to a reduction in the incidence of torture. Consequently, visits to places where torture is thought to occur and the reporting of cases is often limited to those civil society groups able to obtain access.

Government campaigns

In the wake of the visit by the UN Special Rapporteur on Torture in September 2000, the federal government launched a campaign against torture. However, the campaign did not address the fundamental causes of the crime, nor did it seek to improve mechanisms for safe and effective reporting and prosecution of cases, as recommended in the Special Rapporteur's report.(11) The government focused on the creation of a very short and limited publicity campaign and the creation of a telephone hotline, apparently to help anonymous reporting, with a view to collecting data. However, Amnesty International was repeatedly informed that from its inception the hotline failed to meet the minimum criteria necessary for investigations of reported cases and protection of victims. The authorities described it essentially as a means of collecting data on the practice of torture, though even for this the campaign had its limitations.

Although the present federal government has claimed that the "SOS Torture" hotline has proved an effective means of monitoring torture, the data collected by the hotline is not a reliable indicator of levels of torture in a given place, as higher numbers of calls may be due to a variety of factors, such as higher awareness of the existence of the hotline or better access to telephones. Given the anonymous nature of the hotline, it did not contribute to the effective reporting or investigation of alleged cases of torture. The "Dial 100" Human Rights Hotline mentioned by the federal government (paragraph 140) has not yet been established and Amnesty International is concerned that once again it will not provide a safe and effective mechanism for the reporting and investigation of human rights violations.

Since the current federal government came to office in 2003, there have been repeated promises that the national campaign for fighting torture, launched in 2001, was to be re-started. However, this initiative appears to have been made a low priority especially since the federal human rights secretariat recently lost its ministerial status.(12) In his first published interview,(13) the new federal human rights secretary made no mention of the national campaign for fighting torture.

There is still no comprehensive or reliable statistical monitoring of implementation of the Torture Law. In 2001, the national council of state public prosecutors offices collected data on prosecutions and convictions under the Torture Law, providing information for the federal government's submission to the Committee against Torture. However, the information at the time was limited and has still to be updated. A recent report cited figures showing that in the state of São Paulo, which has the highest prison population in the country, there had only been 12 convictions under the Torture Law between 1997 and 2004, most of these for non-state actors. (14) A national database that accurately reflects levels of torture and records prosecutions and condemnations brought under the 1997 Torture Law should be set up as a matter of priority.

Amnesty International welcomes plans by the Brazilian government to ratify the Optional Protocol to the Convention Against Torture. The establishing of an independent national preventive mechanism for monitoring torture in places of detention, if effective, should prove a powerful tool in the fight against torture.

Article 10 - Conditions of detention (paragraphs 181-205 of the State report)

Brazil's detention system has improved little since 1996. Conditions still fail to match minimum international standards and overcrowding, as well as poor health and sanitary standards, are the norm as prison populations continue to grow at rates as stated by the government in paragraph 79. Torture and ill-treatment continue to be means of punishment, control and humiliation of detainees and occur in connection with widespread corruption by prison guards and police officers. Deaths in custody are a constant problem, either at the hands of prison guards or police officers, or more predominantly as the result of prisoner on prisoner violence largely the consequence of gang or drug faction conflicts reportedly facilitated by corrupt prison guards. Prison riots, reportedly the result of poor conditions, are also a constant. Pre-trial detention centres and police holding cells continue to be used as *de facto* prisons, where untried detainees can wait for months and even years for a trial, and where many convicted prisoners continue to be held contrary to the Law of Penal Executions.

Prison monitoring

Amnesty International has also been extremely concerned by attempts, at different times, and in different states, to interfere with the rights of human rights groups or officially authorised prison visiting bodies such as the *conselho da comunidade* [community council, a prison inspection body made up of the authorities and civil society] to visit prisons and speak to detainees. Amnesty International has received specific reports of such cases occurring in São Paulo, where human rights groups were blocked from visiting the FEBEM juvenile detention system, most notably in September 2003 when the authorities tried to block the then UN Special Rapporteur on Extra-Judicial, Summary and Arbitrary Executions from entering a FEBEM unit. Similarly Amnesty International was informed that in Rio de Janeiro the state government placed pressure on the *juiz da vara de execuções penais* [judge of the penal executions court] to replace the president of the *conselho da comunidade* who was widely critical of the state's prison system.

Amnesty International has also been informed of persistent attempts to block human rights groups from visiting detainees held in police stations in the state of São Paulo. Members of *Ação Cristã pela Abolição da Tortura* (ACAT), Christian Action for the Abolition of Torture received a report that on 28 April 2005, 22 detainees of at the 39th *Distrito Policial* (Police Station), were reportedly beaten by members of the military police's shock troops. However, when they tried to visit the police station on 23 May, they were reportedly refused entry on the grounds that the police feared there might be a rescue attempt made for the detainees. Requests to see individual detainees were also reportedly refused. Complaints made to the State Secretariat of Public Security as to the decision remain unanswered at time of writing.

Internal disciplinary measures

In an attempt to combat the level of prison riots, prisoner on prisoner violence and gang related violence in prisons, the São Paulo authorities and subsequently the federal authorities introduced the *regime disciplinar diferenciado* (RDD),(15) differentiated disciplinary regime and also the *regime disciplinar especial* (RDE), special disciplinary regime. The RDD allows judges to sentence those who have committed a crime within the prison system up to a year in a high security facility where detainees are held in solitary confinement. The RDE is an interim step which can be taken by prison directors whereby they can transfer those committing lesser infractions to special prison units. Several bodies, including São Paulo's bar association, have denounced both the RDD and RDE as contrary to the human rights of detainees. Global Justice in its 2003 report stated that, "beginning in the 1990s the construction of a culture of fear has been making penal legislation suffer setbacks and becoming increasingly more rigid, being the Differentiated Disciplinary Regime (Regime Disciplinar Diferenciado, RDD), the best example of this movement."(16)

While the levels of prison riots did diminish for a time, from 33 in 2001 to zero in 2003 in São Paulo,(17) it is not clear that this is only due to the introduction of these punishment systems, especially as in 2004 the number of riots rose again to four and continued to occur in 2005 (see below). Amnesty International has also received reports of people being detained in solitary confinement for periods much longer than the stipulated 365 days, and also of detainees being sent to maximum security prisons with RDD systems prior to having been in the prison system, thus having committed no infraction within the system.

In July 2004, an Amnesty International delegation accompanied by local human rights groups visited the RDE unit at Hortolandia, in the state of São Paulo. There, detainees were handcuffed upon any contact with a guard. The removal of one detainee from a cell meant the prior handcuffing of all those in the cell. Detainees waiting to be seen by medical staff had their hands cuffed behind their backs for several hours, contrary to international standards.(18) Many detainees complained to Amnesty International that the imposition of RDE on prisoners was arbitrary; when challenged, the prison director was unable to inform delegates what legal protection or appeals system detainees had against such punishments.

Prison riots and deaths in custody

Violent riots do still occur within the prison system. In May 2004, 30 detainees were killed during conflict between rival drug factions in the Benfica detention centre. This followed a poorly planned attempt by the authorities to end the separation of rival factions in the prison.

Similarly, in June 2005, during a riot in Zwinglio Ferreira detention centre in Presidente Venceslau, São Paulo state, five detainees were beheaded by other prisoners from opposing prison gangs. Images of the decapitated heads were displayed in the national media, further feeding public fears about the uncontrollability of Brazil's prison system.

Amnesty International has received consistent reports of torture, ill-treatment, deaths in custody, riots, corruption and of cruel, inhuman and degrading conditions in the prison system of Espírito Santo and the prison of Urso Branco in the state of Rondônia. Due to extreme levels of violence within these prison systems, guard duties have been taken up by armed military police officers, contrary to the Law of Penal Executions which prohibits the use of armed guards within a prison.

As a result of the numerous cases of prisoner on prisoner killings and consistent reports of torture and ill-treatment in the Urso Branco prison since January 2002, the Inter-American Commission and later the Inter-American Court requested the government implement cautionary measures(19) to ensure the protection of those under the state's care. According to reports from local human rights groups and members of the Catholic Church, federal funds sent to improve conditions in the prison and to build other prisons, were not properly monitored by the state or federal authorities.

Protection of Children and Adolescents (Paragraphs 185-202 of the State report)

Amnesty International has received persistent reports of poor conditions, torture and ill-treatment in juvenile detention centres around the country. Of particular concern, though, has been the FEBEM juvenile detention system in São Paulo which Amnesty International has been documenting and denouncing for some time.(20)

In February 2003, a FEBEM director described the situation in São Paulo's juvenile detention system as follows: "*employees are letting the place fall to pieces to see how long we can hold on for. They provoke arguments between detainees, promote those among them who exercise negative leadership, facilitate escapes and incite riots. They open the cells and run away. By maintaining a climate of instability they justify repression*".(21)

If the juvenile justice system in São Paulo is taken as an example of how the Brazilian state is dealing with "adolescents at risk" who are in state custody, there is cause for serious concern. The state authorities have failed to provide the minimum proposed socio-educational measures heralded by the *Estatuto da Criança e do Adolescente* (ECA), statute of the child and adolescent, for many if not most FEBEM detainees. Torture and ill-treatment in juvenile detention centres in the state, which hold 6000 children and adolescents, are widespread and systematic. Between January 2001 and July 2005, 269 investigations into incidents of torture were passed onto the police by the state public prosecutor's office. Seventeen separate criminal proceedings have been brought against 227 FEBEM *monitores* (monitors). Out of these, 17 *monitores* have been convicted at first instance, while according to latest reports others await trial.(22)

Attempts to tackle human rights violations in the FEBEM have largely failed, and this year, after a failed attempt by the FEBEM president to root out and punish corrupt employees, there were large scale disturbances, resulting in numerous riots, many reportedly instigated by FEBEM staff, which saw the destruction of several FEBEM units, deaths of detainees and the transfer of juveniles into the adult prison system. The president of the FEBEM, who led the crackdown against corrupt and violent *monitores* has subsequently resigned, and human rights groups have reported a recent increase in repressive treatment of adolescents, through the use of collective punishment, torture and beatings.

Elements within the media in São Paulo treat juvenile justice as a political "hot potato", and riots and disturbances, even when acknowledged to be the result of instigation by corrupt employees, are sometimes cited as a failure by the government to cope with the so-called "public security crisis" in the city, and are met with calls for tougher treatment of juvenile offenders. Public anger at high profile cases of adolescent killers who receive perceived soft sentences under the ECA has led to calls for a reduction in the age of penal responsibility, an issue often exploited by populist politicians.

Amnesty International notes that efforts were made by the authorities to allow some civil society groups to monitor detention centres. Nevertheless, these efforts were hampered in some cases, especially by individual directors of units who have been known to prohibit access, reportedly on grounds of security.

Article 19 – Right to freedom of expression (paragraphs 260 -265 from the state report)

Human rights defenders

Amnesty International has consistently been reporting and denouncing the threats, intimidation, attacks and killings suffered by human rights defenders in Brazil. Those working for the protection of the human rights of others, especially those from most marginalised groups, such as socially and economically excluded communities as well as rural and indigenous groups, have suffered death threats, intimidatory legal measures including politically motivated arrests, defamation suits, and killings. Until recently, state and federal authorities have either shown reluctance or an inability to provide measures to ensure the suitable and effective protection of those under threat.

In August 2004, the government took an important step by launching the First National Plan for the Protection of Human Rights Defenders. This plan was based on consultation with members of the state and federal authorities and civil society. However, in its letter of April 2005 to the National Secretary of Human Rights, the Brazilian Committee of Human Rights Defenders expressed their concern that despite consistent requests on their part, the plan still lacked the necessary infrastructure for its effective implementation. They expressed particular concern at the news that the federal government intended to implement the plan in the state of Pará, following the death of Sister Dorothy Stang, without prior dialogue with those at risk to ascertain their needs.

Valdenia de Paulino, a lawyer and a human rights defender in the socially marginalised community of Sapopemba in São Paulo, suffered extensive death threats for her work on the systematic violations by police officers in her community. In 2004, Valdenia de Paulino became the first human rights defender to receive protection from the federal police under the national human rights defenders plan. However, after a brief period she was forced to leave the country for a time when the protection she received was not deemed effective.

The federal government has also promised to initiate a training project for special units within state police forces to provide protection for defenders, claiming that federal police forces do not have the capacity to provide the service effectively. This has caused some concern amongst human rights defenders who in most cases are under threat from members of the very state police forces who are proposed to protect them.

Elizabeth Maria de Souza began to suffer threatening behaviour from members of Rio de Janeiro's military police after taking up the campaign for her 13 year-old brother, who was reportedly extra-judicially executed on 6 January 2004. Elizabeth's brother, along with four other youths, was allegedly killed by military police officers in the *favela*(23) of Cajú

in the north of Rio de Janeiro. Since taking up the campaign, Elizabete informed Amnesty International that her house was constantly watched by police, her meetings with other relatives were filmed by men in unmarked cars and she has received veiled threats. As a result of these threats, Elizabete informed Amnesty International she was unable to sleep at night as she feared for the safety of her three daughters, only resting for brief periods in the morning before going to work. She further said that she was now looking for a means to take her daughters away from the community so that they could be safe.

Article 26 – Equality of rights before the law and the right to protection from the law without discrimination (paragraphs 325-350 from the state report)

Discrimination and public security

The provision of public security in Brazil has long been based on both socio-economic as well as racial discrimination. Extreme levels of armed violence have led to the persistent use of repressive methods of policing which have contributed to the widespread and systematic violations described above. However, consistent with this process has been the provision of public security on the basis of protection of part of the community, while socially excluded communities have suffered containment, invasion and repression.

Amnesty International has researched and documented police practices which have led to what many human rights groups in Brazil have described as the "criminalisation of poverty".(24) These are practices which have been shown to specifically target socially excluded communities, dismissing whole communities as criminal while conversely also contributing to levels of criminality and violence within them. These include the use of generalised warrants which allow police to search whole communities at one go, thus making all residents automatically suspects contrary to their legal rights. In its report on police killings in Rio de Janeiro, Global Justice underlines the illegality of these warrants when citing a ruling by Judge Domingos de Almeida Neto, of the 29th Criminal Court of Rio de Janeiro, who stated, " You cannot give the investigator a blank cheque [generalised warrant], especially when you are dealing with constitutional guarantees. All evidence derived from such a warrant will be void."(25) However, many judges continue to issue such warrants. Under articles 240 and 340 of the Criminal Penal Code, a search warrant entails a "residence or personal" search, and, "as precisely as possible the house where the search will be conducted, or in the case of an individual search, the name of the person who is to be searched or signs that identify him," in addition to "mentioning the motives and ends of the search."

Other police practices include mounting intimidatory patrols or entering communities shooting randomly, often leading to the killing of innocent bystanders. Also of concern are the extreme levels of corruption, which have contributed to the levels of criminality and violence in the communities. This can range from petty extortion and verbal abuse, through sexual intimidation and harassment, to direct involvement in drug and gun trafficking. Academic studies consistently show that socially excluded communities suffer much higher levels of violent crime, especially homicides, as a result.(26)

At five o'clock in the morning of 28 August 2005 members of São Paulo's military police invaded Jardim Elba, a *favela* in Sapopemba in the east of São Paulo. According to reports the police entered by helicopter, cars and on horse-back, blocking the narrow alley ways and hindering people from going to work. According to press reports the authorities later informed community leaders that the operation, codenamed *Saturation*, was aimed at combating drug trafficking in the community and ensuring closer links between residents and the police. Amnesty International has been informed by the Sapopemba human rights centre, that as part of this operation numerous discriminatory acts and human rights violations have occurred, including: entering houses without proper warrants; abusive and violent searches of women; and the confiscation or discarding of residents' packed lunches. Amnesty International was also informed that a five year old girl had her leg broken after being reportedly trodden on by a military police officer. Members of the Sapopemba human rights centre also informed Amnesty International that the operation appears to follow a pattern of similar operations taking place in *favelas* across the city of São Paulo over the last few weeks. Human rights activists from Sapopemba expressed their concern, to Amnesty International, at the abusive and discriminatory methods of security being imposed on socially excluded communities which failed to address the needs of its residents.

Several studies have also shown, as an extension of this, that Afro-Brazilian communities are more likely to be victims of homicide and especially killings by the police. UNICEF's fourth report mapping violence in Brazil, for example, has shown that on national average in 2002 whites suffered a homicide rate of 39.2 per 100,000, while the country's Afro-Brazilian population had a homicide rate of 68.4 per 100,000.(27) A recent study by Candido Mendes University in Rio de Janeiro, based on national census figures, stated that the number of Afro-Brazilian homicide victims was 87% higher than those of white Brazilians. Further analysis showed that the number of black Brazilian homicide victims was 21% higher than that of mixed race.(28) Studies by both São Paulo's police ombudsman's office as well as the Rio de Janeiro based research centre ISER of police lethality cases show that Afro-Brazilians make up the majority of the victims in these cases.

Most Afro-Brazilians suffer discrimination on two levels, both as a result of their race and by the fact that they make up the largest percentage of Brazil's poorer socio-economic groups. As such, they are more likely to suffer human rights violations at the hands of the police. There are also indications that indigenous peoples and internal immigrants from the north-east of the country are treated differently by the police forces. The following cases indicate these reported trends.

On 3 February 2004, Flávio Ferreira Sant'Ana, a black dentist from São Paulo, was shot in the head and killed after

being detained by military police officers searching for a thief. The victim of the theft resisted attempts by the police to coerce him into covering up the killing, and refused to identify Flávio Sant'Ana as the alleged thief. The officers involved were reported to have planted a gun by his body, stating that he was killed while resisting arrest. There were strong indications that the killing was racially motivated. However, it is also apparent that it was Flávio Sant'Ana's position as a dentist that differentiated his case from so many other similar ones, reportedly contributing to the public's strong reaction to the killing. This highlighted how a combination of both social and racial discrimination underlies many of the human rights violations perpetrated by members of the police. In August 2005, three police officers stood trial, accused of the murder of Flávio Sant'Ana.

In August 2005, a jury acquitted the military policeman accused of killing the indigenous man Raimundo Silvino of the Shanenawa people in Feijó, Acre state in July 1996. According to two other indigenous men who witnessed the incident, Raimundo Silvino was killed because the off-duty policeman saw him hugging a non-indigenous child, the son of a woman who worked with the Shanenawa. Despite attempts to move the case to a federal court, it was heard locally. CIMI, the indigenist missionary council, has appealed against the decision.

Second Optional Protocol of the ICCPR

In relation to the death penalty, Brazil is abolitionist for ordinary crimes. However, it is amongst a list of countries which is still to ratify the 2nd Optional Protocol of the ICCPR. Amnesty International believes that it is essential for a country like Brazil to take the lead by signing and ratifying the only international treaty of worldwide scope to prohibit executions for ordinary crimes at least, and thus help strengthen the growing global consensus against the death penalty as an unacceptable violation of human rights.

(1) "Commentary on Brazil's First Report on Implementation of the International Covenant on Civil and Political Rights" Amnesty International, AMR 19/26/96, July 1996.

(2) Information supplied by state secretariats for public security, see: www.ssp.sp.gov.br & www.ssp.rj.gov.br

(3) See: Ouvidoria da Policia do Estado de São Paulo Relatório Anual de Apresentação de Contas 2001, pg 85 and Cano, Ignácio The Use of Lethal Force by Police in Rio de Janeiro ISER, 1997 pgs 68-69.

(4) Law 10,826 of the 22 December 2003

(5) On 5 November 2004, the judge of the 4a Vara da Justiça Federal in Espírito Santo passed the sentence against Escuderie Detetive Le Cocq.

(6) 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 paras 143-146

and Rapport de la Rapporteuse Spéciale, Mme Asma Jahangir, Additif Mission au Brésil, E/CN.4/2004/7/Add.3 para 23

(7) Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy. Addendum Mission to Brazil. E/CN.4/2005/60/Add.3, 22 February 2005, para 24

(8) "Dispõe sobre infrações penais de repercussão interestadual ou internacional que exigem repressão uniforme, para fins do disposto no inciso I do § 1º do art. 144 da Constituição prevê, em seu artigo III a atuação da polícia federal em casos de violações de direitos humanos, que a República Federativa do Brasil se comprometeu a reprimir em decorrência de tratados internacionais de que seja parte."

(9) "Consideration of reports submitted by states parties under article 40 of the covenant – Second Periodic report Brazil" CCPR/C/BRA/2004/2, 11 April 2005, Paragraph 136

(10) Poll conducted in February 2004 by Datafolha, a recognised Brazilian national polling organisation.

(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 169

(12) The ministerial status of the Special Secretariat for Human Rights was reduced along with several other ministries following widespread ministerial reform in July 2005. Attempts to move it from the Presidency to the Ministry of Justice, further reducing its status, were averted following protests from Brazil's human rights movement.

(13) "Quero resgatar a secretaria de DH ao patamar que ela ocupava", Interview with Mário Mamede, Federal Human Rights Subsecretary, Agencia Carta Maior 24 August 2005

(14) Análise do Cumprimento pelo Brasil das Recomendações do Comitê da ONU contra a Tortura. Programa dhInternacional – MNDH-NE & GAJOP, July 2005.

(15) The RDD was introduced as article 52 of Law 10,792 of December 2003, which altered the National Prison Law.

(16) Global Justice Human Rights in Brazil 2003 – Global Justice Annual Report May 2004, pg 23.

(17) São Paulo State Secretariat for Public Security's web site: <http://www.sap.sp.gov.br/dti/estatisticas/rebeliao.htm>

(18) Contrary to articles 33 and 34 of the "Standard Minimum Rules for the Treatment of Prisoners - Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977"

(19) See http://www.corteidh.or.cr/seriee_ing/index.html#urso

(20) See: AI reports: Brazil - Nobody here sleeps safely: Human rights violations against detainees. AI index AMR: 19/09/99, 23 June 1999'

Brazil: A waste of lives - FEBEM juvenile detention centres, São Paulo' AI index: AMR 19/14/00, July 2000

(21) "Máfia domina Franco da Rocha, diz diretor" Estado de São Paulo, 27 February 2003.

(22) Information passed to Amnesty International by members of the Children and Adolescents' department of São Paulo state Public Prosecutor's Office.

(23) Favela is the Brazilian term for shanty town or slum.

(24) Global Justice, Rio Report: Police Violence and Public Insecurity, 2004, p 19

(25) Reasons for judgement of Judge Joaquim Domingos de Almeida Neto from the 29th Criminal Court, dismissing the request from the Public Prosecutor for a generalised warrant, in case 2003.001.090811-5, August 6 2003. Cited in Global Justice, Rio Report: Police Violence and Public Insecurity, 2004, pg 31

(26) See: Dowdney, Luke Children of the Drug Trade: A case study of children in organised armed violence in Rio de Janeiro ISER, Rio de Janeiro 2003 pgs 268 – 270

Nucleo de Estudos de Violencia, University of São Paulo website http://www.nev.prp.usp.br/scripts/conteudos/pg3_5.html?tipo=0&imagens=6&mapa=33&img_i=8

Beato, C, "Crime and Social Policies in Latin America: Problems and Solutions" Woodrow Wilson Centre, Update on the Americas, 2002, No 7, p. 3.

(27) Waiselfisz, Juilo Jacobo (July 2004) Mapa da Violência IV UNESCO, pg 59

(28) Soares, Gláucio & Borges, Doriam (October 2004) "A cor da morte" Ciência Hoje , vol. 35, nº 209, , pg 28

Previous