

## **BRAZIL**

### **CAT Article 20 Examinations Concerning Systematic Torture**

**CAT, A/63/44 (2008)**

#### **CHAPTER V. ACTIVITIES OF THE COMMITTEE UNDER ARTICLE 20 OF THE CONVENTION**

##### **A. General information**

59. In accordance with article 20, paragraph 1, of the Convention, if the Committee receives reliable information which appears to contain well founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and, to this end, to submit observations with regard to the information concerned.

60. In accordance with rule 69 of the Committee's rules of procedure, the Secretary General shall bring to the attention of the Committee information which is, or appears to be, submitted for the Committee's consideration under article 20, paragraph 1, of the Convention.

61. No information shall be received by the Committee if it concerns a State party which, in accordance with article 28, paragraph 1, of the Convention, declared at the time of ratification or accession to the Convention that it did not recognize the competence of the Committee provided for in article 20, unless that State party has subsequently withdrawn its reservation in accordance with article 28, paragraph 2, of the Convention.

62. The Committee's work under article 20 of the Convention continued during the period under review. In accordance with the provisions of article 20 and rules 72 and 73 of the rules of procedure, all documents and proceedings of the Committee relating to its functions under article 20 of the Convention are confidential and all the meetings concerning its proceedings under that article are closed. However, in accordance with article 20, paragraph 5, of the Convention, the Committee may, after consultations with the State party concerned, decide to include a summary account of the results of the proceedings in its annual report to the States parties and to the General Assembly. Such summary account is herewith provided in connection with Brazil.

63. In the framework of its follow up activities, the Rapporteur on article 20, continued to carry out activities aimed at encouraging States parties on which enquiries had been conducted and the results of such enquiries had been published, to take measures to implement the Committee's recommendations.

##### **B. Summary account of the result of the proceedings concerning the inquiry on Brazil**

64. Brazil ratified the Convention on 28 September 1989. At the time of ratification it did not

declare that it did not recognize the competence of the Committee provided for in article 20 of the Convention, as it could have done under article 28 of the Convention. Accordingly, the procedure under article 20 is applicable to Brazil.

65. In November 2002, the non-governmental organizations World Organization against Torture and Action by Christians against Torture (hereinafter, the "NGOs") submitted information to the Committee on the alleged systematic practice of torture in Brazil and requested the Committee to examine the situation in Brazil under article 20 of the Convention. This information summarized a previous report prepared by seven Brazilian NGOs working with prisons and detention centres concerning allegations of torture in the State of São Paulo for the period between 2000 and 2002.

66. During its twenty-ninth session in November 2002, the Committee examined the information submitted by the NGOs in private meetings and considered that the information was reliable and that it contained well-founded indications that torture was being systematically practised in Brazil.

67. At its 591st (closed) meeting, on 21 November 2003, the Committee decided to undertake a confidential inquiry and designated Mr. Claudio Grossman, Mr. Fernando Mariño and Mr. Ole Vedel Rasmussen to conduct the inquiry. The Committee invited the Government of Brazil to cooperate with the Committee in the conduct of the inquiry, and accordingly, to appoint an accredited representative to meet with the members designated by the Committee; provide the latter with any information that they or the Government might consider useful; and indicate any other form of cooperation which might facilitate the conduct of the inquiry. This decision was transmitted to the Minister of Foreign Affairs of Brazil on 4 December 2003.

68. The Government of Brazil requested the postponement of the visit twice and, by note verbale dated 3 February 2005, the State party informed the Committee that it accepted its visit and agreed that it take place in July 2005. The visit took place from 13 to 29 July 2005. It was undertaken by Mr. Fernando Mariño Menendez and Mr. Claudio Grossman. Mr. Rasmussen was unable to participate in the visit.

69. On 1 June 2006, the Committee adopted the "Report on Brazil, produced by the Committee against Torture, under article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/36/R.1/Add.1)" and, in accordance with article 20, paragraph 4, of the Convention, decided to transmit it to the Government of Brazil. At the same time, the Committee invited the Government to inform it of the action taken with regard to its findings and in response to its conclusions and recommendations.

70. In its conclusions, the Committee noted that the Government of Brazil fully cooperated with the Committee's visit, constantly expressed its awareness and concern with the seriousness of the existing problems, as well as its political will to improve. However, the Committee noted that tens of thousands of persons were still held in *delegacias* and elsewhere in the penitentiary system where torture and similar ill-treatment continued to be meted out on a widespread and systematic basis.

71. On 16 April 2007, the Government submitted the information requested, whereby it informed the Committee that Brazil was already complying or considering compliance with the recommendations contained in the report. It stated that many of the measures responding to the Committee's recommendations were already being taken on the initiative of the Brazilian governmental authorities. The Government noted that the Committee's recommendations were significantly useful for the prevention and the struggle against torture and other cruel, inhuman or degrading treatment and punishment in many circumstances and hoped to deepen and expand its dialogue with the Committee on that account.

72. On 22 November 2007, the Government informed the Committee that it agreed to the publication of the full text of the report together with the Government's response. Both are contained in document CAT/C/39/2.

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**CAT/C/39/2 (2009)**

**Report on Brazil Produced by the Committee under Article 20 of the Convention and Reply from the Government of Brazil**

**List of acronyms**

|        |  |
|--------|--|
| CAJE   | <i>Centro de Atendimento Juvenil Especializado</i> , Centre for Specialized Juvenile Attention;          |
| FEBEM  | <i>Fundação Estadual do Bem-Estar do Menor</i> , State Foundation for the Well-Being of Minors;          |
| DEGASE | <i>Departamento Geral de Ações Sócio-Educativas</i> , General Department for Socio-Educational Measures; |
| RDD    | <i>regime disciplinar diferenciado</i> , differentiated disciplinary regime;                             |
| RDE    | <i>regime disciplinar especial</i> , special disciplinary regime.  |

**PART ONE: REPORT OF THE COMMITTEE**

**I. INTRODUCTION**

1. In accordance with article 20 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”) if the Committee against Torture (hereinafter referred to as “the Committee”) receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State party, the Committee shall invite that State party to cooperate in the examination of the information and, to this end, to submit observations with regard to the information concerned. The Committee may subsequently decide to designate one or more of its members to undertake a confidential inquiry which may include, with its agreement, a visit to the territory of the State party concerned. The proceedings of the Committee under these processes are confidential and at all stages the cooperation of the State party is sought. After the proceedings have been completed, the Committee may, after consultation with the State party concerned, decide to include a summary account of the results in its annual report to the States parties to the Convention and the General Assembly.

2. Brazil ratified the Convention on 28 September 1989. At the time of ratification it did not declare that it did not recognize the competence of the Committee provided for in article 20 of the Convention, as it could have done under article 28 of the Convention. The procedure under article

20 is, therefore, applicable to Brazil.

## **II. DEVELOPMENT OF THE PROCEDURE**

3. In November 2002, the non-governmental organizations World Organization against Torture and Action by Christians against Torture (ACAT-Brazil) submitted information<sup>1</sup> to the Committee on the alleged systematic practice of torture in Brazil and requested the Committee to examine the situation in Brazil under article 20 of the Convention. This information summarized a previous report prepared by seven Brazilian NGOs working with prisons and detention centres concerning allegations of torture in the State of São Paulo for the period between 2000 and 2002.<sup>2</sup>

4. During its twenty-ninth session in November 2002, the Committee examined this information in private meetings. The Committee considered that the information was reliable and that it contained well-founded indications that torture was being systematically practised in the territory of Brazil.

5. On 22 November 2002, the information received from the non-governmental organizations (hereinafter referred to as “NGOs”) was submitted to the State party for its comments by 28 February 2003. At its thirtieth session in May 2003, the Committee noted that no response had been received and by letter of its Chairman, dated 16 May 2003, reiterated its request to the State party to submit its observations on the allegations by 1 September 2003. The State party has not submitted, to date, any observations on these allegations.

6. At its 591st (closed) meeting, on 21 November 2003, the Committee decided to undertake a confidential inquiry and designated Mr. Claudio Grossman, Mr. Fernando Mariño and Mr. Ole Vedel Rasmussen to conduct the inquiry. The Committee invited the Government of Brazil to cooperate with the Committee in the conduct of the inquiry, and accordingly, to appoint an accredited representative to meet with the members designated by the Committee; provide the latter with any information that they or the Government might consider useful; and indicate any other form of cooperation which might facilitate the conduct of the inquiry. This decision was transmitted to the Minister for Foreign Affairs of Brazil on 4 December 2003.

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<sup>1</sup> “Information to the Committee against Torture submitted under article 20 of the Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment concerning the situation in Brazil”, World Organization against Torture and ACAT Brazil, 4 November 2002.

<sup>2</sup> “Follow-up to torture allegations in the State of São Paulo 2000/2002”, a joint collaboration between the following NGOs: Ação dos Cristãos para a Abolição da Tortura ACAT/Brazil; Pastoral on Detention Centres/SP; Centre for Global Justice; AMAR; AFACE; Torture Never Again; Psychotherapist’s Union/SP.

7. The Government of Brazil requested the postponement of the visit twice as the dates proposed by the Committee (i.e. July 2004 and January 2005) did not allow enough time to prepare an adequate programme of work for the experts. By note verbale dated 3 February 2005, the State party informed the Committee that it accepted the visit of the Committee and agreed that it take place in July 2005.

### **III. VISIT TO BRAZIL FROM 13 TO 29 JULY 2005**

#### **A. Activities of the Committee members during the visit**

8. The visit, which took place from 13 to 29 July 2005, was undertaken by Mr. Fernando Mariño Menendez (Chairperson of the Committee) and Mr. Claudio Grossman. Mr. Rasmussen was unable to participate in the visit. The Committee members were assisted by Ms. Jane Connors, Ms. Mercedes Morales and Ms. Marina Narváez, staff members of the Office of the United Nations High Commissioner for Human Rights, and four interpreters. In addition, during their stay in Rio de Janeiro and São Paulo, they were accompanied by Mr. Duarte Nuno Vieira, medical expert.

9. Two inquiry teams constituted by the Committee members, members of the Secretariat of the Committee and interpreters visited the following states: the Federal District of Brasilia, São Paulo, Rio de Janeiro, Minas Gerais and Bahia. The programme of activities was prepared by the Committee members conducting the inquiry in cooperation with the Secretariat of the Committee, the authorities of Brazil and the Resident Representative of the United Nations and his staff at the Office of the United Nations Development Programme in Brazil.

10. In the Federal District of Brasilia, the Committee members met with several members of the Human Rights Commission of the Federal House of Representatives; the Vice-President of the Federal Supreme Court; the Secretary for Social Welfare of the Federal District; representatives of the Ministry of Justice and the National Penitentiary Department; representatives of the National Secretary for Public Security; the Secretary for Public Security of the Federal District; representatives of the Special Secretary for Human Rights, including the Coordinator General of the Permanent Commission against Torture and Institutional Violence; the President of the Superior Court of Justice; representatives of the Ministry of Foreign Affairs; the Vice-Director of the Public Prosecutor's Association; and the Federal Prosecutor for Human Rights and their staff.

11. In São Paulo (state of São Paulo), they held discussions with: the Police Ombudsman (*Ouvidor*); the Secretary for Penitentiary Administration and Ombudsman (*Ouvidor*); the Deputy Secretary for Public Security; Superintendent of the scientific police; the Commander of the Military Police; the Secretary of Justice; representatives of the Public Prosecutor's Office; the President of the Court of Justice; the *corregedor* (head of the internal affairs office) for the civil police; and a representative of the Public Prosecutor's Office for Children and Adolescents.

12. In Rio de Janeiro (State of Rio de Janeiro), the Committee members met with: the Vice-Secretary for Children and Youth; the Director General of the scientific police; the General Public Prosecutor and other representatives of his Office, a representative of the Secretary for Public



Security, the *corregedor* (head of the internal affairs office) of the military police and a representative of the military police; the State Secretary for Human Rights; the Police Ombudsman (*Ouvidor*); the State Secretary for Penitentiary Administration and other representatives of the Secretariat, including the Ombudsperson; the *subcorregedora* of the civil police and the Chief of the civil police; and the President of the Supreme Court of Justice of the State of Rio de Janeiro.

13. In Belo Horizonte (State of Minas Gerais), the Committee members held meetings with: the Police Ombudsman (*Ouvidor*); the Deputy Secretary of Social Defence and the Director of Quality Control of the same Secretariat; the General Commander of the military police; the Chief of the civil police, the Chief of staff of the civil police and members of the Superior Council of the civil police; and Justices (*desembargadores*) of the Justice Tribunal.

14. In Salvador da Bahia (State of Bahia) they met with: the Superintendent of the forensic police; the Secretary of Justice and Human Rights of the Government of the State of Bahia who was accompanied by the Secretary for Public Security, Chief of Staff, the Undersecretary for Human Rights and the Undersecretary for Criminal Affairs; the Vice President of the Justice Tribunal of the State of Bahia; the Public Prosecutor General; the Governor of the State of Bahia; the Chief of the military police; the Chief of the civil police and the *corregedor* (head of the internal affairs office) of the civil police; and the Secretary for Labour, Social Services and Sports.

15. During their stay in Brazil, the Committee members visited a large number of places of detention. When detention centres were visited, senior officials of the establishments concerned were present and met the Committee members. The centres visited were the following:

(a) In the Federal District of Brasilia:

- (i) CAJE, Centre for Specialized Juvenile Attention “Centro de Atendimento Juvenil Especializado”;
- (ii) Papuda Centre “Centro de Internação e Ressocialização”,
- (iii) Provisional Detention Centre in Brasilia; and
- (iv) Women’s Prison in Brasilia.

(b) In the State of São Paulo:

- (i) “Tietê” Unit of the Compound of Juvenile Centres “Vila Maria”;
- (ii) Provisional Detention Centre Pinheiros I;
- (iii) Women’s Public Jail Cadeia Publica Pinheiros 4;
- (iv) Adriano Marrey Penitentiary in Guarulhos;
- (v) 4th District Police Station;
- (vi) 39th District Police Station; and
- (vii) 9th District Police Station “Delegacia de Policia Participativa”.

(c) In the State of Rio de Janeiro:

- (i) Pre-trial detention centre for juveniles Padre Severino;
- (ii) Bangu III Prison;
- (iii) Plácido Sá Carvalho II Prison;
- (iv) Women’s Prison Talavera Bruce;
- (v) Ary Franco Prison;
- (vi) Polinter;
- (vii) 5th District Police Station “Delegacia legal”; and
- (viii) 59th District Police Station.

(d) In the State of Bahia:

- (i) Lemos de Brito Penitentiary;
- (ii) “Baixa do Fiscal” Police Station on Thefts and Robberies;
- (iii) “Pau de Lima” District Police Station; and
- (iv) “Rio Vermelho” District Police Station.

(e) In the State of Minas Gerais:

- (i) Police Station for the Repression of Vehicle Thefts and Robberies;
- (ii) Police Station on Thefts and Robberies;
- (iii) Police Station on Toxics and Narcotics;
- (iv) Provisional detention Centre for juveniles “CEIP Dom Bosco”; and
- (v) Women’s penitentiary in Belo Horizonte.

16. Throughout the visit, the Committee members also met with alleged victims of torture and/or their relatives. The majority of these meetings took place in detention centres, others took place at NGO premises. The Committee members also received extensive verbal and/or written information from numerous NGOs, including: Action by Christians against Torture-Brazil (ACAT-Brazil); Global Justice; the Land Pastoral Commission; the Centre for Justice and International Law (CEJIL); and the National Human Rights Movement (MNDH).

17. In addition, the Committee members also met with the United Nations Resident Representative and his staff in Brasilia and with the Executive Director of the United Nations Latin American Institute for Crime Prevention and the Treatment of Offenders (ILANUD) in São Paulo.

## **B. General conditions in which the visit took place**

18. Before starting the visit the Committee agreed with the State party that it would take place in accordance with the following principles:

- (a) Freedom of movement in the whole country and facilitation of transport in restricted areas, as required for the performance of the Committee’s mandate;
- (b) Freedom of inquiry, regarding in particular:

- (i) Access to all prisons, detention centres and places of interrogation;
  - (ii) Contact with central and local authorities of all branches of Government;
  - (iii) Contacts with representatives of NGOs and other private institutions;
  - (iv) Contacts with witnesses and other persons considered necessary for the fulfilment of the mandate;
  - (v) Full access to all documentary material relevant to the inquiry.
- (c) Assurances by the Government that no person, whether an official or a private individual, who had been in contact with the Committee members designated for the inquiry or with other persons accompanying them in the framework of their mandate, would suffer threats, harassment or punishment, or be subjected to judicial proceedings in connection with the inquiry. The same assurances apply to the families of the persons who have been in contact with the Committee members designated for the inquiry or with the persons accompanying them;
- (d) Appropriate security arrangements, without, however, restricting the freedom of movement of the members conducting the enquiry;
- (e) Before, during and after the visit, the members of the Committee designated for the inquiry, the United Nations staff, as well as any other persons assisting them during the inquiry should be entitled to the same facilities, privileges and immunities provided for in respect of the members of the Committee, under article 23 of the Convention.

19. The Government of Brazil was cooperative and supported the visit. It respected the above principles and, both in the Federal District and in the states, took necessary measures to enable the Committee members to carry out their programme of work and to guarantee their security. As a result, the Committee members were able to visit places of detention and talk in private with all the detainees they asked to see. In addition, they were able to hold unimpeded discussions with representatives of NGOs. They informed all the people they spoke with of the purpose of their visit and of its confidential nature.

20. The Committee members encountered difficulties on 22 July 2005, when they travelled to the Jason Albergaria Regional Penitentiary, located in the municipality of São Joaquim de Bicas outside Belo Horizonte, where they were denied entry despite the efforts of the official from the Ministry of Foreign Affairs. In addition see paragraphs 120 and 128 of this report.

#### **IV. BACKGROUND INFORMATION**

##### **A. Brazil as a federal State**

21. Brazil is a federal republic composed of 26 states and a Federal District. Individual states are vested with a high degree of autonomy. They elect their executive branch and legislature, and hence, may adopt laws in accordance with the principles of the 1988 Constitution. Furthermore, they are responsible for their respective State Public Prosecutor's Office and State Judiciary (with access to

the federal courts as a final place of appeal).

22. The Penal Code (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 Execution of Sentences (Decree Law No. 7,210 of 11 July 1984) are federal legislation. However, States are responsible for their observance and administration, if the crime falls within their respective jurisdictions. There are certain federal crimes, which fall under the responsibility of the federal State, and hence are dealt with by members of the federal police and federal judiciary. However, the majority of crimes remain under the jurisdiction of the individual State police forces and State judiciary.

## **B. Law enforcement**

### **1. Police forces**

23. The different police forces and their respective tasks are described in article 144 of the Constitution. Brazil has a federal police force, as well as a specialized federal police force for highways and railways. There are also State police forces, i.e. the civil and the military police, which are responsible for security and guaranteeing the peace.

24. States are responsible for their own civil and military police forces, which report to the state Governor. The civil police carry out the functions of judicial police and investigate criminal offences, except military ones, while the military police maintain public order and exercise the functions of public policing. The latter is a uniformed force. Arrests “in flagrante” are usually carried out by the military police, although civil police reportedly also exercise powers of arrest. The military police is sometimes responsible for the external security of penitentiary centres. In addition, according to information received from police authorities, the military police is sometimes responsible for the internal security of certain penitentiary centres, due to their high security risk. The civil police oversee police stations, including those that continue to hold public jails. All other centres are managed by prison guards.

### **2. Oversight bodies**

25. The *corregedorias* (police internal oversight offices) are responsible for the initial administrative investigation of police misconduct. In most states, there is a *corregedoria* for the civil police and another for the military police, tasked with monitoring the respective police force. Following the conclusion of an investigation, the *corregedorias* may either file the case if the allegations are unsubstantiated; propose disciplinary sanctions including reprimands or suspensions; recommend the dismissal of the police officer concerned subject to approval of the state Governor; and send the case to the public prosecutor for further action.

26. The *ouvidorias a policia* (police ombudsman’s offices) also constitute an additional oversight body which monitors police conduct. The first police *ouvidoria* was established in São Paulo in 1996. The police *ouvidorias* may receive allegations of police misconduct and forward them to the police *corregedorias*, which will decide whether there is sufficient evidence to open an

administrative inquiry. Hence, they do not investigate the allegations submitted to them. The police *ovidorias* may also transmit a case directly to the Public Prosecutor's office, when they consider there is sufficient evidence of this conduct even if the case has been filed by the police or the *corregedoria*.

### **3. Forensic medical institutes (*Instituto Medico-Legal*)**

27. Forensic Medical Institutes are responsible for all medical investigations, and in this context may detect possible cases of torture or ill-treatment. These institutes generally respond to the State Secretary for Public Security, which is the same authority with responsibility over the State police forces. It should be noted that the Forensic Medical Institute of Belém, for example, has been provided with a certain degree of independence by the State Governor.

### **C. The Public Prosecutor's Office**

28. Preliminary investigations into alleged acts of torture are carried out by the civil police. Thereafter, public prosecutors (*promotores*) may decide whether to prosecute on the basis of the evidence provided by the police investigations.

29. Public prosecutors work within the State Public Prosecutor's Office (Ministério Público), under the State Public Prosecutor General (*Procurador Geral de Justiça*). The institutional functions of the public prosecutor's office, which are provided for in article 129 of the Constitution, include instituting public criminal action; ensuring effective respect of constitutional rights by Government branches and by services of public relevance, including by filing public civil action (*ação civil pública*) and taking the necessary measures to guarantee such rights; exercising external control over police activities; and requesting investigation procedures and the initiation of police investigations, indicating the legal grounds of its procedural acts.

30. At the time of the visit, the question of whether the State Public Prosecutor's Office should have the capacity to investigate and prosecute cases of torture, even where no police inquiry had been initiated or where a police inquiry had not been concluded or had been filed was still pending decision by the Federal Supreme Court. In this connection, prosecutors argued that, constitutionally, they have the power to initiate an independent criminal investigation, irrespective of whether a police investigation has taken place.

### **D. The Public Defender's Office**

31. With respect to legal aid, article 5 of the Brazilian Constitution stipulates that the State shall provide free legal aid to all persons subject to a means test. In this connection, the Public Defender's Office (*Defensoria Pública*) is the Constitutional entity expected to provide legal assistance to these persons.<sup>3</sup> However, not all States have established a Public Defender's Office. For instance, the State of São Paulo, which houses approximately 40 per cent of Brazil's prison population, does not have a Public Defender's Office.

## E. The crime of torture

32. Article 5 of the Constitution enshrines the right of an individual not to be submitted to torture or to inhuman or degrading treatment. Furthermore, it provides that the practice of torture is not subject to bail, mercy or amnesty and that superiors, perpetrators and persons who are able to prevent such a crime but do not do so, even by omission, must be held accountable for the crime.

33. Article 1 of the 1997 Torture Law (Law No. 9,455 of 7 April 1997) defines the crime of torture as:

“I - 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;

“II - 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.”

34. The Torture Law is applicable to the whole territory of Brazil. The crime of torture is not a federal crime (see paragraph 182). Accordingly, each state is responsible for the application of the Torture Law and the enforcement of judicial sentences pursuant to the Law.

35. With respect to criminal offences committed by military police officers, article 9 of the Military Criminal Procedure Code (Decree-Law No. 1002 of 21 October 1969) provides that military crimes are crimes subject to the Military Penal Code, even if they may have the same definition in civil penal law, when they are committed by military police or with military police weapons against a civilian. Law 9,299 of 7 August 1996, modified this provision by adding that crimes falling under this article, when wilfully perpetrated against the life of a civilian, would be subject to the jurisdiction of the common criminal courts. Hence, murder of a civilian by a military police officer would fall under the jurisdiction of the common criminal courts. However, bodily harm, torture and manslaughter committed by the military police against civilians remain under the jurisdiction of military courts.

36. Since the enactment of Constitutional amendment 45/2004, crimes committed by military police against civilians (excluding those crimes that are already under the responsibility of the

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<sup>3</sup> Article 134 of the Constitution.

common courts) fall under the jurisdiction of the *Juiz Auditor*, a civilian career judge within a military court. However, the *Juiz Auditor* would be the competent judicial authority only during the first instance of the proceedings. The appeal process is different in each state, where an appeal can return either to the military courts or go to the common courts, according to the size of their

respective military police corps.

## **F. Legal safeguards and guarantees of criminal suspects and detainees**

37. Domestic law affords comprehensive protection of the rights of criminal suspects and detainees. As described above, the Torture Law introduced the specific offence of torture into the Brazilian criminal system. In addition, there are a number of legal provisions which provide safeguards to all persons from acts of torture or ill-treatment at the time of arrest, pre-trial detention and during the detention period. Inter alia, no one shall be arrested unless in *flagrante delicto* or under the authority of a written and justified order of a competent judicial authority.<sup>4</sup> Arrest of any person, as well as the place where he/she is being held, shall be immediately notified to the competent judge and to his/her family or to the person indicated by him/her;<sup>5</sup> a person shall be transferred to a provisional detention facility after twenty-four hours' detention in a police station; detainees of limited financial resources should have the right to free legal assistance,<sup>6</sup> and evidence obtained through unlawful means is inadmissible in proceedings.<sup>7</sup>

38. Legislation provides that conditions of detention and treatment of detainees should be humane, for instance: pre-trial detainees should be separated from convicted prisoners;<sup>8</sup> detainees in pre-trial detention should be held in remand or pre-trial detention centres;<sup>9</sup> all persons deprived of their liberty must work according to their ability and capacity;<sup>10</sup> closed regime sentences must be served in individual cells measuring at least six square meters;<sup>11</sup> women must serve their sentences in separate establishments to men and persons aged over sixty have to be accommodated in their own penal institution appropriate to their penal situation;<sup>12</sup> women prisoners must be supervised by women guards;<sup>13</sup> penal institutions designed for women should have a nursery, where the inmates

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<sup>4</sup> Ibid., article 5 (LXI).

<sup>5</sup> Ibid., article 5 (LXII).

<sup>6</sup> Ibid., article 5 (LXXIV).

<sup>7</sup> Ibid., article 5 (LVI).

<sup>8</sup> Article 84 of the Law on Execution of Sentences.

<sup>9</sup> Ibid., article 102.

<sup>10</sup> Ibid, article 31.

<sup>11</sup> Ibid., article 88.

<sup>12</sup> Article 37 of the Penal Code and article 82 of the Law on Execution of Sentences.

<sup>13</sup> Article 77 of the Law on Execution of Sentences.

will be able to nurse their children;<sup>14</sup> prisoners have the right to receive adequate food and clothing;<sup>15</sup> and prisoners have the right to medical, pharmaceutical and dental treatment.<sup>16</sup>

## **G. Juvenile offenders**

39. In accordance with the Statute of the Child and Adolescent (Law 8069 of 13 July 1990), children are persons below the age of 12 years, whereas adolescents are persons between the ages of 12 years old and below the age of 18.<sup>17</sup>

40. The Statute states that no child or adolescent shall be subject to any form of negligence, discrimination, exploitation, violence, cruelty and oppression, and any violation of their fundamental rights, either by act or omission, will be punished according to the law.<sup>18</sup>

41. Article 141 of the Statute states that all children and adolescents have the right to access the Office of the Public Defender, the Public Prosecutor's Office (Ministerio Público) and the judiciary, and free legal assistance shall be provided to those who need it.

42. The Statute also provides that no adolescent or child shall be deprived of his/her liberty unless arrested *in flagrante delicto* or by written and well-founded order of a judicial authority.<sup>19</sup> Provisional detention, prior to being sentenced, can last a maximum of 45 days.<sup>20</sup> Internment of adolescents may only be applied for infractions committed by means of grave threats or violence to a person; repetition of other grave offences; or repeated and unjustified failure to comply with the previously imposed measure, in which case it would only be imposed for a maximum period of three months. However, internment shall not be applied, should it be possible to apply an adequate alternative measure.<sup>21</sup> These measures are described in article 112 of the Statute and include, inter alia: reprimand, obligation to repair the damage and community service. The maximum period of internment may not exceed three years, after which the adolescent shall be released or placed in a system of semi-liberty or assisted liberty. Moreover, continued internment should be re-evaluated every six months. Release is compulsory upon the offender reaching the age of 21.<sup>22</sup>

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<sup>14</sup> Ibid., article 83.

<sup>15</sup> Ibid., article 41.

<sup>16</sup> Ibid., article 41.

<sup>17</sup> Article 2 of the Statute of the Child and Adolescent. In cases specified in law, the Statute will apply to persons between 18 and 21 years old.

<sup>18</sup> Ibid., article 5.

<sup>19</sup> Ibid., 106.

<sup>20</sup> Ibid., article 108.

<sup>21</sup> Ibid., article 122.

<sup>22</sup> Ibid., article 121.

43. Juvenile offenders shall be held in establishments exclusively for adolescents and separated on the basis of age, physical build and the seriousness of the offence.<sup>23</sup> Article 124 of the Statute enumerates the rights of all adolescents deprived of their liberty, which include the right to enjoy leisure, culture and sporting activities; the right to live in adequate hygienic conditions; the right to schooling and training; and the right to be interned in a locality close to the domicile of their parents



or other legal guardian. The responsibility for ensuring the respect of the legal rights and guarantees of all children and adolescents lies with the State Public Prosecutor's Office (Ministério Público) which is also responsible for the inspections of juvenile detention centres.<sup>24</sup>

## **V. TORTURE AND ILL-TREATMENT IN BRAZIL**

44. The findings of the Committee members are based mainly on information collected from Government officials, members of the legislative and the judiciary, medical experts, law enforcement personnel, NGOs and associations, detainees, and persons alleging to have been tortured or ill-treated as well as their relatives. The Committee members also received precise information on the examinations of alleged victims of torture from the medical expert who assisted during the inquiry.

### **A. Information provided by human rights non-governmental organizations**

#### **1. Information provided prior to the visit**

45. The initial information submitted to the Committee by the NGOs World Organization against Torture and Action by Christians against Torture ACAT-Brazil contained a summary of a report that had been prepared in follow-up to the visit of the United Nations Special Rapporteur on Torture to Brazil in 2000, as well as to the presentation by the Government of Brazil of its initial report to the Committee against Torture in May 2001.<sup>25</sup> The report focused on the situation in the State of São Paulo in the period between February 2000 and June 2002 and included, in an annex, descriptions of over 1,600 alleged torture cases registered during this period.

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<sup>23</sup> Ibid., article 123.

<sup>24</sup> Ibid., article 201 (VIII).

<sup>25</sup> See note number 1 and 2.

46. The Committee also received another NGO report describing the Government of Brazil's efforts to implement the recommendations of the United Nations Special Rapporteur on the question of Torture.<sup>26</sup> The addendum to the report described the current status (as of the year 2003) of alleged individual torture cases contained in the Special Rapporteur's report.<sup>27</sup>

47. According to well-documented reports submitted by NGOs, torture in Brazil is systematically practised by different public officials (police, prison officials, monitors in detention centres for minors, etc) during questioning and at all stages of detention. The reports highlight several issues: the difficulties that victims and persons in detention centres encounter in being heard by official organs in light of the fact that the investigation of complaints of torture are carried out solely by police officers; the lack of involvement of the Public Prosecutor's Office in investigations of allegations of torture; and the impunity of police officers and other officials repeatedly accused of torture.

48. The NGOs denounced the lack of effective public policies to end the systematic practice of torture in Brazil. They noted that, the National Campaign against Torture, launched in June 2001, has been highly criticized as constituting a marketing strategy of the Government which has been limited to the creation of a national centre for the registration of complaints. They claimed that the *disque denuncia* hotline was set up in such a way that it placed an improper burden upon the victim to come forward to denounce a violation. The resources allocated by the Government to support the campaign were also said to be insufficient.

49. With regard to the 1997 law prohibiting torture, NGOs considered it an important step, although they pointed out that the definition of torture included in the law also covers acts committed by private individuals, hence shifting the focus of the prohibition of torture from State officials.

50. The NGOs highlighted the low number of public officials sentenced for acts of torture, in light of the fact that torture is commonly practised in Brazil. Furthermore, according to them, as of November 2002, no State agent has been convicted for acts of torture under this law. They pointed

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<sup>26</sup> "Torture in Brazil: implementation of the recommendations of the UN Rapporteur" August 2003. Report prepared by the following organizations: the Association for the Prevention of Torture (APT), the Center for Justice and International Law (CEJIL), *Grupo Tortura Nunca Mais do Rio de Janeiro*, *Ação dos Cristãos para a Abolição da Tortura (ACAT)*, *Comissão Pastoral da Terra de Xinguara (CPT)*, *Comissão Teotônio Vilela*, *Gabinete de Assessoria Jurídica a Associações Populares (GAJOP-DHInternacional)*, *Justiça Global*, *Movimento Nacional de Direitos Humanos (MNDH)*, and *Sociedade Paraense de Defesa dos Direitos Humanos (SDDH)*.

<sup>27</sup> Report of the Special Rapporteur on the question of Torture (E/CN.4/2001/66/Add.2, dated 30 March 2005).

out that the lack of independence of the organs responsible for investigating acts of torture and ill-treatment committed by the police, i.e. the *ouvidorias* and *corregedorias*, are under the control of the same institution that is being accused of these practices. The police *ouvidorias* are linked to the state government, given that the *ouvidor* is a political appointee. The *corregedor* can be removed

at any point. Upon completion of their mandates, it is apparently not uncommon that persons who have previously acted as *ouvidor* or *corregedor* find themselves working under someone whom they might have previously denounced for torture during their tenure. To aggravate matters, the *ouvidorias* have no budgetary autonomy, being financially dependent on the State.

51. NGOs also denounced the lack of independence of the forensic institutes reporting to the Secretary of Public Security, who is also responsible for the police forces, a situation which exacerbates the sense of impunity in cases of torture.

52. It was reported that it is unusual for accused police officers to be suspended from their duties pending the outcome of the investigation, and any subsequent legal or disciplinary proceedings. At most, those under investigation are transferred to another location.

53. It was also explained to the Committee that, although the Brazilian Constitution established the Public Prosecutor's Office as an independent organ which has the control of police activity amongst its responsibilities, in practice in most states the Public Prosecutor's Offices do not perform these functions. In the majority of states and even in states where prosecutors carry out investigations of certain cases directly, it is the police itself, through its *corregedorias* or through police investigations, which is responsible for inquires into alleged practice of torture by the police.

54. Reportedly, there have been no significant improvements concerning abusive practices by the police. In this connection, NGOs drew attention to the practice known as "the generic search and apprehension warrant" which is apparently common in Rio de Janeiro and allegedly led to abuses by the police. This warrant consists of a judicial order that allows the police to inspect any establishment or residence within a specific area, district etc. In addition, the Committee received information that the Civil Police's Station for the Protection of the Child and Adolescent has conducted a temporary arrest and removal campaign, since November 2004, denoted "Operation Secure Tourism" (*Operação Turismo Seguro*). Rights groups contend that this operation has entailed the arbitrary targeting of children and adolescents deemed "suspicious" or "abandoned" primarily on the streets of Rio de Janeiro's affluent Zona Sul district. According to NGO sources, police have apprehended, registered and catalogued these children and adolescents at police stations, after which the children and adolescents are removed to city shelters and given the option of leaving. A human rights group in Rio de Janeiro has challenged the constitutionality of this practice, and the matter is still pending before the Supreme Federal Tribunal.<sup>28</sup>

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<sup>28</sup> See e.g. Judgments 2004.059.06263 - Habeas Corpus, *Desembargador Nilza Bitar, Secao Criminal, Tribunal de Justicia do Estado do Rio de Janeiro*, 20 July 2005.

55. In relation to the monitoring of places of detention, the Law on the Execution of Sentences sets out at least six organs which have the authority to conduct visits to monitor and supervise prisoners' conditions of detention; in practice, however, it was alleged that such visits are rarely carried out.<sup>29</sup>

56. With regard to the penitentiaries, the NGOs complained that conditions are inadequate for inmates and overcrowding, which is endemic, remains a constant concern. According to the information provided in June 2003, there were a total of 180,726 places for a total of 284,989 detainees in Brazil. The State of São Paulo lacked 43,659 places (41.8 per cent of the total) and the State of Minas Gerais lacked 17,194 places.

57. Overcrowding in police stations was reported to be another problem. A number of temporary detention centres have been built in the State of São Paulo to receive detainees who await convictions, thus relieving overcrowding in police stations. However, these temporary detention centres are already overcrowded. Material conditions of detention continue to be precarious.

58. The NGOs also explained that so called “clean police stations”, known as *delegacias legais* have been established in Rio de Janeiro, with the purpose of deactivating all jails in police stations and building *casas de custódia* (custodial houses) to receive detainees previously held in police stations. In practice, however, too few custodial houses have been built. Detainees are still held in police stations even after being sentenced, and are under the responsibility of the Secretary of Public Security, instead of the Secretary for Penitentiary Administration, under whose supervision they would have access to greater benefits.

59. Furthermore, NGOs referred to the *Regime Disciplinar Diferenciado (RDD)*, a differentiated disciplinary regime which is in place in the States of Rio de Janeiro and São Paulo. Under this regime, it would appear that inmates who do not obey an order and/or the internal disciplinary regime of the penitentiary may be subjected to a regime of severe punishments that could include up to 360 days in isolation.

60. It was reported that family members do not receive information about the whereabouts of inmates, including information on transfers. Moreover, highly intrusive searches of family members and visitors, particularly women, continue to be routine.

61. The NGOs pointed out that free legal assistance is not guaranteed to people who are deprived of their liberty and cannot afford a private lawyer. Six States do not have a Public Defender’s Office

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<sup>29</sup> Article 61 of the Law on Execution of Sentences identifies several mechanisms which have prison monitoring functions, i.e., the National Council of Criminal and Penitentiary Policy, penal execution judges, public prosecutors, the Penitentiary Council, the Penitentiary Department and the Community Council.

and those that exist are known to be understaffed. Statements provided without the presence of a judge or lawyer continue to be admissible in court, if there is no explicit proof that an act of torture was committed. The burden of proof is placed on the alleged victim of torture or ill-treatment. Allegations of torture made by persons suspected of having committed a criminal offence or of detained persons have no weight in Brazilian jurisprudence. As a result, NGOs complained that there

is almost no possibility of effective complaint against the abusive conduct of public officials.

62. According to the information provided, approximately 60 per cent of the inmates could benefit from the application of alternative sentences. However, judges tend to refuse to apply these.

63. Finally it was reported that the judiciary has failed to monitor adequately the time served by inmates. This is particularly evident in the State of Rio de Janeiro, where there is only one court responsible for this task, i.e. the *vara de execuções penais*.

## **2. Information provided during the visit**

64. During the visit to Brazil, the Committee members met with more than 15 NGOs. In general, NGOs claimed that the situation had not improved in the last few years, and reiterated the concerns contained in the NGO reports submitted prior to the visit of the Committee. NGO representatives emphasized the seriousness of the situation and the failure of the authorities to adopt adequate measures to combat the practice of torture. They alleged that frequently torture was inflicted partly due to the prevailing culture of the police, and that few acts of torture had been investigated and even fewer brought before the courts.

65. During the visit, NGOs provided information in writing on other cases of torture brought to their attention by alleged victims. In their opinion, however, a large number of cases of torture are not reported. NGO representatives pointed out that most acts of torture are committed by the military and the civil police. Very few allegations were received regarding the federal police.

66. NGO representatives also alleged that the existing police control mechanisms continue to be inefficient, given that the *corregedorias* still do not have any operational and financial autonomy, and the *ouvidorias* remain dependent on the respective state Governors. Better control of the police by the state Governor would contribute to the prevention of abusive acts.

67. They further claimed that there were neither adequate policies nor the political will on the part of the relevant authorities to improve conditions of detention; hence, the problem was not just one of lack of financial resources.

68. An NGO representative also pointed out that the crime rate in Brazil was not proportionally so high as to have such a large number of detainees. In fact, it appears that on many occasions, the sanction imposed is not proportional to the seriousness of the offence. An example was provided where persons caught with a small quantity of drugs may be charged under the article of the penal code that refers to drug trafficking.

69. The NGOs indicated that other legal requirements regarding custodial sentences, including that prisoners be held within geographical proximity of their families, are routinely breached. Laws regulating visits are also breached, with families being subjected to strip searches and other degrading treatment, which frequently discourage family members from visiting. It was also alleged that clothing and other items brought by relatives for inmates are taken by the prison staff who

themselves sell these items to the inmates or others. There were also complaints with respect to restrictions on items inmates may receive from their relatives, in particular restrictions on fruit, other food products and toiletries.

70. The NGOs told the Committee members that in most places of detention there are no full records, either to indicate when detainees enter or exit the centres or with respect to medical information of any sort including when injuries occur. NGOs also reported that records of staff performance, training and hiring, as well as disciplinary histories are also often missing or do not exist.

71. There were also generalized complaints regarding the difficulties encountered by NGOs monitoring detention centres and in making formal complaints. Many NGOs alleged that they had been denied access to various centres of detention on many occasions often with no reason being provided.

72. It was reported that State public defenders are paid poorly and have excessive workloads. Their numbers are low and insufficient to cover the existing demands. Furthermore, the Committee members were told that there is a general perception that public defenders are not very highly regarded and that their work is seen as an employment of last resort. Under these conditions, it is difficult for public defenders to remain motivated and committed.

73. NGO representatives claimed that organized crime persists within penitentiary establishments. In fact, the Committee members were told that organized criminal gangs continue to operate and run criminal rackets from within the centres.

74. NGOs also pointed out that detainees under the RDD differentiated disciplinary regime are kept incommunicado and that in many cases, they are placed under this regime because of the lack of space in general cells. Inmates are said to have mental problems as a result of having been held under this regime. NGOs also informed the Committee members about the *Regime Disciplinar Especial* (RDE) or special disciplinary regime, where inmates are held in collective cells in a regime similar to the RDD regime.<sup>30</sup>

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<sup>30</sup> Further information on the RDD and RDE regimes is provided in paragraphs 174-176 of the report.

75. It was reported that the juvenile detention system mirrors the adult detention system with regard to impunity. NGOs provided information on alleged cases of ill-treatment and torture in juvenile detention centres. They claimed that beatings were used frequently to punish juveniles who appeared not to have respected the disciplinary rules, and in some cases simply for making noise. Often, these beatings were carried out by persons wearing hoods; hence the identity of the offender remained concealed.

76. The Committee members were also provided with the final report of the Campaign for Combating Torture and Impunity. According to the report, 2,206 complaints of torture were registered by the hotline “SOS Tortura” during the period October 2001 to July 2003. Only 1,336 were considered as institutional torture. Most of the complaints came from the following states: São Paulo, Minas Gerais, Pará, and Bahia. It would appear that torture was inflicted mostly in police stations (47.2 per cent), followed by penitentiary units (26.9 per cent). NGOs familiar with the practice of torture, however, informed the Committee that rates of severe physical abuse are in fact much higher than these figures suggest.

77. The Committee received numerous reports that detentions centres almost invariably contain punishment cells (castigo) used by authorities. The cells are alleged to be places where inmates are subject to severe corporal punishment as well as cruel and inhuman conditions of detention. These cells are not shown to outsiders and their existence was already denounced by the Special Rapporteur on Torture. The State party has not adequately addressed these allegations.

### **3. Direct testimonies**

78. The Committee members also met with several alleged victims of torture and their relatives who were present during the NGO meetings. The Committee members were informed by NGOs that some victims had refused to meet with them for fear of retaliation. In particular, they recalled the deaths of two witnesses who had given testimonies to a United Nations Special Rapporteur. A number of those who voluntarily agreed to meet with the Committee members requested that their personal cases remain confidential for a variety of reasons, mainly to protect their safety and to prevent reprisals from their employers.

79. The majority of the interviewees claimed to have been victims of torture and/or ill treatment at the time of arrest. A number of interviewees complained at the way the police had treated them on arrest; in particular they said that the police referred to them as criminals instead of suspects. On a number of occasions, the Committee members heard that arrested persons were not brought directly to police stations, and that transfers took longer than needed, this being the interval when they claimed to have been subjected to ill-treatment or torture. It also seemed that the use of excessive force during arrests was a common practice.

80. Interviewees referred to abuses committed by both the civil and the military police. They reported feeling powerless and unprotected by the State, and agreed that they live in a climate of impunity. Many interviewees complained that legal proceedings are extremely slow, offenders are rarely prosecuted or found guilty for crimes of torture and that financial compensation, if any, takes a very long time to be awarded. In addition, some of them reported that they had been subjected to punishment (castigos) not authorized by law.

### **B. Information obtained in places of detention**

81. Places of detention, excluding federal detention centres, are under the responsibility of the individual states. In most states, the Secretary for Public Security is responsible for police stations

(*delegacias*) and the Secretary for Justice through the Penitentiary Administration is responsible for the penitentiary system. Some states, such as Rio de Janeiro and São Paulo have autonomous Secretariats for Penitentiary Administration. In the Federal District, the penitentiary system is under the responsibility of the Secretary for Public Security.

82. Juvenile detention centres are under different jurisdictions, such as the Centre for Specialized Juvenile Attention (*Centro de Atendimento Juvenil Especializado, CAJE*) in Brasilia, the State Foundation for the Well-Being of Minors (*Fundação Estadual do Bem-Estar do Menor, FEBEM*) in São Paulo, the General Department for Socio-Educational Measures (*Departamento Geral de Ações Sócio-Educativas, DEGASE*) in Rio de Janeiro or the Office of Social and Educational Measures (*Superintendência de Atendimento às Medidas Sócio-Educativas*) in Minas Gerais.

## **1. Material conditions of detention**

83. In the majority of the centres visited, particularly the *delegacias*, which have not been decommissioned, and the provisional detention centres, the material conditions of detention were appalling (see paragraph 178). In addition, the authorities, who are fully aware of the situation, continue to detain persons in these conditions for prolonged periods of time. In fact, these conditions contribute in a decisive way to the destruction of the physical and emotional well-being of the detainees. The poor conditions also affect the detainees' families, namely due to the conditions under which visits in most establishments take place.

## **2. Centres visited**

### **(a) Juvenile detention centres**

84. By law, juvenile detention centres are supposed to provide educational, medical and recreational facilities to help reintegrate juvenile offenders into society. However, the infrastructure and the material conditions of the centres visited make this task next to impossible to accomplish. Indeed, according to a 2003 presidential action plan on child welfare, in the case of 71 per cent of detention centres, the physical plant was deemed "inadequate" to comply with socio-educational

purposes required by law.<sup>31</sup> The Committee members also noticed that children<sup>32</sup> were not separated on the basis of age and physical build as required by the law.

85. On 15 July 2005, the Committee members visited a detention centre for juveniles in Brasilia under the responsibility of CAJE. While the centre could accommodate approximately 240 juveniles, it housed 370. Girls were less than 10 per cent of the centre's population. As in other juvenile centres, juveniles were supervised by monitors. There were a total of 16 policemen on shifts to guard the centre. The Committee members were told that these policemen do not have any direct contact



with the children. The centre has a school with 42 teachers and juveniles can pursue different activities, including tertiary education. The cells where boys were held were overcrowded, holding twice as many children as their capacity. The Committee members were informed that one of the problems of the centre is the rivalries among children belonging to different gangs. Although efforts are made to separate rival gangs, the Committee members were informed of the recent murder of a boy by other fellow detainees who shared the cell with him.

86. On 19 July 2005, the Committee members visited Vila Maria in São Paulo, under the responsibility of FEBEM. The *Corregedor* of FEBEM was also present. The Committee members visited the premises and spoke to several of the children. The Committee members were informed that a riot had taken place recently, and that a number of juveniles had been transferred to a penitentiary for adults. They were also informed that new units are to be built where detainees will be held in smaller groups.

87. On 22 July 2005, the Committee members visited the *Centro de Intenção Provisoria* (CEIP), a juvenile centre in Belo Horizonte which had been the subject of press coverage with allegations of torture of juveniles.<sup>33</sup> The Director of the Centre had been suspended and replaced by a new Director the day before the visit of the Committee. The Committee members noted that there were discrepancies in the reasons they were given regarding the previous Director's removal. The centre was overcrowded, having capacity to accommodate 62 inmates, but there were 86 in residence. Thirty younger children (aged 12 to 14) were housed in a better annex nearby. The Director indicated that the girls' facility, which the Committee members did not see, was much newer. The Committee members interviewed several children who alleged that they had been beaten,

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<sup>31</sup> *Presidente Amigo da Criança e do Adolescente: Plano de Ação, 2004-2007*, October 2003, available at [http://www.fundabrinq.org.br/\\_Abrinq/documents/biblioteca/planodeacao\\_presidente2004.pdf](http://www.fundabrinq.org.br/_Abrinq/documents/biblioteca/planodeacao_presidente2004.pdf).

<sup>32</sup> Article 1 of the Convention on the Rights of the Child provides that "a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier".

<sup>33</sup> *Hoje em Dia, Belo Horizonte* 21 July 2005; *Estado de Minas*, 22 July 2005.

particularly at night, and that several monitors were "brutal". The children seemed intimidated and were reluctant to providing details. Details were not forthcoming. Two children occupied each cell, and mattresses were of very poor quality. The younger children's annex was a modern facility, better equipped, and the children were very bright and inquisitive, leading the Committee members to question why the older children's facility could not be maintained to the same standard.

88. On 26 July 2005, they visited Padre Severino, a pre-trial juvenile detention centre in Rio de Janeiro, under the responsibility of DEGASE. The centre could accommodate 180 juveniles, but it

housed 283. There were 15 monitors, while according to the vice-director of DEGASE there should be at least 35 per shift. Due to the lack of personnel, only 120 juveniles have access to education and recreational activities. Family visits take place once a week. In principle, juveniles may only be detained in Padre Severino for a maximum period of 45 days before being transferred to other DEGASE institutions. However, a number of the children interviewed, in particular those who were not from the city of Rio de Janeiro, claimed to have been in the centre for four or five months. The Committee members noted that the material conditions were extremely poor: the cells were overcrowded and contained insufficient cement beds. No books or reading material were provided to the detainees. The children complained that their cells contained vermin and that they were often hit and slapped in the face by the monitors. NGOs reported that these beatings often involved the use of wooden clubs or batons, a fact that was confirmed to the Committee by some of the children.

**(b) Police stations**

89. Police stations (*Delegacias*) are run by the civil police and are directed by a *delegado*, who is a senior civil police official with a law degree. The Committee members visited the so-called deactivated police stations that serve the public and where persons under arrest are only held up to 24 hours, as well as police lock-ups that have not been decommissioned and continue to operate as public jails.

90. In principle, a person may be held in a police lock-up for a maximum period of 24 hours after which a judge must issue a provisional detention order and the person should be transferred to a provisional detention centre. Detainees awaiting trial should be held in pre-trial or remand centres, commonly known as *cadeias publicas*. In order for a detainee to be transferred to a penitentiary facility, an authorization from the penitentiary authorities is required. However, it appears that because the penitentiary facilities are already overcrowded and risks of riots are high, transfer authorizations to these facilities are not always issued.

91. The Committee members observed that a large number of detainees continue to be held in police stations instead of being transferred to pre-trial detention centres and prisons. Under these circumstances, the provisions of the Criminal Procedure Code regarding the separation of detainees according to their legal status, i.e. awaiting trial or convicted, are clearly violated. Police officers are obliged to assume new functions as prison guards in police stations, without having received any training in this respect. Moreover, the fact that the civil police are in charge of the preliminary investigations and that police lock-ups are guarded by the civil police, reportedly facilitates the abuse of provisional detainees by police investigators seeking to obtain confessions or any other relevant information.

92. The Committee members observed that no police stations that operated as public jails were equipped for long periods of detention, given that the infrastructures were inadequate and the material conditions degrading. Severe overcrowding was widespread. The Committee members observed that detainees held in public jails are deprived of many of their rights. For instance, it is impossible for detainees to reduce their sentences through work, an entitlement provided for by law. Also, they do not have access to any recreational activities and ordinarily cannot receive conjugal

visits. Regular visits seem very difficult and discouraged.

93. The Committee members found that in most cases detainees were not examined by a doctor after arrest, it being up to the arresting officer to decide if such an examination was necessary. There is no systematic examination of detainees upon arrest, sentence, when transferred between centres or when released.

#### *São Paulo*

94. On 19 July 2005, the Committee members visited the 4th District Police Station in São Paulo, where approximately 66 detainees accused of sexual crimes were being held in a public jail. The Committee members were informed that the public jail of this police station was currently being decommissioned; hence no new detainees had come in since 2003. Due to extreme conditions of overcrowding, the Committee members observed that a tetraplegic detainee was being held in the corridor outside the cell.

95. Committee members also visited the 39th District Police Station in São Paulo, where they observed that 150 detainees were being held in a single space which consisted of several open cells facing a courtyard with very little natural light. The detainees had no beds and they had to take turns to sleep on the concrete floor. Committee members were informed that the cell had previously held 230 detainees. The conditions relating to hygiene were appalling. One of the detainees had a finger affected by gangrene for which he was receiving no medical attention. Many had sores and showed obvious signs of poor health.

96. The Committee members also had the opportunity to visit the 9th District Police Station *Delegacia de Polícia Participativa* in the Carandiru district of São Paulo. This police station, which was inaugurated in April 2004, is a model police station with no jail capacity. The installations were modern and clean, appropriately structured to serve the public 24 hours a day.

#### *Salvador da Bahia*

97. On 19 July 2005 the Committee members visited the 7th District Police Station Rio Vermelho in Salvador da Bahia, housing 11 detainees, although in the past it had housed up to 38. Detainees arrived every day, after being discovered *in flagrante* in crimes such as robbery, murder and narcotics. Detainees have access to the sun on a daily basis, two hours in the morning and the afternoon; but they are unable to leave their cells on weekends as there are insufficient guards.

98. It was noted that there were no mattresses, which the *delegado* indicated had been removed because prisoners set them on fire. Although families sent clothes, prisoners had no blankets, because these were difficult to transport. The prison authorities did not provide blankets, allegedly because of the rotation of prisoners.

99. This facility was unpleasant, but not overcrowded, although the Committee members suspected that it had been cleaned and some prisoners removed because the *delegado* had been made

aware of the Committee members' impending visit. Prisoners did indicate that they were not badly treated, although the food was cold, raw and quite limited in amount. They did have bathrooms, but no towels. Detainees indicated that they could receive visits, but these were once a week and short. One detainee from Rio alleged that his family was unaware he was detained in Salvador. They indicated that they received limited legal assistance. There was no allegation of violence from any detainee. They did, however, indicate that despite the fact that the superintendent indicated that the church had access rights, they had never entered the corridor in the facility.

### *Belo Horizonte*

100. On 22 July 2005, the Committee members visited the *Delegacia de Repressão ao Furto et Roubo de Veículos* in Belo Horizonte. The *delegado* himself spoke of poor conditions, with prisoners rarely released. He indicated that he provided medicine through his wife who is a medical doctor and a police officer. There were 155 detainees when the Committee members visited, and 168 two weeks earlier. At one point the facility had housed 189 detainees. The maximum a detainee had been held was two years. Inmates are a mixture of those convicted and on remand, with most being convicted and some having 600-year sentences. As the facility focused on vehicle robbery, the sentences of most are much less. Detainees are always locked up. The *delegado* himself acknowledged the conditions amounted to violations of human rights of the inmates and in some cases could amount to torture. He said inmates caused "self-inflicted injuries" in order to gain release. The facility was extremely hot as a result of crowding, the roof was asbestos and there were no NGO or church visits. Washing and sanitation was almost non-existent. The Committee itself witnessed the deplorable impact of these conditions on the health of those in detention, as most of them were emaciated and pale and some of them had open sores.

101. The Committee members found that there were 40 or 50 people per cell, with two being 5m by 6m and two 4m by 5m and resembling cages. They were 4m high at most. The cells had no electricity, no light and there was no space for inmates to read. There were no beds, and inmates slept on concrete surfaces and hammocks. The roof was open, and the detainees were not sheltered from the rain. The conditions were either very hot or cold and the inmates were pale. The food, which was seen by the Committee members, was inappropriate, and detainees indicated that they are required to pay for the food when they leave. There was one tap per cell for washing which is fed by tanks on the roof and one toilet stall, protected by a thin curtain. There was no possibility for all inmates to sleep at the same time, given the space available, and inmates had to take turns to sleep, as well as use hammocks in order to create levels to allow for sleep. The corridor outside is always lighted, and raw sewage runs in this corridor from the cells.

102. Detainees are allowed a 30-minute visit every 30 days, but they are not allowed to use the telephone, and currently visits are suspended because of fear of riots. One detainee indicated he had been there for 20 months and had no opportunity for visits. Detainees indicated that they needed to attract attention by making noise to get medical assistance and that gas bombs and pepper spray are used by staff to keep inmates under control. Many detainees provided the Committee members with notes on their situation, with many suggesting that they had been kept in prison well beyond the time of their sentences. Others indicated that they had yet to be charged. Some alleged beatings in

addition to the frequent use of gas bombs, pepper spray and noise.

103. The Committee also visited the *Delegacia de Furtos e Roubos* in Belo Horizonte. The Committee members were told that 400 inmates were in the *delegacia*, and that they were never allowed out of their cells. There were 22 cells, the small ones being 10 square metres and housing 10, 20, 28 and 30 persons and the large 15 square metres. At least two inmates were HIV-positive and at least three others mentioned that they had syphilis. There was running water in the cell, and light in the corridor, but not in the cells. Again the Committee members were able to speak to inmates without interference. On the day the Committee members visited, men were standing in groups of 50 in the patio, totally naked allegedly for security reasons according to the Director. The food, which the Committee members saw, was very poor, frequently raw, always cold, and insufficient. No detainee alleged that they had been physically attacked, but suggested that tear gas and incapacitating sprays are used, and guards intimidate through the use of noise and banging on cell bars with sticks. There are no dentists' visit, nor are legal services provided, and some detainees alleged that their sentences had been served. No children may visit, as the *delegado* considers the conditions inappropriate. He also indicated that his training was with regard to investigations, not care of inmates.

104. The Committee members also visited the *Delegacia Tóxicos and Entopecentes in Belo Horizonte*, housing both convicted and pre-trial detainees waiting process on drugs charges. This *delegacia* also suffered from extreme overcrowding, having a capacity of 28 and housing 215. In the past 259 were housed in the *delegacia*, a situation which had led to rioting. Sixty per cent have been sentenced, the rest have not. Some detainees had been in this facility for 3 or 4 years. There were seven 4 by 4m cells with 28 and 38 prisoners. The food provided is adequate in quantity, but of low calorific value. There is no medical treatment provided by the State, but a volunteer provides partial care weekly. Judges come to this *delegacia* as part of their training. Family visits are logistically difficult to arrange, but two are provided for monthly. There are no bathroom facilities for visitors, which acts as a disincentive. Inmates are always kept locked up, except during visits. The hygienic and sanitary conditions are appalling. There is no treatment for addicts, and few family members can provide this. Many escape attempts occur. Detainees sleep in shifts, never go out and are disciplined by gas and noise bombs. Detainees wear uniforms of white T-shirts and blue trousers which are bought by families and appear relatively content, despite the conditions, and on the day of the visit the *delegado* had arranged for flu shots for inmates.

### *Rio de Janeiro*

105. On 22 July 2005, the Committee members visited the 5th District Police Station in Rio de Janeiro, which is an example of a *delegacia legal*, similar to the model of the *delegacia de policia participativa* of São Paulo. The first *delegacia legal* opened in the State of Rio de Janeiro in March 1999. The installations were also modern and clean. However, the Committee members were surprised to see that there were two cells that were unlit and that the police alleged they had forgotten there was someone inside the cells despite the fact that the cells were locked.

106. On 23 July 2005, the Committee members visited the 59th District Police Station in Duque

de Caixas in Rio de Janeiro. This police station continues to accommodate a public jail where 279 detainees are held, although it can only accommodate 250. At the time of the visit, no date was envisaged to decommission the public jail of the police station. The Committee members were informed that the *delegacia* also held sentenced prisoners, although these were generally prisoners with short sentences. No activities were available to detainees, although some of them worked as cleaners. Detainees were separated on the basis of the criminal gang that they belonged to. For this reason, the number of detainees held in each cell varied. The conditions of hygiene were deplorable and created serious health problems for the detainees. In addition, there were persistent and generalized complaints regarding the bad quality of the food, and the lack of medical assistance.

**(c) Pre-trial detention centres and prisons**

107. The Penal Code provides for different types of penitentiary regimes: closed, semi-open and open regime in articles 34, 35 and 36, respectively. The Committee members observed that separation of inmates on the basis of the nature of the regime to which they had been sentenced (open/semi-open or closed regime) is not always respected. Those held for violent crimes are sometimes held with petty criminals. The penitentiary authorities in at least one state attempt to separate prisoners depending on the criminal gang to which they belong. Although this is an attempt to prevent inter-prisoner violence, a number of detainees expressed their fears of suffering attacks from other prisoners. Moreover, it is frequently alleged that the poor and inhuman prison conditions create a situation where prisons turn into “schools for crime”.

108. In some penitentiary centres, they also met with inmates who claimed to have already served their sentences but who had not been released. A large number of detainees testified that they were not assisted by a lawyer.

109. The Committee members noticed that a number of detainees claimed to have been sentenced for petty crimes involving no serious threat to society. While the Committee members do not intend to draw conclusions with regard to any judicial decision in this respect, they do wish to voice the concern transmitted to them that allegedly the police, prosecutors and even judges tend to qualify offences as being the most serious available. For instance, they may qualify an offence as robbery instead of theft. As a result, bail would not be granted. Moreover, the situation of overcrowding will only worsen if this continues.

110. Women serve their sentences in separate establishments. The penitentiary centres for women which were visited by the Committee members had a nursery, where the inmates were able to nurse their children for a specific period which varied in the different centres. Women were separated from men in all detention centres.

*Brasilia*

111. On 16 July 2005 the Committee members visited the Papuda CIR Centre in Brasilia, built in 1979. On the day of the visit, the Centre had a population of 1,434, although it has a capacity to accommodate 900 inmates only. The majority of the detainees are under a semi-open regime. Each

week, 30 to 40 inmates enter the centre. The Director of the Centre acknowledged that the Centre was extremely overcrowded, partly due to the deterioration of the infrastructure. In fact, the cells visited by the Committee members were inadequate for the number of detainees held. As in other penitentiary centres, the military police is responsible for the external security, while the civil police is responsible for the internal security. The Director complained that there were not enough guards to look after all the detainees. During the weekend, there were only 19 guards. For this reason, visits cannot take place during the weekend and the period in which detainees are allowed out of their cells is limited. Approximately 600 to 700 detainees have the possibility to participate in different workshops and to learn vocational skills. Legal assistance is usually provided through a legal aid clinic of the University of Brasilia. The Centre has dental and medical services. Since these were set up, the number of serious incidents in the prison has been reduced. However, these services are not available on the weekends and the medical doctor only comes two days a week.

112. They also visited the Centre for Provisional Detention in Brasilia. The Centre held 2,230 detainees, both provisional and convicted, under a semi-open regime, while the real capacity of the centre is 1,500 persons. Pursuant to suggestions received from NGOs, the Committee members visited the disciplinary pavilion. They were informed by the centre's personnel that detainees held in this pavilion were accommodated in individual cells for a maximum of 30 days. The Committee members observed that there was more than one person in each cell.

113. Finally they visited the Women's Prison, which held 310 women, although it had a maximum capacity of 380. The centre, which was converted into a women's prison in 1996, consisted of three pavilions: the first under a semi-open regime for women, the second under a closed regime also for women and the third was exclusively for mentally ill men, where approximately 68 men are held. Women awaiting trial were also held in the centre. According to the data provided by the prison Director, a total of 127 women have access to activities, while 83 do not. Pre-trial detainees were not included in this data. The Committee members visited the different workshops of the penitentiary where these activities take place. The Director of the centre informed the Committee members that most of the women were being held for drug trafficking related crimes and homicide. The Committee members also visited the nursery. Overall, there were no complaints of torture. However, there were complaints with respect to the quality of the food and claims that it was often raw. The centre has a register of all incidents that occur. The Committee members also visited the psychiatric detention pavilion for men and received complaints from the detainees relating primarily to lack of legal assistance.

#### *Salvador da Bahia*

114. On 19 July 2005, the Committee members visited a new prison which was being constructed in Salvador da Bahia. The facility, which at the time of the visit was empty, is very modern with a sophisticated interview room and secure control units. Cells are constructed to accommodate four prisoners, and the capacity of the prison will be 324. There will be separate facilities for those on remand, and those who are sentenced. The facility will cost 6 million reais.

115. The Committee members visited the Penitenciária Lemos de Brito (PLB) which has a

capacity of 1422, but housed 1,960 prisoners, all of whom were sentenced. It is a closed facility from which it would be difficult to escape. Twenty percent of detainees were working and receiving 80 per cent of the minimum wage. Detainees, all of whom were young and black, worked inside and outside the prison for eight hours a day and received 30 or 40 reais per month. The conditions in the prison appeared to be good, although the food, prepared in the prison by an outside catering firm, and eaten by prisoners and staff alike, was described as poor and frequently raw. The prison included a relatively pleasant school facility. Prisoners could be visited by their families on the weekend, with spouses being entitled to visit on Friday.

116. A number of prisoners described maltreatment upon arrest, including beatings with sticks, by the police and while waiting for legal assistance. They alleged that medical treatment in the prison was poor. One prisoner indicated that he had been shot on arrest, and that the wound had never properly healed, and that he had to buy his own medicines. A number of prisoners indicated that, although they had served their sentences, they were still in prison. In response to questions being posed about health and dental care, the prison authorities suggested that this was limited, given that the federal authorities had not provided the financial support required, despite their obligations in this context.

117. The Committee members visited row 4 of the centre, as suggested by the NGOs. They did not enter the facility, as the authorities alleged security concerns, but spoke with prisoners at the gate. These included a number of foreign prisoners, two of whom spoke English. They told the Committee members that while hygienic and other conditions were very poor, no one had been subject to direct physical attack. Several did indicate, however, that they had been in prison longer than their sentences provided, and the Committee members were told that police beatings on arrest were routine. At the same time they complained about the punishment cells, claiming that they existed in all Brazilian prisons.

118. The Committee members visited the Baixa Fiscal delegacia in Salvador da Bahia, housing individuals who had been involved with robbery and theft. Detainees indicated that they had spent from 6 to 8 months in *delegacias* before coming to this facility. Six prisoners were housed in each cell (4m by 3m and 10m high), which was not provided with lights or mattresses. It was indicated that no medical care was provided. Prisoners spent 20 hours per day inside the cells, with four hours in an open space, which was wet and dirty. As there were only five guards for the facility during weekends, they were kept in for 24 hours. The facility was very cold, and one block lacked drinking water. It was covered with rubbish and prisoners looked in poor shape, with skin disorders. Hygienic conditions were extremely poor with up to 170 prisoners having no sewerage. Food was also reported to very poor. Detainees were issued with only two pairs of shorts and two T-shirts in order to ensure that they did not commit suicide. Detainees appeared afraid to speak, because they feared violence and curtailment of visits and they indicated that there was a punishment room which housed seven people. Eighty prisoners came from 500 km away from Salvador, and had not been visited by their families.

119. The Committee members visited a *delegacia* called Pau de Lima in Salvador da Bahia. The Committee members were informed that the facility covered a large number of neighbourhoods, with



many coming from Ilhéus, where there had been a riot and large-scale destruction of the prison. Prisoners held here were being punished for what is called “crimes against heritage”, “honour crimes”, and “blood crimes”. At that time only seven persons were detained in the facility: these had been found guilty of drug smuggling, homicide or illegal possession of a weapon. Detainees could be visited on Wednesdays, and during the week, they were generally out in the patio, spending only the nights in their cells. During the weekends, when staffing was lighter, they had less time outside the cells. There was no limitation on the number of clothes detainees could have. While the State was responsible for food, relatives could also bring in food and the detainees would receive this after security searches.

120. On visiting the cells, the Committee members found the facility to be less crowded. However, it was very wet, with rain coming in from the roof, and there were no lights in the cells. Detainees indicated that in the past there had been up to nine persons per cell and that after the Ilieus incident a number of prisoners were transferred to this facility. Several indicated that their families did not know they were there, despite the fact they had been there for over one month. The families of these individuals were located over eight hours away. Several detainees showed signs of eczema and hygiene conditions were unacceptable. Detainees’ accounts of the time they are entitled to be in the patio outside the cells differed from the prison personnel. All except one prisoner indicated that he had been beaten at the *delegacia* by police. The Committee members also saw a graffiti which depicted “trying to stay alive in this hell”.

#### *São Paulo*

121. In São Paulo, the Committee members visited the provisional detention centre Pinheiros I on 20 July 2005. There were 865 detainees although it can only accommodate 570. The centre was very overcrowded and it would appear that detainees needed to take turns to sleep. Detainees arrive at the centre as they are moved out of the *delegacias*. The Committee members were informed that the centre had a videoconference room via which prisoners provided evidence to court, thereby avoiding their transfer to court. There were a total of 12 guards. The Committee members were informed that a riot had taken place recently, in March 2005, during which two guards had been killed.

122. They also visited the women’s *cadeia publica* Pinheiros IV. There were 1248 women housed in the provisional detention centre, although it can only accommodate 512. Furthermore, although the centre was only for provisional detention, there were 759 provisional detainees and 489 convicted prisoners. Not all the guards were women. The Committee members were informed that it is expected that the centre will become a pre-trial detention centre for men by the end of 2005.

123. Finally, the Committee members visited the Guarulhos prison in São Paulo. Ninety per cent of the prison population were pre-trial detainees. In fact, it was explained to the Committee members that the prison would be transformed into a provisional detention centre. There were a total of 2,007 persons held in the centre, which was designed to accommodate 1,170. There were 280 foreign nationals. The Committee members were shown several workshops where inmates can work. The Committee members noticed that the grounds around the cellblocks and inside the prisons were full

of garbage. Prison officers explained that detainees threw the garbage out of their cells, so that when they were allowed out to pick it up, they could use the opportunity to pass information from block to block.

### *Belo Horizonte*

124. On 22 July 2005, the Committee members visited the Women's Penitentiary in Belo Horizonte, which housed 158 inmates in a well-maintained and equipped facility. Inmates produced sports clothing and nurses uniforms, in part through an agreement with the Ministry of Sports, for which they receive a wage amounting to 75 per cent of the profit. All inmates live in pleasant surroundings and all of them work. There is capacity to isolate prisoners for behavioural reasons. This prison was dubbed a model prison for Brazil in 2002. There was no interview of any prisoner, but the conditions observed by the delegation prompted the question. Why could the conditions in this facility not be replicated in facilities holding male prisoners?

### *Rio de Janeiro*

125. On 23 July 2005, the Committee members also visited the Polinter remand centre in Rio de Janeiro. The conditions under which the detainees are kept were extremely poor and shocked the Committee members. At the time of the visit, the centre housed approximately 1,405 men detained in the basement of the police station designed to accommodate 500 detainees. The sub-*delegado* explained that until recently, there had been 1,600 detainees. Approximately 150 detainees had already been sentenced but they had not been transferred to a penitentiary. Some of the detainees complained privately to the Committee members that they had to pay in order to be transferred to another centre. Many of the detainees provided the Committee members with notes on their situation pleading for help.

126. At Polinter, the Committee members observed that approximately 90 men were kept in overcrowded cells of 30 square metres, which resembled cages in which it was impossible for them to move or exercise. There were no beds (inmates slept on concrete surfaces and hammocks placed one above the other) and the sanitation facilities were deplorable (a hole was used as a shower and toilet and no soap or toilet paper was provided). There was no natural light (the lights were on 24 hours a day), resulting in the detainees losing their sense of time. Fans were used for ventilation, but the temperature was still very high, even though the visit occurred in winter. Detainees were allowed to leave their cells for a common area in the basement once a day for 40 minutes.

127. The Committee members considered that the situation in Polinter is also unacceptable for the six guards who have to control all the detainees. As in the case of many other police and prison guards with whom the Committee members met, they described their situation as degrading and dangerous. The Committee members were also astonished to see that detained policemen acted as guards in order to compensate for the low number of staff.

128. The Committee members had received allegations from a detainee concerning the existence of a soundproof room near the *delegado's* office where detainees had been tortured. However,

because the visit took place on a Saturday, a day when parts of the premises of the police station are closed, the *subdelegado* did not have the keys to the offices and the Committee members were unable to address these allegations.

129. The Committee members received and welcomed information that in early 2006 the Polinter remand centre was closed giving effect to an order for precautionary measures, of November 2005, issued by the Inter-American Commission on Human Rights.

130. On 25 July 2005, the Committee members visited the prison Bangu III in Rio de Janeiro where 448 inmates were held under a closed regime of maximum security. There was no overcrowding. However, the NGOs had alleged that there are many complaints of violence and ill-treatment relating to this centre and that the Director was also the Director of the Benfica Prison in May 2004 when an incident resulting in the deaths of 30 prisoners and one guard occurred. The Committee members were informed that all of the inmates held in this centre belong to the same criminal gang (Comando Vermelho) and have been sentenced mostly for crimes related to drug trafficking. The Bangu complex includes a prison hospital and inmates with AIDS are transferred to the Niterói Penitentiary. Access to work is limited to a minority of inmates. Those who work can reduce their sentences. The Committee members were also informed that some of the workshops were destroyed in December 2003 after a riot. The differentiated disciplinary regime is not applied in the penitentiary. Should this regime be applied by a judge, the detainee would have to be transferred to the penitentiary centre Bangu I in Rio de Janeiro. There are usually only four public defenders that provide legal assistance to the inmates, a totally insufficient number. While the *Defensoria Publica* of the State of Rio de Janeiro was on strike, measures were adopted to provide assistance to the prisoners. However, numerous prisoners whose sentences had been served had not been released and the strike was used as an excuse for not releasing them.

131. The Committee Members also visited pavilion A of the penal institute Placido Sá Carvalho II in Rio de Janeiro. Detainees were held under a semi-open regime. There were eight cells of approximately 50 square metres where 38 men were held. Visits take place twice a week. There were allegations that the water is not clean and is often rationed. Legal assistance is provided but this is limited as only approximately 20 detainees receive assistance each day. This, like in other prisons, means that detainees remain in prison despite having served their term. The prisoners complained about the quality and quantity of the food. Not all prisoners have a mattress to sleep on.

132. The Committee members visited the women's prison of Talavera Bruce in Rio de Janeiro. There were 310 inmates; 60 per cent had access to work and only 40 per cent were studying due to the lack of space in the school. As in the case other women's prisons visited, there was a nursery which was well equipped. The majority of the inmates were being held for drug trafficking. Visits take place three times a week. Conjugal visits are also allowed. The prison facilities include a school, theatre, various workshops and inmates publish a newspaper.

133. On 26 July 2005, the Committee members visited the Ary Franco Prison in Rio de Janeiro. Although the majority of the prison population (1,122) consisted of convicted detainees under a closed regime, there were also some pre-trial detainees. Groups of all the criminal gangs are present

in the prison. Detainees have no access to education, given that there is no school. They do not have the possibility of working, although at the time of the visit there were 100 detainees who worked as cleaners. Food was cooked on the premises, rather than being brought in from an outside caterer.

134. The Committee members visited corridor A which was underground. Part of the corridor was reserved for foreign nationals, while Brazilian nationals occupied the rest. All foreign nationals had requested that they serve their sentence in their own country, except for one whose family lived in Brazil. They indicated that the hygienic and other conditions were poor, but that Brazilian nationals were treated much worse. The Committee members observed the extremely poor material conditions, which were particularly evident where the Brazilian nationals were held. Detainees complained that the lights went off frequently and hence, they were left in the dark. There was no natural light. Some cells were extremely overcrowded, with a significant shortage of sleeping space for the detainees. There were no mattresses. The Committee members also received requests from some of the detainees demanding that they be transferred to a different cell because they feared for their lives. Some of the detainees claimed to have served their terms but continued to be detained. The majority of the detainees complained that they had no legal assistance at all. They also complained that visitors were submitted to degrading treatment and punishment while being registered at the entrance.

### **3. Interviews with alleged victims of torture and medical findings**

135. The Committee members also held confidential interviews with persons deprived of their liberty. Some of these interviews took place individually, while others took place collectively. However, all of them were carried out away from the hearing of those responsible for the detainees and confidentiality was respected at all times.

136. The interviewees were selected according to the following criteria: information had already been received to the effect that they had been tortured; and randomly, including on the basis of the most recent arrival or longest-serving in their respective places of detention. It was not possible to select them on account of the medical records kept in places of detention due to the fact that such records do not exist in all centres visited.

137. The medical expert, who was present during the interviews carried out in São Paulo and Rio de Janeiro, completed 19 clinical forensic examinations. Ages of examinees varied between 15 and 49 years old; of these, two were under the age of 20, seven between the ages of 21 and 30, three between the ages of 31 and 40, and seven above 40 years old. Seventeen of those examined were males and two were females. The time of detention varied from less than 24 hours (only one case) to approximately 16 years. Of the examined detainees, five were awaiting trial. The sentences being served by the convicted prisoners ranged from four to 70 years (the latter involving homicides). Almost all the detainees were persons who had previously lived in difficult socio-economic conditions, with a low level of education and belonged to vulnerable social groups.

138. Nine out of 19 interviewees stated that they had been treated in a way the Committee members considered could fall within the definition of article 1 of the Convention. They claimed

to have been subjected to torture by police agents at the beginning of their detention, in particular in order to obtain a confession. The mistreatment inflicted during this phase of detention was normally of a short duration, and did not result in haemorrhages or loss of consciousness, and consisted mainly in trauma caused by blunt instruments (essentially punches, kicks, slapping and occasionally, blows with objects). In the majority of the cases the results were contusions and haematomas that did not need medical treatment and healed by themselves.

139. One of those examined, who had been arrested the previous day, showed a haematoma on his right upper lip with a small horizontal cut on his inside lip, half a centimetre long. He stated that this was the result of a punch received from the police at the time of detention, an explanation that the medical expert considered totally compatible with the injury examined.

140. One detainee referred to open wounds incurred as a result of aggression by the police at the time of arrest and another referred to being subjected to the same type of injuries after being hit with the back of a spade/hoe by a prison warden. The physical examination clearly showed the existence of different sizes and shapes of scars, some almost oval, with pigmentation and hypertrophic, on the posterior-internal face of the forearm, the larger measuring about two and a half centimetres in diameter; and the other linear and oblique from top to bottom and from the outside to the inside, the biggest one measuring 12 centimetres, was located on his back. These areas of the body were the ones referred to as those subjected to aggressions.

141. In one case, reference was made to the practice of electric shocks, administered twice, in connection with a detention which had occurred in the second half of the 1980s, but no physical trace of such practice were found.

142. In another case, the practice of mistreatment by twisting the thumb repeatedly was alleged. The medical examination showed rigidity of the thumb.

143. In two cases the medical doctor found surface scars on the detainees' backs compatible with aggression with blunt instruments used in arrests by the police. Scars were linear, sometimes double and parallel, some oblique from top to bottom and from the outside to the inside, others almost horizontal, the biggest one measuring 11 centimetres.

144. In the case of a young detainee, the medical doctor found a scar on the left buttock measuring 3 centimetres which was compatible with the report made that he was hit by rubber bullet shot by a prison warden during a rebellion in the juvenile detention centre where he was detained.

145. The medical expert observed one case where the detainee alleged that he was the victim of repeated torture. This took place during a previous detention in the 1980s. He remembered having been taken to a room, which could have been an office, where he was placed in a position called *pau de arara*, while police agents hit him on his back and head. During the torture he was continuously insulted and threatened. The physical examination of the detainee revealed motor and sensorial neuropathy of the lower limbs with alteration of the motor function, that is, pathology compatible with what he reported.

146. Hence, the medical expert observed that some of the physical injuries could be related to trauma, while other injuries were absolutely diagnostic of mistreatment. These latter signs clearly and unequivocally proved the existence of situations of repeated mistreatment.

147. All detainees examined denied they had experienced other types of torture, namely asphyxiation by wet and dry methods, injuries by penetration, crushing, exposure to chemicals, burns or pharmacological torture. They also denied they had experienced humiliation by verbal abuse or the carrying out of humiliating acts, threats to them or their families, systematic psychological techniques of personal humiliation or coerced behaviour.

148. Eleven of the detainees examined showed psychological alteration well above what was expected within their cultural and social context, resulting from the stress of their current situation as detainees. The medical expert observed elements suggesting depression and post-traumatic stress, requiring a deeper neuropsychological and psychiatric assessment, which was impossible to carry out in the context of these examinations. Besides the depressive states, amongst the most frequent psychological symptoms, the medical expert found lack of pleasure, anxiety, insomnia, emotional lability, sense of uselessness (very often related to the boredom resulting from having nothing to do), lack of self-confidence, dissociation and depersonalization. The psychosomatic complaints, of diverse intensity, consisted mainly in chronic headaches, back pain, muscular or skeletal pain and gastro-intestinal symptoms.

149. The medical expert noted that the detention system is inefficient in terms of provision of medical, psychiatric and dental care and assistance to the detainees, and that in some cases these services were unavailable to detainees. A large number of detainees had skin diseases (scabies, psoriasis, infections etc) that in the majority of the cases were not being medically treated. There were no adequate and separate facilities for detainees with infectious contagious diseases, namely tuberculosis, who live side by side with others. The non-existence of regular and satisfactory medical care both in the case of general medical care, as well as dental health care, was also observed.

150. The Committee members and the medical expert were provided with a videotape containing images collected during surprise visits carried out by prosecutors from the Children's and Minors Court of São Paulo to juvenile detention centres under the responsibility of FEBEM in São Paulo. The videotape contained, inter alia, images where the medical expert observed the existence of significant and intense injuries of a traumatic nature produced by blunt instruments in many juveniles. These were essentially ecchymosis, haematomas and grazing, in the majority of cases located in the dorsal and lumbar region, but also in other parts of the body, namely the back of the hands and forearms, buttocks and thighs. A few of them have been produced by rubber bullets. In general, they were injuries whose location and typology (and in some cases they clearly looked like defence wounds) allowed him to conclude unequivocally that they were the result of violent aggression. The fact that recent and not so recent injuries were simultaneously observed, led him to believe that there is a situation of repeated aggression and not just a case of a sporadic episode of aggression.

151. The videotape also showed various blunt instruments found in the course of the visits to the juvenile detention centres in question, that, according to the medical expert, were perfectly consistent with the type of injuries observed in the juvenile detainees. In other words, the instruments were probably the cause of those injuries. In some cases, the trauma injuries reproduce the shapes of the instruments almost perfectly.

152. NGOs also provided the Committee members and the medical expert with photographs of recent traumatic injuries (mainly haematomas, ecchymosis and excoriations), on the head, face, the back and upper limbs, produced by blunt instruments, which appeared to be consistent with intentional aggression. The medical expert noticed that, in some cases, injuries occurred as the victim tried to avoid the blows that were being inflicted. According to the medical expert, the characteristics of these injuries are totally consistent with the batons used by the police force which are also visible in the photographs provided.

### **C. Information received from federal and state governments and other authorities**

153. During the meetings with government officials, the Committee members were briefed on the situation in the country, as well as on the legislative, administrative and judicial measures taken in their respective areas of work to prevent acts of torture and to respond to allegations of torture. Overall, the government officials acknowledged that acts of torture occur in Brazil, but that they were isolated acts and not an institutionalized practice.

#### **1. Follow-up to the visit of the Special Rapporteur on the question of torture**

154. The Human Rights Commission of the Federal House of Representatives updated the Committee members on the implementation of the recommendations formulated by the Special Rapporteur on the question of Torture following his visit in 2000, which reflected the concerns described above by the NGOs. Inter alia, the police practice of arresting people without a judicial order continues and detention facilities have not improved as a whole. The probative value of confessions obtained by the police in the absence of a judge or lawyer has not changed. However, a bill is being discussed in the Parliamentary Commission for Constitution and Justice within the Chamber of Deputies, which would establish that confessions will only be used as evidence if made before a court in the presence of a defence lawyer. The proposal of transferring the burden of proof to the prosecution in cases in which the defendant alleges that evidence was obtained under torture has not been considered. The protection of witnesses with criminal records is still not ensured. Most of the independent monitoring of detention facilities has been implemented by civil society, though access for these groups has often been difficult. No other independent system is provided by the State authorities.

155. The Committee members were provided with two draft bills that are currently being debated in the National Congress which establish various measures for the prevention of torture, such as the creation of a National System for the Prevention of Torture.<sup>34</sup> The Committee members consider that the adoption of these draft bills could be an important step forward to combat the practice of torture.

## **2. The application of the 1997 Torture Law**

156. The Committee members requested statistics on the application of the 1997 Torture Law. It was indicated by some authorities that the number of convictions is low, partly due to the lack of forensic reports proving the occurrence of an act of torture. However, the Committee members were informed that there is no compilation of data at the national level regarding the application of the Torture Law. Each state has its own data. For instance, the representative of the Public Prosecutor's Office of São Paulo said that six public agents had been condemned in first instance under the Torture Law in São Paulo. Research by one international NGO demonstrated the existence of just one known conviction for torture of personnel since 1994 in the abusive juvenile detention system of Rio de Janeiro.<sup>35</sup>

157. The Vice-President of the Federal Supreme Court informed the Committee members that there are currently several draft bills on the federalization of the crime of torture that are being

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<sup>34</sup> Draft bills number 5546/2001 (Deputies Nilmário Miranda and Nelson Pellegrino) and 5233/2005 (Deputy Sigmaringa Seixas).

<sup>35</sup> Human Rights Watch, "In the dark: hidden abuses against detained youth in Rio de Janeiro", June 2005, vol. 17. No 2 (B).

considered in the National Congress. Representatives of the Ministry of Justice of the Federal District informed the Committee members about the enactment by the National Congress of the Constitutional amendment number 45/2004 whereby the Superior Court of Justice is competent, upon request of the Federal Prosecutor General, to transfer a case concerning serious violations of human rights (including torture) from the local courts to the federal courts.

## **3. Compensation**

158. According to the Association of Judges for Democracy, compensation, even if there is a judicial decision establishing the right to this, has not been provided in any case since 1998. Furthermore, the presidents of the superior judicial bodies with whom the Committee members met expressed concern at the inefficiency and slowness of the implementation of judicial decisions which provide for compensation to be paid by the State.

## **4. Complaints of torture and administrative investigations**

159. The number of complaints of torture received is low. For instance, the police *ouvidor* of São Paulo indicated that in the year 2004, he received 3,300 complaints, out of which only 1.26 per cent related to torture. The *ouvidor* indicated that torture takes places mainly in police stations that hold



public jails. According to the data provided by the police *ouvidor* of Rio de Janeiro, 104 complaints of torture were received in the last 75 months, amounting to approximately 1 per cent of the complaints received. Complaints concerned the military police in 66 cases and the civil police in 34 cases.

160. The police *ouvidor* in Belo Horizonte indicated that it was difficult to gather statistics on convictions of police following complaints of torture, as the procedure was predominantly administrative with up to six opportunities for appeal. He indicated that there had been eight cases of torture reported to the *ouvidoria* in 1998; 162 in 2002; 48 in 2003; 56 in 2004 and 18 in the first quarter of 2005. Reports had concerned military police in 355 cases, there being 37890 such police, thereby indicating that about 1 per cent of military police had had complaints alleged against them, while 351 concerned the civilian police. Reports concerned police outside metropolitan areas mostly (272 out of 351; 220 out of 355).

161. The *corregedoria* of the civil police of São Paulo provided information on the number of proceedings initiated against civil police officers for acts of torture. From 2003 to 2005, there were a total of 12 administrative proceedings for torture and one civil police officer had been suspended from his duties, while three have resigned. In the same period, there have been a total of 175 administrative proceedings for police violence.

162. The Committee members were informed that some 1,700 monitors of FEBEM had been suspended, but some had eventually been reintegrated following official investigations for grave incidents and were working at other detention centers.

## **5. The penitentiary system**

163. The Chairperson of the Human Rights Commission of the Federal House of Representatives claimed that the penitentiary system was flawed and that the Government lacked a penitentiary strategy to combat all the current problems. As explained by several government officials, each state has its own individual penitentiary policies. It appears that often, state policies are focused on the creation of new detention centres. In fact, the Committee members were informed that in the last 10 years, the number of detention centres have doubled the number of centres which were operative in the early 1980s.

164. Five new penitentiary centres are to be built at the federal level; one in each federal region. Two will be completed by 2005, and the remaining three by 2006. This will alleviate, to a certain extent, the existing need of federal detention centres, given that currently many detainees sentenced for federal crimes or foreign prisoners are held in state penitentiaries. A training centre will also be set up to train all personnel of the new federal penitentiary centres, and it is expected that it will eventually train state penitentiary personnel.

165. A new penitentiary centre will also be established in Brasilia, which will reduce the existing overcrowding by 1,500 persons. At the time of the visit, the Committee members were told that there was an overpopulation of 3,000 inmates in the Federal District. Concerning juvenile detention

centres in Brasilia, the Secretary for Social Welfare of the Federal District informed the Committee members that a new centre for juveniles in Brasilia, which will accommodate 144 juveniles, will be inaugurated in October.

166. The Secretary for Penitentiary Administration of São Paulo provided the Committee members with a list of all penitentiaries in the State of São Paulo, where out of a total of 134 centres, 77 had been built since 2000. During the inquiry mission, the penitentiary of Carandiru was demolished. Assurances were also given by the Secretary of Justice of São Paulo that the Tautapé centre for juveniles would be decommissioned by the end of the year.

## **6. Pre-trial detention centres and police stations (*delegacias*)**

167. The number of pre-trial detainees is very high. According to the information provided by the Secretary for Penitentiary Administration of São Paulo, this is due to the large number of arrests, which in the State of São Paulo amount to 1,000 each month. The prison population of São Paulo under the Secretary for Penitentiary Administration is almost 120,000, while pre-trial detainees amount to almost 35,000; 51.17 per cent of the prison population has access to work, 23.82 per cent has access to education and the remaining prison population (25.01 per cent) does not carry out any activity.

168. It was acknowledged to the Committee members that police stations should not accommodate prisoners. The *Delegacias de policia participativa* in São Paulo, or *delegacias legais* in Rio de Janeiro, are police stations without public jails which replaced the existing police lock-ups. The procedure now should be that when a suspect is arrested, he/she would be taken to this type of *delegacia* where his/her identity would be established and a preliminary investigation would take place. Afterwards, he/she would be taken to a “custody house” to be further questioned. Both the Secretary for Penitentiary Administration of São Paulo and the Deputy-Secretary of Public Security of the State of São Paulo gave their assurances that all police stations with jails would be decommissioned by the end of September 2005. The Deputy-Secretary of Public Security of the State of São Paulo also informed the Committee members that there were still 16 police districts with public jails, while 56 have already been decommissioned.

169. According to the Chief of the civil police in Rio de Janeiro, there are a total of 166 police stations in the State of Rio de Janeiro, out of which 83 are *delegacias legais*; 5,500 detainees are held in police stations, under the authority of the civil police. The total prison population of Rio de Janeiro is 26,000. The State provides 700 reais per month per detainee.

170. The Deputy-Secretary of Social Defence of Minas Gerais expressed concern that there were up to 25,000 detainees in the State, with up to 17,000 in *delegacias*; whereas they could only accommodate 8,000 detainees. He indicated that more jails were being built, and many more would be needed. He wished to decommission all *delegacias* with detainees and ensure that all *delegacias* were now built without cells, especially in the interior of the state.

171. The Secretary for Human Rights and Justice of the State of Bahia indicated that there

were 11,000 detainees in Bahia, 6,000 in the hands of justice and 5,000 in *delegacias* under the custody of the police. The state spends 1,200 *reais* per month per detainee.

## **7. Training of law enforcement officials**

172. The Committee members were informed of the efforts being made to train law enforcement officials on human rights. The United Nations Development Programme and the British Embassy had collaborated in the provision of trainings and in the elaboration of a manual for prison officials. A curriculum matrix for police training has also been created. The Committee did not receive parallel information concerning training plans for guards in centres for juvenile detention.

## **8. Disciplinary regimes (RDD and RDE)**

173. The Committee members were also informed of the creation of the differentiated disciplinary regime (RDD), which was established by federal law in December 2003. This regime, which started in the State of São Paulo, provides that detainees may be held, upon a judicial decision, in complete isolation in special cells. Inmates are not entitled to access to radio or television and do not have the right to conjugal visits. They may not carry out any activities nor redeem their sentences. The Secretary for Penitentiary Administration of São Paulo confirmed that the director of a penitentiary centre may order the transfer of an inmate to an RDD centre even without a judicial decision in the case of a riot. The director would then have 24 hours to inform the competent judge.

174. In this connection, the Committee members would like to refer to a document prepared by the National Council for Criminal and Penitentiary Politics dated August 2004, which denounces the differentiated disciplinary regime. The document highlights general comment No. 20 of the Human Rights Committee which provides that “prolonged solitary confinement of the detained or imprisoned person may amount to acts of torture”.

175. The Committee members were also informed of the establishment of the special disciplinary regime (RDE), which is implemented in the State of São Paulo. Under this regime, inmates are held in collective cells, radio and television is permitted, and they may engage in four hour of exercise. The Secretariat for Penitentiary Administration may decide whether or not to transfer an inmate to an RDE facility, but must thereafter inform the corresponding judge.

## **9. Other developments**

176. During the course of the inquiry mission, the Committee members were also informed that the Special Secretariat for Human Rights no longer has ministerial status. The Committee members found this decision regrettable, considering the significant role of this institution in the formulation and implementation of public policies geared towards the promotion and protection of human rights.

177. Finally, it was noted that Brazil had signed the Optional Protocol to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and it is expected that the National Congress will decide on its ratification in the coming months. Brazil is also expected to

accept the right of individual petition to the Committee, by making the declaration envisaged under article 22 of the Convention.

## **VI. CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE**

178. The Committee found, as described in the preceding paragraphs, endemic overcrowding, filthy conditions of confinement, extreme heat, light deprivation and permanent lock-ups (factors with severe health consequences for inmates), along with pervasive violence as well as lack of proper oversight, which leads to impunity. In fact, there is widespread impunity for the perpetrators of abuse. In addition, the Committee on several occasions received allegations attesting to the discriminatory nature of these conditions given that they affect vulnerable groups and in particular, persons of African descent. The Committee notes that the government of Brazil, fully cooperated with the Committee's visit, constantly expressed its awareness and concern with the seriousness of the existing problems, as well as its political will to improve. However, tens of thousands of persons are still held in *delegacias* and elsewhere in the penitentiary system where torture and similar ill-treatment continues to be "meted out on a widespread and systematic basis".<sup>36</sup> The Committee has defined systematic torture by stating that "the Committee considers torture is practised systematically

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<sup>36</sup> Report of the visit to Brazil of the Special Rapporteur on Torture, E/CN.4/2001/66 Add.2, para. 166.

when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice".<sup>37</sup>

179. Police investigations into alleged acts of torture or ill-treatment have been criticized as ineffective. Abuses by the police in carrying out these investigations are reported to be common. There is a reported lack of willingness by police officers to investigate fellow officers. In this connection, the corporate nature of the *corregedorias* may lead police officers to be unwilling to investigate their own colleagues. It was repeatedly suggested that it usually takes a long time before information on allegations of torture reaches the Public Prosecutor's office from the *corregedorias* and a criminal inquiry is initiated.

180. Furthermore, the constitutional debate on the power of the Public Prosecutor's Office to initiate independent investigations into allegations of torture is still pending. The Constitution has been interpreted by some as providing the Public Prosecutor's Office with a more active role and

allowing it to proceed with criminal investigations and indict officials involved in criminal activities, such as torture, in cases where there is sufficient prima facie evidence. Other commentators, including the police, claim that constitutional provisions require that a police inquiry is necessary and that preventing the causes of torture would be more appropriate. The Committee members consider that public prosecutors should be able to initiate cases rather than having to rely on evidence collected and forwarded by the police.

181. Proposals have been made to replace the preliminary police investigation with an investigation led by a prosecutor and controlled by an investigating judge, whereby all detained persons would be brought before an investigating judge and only confessions made before him/her would be considered admissible. The Committee members support this proposal, but note that no action has been taken in this respect to date.

182. Another factor that contributes to impunity is that judges do not apply the 1997 Torture Law and prefer to classify cases of torture as bodily harm or abuse of authority. The federalization of the crime of torture has been proposed as a possible means of overcoming the difficulties in the implementation of the Torture Law. The Committee members found it regrettable that the procedure established by the Constitutional amendment 45/2004, whereby the Superior Court of Justice is

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<sup>37</sup> A/48/44 Add.1, para. 39 and A/56/44, para. 163.

competent, upon request of the Federal Prosecutor General, to transfer a case concerning serious violations of human rights (including torture) from the local courts to the federal courts has rarely been used.

183. There seems to be very strong pressure and demand from society and politicians that all criminals should receive strict penalties and remain in detention centres away from the public. Judges allegedly impose harsher sentences than are necessary, and do not apply alternative sentences,<sup>38</sup> such as payment of reparation, community work or temporary suspension of rights provided by the Penal Code. The application of such sentences would relieve, to a certain extent, the overcrowding which exists in detention centres.

184. The Committee members were concerned at comments made by high-level Government officials; these included the opinion that juvenile second-time offenders should not be protected under the Statute of the Child and Adolescent and that police officers who commit a crime of torture should not be treated in the same way as civilians who commit such a crime, because the former can be integrated into society more easily, given that they are trained.

185. The Committee members observed that the protection of detainees during their arrest, pre-trial detention and detention is well provided for in the national legislation. However, serious difficulties arise in the implementation of the law. They also considered that the legal provisions in

this area are generally not well known. This observation was confirmed when the President of the Supreme Court of Rio de Janeiro affirmed to the Committee members that the crime of torture constituted a federal crime. Due to his lack of knowledge of criminal law in this regard, the President felt uncomfortable with the discussion and abruptly interrupted the dialogue with the Committee members.

186. The Committee members also noted that, in practice, a large number of detainees with whom the Committee members met did not have any free legal assistance, despite the fact that they did not have the funds to pay a lawyer. The Public Defender's Office is not available in a large part of the country and reportedly, in those cases where it is present, lacks resources to carry out its functions. For instance, the State of São Paulo still does not have a Public Defender's Office. At the time of the visit, the Public Defender's Office in Rio de Janeiro was on strike for various reasons, including lack of personnel, precarious work conditions and low salaries (public defenders reportedly earn one third of a judge or prosecutor's salary).

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<sup>38</sup> The possibility of applying alternative sentences is provided for in articles 43 and 44 of the Penal Code. Alternative sentences substitute sentences of deprivation of liberty in the following cases: the sentence of deprivation of liberty should not be more than four years; the crime was not committed with violence or serious threats of violence and was unintentional; the offender has not previously committed an intentional crime; and his/her previous record, social conduct, personality and circumstances of the commission of the crime indicate that an alternative sentence is sufficient.

187. The Committee members also observed that specific initiatives have been taken at the state and federal level to combat the practice of torture, such as the "National Permanent Campaign for Combating Torture and Impunity" launched by the federal Government and civil society but regrettably discontinued in 2003. The campaign has been criticized by many NGOs as being highly ineffective.

188. The extremely poor conditions of detention facilities observed consistently throughout the visit were of deep concern to the Committee members. There is a constant threat of violent riots in detention centres, with the danger of such incidents increasing as a direct result of poor conditions. Overcrowding is endemic and the majority of the centres visited lack adequate facilities. Moreover, the Committee members observed that the detention centres do not have programmes to help reintegrate detainees into society. A large percentage of the detainees do not have access to education or to any vocational activity. This situation particularly affects persons with low income who belong to disadvantaged groups. Their prolonged detention reduces their possibilities of social reintegration, deepening their marginalization and exposing them to other criminal activities.

189. The Committee members noted that the Government of Brazil has attempted to reduce overcrowding by building more detention centres, which in turn, have become overcrowded in a short period of time. Alternative solutions must be sought as a matter of extreme urgency. Overcrowding causes irreparable physical and psychological damage to detainees. As long as this

problem is not solved, the State will be responsible for tolerating an inhuman situation in many detention centres.

190. The number of staff guarding detainees is extremely low. The Committee members observed that the shortage of staff had a negative effect not only on security and respect of detainees' rights, but also on the security and morale of the staff. They also observed shortages in the number of social workers, psychologists and other staff. Furthermore, staff do not receive sufficient training on the rights of all detainees and their obligation to respect such rights.

191. Jails continue to exist in police stations. Although the initiative to decommission police stations has been partially implemented, as was observed at the 9th District *Delegacia de Polícia Participativa* in São Paulo and 5th District *Delegacia Legal* in Rio de Janeiro, there are still a large number of police stations which continue to hold detainees. The Committee members strongly recommend that any jails in police stations be abolished immediately.

192. The Committee members consider that the new disciplinary regimes (RDD/RDE) may lead to violations of the human rights of inmates held under these regimes, particularly where they are held in isolation for long periods of time. They regretted not having been able to visit any centres of RDD/RDE due to their distance from the state capitals. In this regard, the Committee members are concerned that the geographical distance between these centres and the location of the family members of most inmates impede visits by family members.

193. The Committee members received numerous allegations from NGOs concerning abuses in psychiatric detention centres. However, the Committee members did not visit these centres as they did not have medical expertise required for their assessment and therefore cannot draw conclusions based on its own observations.

194. Generally forensic institutes and their doctors are economically dependent of the police authorities. Thus, most States lack an independent forensic institute. Considering that most allegations of torture and ill-treatment are against police agents, this lack of independence can seriously compromise a diligent and prompt forensic examination with accurate results. In addition, it has been repeatedly reported that all forensic institutes do not have sufficient financial, technical and human resources to carry out their functions adequately.

195. In practice, the forensic examination of detainees is carried out only at the request of the police or legal authority, such as a judge or prosecutor. This reduces the possibility that a possible victim of torture will be medically examined. In many cases, medical examinations are superficial or are carried out many days after the aggression has taken place, when external signs of such activity will have already disappeared. Many doctors lack professional training in forensic medicine and are unable to identify the injuries characteristic of ill-treatment or torture.

196. In the light of these considerations, the Committee makes the following recommendations:

(a) Complaints alleging torture by public officials should be promptly, fully and impartially

investigated and offenders should be prosecuted under the 1997 Torture Law and penalized appropriately;

(b) The states' Public Prosecutors' Offices should be empowered to initiate and carry out investigations into any allegations of torture and should be provided with the necessary financial and human resources to allow them to fulfil this responsibility;

(c) An effective application of the Constitutional safeguard of federalization of human rights crimes, in particular torture, which allows the Federal Prosecutor-General to request a transfer of certain human rights violations (including torture) from State to federal jurisdiction, should be ensured;

(d) Accused officers should be suspended from their duties pending the outcome of any investigation into alleged torture and ill-treatment and any subsequent legal or disciplinary proceedings;

(e) The judiciary should be encouraged to impose alternative sentences to detention as provided for by the law. The imposition of long periods of detention or imprisonment for relatively minor offences should be avoided as should close regime custody;

(f) The prosecution should carry the burden of proof where there are allegations that a confession was extracted under torture;

(g) Only statements or confessions made in a presence of a judge should be admissible as evidence in criminal proceedings;

(h) In order to ensure impartial investigations and safeguard the rights of all persons deprived of their liberty, the State party should consider the creation of an Office of an Investigating Judge;

(i) Alleged human rights violations committed by the military police against civilians should be investigated and prosecuted by general criminal courts at all stages of the criminal proceedings, rather than by military courts;

(j) All victims of torture should be provided with compensation. The State party should ensure that enough funds are allocated to make the relevant payments. The existing system of implementation of judicial decisions that grant State compensation to victims of torture so that these persons may receive the compensation that they are entitled to should be reformed in a timely fashion;

(k) The State party should carry out awareness-raising campaigns in order to sensitize all sectors of society about the issue of torture and ill-treatment and on the existing conditions of detention centres;

(l) The right to counsel must be guaranteed at all stages of detention, from the initial detention



at police stations. An adequately resourced *Defensoria Pública*, with appropriate authority to investigate and file necessary legal actions, should be present in all States of the Federation in order to provide legal representation to all criminal suspects. Public defenders should receive adequate salaries and appropriate training to ensure that they can carry out their duties;

(m) Allegations of police misconduct should be investigated by an independent body, adequately resourced to perform its functions;

(n) Allegations regarding cells of *castigo* should be investigated by the State party;

(o) The State party should ensure that the police *ouvidorias* have sufficient human and financial resources so that they can carry out their tasks independently;

(p) All state and federal organs responsible for the investigation of police misconduct should compile statistics disaggregated by age, sex and race on the number of complaints of torture received and investigations carried out. These statistics should be in a public document which should be submitted to Parliament annually;

(q) The material conditions of detention centres must be improved without delay as a matter of highest urgency and importance. The State party must allocate sufficient financial resources to improve these conditions so that all detainees may be treated humanely;

(r) The material conditions of juvenile detention centres must also be urgently improved. The State party should ensure the application of the Statute of the Child and Adolescent and adopt all necessary measures to provide educational and vocational training, medical and recreation facilities to help reintegrate children and adolescents into society;

(s) The problem of overcrowding in detention centres must be solved by adopting measures urgently, such as awareness-raising of the judiciary of the possibility of applying alternative sentences;

(t) Juvenile offenders should be separated on the basis of age, physical build and seriousness of the offence, as provided for in the Statute of the Child and Adolescent and the United Nations Convention on the Rights of the Child;

(u) Police stations should not be used to accommodate pre-trial detainees and sentenced prisoners beyond the 24-hour period prescribed by the law;

(v) Detainees should be separated, depending on whether they are awaiting trial or sentenced, whether they have been sentenced to an open, semi-open or closed regime, as well as by the seriousness of the offence;

(w) The State party should ensure adequate funding to recruit sufficient prison personnel. Furthermore, all law enforcement personnel, including police officers and prison guards should

receive training on the rights of suspects and detainees and their obligation to respect such rights, including the provisions set forth in the Convention and other relevant international instruments;

(x) The State party should review the disciplinary policy regimes for detainees (RDD/RDE) currently being implemented. The State party is reminded that prolonged isolation may amount to torture;

(y) An adequate system which would enable all inmates to reduce their sentences through work without any distinction or discrimination should be established in all penitentiary centres;

(z) In all cases in which a person alleges torture, the competent authorities should guarantee that a medical examination is carried out in accordance with the Istanbul Protocol on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment. Medical doctors should be trained to identify injuries that are characteristic of torture or ill-treatment in accordance with the Istanbul Protocol. Forensic examinations of detainees should be routine and not dependant on a police request;

(aa) The technical and scientific independence of forensic doctors in the execution of their forensic work should be guaranteed, including through placing them under the judicial authority or any other independent authority and separating them from all police structures;

(bb) The State party is encouraged to ratify the Optional Protocol to the Convention, which would provide for the establishment of a national protection mechanism with the authority to make periodic visits to places of detention;

(cc) The State party is also encouraged to accept the right of individual petition to the Committee, by making the declaration envisaged under article 22 of the Convention.

**PART TWO: Comments by the Government of Brazil on the Report produced by the Committee against Torture, under Article 20 OF the Convention against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment (CAT/C/36/R.1/Add.1)**

197. On June 8 2006 the conclusions resulting from the investigation carried out by the Committee Against Torture (CAT) in Brazil, expressed in document CAT/C/36/R.1/Add.1, “Report on Brazil, produced by the Committee Against Torture, under article 20 of the Convention”, were transmitted to the Government of Brazil.

198. Taking into account especially the observations and recommendations made by the Committee, the present document comments and clarifies some of the points contained in the Report and updates information on measures taken by the Brazilian government to prevent and combat torture and other cruel, inhuman or degrading treatment or punishment.

**Introduction**

199. The Brazilian Government expresses its appreciation to the Committee against Torture (CAT) for the transmission of the report on Brazil, produced under article 20 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Both the Report and the *in loco* visit of the delegation from the Committee Against Torture that preceded it (13-29 July 2005) represent important elements of cooperation to strengthen prevention and the struggle against torture and other cruel inhuman or degrading treatment in Brazil.

200. The Brazilian Government expresses its appreciation for the recognition in the report of the Committee of the degree of openness and cooperation by its authorities for the organization and realization of the visit. The Brazilian Government is convinced that a frank, constructive and ongoing dialogue with the Committee may contribute to additional progress in human rights in the country.

201. Since Brazil is one of the countries that have received most Special Procedures visits from the Commission/Council on Human Rights, the mission of a “treaty body” such as CAT to Brazil has also been useful to strengthen transparent and good faith dialogue between Brazil and all international mechanisms for the protection of human rights.

202. Since September 28 1989 Brazil has been a party to the Convention Against Torture. The Convention and its corresponding regional instrument - the Inter-American Convention to Prevent and Punish Torture, ratified in June 1989 - were the first human rights treaties to which Brazil adhered after the return to democracy and the adoption of the 1988 Constitution. Their ratification preceded adherence to the more general instruments of promotion and protection of human rights, such as the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and the American Convention on Human Rights. It is thus evident that the struggle against torture is one of the first priorities in the Brazilian policy on human rights.

203. The Constitution of October 5 1988 enshrined repudiation to torture in several of its provisions, by stipulating that “no one shall be subject to torture or inhuman or degrading treatment” (art. 5, III) and that the law will consider the practice of torture as a non-bailable crime, to which no pardon or amnesty is admissible, and for which the principal agent, the executors and those who did not prevent it although in a position to do so are responsible (art. 5, XLIII). Cruel punishment is also forbidden (art. 5, XLIV, e).

204. For Brazil, the priority of the prevention of and the struggle against torture stems both from its character of serious violation of fundamental rights and, unfortunately, from the historic circumstances that affected the country during the period of dictatorship, between 1965 and 1985.

205. At the time, especial after the edition of Institutional Act no. 5 (AI-5), in December 1968, rights and assurances essential to the Democratic State of Right were abolished and the practice of arbitrary arrests, followed by torture and ill treatment by official agents became commonplace. Opponents of the authoritarian regime were persecuted and violently punished, often by death.

206. The fight against dictatorship was thus characterized by torture, so much so that to fight

against it today is emblematic for the Brazilian Government and society, standing for the consolidation of the democratic regime.

207. In this connection, beside the above-mentioned conventions and constitutional guarantees, the Brazilian Government launched, in late 2005, an integrated action plan against torture, whose central axis are the thirty recommendations made by the Special Rapporteur on Torture in his last visit to Brazil. The Plan aims at joining the three Powers and organized civil society in the prevention of and struggle against practices of torture.

208. Until March 2007 eight states of the Federation had adhered to the Plan. Among measures proposed to curb torture is the video recording of interrogations and frequent surprise visits to penitentiaries and police precincts by independent committees and organizations the creation of specialized groups of public prosecutors to combat torture and to develop a permanent national anti-torture campaign in the media.

#### **I. ON THE VISIT TO BRAZIL OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 20 OF THE CONVENTION**

209. The starting point of the investigation procedure by the Committee Against Torture under article 20 of the Convention was the information transmitted to CAT by non-governmental organizations in November 2002. It should be mentioned that according to paragraphs 3 and 45 of the Report of the Committee, that information was related to alleged practice of torture in but one state of the Federation. A part of such information had already been transmitted to the Rapporteur of the Human Rights Commission on the Question of Torture, Sir Nigel Rodley, on the occasion of his visit to Brazil in 2000.

210. The information received by the Committee was transmitted to Brazil in November 2002. The process of government change in the Federal and State levels at that time hampered a prompt response to the written information and queries sent by CAT. On the other hand, the priority accorded by the Lula Administration to the promotion and protection of human rights - as shown by the creation of three Special Secretariats with ministerial level on the issue and by deepening dialogue and cooperation with the international protection machinery - led Brazil to promptly agree with the request of a visit sent by the Committee in December 2003; there was only a request for a shift of dates necessary for its adequate preparation and carrying out.

211. The Brazilian Government expresses its satisfaction for the recognition by the Committee, in paragraph 19 of its Report, of the cooperation and support of the Government of Brazil for the visit and for the respect to the principles agreed with the Committee for its realization. Throughout the visit, the Brazilian Government accorded the Committee full freedom of transit and investigation, with access to relevant officials at every level and Powers of the Federation, access and private contacts with representatives of non-governmental organizations, likely witnesses and persons deprived of freedom. The Brazilian Government also assured the security measures necessary to the members of the Committee and other members of its delegation during the whole

visit. In cases of seeming conflict between security needs and freedom of investigation, the Brazilian authorities left this appraisal at the discretion of the members of CAT, as in the instances when members of the delegation decided to enter unaccompanied in cells and pavilions with a large number of inmates.

212. As mentioned by the Committee, the visit of the CAT delegation was not possible in only one detention center: the Regional Penitentiary Jason Soares Albergaria, in São Joaquim de Bicas - MG. The Brazilian Government expresses its appreciation to the Committee for recognizing the efforts of an official of the Ministry of External Relations to allow access of the CAT delegation to that the detention center and regrets the lack of communication between the Secretariat for Social Defense of Minas Gerais and the administration of that prison unit, which made impossible the realization of the visit. It stresses the cooperation by State authorities to the visits to all the other detention centers singled out by the Committee in that State and the isolated nature of the incident. It points out that the delegation of the Committee sought the visit to the Regional Penitentiary on a week-end, when on the one hand visits by families of inmates were in progress, and on the other communication with relevant State authorities to assure access by the Committee was more difficult. It recalls that the Regional Penitentiary Jason Albergaria, opened in November 2003, is a modern prison establishment, recently built, and had even been mentioned to the Committee in its meetings with state authorities as an example of efforts carried out to improve prison conditions.

213. The Brazilian Government thanks the delegation of the Committee for having informed all persons whom it met in Brazil that the visit had a confidential character, according to article 20 of the Convention. It regrets, however, that some representatives of non-governmental organizations with whom the Salvador-BA team met in Salvador BA did not respect the confidentiality of the procedure. According to the annex documents, the visit of CAT to Salvador came to be announced by the local press, including declarations of persons who may have had contact with the Committee's delegation. In some instances, photographers tailed the members of the delegation from one of the leading local newspapers. The Brazilian Government highlights the importance of rule 81.3 of the Rules of Procedure of the Committee, about the oath and the solemn declaration of truthful witness and respect for the confidentiality of the procedures on the part of all persons from whom the members of the Committee may obtain testimony.

214. The Brazilian Government stresses the posture of transparency and constructive dialogue adopted in general by the Brazilian authorities whom the Committee's delegation interviewed during its visit to the country. It regrets, however, the early closure of one of the meetings carried out by the Committee's delegation. It regrets especially the incomplete and partial way in which that incident was included in the Committee's Report (paragraph 185 of the Report). The Report omits, with respect to that incident, the attitude of one of the members of the Committee present at the meeting, hardly compatible with the dignity of the office held by the official being interviewed and with that of the member of the Committee Against Torture. To reestablish truth, the Brazilian Government stresses that the state official brought the meeting to an early closure because he felt "under interrogation" due to the way he was being interviewed by the above-mentioned member of CAT, who acted several times in an inquisitorial and ironic way. It emphasizes that such a posture

had occurred in previous interviews, fortunately without the same result, and that it was never shared either by any other member of the Committee present at the visit or by the remainder of the members of the CAT delegation. The Brazilian Government stresses the need for full respect to the solemn declaration provided in Rule 14 of the Rules of Procedure of the Committee.

## **II. ON THE PLACES OF DETENTION VISITED BY THE COMMITTEE**

215. As part of their work in Brazil, the members of CAT visited places of detention of persons in five states of the Federation. The Brazilian State presents updated information on some of the places visited by the Committee.

216. On July 16 2005, the members of the Committee visited the Vila Maria center, in São Paulo, under FEBEM, now renamed Socio-Education Attention Center for the Adolescent (CASA) Foundation of São Paulo. At present, the CASA Foundation has about 1.110 places available. Thus there is no overcrowding, but other units are to be built outside the city of São Paulo in order to allow the accommodation of youngsters in the municipalities where their parents live.

217. The Brazilian State informs that the CASA Foundation has a Permanent *Corregedor* (Ombudsman), beside the vigilance carried out by the Judiciary Branch and the Public Prosecution Service. In every procedure, when there is strong evidence of involvement in irregularities, the official is suspended. The adolescents are grouped by age and degree of their offense. Pedagogic activities take place regularly.

218. On July 19 2005 the members of the Committee visited the Precincts of the 4<sup>th</sup> and 39<sup>th</sup> Police Districts and the Participative Precinct of the 9<sup>th</sup> Police District, all in São Paulo. The Brazilian State makes clear that the jails at the 4<sup>th</sup> and 9<sup>th</sup> Districts were closed up and their inmates were transferred to Provisional Detention Centers.

219. On July 22 2005 the members of the Committee visited the Theft and Robbery Precinct, the Vehicle Theft and Robbery Precinct and the Drug and Narcotics Precinct, all in Belo Horizonte. The Brazilian State informs that the jails at the first two of the precincts mentioned were totally closed and their inmates were transferred to new prison units in the metropolitan region. The jail at the Drug and Narcotics Precinct is being closed. Since September 2006 no new inmates entered it and total closure awaits the construction of new prison units.

220. On July 22 2005 the members of the Committee visited the Precinct of the 5<sup>th</sup> District in Rio de Janeiro. At the time, that Precinct was already a part of the “Legal Precinct” (Delegacia Legal) program and held no inmates. Today there are other precincts of this kind in the state.

221. On July 22 2005 the members of the Committee visited the Provisional Interment Center (CEIP) at Belo Horizonte, about which there had been press allegations concerning torture of minors. The Director of the Center had been suspended and replaced on the eve of the Committee’s visit. The Brazilian state informs that the procedure set in motion at the time was concluded on August 8 2005 and resulted in the Director’s dismissal. The documentation regarding the procedure

was sent to the Public Prosecutor, who filed for penal action on July 22 2005 (Prc. No. 0024.05.573.362-0).

222. The premises of CEIP were restored and the problem of overcrowding is being gradually solved. It is expected that on the second half of this year the number of places offered will be three times that of 2003, from 420 to 1.141. The selection of the technical team is carefully done, there is continuous training, including on the issue of human rights. A new socio-educational model, based on educative intervention, has been adopted.

223. On July 23 2005 the members of the Committee visited the headquarters of Polinter in Rio de Janeiro. The Brazilian State informs that the jail at Polinter was closed and is today used only as a center for sorting and classifying detainees, as well as a halfway house for detainees being sent to custody centers. Detainees spend no more than one day at that place, among a total of 10 to 50 people under custody.

224. On July 26 2006 the members of the Committee visited the provisional detention center Padre Severino, in Rio de Janeiro, under DEGASE. The Brazilian state informs that currently 100% of the adolescents are enrolled in the school.

225. On July 29 2005 the members of the Committee visited Bangu III in Rio de Janeiro. The penitentiary encompasses two separate units and there is no overcrowding. The last rebellion took place in 2003.

### **III. COMMENTS FROM BRAZIL ON THE CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE**

**“Paragraph 178,** *The Committee found, as described in the preceding paragraphs, endemic overcrowding, filthy conditions of confinement, extreme heat, light deprivation and permanent lock-ups (factors with severe health consequences for inmates), along with pervasive violence as well as lack of proper oversight, which leads to impunity. In fact, there is widespread impunity for the perpetrators of abuse. In addition, the Committee on several occasions received allegations attesting to the discriminatory nature of these conditions given that they affect vulnerable groups and in particular, persons of African descent. The Committee notes that the government of Brazil, fully cooperated with the Committee’s visit, constantly expressed its awareness and concern with the seriousness of the existing problems, as well as its political will to improve. However, tens of thousands of persons are still held in delegacias and elsewhere in the penitentiary system where torture and similar ill-treatment continues to be “meted out on a widespread and systematic basis”. The Committee has defined systematic torture by stating that “the Committee considers torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its*

*implementation by the local administration. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice”.*

226. The Brazilian Government notes the Committee’s conclusion that the practice of torture could be systematic in the country. It expresses its appreciation for the statement by CAT that *“the government of Brazil, fully cooperated with the Committee’s visit, constantly expressed its awareness and concern with the seriousness of the existing problems, as well as its political will to improve.”* The Brazilian Government notes, in this connection, that the Committee Against Torture usually considers torture to be systematic *when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question.* **Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration.** *Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice”* (emphases added).

227. As will be clearly shown further on, Brazil is already complying or considering compliance with the recommendations contained in the Report of the Committee’s investigation under article 20. Many of the measures responding to CAT’s recommendations were already being taken on the initiative of the Brazilian governmental authorities. The Brazilian Government believes that the Committee’s recommendations are significantly useful for the prevention and the struggle against torture and other cruel, inhuman or degrading treatment and punishment in any circumstances and hopes to deepen and expand its dialogue with the Committee on that account.

228. However, some points should be made regarding the conclusions of the Committee in its investigation under article 20 of the Convention.

#### **IV. SYSTEMATIC PRACTICE OF TORTURE IN INTERNATIONAL LAW**

229. Brazil recalls that the Convention Against Torture mentions the systematic practice of torture in its article 20, where it provides that *“If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.”* There is no indication in the text of the Convention that States Parties have intended to attach special meaning to the concept of systematic practice of torture as provided in the Convention.

230. The above mentioned interpretation given to the systematic practice of torture was made by CAT itself, on the occasion of its first investigation under article 20, relating to Turkey (A/48/44/Add.1, paragraph 39). The definition of systematic practice of torture considered by the Committee seemed to add a special meaning to the expression, without it having been established



that such was the intention of the Parties to the Convention.

231. The use of the term “systematic”, such as in systematic violations of human rights, is common in the language of Human Rights International Law, International Humanitarian Law and International Criminal Law.

232. When dealing with “serious violations of obligations stemming from peremptory norms of general international law”, the International Law Commission of the United Nations considered the term *systematic* during the elaboration of draft articles on the international responsibility of the State. At the second reading of the draft articles on the international responsibility of the State, serious violations were deemed to be those occurring in a context of a pattern of violations carried out in a systematic and often massive manner.

233. Violations were considered to have been committed in a systematic way when there is evidence of a certain pattern in the actions of the State, leading to the harm of certain rights,<sup>39</sup> and

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<sup>39</sup> Jørgensen, Nina H. B. *The Responsibility of States for International Crimes*. Oxford: Oxford University Press, 2003. p. 108 e 109.

that it is massive when it is notorious. Thus, the existence of a pattern of violations leads to the question of the intention and the motives of the perpetrator to commit the violations. The objectives of the State when committing certain violations may be essential to determine the existence of a “serious violation of obligations from peremptory norms of general international law”.

234. When commenting on the Draft Articles on the International responsibilities of States, the International Law Commission was particularly precise in clarifying that “to be regarded as systematic a violation would have to be carried out in an organized and deliberate way”.<sup>40</sup>

235. In International Humanitarian Law, the terms “massive” and “systematic” are used to distinguish “Crimes Against Humanity” from the general list of “War Crimes”. To be considered a “crime against humanity” the action that constitutes a violation must be “massive” and “systematic”. Article 3 of the Statute of the Rwanda Court and article 7 of the Rome Statute provide that the listed crimes must occur as a “massive” and “systematic” attack against the civil population. According to the jurisprudence of those courts, the term “systematic” refers to attack carried out according to a common and methodic planning<sup>41</sup>. In *Prosecutor v. Akaseyu, ICTR stated “The concept of “systematic” may be defined as thoroughly organized and following a regular pattern on the basis of a common policy involving substantial public or private resources. There is no requirement that this policy must be adopted formally as the policy of a State. **There must however be some kind of preconceived plan or policy**”*.<sup>42</sup> (emphases added).

236. To sum up, it is understood that the expression “systematic” violation is normally used to characterize human rights violations that occur in a deliberate and planned manner. To that effect, the violations must be committed according to a certain pattern, under an intentional plan or policy,

albeit not explicitly admitted.

237. In this context, CAT's definition of systematic practice of torture seems to diverge from the common meaning of the expression and thus from the general rule of interpretation of treaties, according to which a treaty should be interpreted in accordance with the common meaning to be given to its terms, expressed in article 31 of the Vienna Convention on the Law of Treaties, as follows:

*“Article 31 General rule of interpretation:*

*1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning*

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<sup>40</sup> INTERNATIONAL LAW COMMISSION. *Draft articles on Responsibilities of States for Internationally Wrongful Acts with commentaries*. United Nations: 2005, p. 285, Commentary (8) on Art. 40. Available at < [http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf)>.

<sup>41</sup> See *Prosecutor v. Tadic*, Trial Judgement, 7 May 1977, para. 648.

<sup>42</sup> See *Prosecutor v. Akayesu*, Trial Judgement, 2 September 1998, para. 580.

*to be given to the terms of the treaty in their context and in the light of its object and purpose.*

*2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:*

*(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;*

*(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.*

*3. There shall be taken into account, together with the context:*

*(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;*

*(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;*

*(c) any relevant rules of international law applicable in the relations between the parties.*

*4. A special meaning shall be given to a term if it is established that the parties so intended.”*

238. The general rule of interpretation described above is uncontrovertibly recognized as the expression of common international law, including by the International Court of Justice.<sup>43</sup> In fact,

already in 1931 the Permanent Court of International Justice recognized that “It is a fundamental rule of interpretation that words must be given the ordinary meaning which they bear in their context unless such an interpretation leads to unreasonable or absurd results.”<sup>44</sup>

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<sup>43</sup> Cf., for instance, INTERNATIONAL COURT OF JUSTICE. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. Advisory Opinion. 09 July 2004. para. 94. Territorial Dispute (Lybian Arab Jamahiriya v. Chad) Judgment, I.C.J. Reports 1994, pp. 21-22, para. 41. Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objections, I.C.J. Reports 1996 (II), p. 812, para. 23; Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1995, p. 18, para. 33; Kasikili/Sedudu Island (Botswana/Namibia), I.C.J. Reports 1999 (II), p. 1059, para. 18, Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002, p. 645, para. 37.

<sup>44</sup> “PERMANENT COURT OF INTERNATIONAL JUSTICE, *Customs Unions between Germany and Austria*, Advisory Opinion, Series A/B, N° 41, 60.

239. The ICJ has been developing important jurisprudence on the respect to the general interpretation rule. Already at the Advisory Opinion on the Competence of the General Assembly to admit a State to the United Nations, it stated that “(...) *the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur*” (...) [I]f the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter. If, on the other hand, the words in their natural and ordinary meaning are ambiguous or lead to an unreasonable result, then, and then only, must the Court, by resort to other methods of interpretation, seek to ascertain what the parties really did mean when they used these words.”<sup>45</sup> The Hague Court also emphasized that the interpretation cannot revise treaties or read into them what they do not contain expressly or by necessary implication.<sup>46</sup>

240. It should be mentioned, in particular, that the general rule of interpretation can have a fundamental role in the protection of human rights, as in the recognition, by the International Court of Justice, of the individual right to be informed about the rights to consular assistance provided for in article 36 1.b of the Vienna Convention on Consular relations and, more recently, in the case on the application of the Convention for the Prevention and Punishment of the Crime of Genocide, in which the ICJ recognized that article I forbids States from committing themselves the crime of genocide, thus not only preventing and punishing its perpetration by individuals.<sup>47</sup>

241. In view of the considerations above, the Brazilian State asserts the inexistence of any deliberate plan or policy for the occurrence of the practice of torture in the country. On the contrary, as the Committee against Torture itself recognized, it stresses that the governmental authorities are aware of the seriousness of the problem and have the political will to improve. It thus disagrees with

the opinion that torture is systematically practiced in Brazil, having in mind the meaning ordinarily given to the expression.

## **VI. DIFFERENCES BETWEEN TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

242. The Brazilian Government takes note of the comments by the Committee on situations of

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<sup>45</sup> International Court of Justice. *Competence of the General Assembly for the Admission of a State to the United Nations*. Advisory Opinion, I.C.J. Reports (1950), p. 8.

<sup>46</sup> INTERNATIONAL COURT OF JUSTICE. *Certain Expenses of the United Nations*, Advisory Opinion, I.C.J. Reports 1962, p. 159; *South-West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, Second Phase, Judgment, I.C.J. Reports 1966, pp. 39, 48.

<sup>47</sup> Cf. INTERNATIONAL COURT OF JUSTICE. *LaGrand Case (Germany v. United States of America)*. Judgment, 27 June 2001. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 26 February 2007.

endemic overcrowding, filthy conditions of confinement, extreme heat, light deprivation and permanent lock-ups in places of detention in Brazil and their relationship with the conclusions arrived at by CAT under article 20. It points out, however, that sufficient consideration does not appear to have been given to the distinction between the practice of torture and other cruel, inhuman or degrading treatment or punishment, on the one hand, and lack of respect toward the human treatment of persons deprived of freedom.

243. In its article 1, the Convention Against Torture defines torture as “*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions* (emphases added).

244. The Convention Against Torture, however, did not define what would be “other cruel, inhuman or degrading treatment or punishment”, mentioned in its article 16 (“*Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*”) (emphasis added).

245. It is clear, anyway, that the Convention sought to distinguish violations of human rights deemed as torture from those that would constitute other cruel, inhuman or degrading treatment or

punishment, even if in any case those are serious violations of human rights that need to be prevented and punished. From the provisions of the Convention one can note that other cruel, inhuman or degrading punishment would be violations of a different, lower degree (“which do not amount to torture”), which receive a specific treatment in the Convention, in conformity with its article 16.

246. The Brazilian Government takes note that the Committee against Torture (CAT) has not been taking into consideration the distinction between torture and other cruel, inhuman or degrading treatment, either within the scope of the analysis of periodic reports or in the examination of individual communications. Greater clarity in those distinctions would be important to better elucidate the obligations of States and of the normative contents of the conventional terms, thus leading to a more adequate protection of individuals and groups.<sup>48</sup>

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<sup>48</sup> BARRETT, J. *The Prohibition of Torture under International Law, Part 2: The Normative Content*, *The International Journal of Human Rights*, Volume 5, Issue 2, Jan 2001, pp. 1-29, pp. 1-2.

247. Despite having equally utilized a “global approach”<sup>49</sup> on the application of article 7 of the International Covenant on Civil and Political Rights<sup>50</sup> (ICCPR), which also prohibits torture and other cruel, inhuman or degrading treatment or punishment, the Committee on Human Rights recognized, in its General Comment no. 20, that although it does not consider necessary to define a list of prohibited actions and establish sharp differences among the different types of treatment or punishment, **the distinctions depend on the nature, purpose and severity of the treatment applied**. It is also useful to observe that ICCPR contains different provisions on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (article 7) and on the humane treatment of persons deprived of freedom (article 10), object of two different General Comments (GCs no. 20 and 21). This amounts to a strong indication of the different nature of violations deriving from the practice of torture and other forms of ill-treatment and from inadequate conditions of deprivation of freedom.

248. So far, the issue was further developed within the European system of human rights, in the interpretation and application of article 3 of the European Convention on Human Rights, which could be utilized, *mutatis mutandis*, for a better understanding of the provisions of the Convention Against Torture. The recognition that the distinction between torture and other inhuman treatment is rooted mainly in the “difference of intensity of the suffering inflicted” should be stressed.<sup>51</sup> Torture would thus be “an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment”<sup>52</sup> (emphases added). The European Court deemed important to distinguish other inhuman treatment from torture because the latter involves a “special stigma” of violation.<sup>53</sup> It is also necessary, for its characterization, that the cruel or inhuman treatment be deliberate and have a specific purpose. Several cases considered by the European HR system deepen this understanding,

as the case *Ireland v. the United Kingdom*, the so-called “Greek Case” and also the cases *Selmouni v. France* and *Ihlan v. Turkey*, in which the European Court mentioned the United Nations Convention against Torture.<sup>54</sup>

<sup>49</sup> RODLEY, Nigel. *The Treatment of Prisoners under International Law*, Oxford: Clarendon Press (1983), p. 71.

<sup>50</sup> “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

<sup>51</sup> ECHR, *Ireland v. the United Kingdom*, Judgement of 18 January 1978, § 167.

<sup>52</sup> Resolution 3452(XXX), adopted by the General Assembly of the United Nations on 9 December 1975, article 1.2.

<sup>53</sup> ECHR, *Ireland v. the United Kingdom*, Judgement of 18 January 1978, *idem*.

<sup>54</sup> Cf. LONG, Debra. *Guide to Jurisprudence on Torture and Ill-Treatment - Article 3 of the European Convention for the Protection of Human Rights*, Geneva: APT, 2002, pp. 13-20. BUENO, Gonzalo. *El Concepto de Tortura y Otros Tratos Cruels, Inhumanos o Degradantes en el Derecho Internacional de los Derechos Humanos*, available at: <http://www.derechopenal.com.ar/archivos.php?op=13&id=169>.

249. In the light of the distinctions between torture and other cruel, inhuman or degrading treatment or punishment, chiefly the elements of special degree of severity and specific purpose, which attach a special stigma to acts of torture, it would seem mistaken to try to equate torture with problematic conditions of detention. The Brazilian Government took note of the observations on the serious conditions of deprivation of freedom in the detention centers visited by the Committee, a serious and complex problem that Brazil has been endeavoring to solve. Brazil highly appreciates the recommendations of the Committee related to this question.

250. The problems of overcrowding and inadequate conditions of deprivation of freedom in detention centers are serious human rights issues which require adequate solution, including through cooperation with the relevant international mechanisms. Such problems usually derive from a complex ensemble of factors, which may include excessive use of deprivation of liberty as punishment, growing rates of criminality sometimes linked to economic and social problems and lack of sufficient public resources - especially in developing countries - to build and restore places of detention and hire and train personnel. The process of improvement of the conditions of deprivation of freedom in Brazil - a developing country - cannot show immediate results, but several improvements have come about, such as the progressive abolition of jails in police precincts, the construction of new and better detention centers, the plan underway to establish units of the Unified Health System inside detention centers, etc., besides several preventive actions that seek to avoid deprivation of freedom and encourage alternative sentencing, as detailed later in this document.

251. It would seem thus inadequate to consider the existence of a deliberate system with punitive and discriminatory purposes, of deprivation of freedom in situations, for instance, of overcrowding

and unhealthy conditions. Such situations persist in certain cases, despite the best efforts of Brazilian authorities, and not with their consent or acquiescence. These situations lack both the “special stigma” of aggravated violations and the purpose of obtaining information or meting out punishment that would characterize torture. During the visit of the Committee’s delegation to Brazil the national authorities always recognized problems in the conditions of deprivation of freedom, but also expounded the ongoing measures for their solution.

252. The general character of the situation, which affects whole populations in detention centers, the lack of physical and psychological aggression against inmates and the absence of punitive purposes or of obtaining confessions or information indicate that one cannot identify the special degree of severity and the absence of the specific purpose that would define torture. This even more obvious as the State authorities recognize the problem and endeavor to overcome them. A contrary reasoning would lead to the conclusion that the whole system of deprivation of freedom in a given State could be organized with the aim of violating the inmates’ human rights, which is highly unlikely in a democratic society that strives to improve its human rights profile in this issue.

*“179. Police investigations into alleged acts of torture or ill-treatment have been criticized as ineffective. Abuses by the police in carrying out these investigations are reported to be common. There is a reported lack of willingness by police officers to investigate fellow officers. In this connection, the corporate nature of the corregedorias may lead police officers to be unwilling to investigate their own colleagues. It was repeatedly suggested that it usually takes a long time before information on allegations of torture reaches the Public Prosecutor’s office from the corregedorias and a criminal inquiry is initiated.”*

253. The Brazilian Government is keen on the need for the improvement of the internal investigation systems of the police corps. The Ministry of Justice, through its National Public Security Secretariat (SENASP-MJ) held on 30 and 31 May 2006 the National Meeting of Police *Corregedores* in Brazil, with a view to discussing existing problems and proposing public policies to strengthen the *Corregedorias*.

254. At the Meeting, it was found that the improvement of the work of the *Corregedorias* can be reached through the adoption of the following proposals: 1) administrative and financial autonomy; ii) adequate organizational structure; iii) provision of qualification and improvement courser for officers and managers; iv) logistic and human resources (a qualified specific corps of officials, whose number should be equivalent o about 2% of the total number of the institution’s officers; v) adequate regulation of the existing legislation through normative instruments and standardization of procedures; vi) specific penitentiaries for police officers; vii) creation of intelligence and investigation units; viii) exchanges among the *Corregedorias*; ix) institution of special pay or officials at the *Corregedorias*; x) creation of the National College of Police *Corregedores*.

255. SENASP also carried out the first Research on the Organizational Profile of Police *Corregedorias*,<sup>55</sup> whose report should be published soon. This research aimed at deepening knowledge on the structure of existing Police *Corregedorias* (both general and specific of the Civil and Military Police), and from the analysis of that Report SENASP will evaluate the implementation

of the following actions: i) acquisition of equipment for a kit to be distributed directly to the *Corregedorias* during the first half of next year; ii) qualification of police officers in administrative-disciplinary procedures, through the National Network of Remote Education, still during the current year; iii) setting up of a working group through ministerial act, composed of ten (10) *corregedores* from the civil and military police, representing the five regions of the country, to make effective the needed legislation and the procedural standardization, among other proposals that may be considered feasible and pragmatic.

*“180. Furthermore, the constitutional debate on the power of the Public Prosecutor’s Office to initiate independent investigations into allegations of torture is still pending. The Constitution has been interpreted by some as providing the Public Prosecutor’s Office with a more active role and allowing it to proceed with criminal investigations and indict officials involved in criminal activities, such as torture, in cases where there is sufficient prima facie evidence. Other commentators, including the police, claim that constitutional provisions require that a police inquiry is necessary and that preventing the causes of torture would be more appropriate. The Committee members*

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<sup>55</sup> The Report of the research will be available at [www.mj.gov.br](http://www.mj.gov.br) at Pesquisas Estatísticas.

*consider that public prosecutors should be able to initiate cases rather than having to rely on evidence collected and forwarded by the police.”*

256. The Public Prosecutor’s Office (*Ministério Público*) is the institution charged with the defense of the public order, the democratic regime and the inalienable social and individual interests. It has functional, administrative and budgetary autonomy. Its members enjoy the same impediments and guarantees as magistrates. On penal matters, the Prosecutor’s Office is entitled to public penal action and in order to exercise it its members are vested with privileges such as “exercise internal control of police activity” and “order investigation procedures and initiate police inquiry, with the indication of the legal grounds of its procedural manifestations” (arts. 127 and 129 VII and VIII of the Federal Constitution). On its part, the judicial police activity is incumbent on the civil (State) and federal police, which are charged with “verifying criminal infractions, except military” (art. 144, §§ 1 and 4 of the Federal Constitution). Thus there is no doubt that the Public Prosecutor’s office may, upon knowledge of a possible criminal infraction, order the carrying out of an investigation, request specific search and if already in possession of sufficient elements for offering a denunciation (that is, the initiation of the legal process) independently from the police investigation.

257. Thus, public prosecutors may offer denunciation (that is, initiate penal action in court) independently from the police investigation, if they possess sufficient elements that indicate the materiality of the offense and its authorship.<sup>56</sup> The question of the power to investigate penal infractions directly by the Public Prosecutor’s Office, without police participation, is still controversial. This issue is under examination by the Supreme Court. Despite this situation of lack of legal definition, there are concrete examples of special police teams operating directly with the Public Prosecutor’s Office.



*“181. Proposals have been made to replace the preliminary police investigation with an investigation led by a prosecutor and controlled by an investigating judge, whereby all detained persons would be brought before an investigating judge and only confessions made before him/her would be considered admissible. The Committee members support this proposal, but note that no action has been taken in this respect to date.”*

258. The Brazilian justice system does not include judicial inquiry or “investigative judges”. The creation of the Public Prosecutor’s Office, with the same impediments and guarantees as those of judges, aims precisely at charging another institution with the task of penal prosecution. The task of

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<sup>56</sup> “The initiation of a police investigation is not indispensable to the initiation of a public penal action, and the Public Prosecutor’s Office may utilize evidence in order to support its opinion. There is no impediment for the Public Prosecutor’s agent to gather other depositions when, having a factual knowledge of the circumstantial evidence of the authorship and materiality, he learns directly of any fact that deserves clarification” (Ing. 1.957), Rapp. Min. Carlos Velloso, DJ 11.11.05).

judging, with independence and impartiality, is reserved to magistrates. This concept is inspired in the accusatory model of penal procedure.

259. The system of evaluation of evidence adopted in Brazilian law, known as rational persuasion of the judges, does not establish a value relationship among pieces of evidence and requires the judge to give the reasons for his or her decision. Besides, “... the defendant’s confession ceases to be conclusive proof of his (her) guilt. All evidence is relative; none has a decisive value or necessarily more prestige than another.” (Exposé on the Penal Procedure Code, item VII). Thus, even the confession during the inquiry, by itself, unaccompanied by other evidence to indicate the authorship of the offense by the defendant, may not be enough to bring about his (her) conviction.

*“182. Another factor that contributes to impunity is that judges do not apply the 1997 Torture Law and prefer to classify cases of torture as bodily harm or abuse of authority. The federalization of the crime of torture has been proposed as a possible means of overcoming the difficulties in the implementation of the Torture Law. The Committee members found it regrettable that the procedure established by the Constitutional amendment 45/2004, whereby the Superior Court of Justice is competent, upon request of the Federal Prosecutor General, to transfer a case concerning serious violations of human rights (including torture) from the local courts to the federal courts has rarely been used.”*

260. The Government lacks data that would enable it to recognize that the “Lei contra a Tortura” (Anti-Torture Law) is not being effectively applied by the judicial authorities. Similarly, there are no available data on the result of denunciations (penal procedures) of crimes of torture and the result of convictions for this crime or a less serious one (such as physical harm). From the issues raised

by CAT's Report it will be important to look into this situation and search for adequate solutions together with the Judiciary Branch.

261. The reform of the Judicial Branch accorded special treatment to serious violations against human rights, by means of the possibility of the transfer of competence to the Federal Justice. According to § 5 of article 109 of the Federal Constitution, *“in cases of grave violations of human rights, the General Prosecutor, with a view to ensuring compliance with obligations stemming from international treaties on human rights of which Brazil is a Party, may raise before the Superior Court of Justice, at any time during the inquiry or the procedure, the shifting of competence to the Federal Justice.”* This proposal was contained in the National Human Rights program, having in mind that serious violations are an issue that interests the whole country, and their internal and external repercussion goes beyond the territorial limits of the States of the Federation. While the norm is auto-applicable, according to a decision by the Federal Supreme Court, the detailed regulation of the matter is proposed in Draft Bill 6.647, of 2006, already approved by the Federal Senate and presently awaiting examination by the Constitution and Justice Committee of the House of Representatives.

262. It should be reiterated, however, that any citizen may file a request to the General Prosecutor with a view to initiating the procedure of shifting of competence to the Federal Justice system. The General Prosecutor will decide on its pertinence.

263. It should also be stressed that there is a draft constitutional amendment (PEC no. 487 05) that legitimizes the Union's General Public Defender to initiate the shift in competence, as a way to further expand the federalization of such serious violations.

*“183. There seems to be very strong pressure and demand from society and politicians that all criminals should receive strict penalties and remain in detention centres away from the public. Judges allegedly impose harsher sentences than are necessary, and do not apply alternative sentences, such as payment of reparation, community work or temporary suspension of rights provided by the Penal Code. The application of such sentences would relieve, to a certain extent, the overcrowding which exists in detention centres.*

264. The Brazilian Government is acting on the encouragement of the application of alternative sentences, as measures in keeping with the ideal of re-socialization of the offender and also contribute to lessening the problem of overcrowding. The Brazilian Government believes that deprivation of freedom is not always the best way of punishing crimes.

265. As stated by the Committee, alternative measures have not yet been fully accepted both by society and by authorities responsible for their application. The Brazilian Government thus considers essential the development of the programs in that direction.

266. So, side by side with the creation of the Federal Penitentiary System, turned to high risk crimes, a number of measures aiming at the diffusion and encouragement to the application of alternative sentencing were developed. The Ministry of Justice, through the National Penitentiary

Department (DEPEN) has a program of stimuli to initiatives in this area. Some of the states receiving incentives by way of resources have shown significant results.

267. As an example, the case of the State of Pernambuco deserves to be mentioned. Between March 2005 and September 2006, the Alternative Sentencing and Social Integration Management (GEPAIS) - connected to the Justice and Human Rights Secretariat of the State of Pernambuco - was responsible for the installation of ten new units of the Central of Support to Alternative Measures and Sentences (CEAPAS). These are the nuclei that monitor alternative measures in the state.

268. It must be stressed that the application of alternative measures and sentences involves a complex operation, since the convicted must be kept under a certain control by the State, despite being free.

269. The results reached in Pernambuco illustrate the efficacy of the adoption of those measures. During the thirteen months of their operation the imprisonment of 869 persons was avoided.

270. Another measure created to expand debate on the issue is the holding of the National Congress on the Execution of Alternative Sentences and Measures (CONEPA). The objective of CONEPA is the debate of central issues on the national reality concerning the alternative penal execution and to produce strategic bases and fundamental guidance of a sustainable policy of stimulus to alternative sentencing and measures in Brazil. This entails the necessary cooperation between the State, through the institutions that make up the justice system - Judiciary Branch, Public Prosecutor Office, and Public Defender Office - the Executive Branch, civil society and the media. The Congress is an annual event and the third one will take place in November this year, in the state of Minas Gerais.

271. Furthermore, the Ministry of Justice created the National Commission on Alternative Sentencing, an agency dedicated to dialogue with the states to divulge the application of alternative measures.

272. The restructuring of the National Penitentiary Department, with the creation of the General Coordination of Alternative Sentencing, is also an important factor to denote the relevance of this issue for the Brazilian Government.

273. All actions described above resulted in the growth of the application of alternative sentences in Brazil: in 2002, 21.560 persons served alternative sentences or were subjected to alternative measures; the estimate number for the end of 2006 is around 170.000 persons. These numbers - a growth by almost 700% in four years - attest to the success of the policy of expansion and acceptance of alternative sentences and measures by the agencies charged with penal execution and the society in general.

274. Mention should also be made to the enactment of Law no. 10.259/2001, which besides having created the Special Federal Criminal Courts also expanded the range of crimes subject to the application of alternative sentences, by establishing a new paradigm for crimes of lesser offensive

potential, now defined as those crimes for which the maximum sanction is under two years of incarceration or fine.

*“184. The Committee members were concerned at comments made by high-level Government officials; these included the opinion that juvenile second-time offenders should not be protected under the Statute of the Child and Adolescent and that police officers who commit a crime of torture should not be treated in the same way as civilians who commit such a crime, because the former can be integrated into society more easily, given that they are trained.”*

275. The Brazilian Government wishes to reiterate its full commitment to the implementation and the strictest compliance with the Statute of the Child and the Adolescent and to the punishment of police officers indicted and convicted for the crime of torture. It does not recognize, therefore, contrary statements by any individuals in authority at any level of the Federation.

*“185. The Committee members observed that the protection of detainees during their arrest, pre-trial detention and detention is well provided for in the national legislation. However, serious difficulties arise in the implementation of the law. They also considered that the legal provisions in this area are generally not well known. This observation was confirmed when the President of the Supreme Court of Rio de Janeiro affirmed to the Committee members that the crime of torture constituted a federal crime. Due to his lack of knowledge of criminal law in this regard, the President felt uncomfortable with the discussion and abruptly interrupted the dialogue with the Committee members.”*

276. The Ministry of Justice, through the National Public Security Secretariat (SENASP-MJ), has been implement short- medium- and long-term measures aiming at changing the culture of state police forces regarding the need to ensure the protection of detainees on occasion of their arrest.

277. As a short-term measure, SENASP held Human Rights Meetings to motivate, sensitize and mobilize multiplier leaderships in the human rights culture, in the context of public security, thus contributing to the formation of a National Culture of Human Rights and Duties, of active solidarity and social peace, and collaborating for the construction of a new police, conscious of its role in the promotion of human rights and peace. In four years, 2.480 professionals in the field of Public Security were trained in the states of Bahia, Paraná, São Paulo, Amazonas, Paraíba, Pernambuco, Rio Grande do Norte and Sergipe.

278. Another initiative was the creation of an Itinerant School of High Studies in Public Security with the purpose of developing the conscience of operators in public security as citizens, promoting reflection on techniques of action employed in their activities, the enhancement of the professional character of police actions, incentive to sharing of responsibilities and integration of the action of all organizations related to the area of public security and the broadening of the responsibility of the police beyond strictly criminal issues.

279. A partnership with the International Committee of the Red Cross was established in order to promote the training of police officers in human Rights, benefiting 1.030 officers. In 2006, the

partnership was renewed with a view to work out the question of transversal teaching of human rights in the curricula of the federated units. In 2006 the First Inter-American Congress on Education in Human Rights was held with the participation of police officers, NGO representatives, professionals in the field of human rights and representatives of universities.

280. Quantitative and qualitative standards were established for the distribution of financial resources to the state public security Secretariats. It is important to stress that the qualitative standards include the concrete implementation by the states of policies of external control of the police activities, investment in continuing qualification, autonomy of *corregedorias* as well as public policies that enhance the adoption of principles of respect to human rights and a leading role for the police in such issues.

281. The crime of torture was included as a category in the classification of events in the National System of Statistics on Public Security and Criminal Justice.

282. It should also be stressed that the National Policy of Community Police was launched in 2005, with the holding of the I Latin-American Congress on Citizen Security. Professionals and scholars debated with an audience of over 500 people the theme of Community Police in Latin America. Representatives of more than 10 Latin American and Caribbean countries (Costa Rica, Nicaragua, Guatemala, Honduras, Mexico, Peru, Dominican Republic, Argentina, Chile, Paraguay, Uruguay, Venezuela, and Colombia) were present, expounding their experiences in the introduction of a citizen's police. This event marked the start of a survey of national experiences to support the elaboration of a National Matrix of Community Police Programs, in line with the national curricular matrixes for the training of state professionals in public security. As well as professionals from Municipal Guards. Another strategic activity was the holding of the Community Police Contest, in 2005, whose objective was the recognition of the success of community police programs implemented in any unit of the Federation in the country and the dissemination of successful experiences.

283. On April 26 2006 a Working Group was set up within SENASP-MJ through ministerial act with the task of elaborating the "National Curricular Matrix for Community Police", whose chief objective is the presentation of proposals for the description of the subjects in the curriculum of the Community Police Course for Multipliers which will guide the training of professionals in the field of public security, under the philosophy of community police and social mobilization of community leaderships. 421 public security professionals from all over Brazil were trained, among whom military police officers, chief civil police officers, community leaders and inspectors from Municipal Guards.

284. As for medium-term, the Government is investing in a partnership between the Special Secretariat for Human Rights and SENASP-MJ, with an investment to date of the equivalent to R\$6,6 million to strengthen existing police *ouvidorias*, as well as to create such *ouvidorias* in states where they do not yet exist, especially the states of Sergipe, Amapá and Paraíba, by way of agreement, and Rondônia, Acre, Mato Grosso do Sul and Tocantins. It should be stressed that the model adopted for the police *ouvidorias*, endorsed by the National Forum of police *ouvidores*, not

only does the follow-up of denunciations of practice of arbitrary or illegal acts on the part of police officers but also aims at promoting preventive action, looking for investment on qualification and control by the state before the occurrence of facts of that nature.

285. Finally, as regards the long-term, the Government is investing in the continuing training of all professionals in public security from the states (civil and military police) and municipalities (municipal guards) - prison wardens, physicians, experts and police officers - through the projects National Curriculum Matrix for Police Learning and National Public Security Network and Long Distance Education Network for Public Security.

286. The National Curriculum Matrix is a national reference for the formation and training of operators in public Security, based on the principles of human rights and citizenship, integration, interdiscipline, continuity and quality, aiming at standardizing formation activities in public security focusing on humanistic and technical training in all units of the Federation. The implementation of this pedagogic reference for public security professionals has brought about important changes regarding the formulation of policies guiding formation, professional development and permanent education of its professionals.

287. The National Network of Specialization in Public Security is made up of public and private Higher Education Institutions, duly licensed by SENASP-MJ to promote specialization courses (*Latu Senso*) in public security in order to disseminate among public security professionals, and thus among the institutions where they work, the knowledge and ability to appraise necessary for the construction of a new way of making public security, through a commitment with citizenship, human rights and the construction of social peace, and articulated with scientific progress and accumulated knowledge.

288. The Long Distance Education Network for Public Security is an environment of teaching-learning that aims at informing, forming updating and specializing, at no charge, the operators of public security in Brazil - civil, federal, highway and military officers, firemen and municipal guards, using the media and the Internet.

289. There are also programs targeting specifically the members of the Judiciary Branch and the Public Prosecutor Office, with the objective of improving the performance of these professionals in the struggle against torture. In December 2005, during a Seminar on “Building a National Policy to Combat Torture”, a manual for Magistrates and members of the Public Prosecutor’s Office was launched, containing a description of the duties and responsibilities of judges and prosecutors in order to prevent and investigate acts of torture, as well as other forms of ill treatment. The Manual also offers guidance from the best practices about ways to fight torture at the procedural level, the legal instruments in force and cases tried at the internal and international levels. At this Seminar the theme “The Fight Against Torture in the Formation of Magistrates and Prosecutors” was discussed.

290. Regarding the episode in Rio de Janeiro, the Brazilian Government recalls its observations contained in the section on the general comments on the visit.

“186. *The Committee members also noted that, in practice, a large number of detainees with whom the Committee members met did not have any free legal assistance, despite the fact that they did not have the funds to pay a lawyer. The Public Defender’s Office is not available in a large part of the country and reportedly, in those cases where it is present, lacks resources to carry out its functions. For instance, the State of São Paulo still does not have a Public Defender’s Office. At the time of the visit, the Public Defender’s Office in Rio de Janeiro was on strike for various reasons, including lack of personnel, precarious work conditions and low salaries (public defenders reportedly earn one third of a judge or prosecutor’s salary).”*

291. The Federal Constitution assures the right to full and free legal assistance to those who prove lack of resources. The Public Defender offices of the Union, the states and the Federal District should provide this assistance. To widen the scope of the services of the Public Defender, improve its structure and increase the number of its members, the federal government adopted important measures during the last four years. One of the most important changes at the Constitutional Reform of the Judiciary Branch was the granting of administrative, financial and budgetary to the Public Defenders offices. The practical effects of such autonomy were evaluated at the II Diagnosis of Public Defender services in Brazil, launched by the Ministry of Justice in December 2006. Significant progress was attained in all Public Defender offices, with an increase in budgetary expenses, increase in the number circuit courts and judicial sections assisted, increase in the number of public examinations to become a Defender and a concomitant increase in the number of defenders. In 2004, three states in the Federation did not possess Public Defender offices. After the passing of the Constitutional Amendment 45; 2004, two of them already established their offices (São Paulo and Rio Grande do Norte), and the only one remaining is Santa Catarina. The states of Paraná and Goiás have Legal Aid services but those are not organized as Public Defender offices. Within the Public Defender office of the Union, 169 Public Defender jobs were created and filled.

292. In the states where the matter still depends on regulation and Public Defender offices have not yet been created, the defense of those in need is done through Judicial Assistance Attorneys or similar agencies, or else by lawyers appointed by the judge to perform this duty.

293. Important laws were passed at the sub-constitutional level, especially the express legitimization of the Defender offices to initiate collective legal suits to defend their clients and the change in the Code of Penal Procedure to require the police authority the immediate communication to the judge, to the person’s family (or the person appointed by him) and to the Public Defender any arrest *in flagrante delicto* in cases where the arrested person has no lawyer.

“187. *The Committee members also observed that specific initiatives have been taken at the state and federal level to combat the practice of torture, such as the “National Permanent Campaign for Combating Torture and Impunity” launched by the federal Government and civil society but regrettably discontinued in 2003. The campaign has been criticized by many NGOs as being highly ineffective.”*

294. Taking into account the limits and wants detected during the National Permanent Campaign Against Torture and Institutional Violence, the Brazilian government has elaborated and is

implementing in eight pilot states (AC, AL, PB, PE, RS, DF, ES and PI) the integrated action plan against torture.

295. The guiding principles of the action plan against torture are: actions aiming and rendering more difficult the practice of torture, increase the risk of punishment and remove excuses for that practice; adoption of measures aiming at strengthening the victim, avoid or mitigate friction in confrontations and relationships, to enable effective vigilance (personal and environmental) and make the offender less likely to commit the crime; development of integrated actions, articulating initiatives developed in the different police corps, public prosecutor offices, public defender offices, judicial agencies, jails, detention centers, penitentiaries, units of internment of adolescents and the civil society.

296. In this context, the plan produced a profound change in previous strategies by adopting an inter-sectorial, integrated and systemic approach to operate managerial and organizational changes, professional procedures, practices, attitudes norms and values that allow the development and consolidation of a culture of integrity within the institutions. The intention is to reinforce the inclinations of public agents to resist opportunities for abuse of power and force and toward tolerance for abuses associated with their jobs and functions. In this sense the Term of Adherence, to be signed by public and private institutions in the places where the Plan is being introduced, requires the commitment to create an Inter-sectorial State Committee to monitor the execution of the plan at the local level.

297. The Plan foresees preventive action in order to make aggressors answerable and to receive, assist, protect and compensate victims. The following punitive actions have been provided for:

(a) Declaration against torture by the high echelons, making clear that there is no room for this practice in the political structure of the institution. Commitment to adopt effective measures for the repression of torture. Articulation with state and federal governments for the signature of a document repudiating torture and commitment to its eradication. Wide publicity in the media. To be attentive to events that may promote declarations by public security officials and incentives for them to do so, especially when news about torture appear in the press;

(b) To link federal financing of and penal and police facilities to the existence of structure and programs to secure respect to the rights of detainees;

(c) Create and distribute a basic library of documents, studies, research and national and international manuals regarding the integrity of the institutions of the Criminal Justice System with special attention to the prevention and control of torture;

(d) Develop studies, research and manuals about the integrity of institutions in the Criminal Justice System with special attention to the prevention and control of torture;

(e) Develop a module on human rights and torture to be applied in formative schools for police officers and penitentiary agents. Hire specialists to create didactic material on the matter. To establish



training courses for police and penitentiary instructors. To evaluate the impact of the module on the students, in association with the police and penitentiary academies;

(f) Create a data bank with good practices for the prevention and control of torture. To make wide dissemination of that intention in order to collect data and insert them in the Internet;

(g) Create a “Dial Human Rights” number, using the progress achieved by the SOS Torture and correcting its defects, analyzing for this end the experience of the “Dial Sexual Exploitation” and similar systems to receive and deal with denunciations and complaints on the institutions of the Criminal Justice Systems existing in other countries;

(h) Classify existing data and information and integrate data banks and information on the structure and operation of the institutions of the Criminal Justice System;

(i) Offer conditions and incentives for the agencies responsible for the monitoring of places of deprivation of liberty to comply with the law. Judges and members of the Public Prosecutor’s Office have legal competence to make monthly inspections. For other agencies (Penitentiary Council, National Criminal and Penitentiary Policy Council, Community Council, National Penitentiary Department, for Penal Execution, and Tutelage Councils, for the institutions of internment of adolescents) there is no fixed schedule. At any rate, it is an essential resource for the promotion of integrity in the Criminal Justice System and for the prevention of torture that inspections can be carried out as often as possible, with no warning, with the assurance that visitors can have direct access to the inmates and that contacts are confidential;

(j) Create, for the members of entities responsible for the follow-up of penal execution in penitentiaries, an open program for training in the application of socio-educative measures in units of internment of adolescents and in the treatment of persons in other places of deprivation of freedom, according to the directives contained in the *Optional Protocol*. The training should also qualify agents for carrying out more effective inspections, according to international criteria for the protection and promotion of human rights and prevention of torture;

(k) Encourage and promote personnel qualification for the creation of Community Councils, as provided for in the Law of Penal Execution;

(l) Widen, improve, qualify and stimulate the practice, at all levels, of free legal assistance to persons deprived of freedom. Such measures guarantee the rights of individuals in following inquiry and procedures, and prevent torture.

298. The following actions to make aggressors answerable have been provided for:

(a) Creation of specific *corregedorias* for the Police System and the Penitentiary System;

(b) Creation of independent *ouvidorias* in both systems to receive denunciations of torture and follow investigations. It is possible to collect the existing laws on the matter - for instance, the one

that created the *ouvidoria* of the Police of São Paulo - and elaborate a draft bill that can be repeated in the states or voted in the National Congress. Articulation with state and federal governments to send the draft to the Legislative;

(c) Creation of specialized groups of prosecutors to fight torture, making them aware that at the time of denunciation the incident should be inscribed under the penal classification of torture. Include the issue in meetings of the National College of General prosecutors. Organize national experiences and formulate proposals to be introduced by the Public Prosecutor Offices in the federal and state levels and in the Federal District;

(d) Articulate with the Public Prosecutor offices the need to revert the burden of proof in cases of allegation of torture. In cases where denunciation of torture or other forms of ill treatment are brought by a defendant at a trial, the burden of proof should be transferred to the public prosecution so that it proves that the confession was not obtained by illicit means, including torture or ill treatment;

(e) Adoption of measures that speed up the investigation of denunciations of torture and ill treatment and that lead to dismissal of personnel involved;

(f) Train health care professionals who work in the prison system to register and adopt proper legal procedure in cases of torture and ill treatment suffered by inmates. Launching, on December 2 2005, the Brazilian Expert Examination Protocol, which contains, *inter alia*, the chief recommendations of the Istanbul Protocol “International Code of Conduct” for forensic physicians;

(g) Articulate with the Federal Council of Medicine the awareness of doctors to communicate to competent authorities the practice of the crime of torture, stressing the aspect of penal offense typified in article 66, II, of Decree-Law 3688/41.

299. Finally, the following actions for sheltering, assisting, protecting and compensating victims are envisaged:

(a) Expand the technical and scientific capacity of the Forensic Medicine Institutes (IML) or Institutes of Criminalistics, endowing them with budgetary, administrative and operational autonomy in relation with police departments;

(b) Widen cooperation with agencies belonging to public universities for the carrying out *corpus delicti* examinations;

(c) Streamline the carrying out of *corpus delicti* examinations as the inmate enters or leaves the prison, by making available professional physicians on a schedule of duty;

(d) Expand and improve services of shelter, assistance and protection to victims;

(e) Adopt measures aiming at the compensation of harm caused to victims of abuse of power

and excessive use of force by public agents.

*“188. The extremely poor conditions of detention facilities observed consistently throughout the visit were of deep concern to the Committee members. There is a constant threat of violent riots in detention centres, with the danger of such incidents increasing as a direct result of poor conditions. Overcrowding is endemic and the majority of the centres visited lack adequate facilities. Moreover, the Committee members observed that the detention centres do not have programmes to help reintegrate detainees into society. A large percentage of the detainees do not have access to education or to any vocational activity. This situation particularly affects persons with low income who belong to disadvantaged groups. Their prolonged detention reduces their possibilities of social reintegration, deepening their marginalization and exposing them to other criminal activities.”*

300. The Brazilian Government has been striving to allocate resources to hasten the re-equipment of state penal facilities - agreements for the purchase of metal detectors, X-ray equipment, vehicles for transportation of inmates, computers, medical and clinic equipment, etc. - besides direct purchases for donation to the states. There is, therefore, a better use of resources, as a consequence of integrated projects. With high-tech equipment and immediate results at local systems. In 2006 alone about R\$75.5 million were invested in the re-equipment of penal facilities, with special emphasis on the allocation of R\$45 million to the state of São Paulo and the purchase of 62 vehicles for transportation of inmates for 11 states.

301. Furthermore, large investments have been made in expanding space at the prison system. In 2006, about R\$ 170.1 million were spent in state financing policies to create 7,720 new places in the state penitentiary system. Special mention should be made to the creation of 6,992 new places, the result of agreements made in previous years that were continued in 2006. There was also an investment of R\$12.3 million on the reform of penal facilities in the states.

302. In what regards its multi-sectorial action, the Ministry of Justice has been concluding technical cooperation and protocols of intention with other ministries, with a view to establishing integrated public policies for the Penitentiary System. The National Health Plan in the penitentiary system continued in 2006 in partnership with the Ministry of Health. There are one hundred and forty (140) teams registered in ten (10) states, for basic health care of inmates and interns.

303. Interministerial Act (Portaria) 1.777, of 9 September 2003 instituted the National Health Plan in the Penitentiary System (PNSSP). This Plan aims at provide access to the prison population to the Unified Health System (SUS) through basic health care actions and services at the prison units and the use of the next levels of health care. Actions for the promotion of health and for care at the basic level to be undertaken at the prison units regard oral health, women’s health, sexually communicable diseases and AIDS, mental health, hepatitis, TB, hypertension, diabetes, and hanseniasis, besides basic pharmaceutical assistance vaccines and laboratory examinations.

304. A mechanism for the financing and permanent evaluation of the work performed by the team in those spaces has been put in place. It should be stressed that the qualification of states to be included in the PNSSP must be initiated by the federated units themselves. To prevent the absence

of follow-up to the intention to adhere, the Ministry of Health established standards for inclusion through Portaria 1.777.

305. Another worthy initiative is the Protocol of Intention concluded with the Ministry of Education. Since 2005 the Ministries of Justice and Education have been working in tandem to establish jointly a public policy turned towards teaching the prison population to read and write and to improve their level of instruction in general. This action is extended to those leaving prison, also within the policy of education for young people and adults. This joint endeavor generated Resolution 23/2005 by the “Brazil Read and Write Program”, making the prison population one of the priority targets of the country’s largest alphabetization program.

306. This interministerial partnership is linked to a political action for the redemption of the duration of punishment through education. Demarches are under way at the National Congress to obtain approval for the draft bill that would include such a provision in the Penal Execution Law.

*“189. The Committee members noted that the Government of Brazil has attempted to reduce overcrowding by building more detention centres, which in turn, have become overcrowded in a short period of time. Alternative solutions must be sought as a matter of extreme urgency. Overcrowding causes irreparable physical and psychological damage to detainees. As long as this problem is not solved, the State will be responsible for tolerating an inhuman situation in many detention centres.”*

307. As expressed in the comment to paragraphs 183 and 188, the Brazilian Government has been investing in actions to encourage the application of sentences that restrict rights, to replace sentences that restrict freedom, and has also invested in the construction of new units in the prison system.

*“190. The number of staff guarding detainees is extremely low. The Committee members observed that the shortage of staff had a negative effect not only on security and respect of detainees’ rights, but also on the security and morale of the staff. They also observed shortages in the number of social workers, psychologists and other staff. Furthermore, staff do not receive sufficient training on the rights of all detainees and their obligation to respect such rights.”*

308. The Brazilian Government is committed to building a sound policy of formation, qualification and valorization of officers of the states’ prison systems, with a view to improving penal services in the country. In 2006, a public examination for hiring federal penitentiary agents was held. These agents will be responsible for the care, vigilance, custody, guard, assistance and guidance to inmates of federal prisons.

309. Besides the several formation courses and the organization of the National register of Specialists in Knowledge and Teaching of Penal Execution Issues, the Ministry of Justice encouraged the setting up of penitentiary schools in the whole country. In 2006, the installation of schools in five states received financing, bringing to nineteen the total number of penitentiary schools in the twenty-seven states of the country. It must be stressed that before 2005 there were only five units of this kind in Brazil.

310. Through its National Penitentiary Department, the Ministry of Justice has also been concerned with the qualification of security agents in the field of human rights, by means of the following projects: “Establishment of the Human Rights Observatory”, “Human Rights Take the Stage” “Theater of the Oppressed in the Prisons”. Together, all these projects aim at the qualification of security agents, directors of prison units and even the inmates about the issue.

311. With this aim in sight, the Office of Improvement in Penitentiary Management (EMPG) was established through Ministerial Act (*Portaria*) 67, of November 29 2005, which aims at providing qualification in practical and theoretical methods of promotion and defense human rights in penal establishments, already internationally adopted.

*“191. Jails continue to exist in police stations. Although the initiative to decommission police stations has been partially implemented, as was observed at the 9th District Delegacia de Polícia Participativa in São Paulo and 5th District Delegacia Legal in Rio de Janeiro, there are still a large number of police stations which continue to hold detainees. The Committee members strongly recommend that any jails in police stations be abolished immediately.”*

312. Every year the Federal Government apportions financial resources to the State Public Security/Social Defense Secretariats, aiming at investing in professional formation and valorization, prevention and reduction of violence, management of knowledge, institutional reorganization, structuring of expertise and external control and social participation. Within these objectives, states may also receive resources for the construction of functional units (police precincts, academies, etc.) Architectural projects for the construction or restoration of precincts that provide for the construction of cells for detainees are not accepted. It is important not to forget that the Federal Constitution grants autonomy to the federated units. The Federal Government acts to induce public policies in the field of security, establishing standards of rewards for the states that comply with the set directions. We stress that the states of Rio Grande do Sul, Distrito Federal and Ceará do not keep detainees in police precincts.

313. Regarding the precincts mentioned in this paragraph - 9<sup>th</sup> District *Delegacia de Polícia Participativa* in São Paulo and 5<sup>th</sup> District *Delegacia Legal* in Rio de Janeiro, the Brazilian Government informs that they no longer hold detainees, These have been transferred to custody facilities or provisional detention centers in the respective states.

*“192. The Committee members consider that the new disciplinary regimes (RDD/RDE) may lead to violations of the human rights of inmates held under these regimes, particularly where they are held in isolation for long periods of time. They regretted not having been able to visit any centres of RDD/RDE due to their distance from the state capitals. In this regard, the Committee members are concerned that the geographical distance between these centres and the location of the family members of most inmates impede visits by family members.”*

314. The public security policy of the Federal Government in what regards penitentiaries has sought to solve, through multiple actions, the serious problems of overcrowding, rebellions and relapse. As was already mentioned, one of the targets is the broadening of the application of

alternative sentencing and several cautionary measures different from provisional custody. Incarceration should be applied to more serious crimes.

315. The federal special maximum security prisons, provided for since 1984 in the Penal Execution Law, are now under construction (two have been opened and two other are being built).

316. It is well known that among other causes, prison rebellions are sparked by organized groups of criminals who maintain the hierarchical structure of their bands inside the prisons. The federal penitentiaries will hold high-risk criminals, who may jeopardize the security of the facility or become the victims of attempted assassination inside the prison itself. The Government's aim is to assure greater isolation of the bosses of organized crime and at the same time to reduce the tension in the state prison system. Free of rebellions usually provoked by the most dangerous individuals, local authorities will be able to dedicate more attention to the recovery of the prison population and the social reinsertion of the inmates after having served their sentences.

317. Federal prisons, however, are not designed for the full term of the sentences. Only for a certain period (maximum two years), and upon justification of the need, high-risk inmates will be kept in federal facilities.

318. Therefore, differentiated disciplinary regimes can only be applied in cases of extreme need, in order to ensure public security, always for fixed periods of time. Their application can only be decided by a judge, after hearing the Public Prosecutor's opinion and the defendant having been assured the full right of defense. The construction in faraway places is largely a consequence of the difficulties to select the sites due to constant resistance from communities.

319. Therefore, taking into consideration the exceptional character of these regimes, there is no reason to raise the question of human rights violation. The Brazilian Government has no interest in broadening the application of differentiated regimes, which require complex operation and are expensive however, in the face of concrete circumstances, such regimes have proved the best solution to contain serious situations arising inside the prisons.

320. Despite the fact that this is not the ideal situation, when facing extreme conditions, e.g the risk to human lives, one must ponder the values involved and mitigate the application of some in order that others may prevail. Thus it is necessary the application of a stricter regime to certain persons during a certain time, so as to prevent them to continue masterminding criminal schemes from inside the prisons, provoking rebellions, causing deaths and physical harm, as usually happens when more rigid measures are not in place.

321. One must also stress that there is no punitive aim in the isolation to which the inmate may be subjected, and much less the objective of meting out ill treatment. As stated before, such measures are exceptional and their ultimate aim is to protect supreme individual values, chiefly the right to life. Besides, the federal penitentiaries where these regimes are usually applied, possess excellent structure in accordance with international standards for persons deprived of freedom. It is also fundamental to emphasize that the legislation on RDD ensures the right of inmates to weekly

2 hour visits by two persons, not counting their children, to daily 2 hour sunbathing and is without prejudice to their rights to contact with their legal counsel.

*“193. The Committee members received numerous allegations from NGOs concerning abuses in psychiatric detention centres. However, the Committee members did not visit these centres as they did not have medical expertise required for their assessment and therefore cannot draw conclusions based on its own observations.”*

322. The Government abstains from commenting this paragraph, since the Committee did not verify such allegations.

*“194. Generally, forensic institutes and their doctors are economically dependent of the police authorities. Thus, most States lack an independent forensic institute. Considering that most allegations of torture and ill-treatment are against police agents, this lack of independence can seriously compromise a diligent and prompt forensic examination with accurate results. In addition, it has been repeatedly reported that all forensic institutes do not have sufficient financial, technical and human resources to carry out their functions adequately.”*

323. Besides investments already made or foreseen in the formation of public security professionals, the Brazilian Government has set up a working Group at the Ministry of Justice with the aim of elaborating a plan for the modernization of civil police in Brazil. The group is composed of civil police officers from the states and has proposed the reorganization of procedural methods and the redefinition of doctrines to establish a national alignment. Within this perspective, the autonomy of the forensic institutes is under discussion, both with forensic professionals and with unions.

324. In addition, investments were made to establish regional DNA laboratories, electronic microscopy applied to forensic ballistics, a National Center for Forensic Entomology, qualification in forensic genetics, qualification in forensic phonetics, qualification in forensic toxicology, technical assistance to States for structuring in the field of expertise.

325. It should be noted that some draft bills are currently under examination in both Houses of the Legislative Branch with a view to granting autonomy and functional independence to forensic institutes and other expert agencies. One should point out especially Draft Bill no. 3.653/1997, which responds to CAT recommendations, as can be seen from the following section of the Report of the Public Security Committee and Combat to Organized Crime, quoted below:

*“This draft bill deals with official expert examination and provides that they will be carried out by experts who are part of permanent staff of a specialized agency structured in technical careers, to be filled through public contest with requirement of specific degree.*

*It defines as official experts the criminal experts and forensic experts, who would be subject to a special regime of work taking into account the nature of their specific functions and the places where they are to be performed, according to the law.*

***Such an agency would have scientific and functional autonomy, its subordination to a police agency would be forbidden, and the respective careers would be considered as typical of the functions of the State.***

*The Author justifies the proposal by recalling that expert examination is indispensable for the investigation of illicit acts, a task that demands impartiality and encouragement of the exactitude of the performance. **Recommendations by national and international agencies and organizations in favor of the autonomy of expert examination vis a vis the police agencies are mentioned.***

*“195. In practice, the forensic examination of detainees is carried out only at the request of the police or legal authority, such as a judge or prosecutor. This reduces the possibility that a possible victim of torture will be medically examined. In many cases, medical examinations are superficial or are carried out many days after the aggression has taken place, when external signs of such activity will have already disappeared. Many doctors lack professional training in forensic medicine and are unable to identify the injuries characteristic of ill-treatment or torture.”*

326. In 2003, there was an important investment in the qualified production of proof (see answer to paragraph 194). The Coordination of Expertise is preparing a specific course for criminal experts, with a view to the identification of physical torture and ill treatment, according to a request received from the National Forum of Police *Ouvidores*.

327. Furthermore, the Brazilian Government announces an important advancement in this question. In May 2007, the Federal Council on Medicine will publish a resolution that adds new items to the expert report done by experts on the *corpus delicti*. In accordance with the Istanbul Protocol, such items are formulated in order to identify, on the expert report, traces of torture, thus allowing the experts to verify the specific occurrence of this crime.

328. Until then, on the expert reports, cases where indications of torture are detected, have been identified as bodily harm, which produces a distortion of the facts and may jeopardize the criminal investigation. This change is expected to solve that problem. It is further clarified that the medical experts are trained to answer in a correct and adequate way to the new items.

*“196. In the light of these considerations, the Committee makes the following recommendations:*

*(a) Complaints alleging torture by public officials should be promptly, fully and impartially investigated and offenders should be prosecuted under the 1997 Torture Law and penalized appropriately;”*

329. There is a significant growth of the investigations and judicial proceedings initiated against policemen accused of the crime of torture, under the aegis of the Law Against Torture. The Brazilian Government is convinced that this growth will be essential to discourage that practice, due to the demonstration effect already noticeable as those involved are being punished.



*“(b) The states’ Public Prosecutors’ Offices should be empowered to initiate and carry out investigations into any allegations of torture and should be provided with the necessary financial and human resources to allow them to fulfil this responsibility;”*

330. On this item, see comments on paragraph 180. It should be added that in principle compliance with this recommendation may depend on changes in the countries’ legislation, namely a constitutional amendment, since the Federal Constitution devolves on the judiciary police and the federal police the investigation of penal offenses, and on the Public Prosecutor the external control of the police forces. The issue, however, is not settled and a decision from the Federal Supreme Court is pending.

*“(c) An effective application of the Constitutional safeguard of federalization of human rights crimes, in particular torture, which allows the Federal Prosecutor-General to request a transfer of certain human rights violations (including torture) from State to federal jurisdiction, should be ensured;”*

331. On this question, see comments to paragraph 182 of the Report.

*“(d) Accused officers should be suspended from their duties pending the outcome of any investigation into alleged torture and ill-treatment and any subsequent legal or disciplinary proceedings;”*

332. Through SENASP, the Federal Government already recommends, account being taken of the autonomy and independence of the federated units, that professionals involved in situations where there are allegations of torture and ill treatment, as well as manslaughter, be suspended from their regular activities.

*“(e) The judiciary should be encouraged to impose alternative sentences to detention as provided for by the law. The imposition of long periods of detention or imprisonment for relatively minor offences should be avoided as should close regime custody;”*

333. On this item, see comments to paragraph 183 of the Report.

*“(f) The prosecution should carry the burden of proof where there are allegations that a confession was extracted under torture;”*

334. The probative system in Brazil is that of free motivated belief or rational persuasion. The jurisprudence, on its part, has established the understanding that the judicial decision must be grounded on proof produced under the adversary principle. Thus, police inquiries, whose evidence is not produced under that principle, are very valuable for the formation of the *opinion delicti* and consequently for the initiation of the judicial proceeding. But they are not sufficient as grounds for the decision of the court. Draft Bill no. 4.202/2001, which reformulates the ordinary and summary proceedings provided for in the Brazilian Code of Penal Procedure, provides that the sentence of conviction cannot be exclusively grounded on evidence produced during the inquiry phase, thus

establishing a position already based on jurisprudence.

335. Therefore, a confession at the police precinct, in any circumstance, only has a relative value as proof. In cases where the defendant alleges having been tortured, it is up to the Public Prosecutor to act in order to investigate the allegation, including for the punishment of those responsible.

“(g) *Only statements or confessions made in a presence of a judge should be admissible as evidence in criminal proceedings;*”

336. On this question, see comments to paragraphs 181 and 196 of the Report.

“(h) *In order to ensure impartial investigations and safeguard the rights of all persons deprived of their liberty, the State party should consider the creation of an Office of an Investigating Judge;*”

337. The Brazilian Government would appreciate additional clarification from the Committee on the compatibility of the above recommendation with that contained in item “b” on the recognition of investigative powers to the Public Prosecutor in cases of allegations of torture. The two recommendations would seem to be mutually exclusive, when they suggest granting to different authorities the power to conduct and direct investigations. Additionally, on this matter, see comments to paragraph 181.

338. Still on the question of “investigative judges”, the Brazilian Government notes that their compatibility with the respect for human rights could be the object of controversy even in international protection mechanisms. It refers in particular to jurisprudence emanating from the European Court on Human Rights on the due process of law and the impartiality of judges, in the framework of the interpretation and application of article 6, paragraph 1, of the European Convention. The Strasbourg Court has already declared that impartiality “*usually denotes absence of prejudice or predisposition*”, and that “*its existence cannot be tested in several ways (...) a distinction can be made in this context between a subjective approach, which is the effort to highlight the personal conviction of a given judge in a given case, and an objective approach, which is to determine whether he offered enough assurance to exclude any legitimate doubt on that account.*”<sup>57</sup> In this sense, the development of the “appearance theory” is remarkable, and its validity transcends that regional system of protection of human rights. According to the CEDH, some appearances, even if they do not correspond to reality, may create on subjects demanding justice a legitimate doubt about the independence and impartiality of the judge. “*Justice must not only be done, but be seen to be done*” as the English maxim goes, which shows the importance of appearances before the heightened sensitivity of the public regarding the fair administration of

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<sup>57</sup> EUROPEAN COURT OF HUMAN RIGHTS, *Piersack v. Belgium* (judgement) [Chamber], Application no. 8692/79, 1 October 1982, series A, no. 53, para. 30.

justice.<sup>58</sup> For Brazil, the confusion of the roles between the authority that investigates the facts, arriving at a suspect/defendant, and the judging authority, in the manner of an inquisitorial process, would seriously jeopardize the independence and impartiality of the proceedings instead of assuring rights and an impartial investigation.

“(i) *Alleged human rights violations committed by the military police against civilians should be investigated and prosecuted by general criminal courts at all stages of the criminal proceedings, rather than by military courts;*”

339. According to the jurisprudence of the Federal Supreme Court, since the crime of torture is not foreseen in the penal military legislation, must be judged by the mainstream justice (state, in the majority of cases, and federal, in the instances provided for in the Federal Constitution). The same understanding is valid in cases of abuse of authority or any other not provided in the Military Penal Code. The competence of the military justice is restricted to crimes committed by a soldier on duty.

340. Moreover, since the advent of Law 9.299/96, intentional crimes against life committed by a military officer against civilians, even in the course of duty, have been shifted to the competence of ordinary justice. The same Law revoked the provision of the Military Penal Code that gave military justice competence to try crimes committed by soldier on leave using a weapon belonging to their unit.

341. The most important judicial precedent is reproduced below:

*“The crime of torture, when committed against a child or adolescent, constitutes an autonomous offensive entity, whose typical forecast has its legal foundation in article 233 of Law no. 8069/90. This is a normative precept containing an open penal type that may be integrated by the magistrate, since the crime of torture (because it admits many forms of execution) is characterized by the infliction of torment and pain that exasperate, in the physical, moral or psychic dimension of its effects, ,the suffering of the victim though acts*

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<sup>58</sup> See the following decisions of the European Court, among others: *Piersack v. Belgium* of 1 October 1982, Series A no. 53, pp. 14-15, and para. 30; *Campbell and Fell v. United Kingdom* of 28 June 1984, Series A no. 80, pp. 39-40, para. 18; *Sramek v. Austria* of 22 October 1984, Series A no. 84, p. 20, para. 42; *De Cubber v. Belgium* of 26 October 1984, Series A no. 86, p. 14, para. 26; *Bönisch v. Austria* of 6 May 1985, Series A no. 92, p. 15, para. 32; *Belilos v. Switzerland* of 29 April 1988, Series A no. 132, p. 30, para. 67; *Hauschildt v. Denmark* of 24 May 1989, Series A no. 154, p. 21, para. 48; *Langborger v. Sweden* of 22 June 1989, Series A no. 155, p. 16, para. 32; *Demicoli v. Malta* of 27 August 1991, Series A no. 210, p. 18, para. 40; *Brandstetter v. Austria* of 28 August 1991, Series A no. 211, p. 21, para. 44; *Borgers v. Belgium*, of 30 October 1991, Series A no. 214, pp. 8-10, paras. 22-29.

*of unnecessary, abusive and unacceptable cruelty. By defining the crime of torture against a child or adolescent, the norm contained in article 233 of Law no. 8069/90 is extremely faithful to the constitutional principle of typicity of criminal offenses (Federal Constitution, art. 5, XXXIX). The mere normative reference to torture, contained in the typical description of article 233 of the Statute of the Child and Adolescent shows a conceptual universe impregnated with notions with which people's common sense and feelings of decency identify degrading conduct that in concrete practice bring the ominous gesture of offense to the dignity of the human person. Torture means the arbitrary negation of human rights, because it reflects (as an illegitimate, immoral and abusive practice) an unacceptable attempt by the State that tends to asphyxiate and even suppress the dignity, autonomy and liberty with which the individual was inalienably endowed by the positive order. By typifying the crime of torture against children and adolescents, Brazil demonstrated its faithfulness to the commitments assumed in the international order, especially those stemming from the New York Convention on the Rights of Children (1990), the Convention against Torture adopted by the U.N. General Assembly (1984), the Inter-American Convention Against Torture, concluded in Cartagena (1985) and the American Convention on Human Rights (Pact of San José, Costa Rica, formulated within the scope of the OAS (1969). Furthermore, by conferring typical expression to that modality of criminal offense, the Brazilian legislator effectively applied the text of the Federal Constitution, which imposes on the Public Power the obligation to protect minors against all forms of violence, cruelty and oppression (art. 227, caput, in fine). A police officer who, under the pretext of exercising criminal repression in the name of the State, inflicts, through abusive professional performance, physical harm on a minor eventually placed under his power of coercion, availing himself of this executive means to intimidate and coerce his victim to make him confess a given offense, practices unequivocally the crime of torture, such as it is typified in article 233 of the Statute of the Child and Adolescent, exposing himself, by virtue of this arbitrary behavior, to all the legal consequences deriving from Law no. 8072/90 (art. 2o.), whose foundation is article 5, XLIII of the Federal Constitution. **The crime of torture against a child or adolescent, whose practice subsumes the crime of light bodily harm, is placed under the jurisdiction of the ordinary justice of the member State, since this penal offense, which has no typical correspondent in any of the conducts included in the Military penal Code, lies beyond the field of competence of the state military justice.** (Supreme Federal Court Plenary - Habeas corpus no. 70.389-5- São Paulo - 23 July 1994 v.u. rel. Decision (Acórdão) Mins. Celso de Mello, in B.AASP, 1881/13, - j. 11 Jan. 1995).”*

“(j) All victims of torture should be provided with compensation. The State party should ensure that enough funds are allocated to make the relevant payments. The existing system of implementation of judicial decisions that grant State compensation to victims of torture so that these persons may receive the compensation that they are entitled to should be reformed in a timely fashion;”

342. The Brazilian legal order, also by virtue of an express constitutional provision, assures moral

and material reparation to any person who suffers a harm caused by the State, through its agents. This is an objective responsibility, that is, it does not depend of the verification of guilt. The penal conviction also serves as executory mandate for the civil action of compensation.

“(k) *The State party should carry out awareness-raising campaigns in order to sensitize all sectors of society about the issue of torture and ill-treatment and on the existing conditions of detention centres;*”

343. On this question, see comments to paragraph 187 of the Report.

“(l) *The right to counsel must be guaranteed at all stages of detention, from the initial detention at police stations. An adequately resourced Defensoria Pública, with appropriate authority to investigate and file necessary legal actions, should be present in all States of the Federation in order to provide legal representation to all criminal suspects. Public defenders should receive adequate salaries and appropriate training to ensure that they can carry out their duties;*”

344. On this question, see comments to paragraph 186 of the Report.

“(m) *Allegations of police misconduct should be investigated by an independent body, adequately resourced to perform its functions;*”

345. The Police *Ouvidorias*, which exercise external control on the institution that monopolizes the use of force and may restrict the dearest individual freedoms must be absolutely trusted by the society. Hence the recognition by the Federal Government of the need for their complete independence and absence of commitments with Secretariats or Governments, so that the legal democratic order and the power and obligation of the State to assure public security may coexist.

346. For this reason the Brazilian Government, in bilateral cooperation with the European Union, maintains a Program of Institutional Support to the Police *Ouvidorias* and Community Police, and hosts the National Forum of Police *Ouvidores*, in which only those who have no current or past link with the police do participate. There are eleven Brazilian states in the Forum and the number of *ouvidores* appointed by state governors from a list of three names provided by the State Council for Human Rights is growing (SP, MG, MT and RN).

347. As regards budgetary autonomy, essential for the independent development of the activities of the *ouvidorias*, the activity of the *Ouvidoria de Polícia* of the state of Paraíba will set a standard in Brazil. The draft state law that creates this *Ouvidoria* is currently under examination at the state Legislative Assembly and contemplates also administrative and functional autonomy. The *ouvidor* must be a representative of civil society committed to the defense of human rights, since the proposal of names follows the above mentioned pattern. The draft bill also assures the *Ouvidoria* its own headquarters, separate from the facilities of the Public Security Secretariat, and grants competence to requisition documents from any state agency.

348. The creation of this *Ouvidoria*, which can already be considered a model, is undoubtedly the

result of the significant attention that the Brazilian State has been according to the question of the control of police forces.

349. As regards the internal control of the Police *Corregedorias*, it is true that progress has been slower, but it exists: in the state of Ceará there is one General *Corregedor* and six *corregedores*, all appointed by the Governor of the state and not by the Public Security Secretary, and they are placed under the scrutiny of the Public prosecutor, which intervenes in all procedures that are initiated.

350. This additional competence of the Public Prosecutor ends up by facilitating the exercise of one of its tasks, the control of police forces, since it is the institution best placed to do this job, because of its distinct functional structure, not subordinated to any of the three Branches, which gives independence and authority to the control function.

“(n) *Allegations regarding cells of castigo should be investigated by the State party;*”

351. The Brazilian Government has already devoted attention to investigating *celas de castigo* (punishment cells). There are two agencies to perform this function, whose activity inside prison facilities is essential to prevent the continued existence of such cells.

352. One of such agencies is the *Ouvidoria* of the National penitentiary System (DEPEN), which possess institutional electronic mail service (LINK"mailto:ouvidoria@depen.mj.gov.br" ouvidoria@depen.mj.gov.br) through which any citizen may channel his (her) communication. Usually, messages received deal with requests for information on the status of grace proceedings, or denunciations of ill treatment and requests for transfers. All messages are duly answered and filed.

353. During 2006, the *Ouvidoria* carried out thirty inspection visits in penal facilities in ten states, some of them jointly either with the National Council for Criminal and Penitentiary Policy or with the Special Secretariat for Human Rights. From the information collected it was possible to prepare reports sent to the National Council for Criminal and Penitentiary Policy and other agencies responsible for penal execution in their respective states.

354. The National Council for Criminal and Penitentiary Policy is competent to inspect and check penal facilities, and may propose measures for their improvement. It may also request the judiciary or the administrative authority the initiation of an inquiry or administrative procedure, in case of violation of the norms regarding penal execution.

“(o) *The State party should ensure that the police ouvidorias have sufficient human and financial resources so that they can carry out their tasks independently;*”

355. One of the pillars of the action of the Federal Government in public security is the establishment of autonomous and independent *ouvidorias*, through SENASP-MJ, according to guidance from the National Forum of Police *Ouvidores*, as a way to ensure the existence of conditions of development for the activities of the *ouvidores*. Furthermore, the Federal Government,

through the Special Secretariat for Human Rights, concluded a technical cooperation agreement with the European Union, with a view to strengthening the Police *Ouvidorias*.

“(p) *All state and federal organs responsible for the investigation of police misconduct should compile statistics disaggregated by age, sex and race on the number of complaints of torture received and investigations carried out. These statistics should be in a public document which should be submitted to Parliament annually;*”

356. The compilation of data for the formation of statistical indicators on police violence is a fundamental factor for the control of police forces. Those indicators are useful to publicize the work of the controlling agencies, but also to the adequate formulation and execution of public security policies. Data from the Police *Ouvidorias* will be systematized and made available this year at a data bank located at the Special Secretariat for Human Rights.

357. This system will standardize working routines and the categories used to classify denunciations, procedures and results attained. It will have data on age, sex and color, so as to enable research to be conducted on those bases. Finally, this system will represent an enormous quality leap in relation to the annual report of Police *Ouvidorias* that is now published, including because it will distinguish torture from abuse of force in police interventions, a item that in the majority of cases is subsumed under “police violence”.

358. It is also important to compare those data with other indicators. In fact, the amount of denunciations and the crimes to which they refer depend on variables such as the awareness by the population of the existence of control agencies, the trust placed on them, the crimes must publicized by the press. In this connection, the Brazilian Government has been investing in methodological development for research of victimization and police lethality.

359. Furthermore, the Ministry of Justice, through its National Penitentiary Department, has developed the Penitentiary Information System - Infopen, which is a instrument for the integration of penitentiary administrative agencies all over Brazil with the objective of permitting articulate action on the part of agents in proposing public policies.

360. The system is divided into Infopen Statistics and Infopen Management. The former is a *software* available to all federated units by way of an agreement through which they become responsible for the monthly feeding of the system. It is made up of statistical indicators that allow the creation of data banks on penal facilities and prison populations. The latter is a new *software* composed of several modules, which deal with all aspects of the administration of a penal facility, the follow up of penal execution and the extraction of individual and consolidated data. This program brings together all applications of the system, links individual data from the penal population to be fed automatically into the statistical indicators, besides controlling, in real time, administrative procedures and routines of the penal facilities.

“(q) *The material conditions of detention centres must be improved without delay as a matter of highest urgency and importance. The State party must allocate sufficient financial resources to*

*improve these conditions so that all detainees may be treated humanely;”*

361. As stated in the answer to paragraph 188, the Federal Government has been investing in the re-equipment of penal facilities, through allocations of financial resources to the states of the Federation, besides constructing new centers.

*“(r) The material conditions of juvenile detention centres must also be urgently improved. The State party should ensure the application of the Statute of the Child and Adolescent and adopt all necessary measures to provide educational and vocational training, medical and recreation facilities to help reintegrate children and adolescents into society;”*

362. Through the Under-secretariat for the Promotion of the Rights of the Child and Adolescent, agency responsible for the coordination of the Policy of Care to Children and Adolescents, the Brazilian Government elaborated during the last few years, in the field of care for adolescents in conflict with the law, the National System of Socio-educational Care (SINASE). This represents the national policy of the federal Government in this area, in which it seeks to define the competences of the federated units and thus attain the goal of strengthening the socio-educational system. The development of SINASE was reached through partnerships with the states, municipalities, civil society, justice system and ministries that deal directly with these problems.

363. From the perspective of encouraging the care for adolescents in a network and under the principles of the institutional incompleteness, decentralization, municipalization and operational integration among the agencies of the system of justice, it is hoped that an important quality leap will be achieved with the establishment of dialogue with state governments. The Federal Government assumes the responsibility for the management of the state system of social-educational care, mainly in what regards the municipalization of the socio-educational measures in an open environment.

364. Thus, SINASE’s primordial goal is to put together an orderly ensemble of principles, rules and standards that must be observed in the process of investigation of infractions, as well as in the execution of socio-educational measures, by standardizing the policies of socio-educational care in the country and establishing precepts to be observed by the federated units.

365. It also institutes normative and explanatory rules related to the programs and sets criteria strictly related to governmental and non-governmental agencies that intend to execute the socio-educational measures, besides subsidizing programs in open medium and of deprivation of freedom, with specific requirements for each.

366. To structure SINASE, national and international norms (Conventions, Constitution, Statute of the Child and Adolescent, CONANDA resolutions and state governments’ plans) were utilized, as well as several studies, proposals and experiences that have put into practice the new legal paradigm.

367. To this must be added the effort expended in this period to elaborate the Draft Bill on the



Execution of Socio-Educational Measures, which is currently under examination in the National Congress. This Draft Bill aims at overcoming the normative gaps through SINASE, under the coordination of the Union with the participation of states, the Federal District and municipalities.

*“(s) The problem of overcrowding in detention centres must be solved by adopting measures urgently, such as awareness-raising of the judiciary of the possibility of applying alternative sentences;”*

368. On this question, see comments to paragraph 183 of the Report.

*“(t) Juvenile offenders should be separated on the basis of age, physical build and seriousness of the offence, as provided for in the Statute of the Child and Adolescent and the United Nations Convention on the Rights of the Child;”*

369. In the comments to paragraph 196, r, of the Report, information was given on SINASE, including the set of principles to be observed in the execution of socio-educational measures do be applied to minors in conflict with the law. Among the several directives, one can find the architectural parameters to be observed in locations of internment of minors, in order to make possible the separation by age, sex, seriousness of the infraction, phase of the shelter (initial, intermediary and concluding) as well as the existence of spaces that allow the adequate development of socio-educational activities.

370. In March of this year the Specialized Center for Juvenile Care (CAJE) in Brasília, a juvenile detention center visited by the Committee, participated in qualification for SINASE. The initiative came from the direction of CAJE itself, which has introduced socio-educational measures in accordance with the pedagogic principles of SINASE for individual and interdisciplinary care.

371. The separation of minors according to their specificities and development, therefore, is included in the national policy for minors in conflict with the law and is being implemented with a starting point on the introduction of measures proposed by SINASE.

372. The Center for Socio-educational Care for Adolescents - eg. Fundação Casa - sorts out adolescents by age and infraction, and possesses units for first-time interns who committed infractions of medium seriousness, for second- and third-timers and for those who committed serious infractions (separation as “primary-medium”, “primary-serious”, “recidivist medium” and “recidivist serious”). There is also a separation according to the place of residence of the parents.

*“(u) Police stations should not be used to accommodate pre-trial detainees and sentenced prisoners beyond the 24-hour period prescribed by the law;”*

373. On this question, see comments to paragraph 191 of the Report. It should be added that the Federal Government will evaluate, through SENASP-MJ, the possibility of including this item in the qualitative standards for distribution of financial resources to the states. Currently, projects of construction or renovation for police precincts that include jails are not accepted.

*“(v) Detainees should be separated, depending on whether they are awaiting trial or sentenced, whether they have been sentenced to an open, semi-open or closed regime, as well as by the seriousness of the offence;”*

374. As was already observed, concrete measures to tackle this question have been taken, e.g. the incentives by the Federal Government to take public jails out of operation and the important investments in the Federal Penitentiary System with the objective of separating individuals considered high-risk.

*“(w) The State party should ensure adequate funding to recruit sufficient prison personnel. Furthermore, all law enforcement personnel, including police officers and prison guards should receive training on the rights of suspects and detainees and their obligation to respect such rights, including the provisions set forth in the Convention and other relevant international instruments;”*

375. On this question see comments to paragraph 190 of the Report.

*“(x) The State party should review the disciplinary policy regimes for detainees (RDD/RDE) currently being implemented. The State party is reminded that prolonged isolation may amount to torture;”*

376. On this question, see comments to paragraph 192 of the Report.

*“(y) An adequate system which would enable all inmates to reduce their sentences through work without any distinction or discrimination should be established in all penitentiary centres;”*

377. On this question, see comments to paragraph 188 of the Report.

*“(z) In all cases in which a person alleges torture, the competent authorities should guarantee that a medical examination is carried out in accordance with the Istanbul Protocol on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment. Medical doctors should be trained to identify injuries that are characteristic of torture or ill treatment in accordance with the Istanbul Protocol. Forensic examinations of detainees should be routine and not dependent on a police request;”*

378. The Federal Government, through SENASP-MJ, is committed to the elaboration of a course to form professionals in criminal expertise, with a view to performing medical examination in cases of allegations of torture or cruel, inhuman and degrading punishment.

*“(aa) The technical and scientific independence of forensic doctors in the execution of their forensic work should be guaranteed, including through placing them under the judicial authority or any other independent authority and separating them from all police structures;”*

379. Draft bill No. 3.653/1997 is being examined at the Chamber of Deputies, having already been debated and found consensus among expert agencies in the whole country, which proposes the

autonomy of these institutions at the state level. That draft bill should be up to vote at the Federal legislative.

*“(bb) The State party is encouraged to ratify the Optional Protocol to the Convention, which would provide for the establishment of a national protection mechanism with the authority to make periodic visits to places of detention;”*

380. During the visit to Brazil, the Committee delegation could witness the efforts of the Brazilian Government, Congressmen and civil society to make Brazil a part of the Optional Protocol to the Convention Against Torture (OPCAT), then under examination in the National Congress. The National Congress through Legislative Decree no. 483, of December 20 2006 approved the text of OPCAT, as required by the Brazilian Constitution. After legislative approval, Brazil sent the instrument of ratification of OPCAT to the Secretary-General of the United Nations, in New York, on January 11 2007.

381. Therefore, the Optional Protocol is already in force for Brazil, a country that participated intensively and constructively in its negotiation. The Brazilian Government is currently engaged in internal consultation among relevant governmental agencies and dialogue with civil society organizations with a view to compliance with the Optional Protocol, especially the identification and regulation of national prevention mechanism(s), taking particularly into account the situation of deprivation of freedom, the dimensions and the federative nature of the country.

382. It must be observed that laws exist already at the federal level and in some states that include provisions permitting the realization of unannounced visits by representatives of public agencies and civil society with a view to dissuade and repress the practice of torture and other forms of ill-treatment, such as the Public Prosecutor Office, Public Defenders, Penitentiary and Community Councils, the Councils for the Rights of the Child and Adolescent and the Trusteeship Councils, in cases of adolescents in conflict with the law, among others. The already mentioned National Plan, launched on June 26, also provides for the implementation of measures contained in the text of the Protocol.

383. Even before ratifying OPCAT, the Brazilian Government had been engaged in useful dialogue with civil society organizations, such as the Association for the Prevention of Torture (PT), the Center for Justice and International Law (CEJIL) and the Teotônio Vilela Commission (CTV) for exchange of ideas on the future implementation of the Protocol in the country. In this connection, representatives from the Special secretariat for Human Rights and the Ministry of External relations participated in the seminar *“Optional Protocol to the Convention Against Torture: Implementation in Federated or Decentralized States”*, held by the above mentioned organizations from June 22 to 24, 2005, just before the visit of the delegation of the Committee. Since its institution, the National Committee Against Torture has been keeping regular dialogue with several public institutions and non-governmental organizations on the implementation of the Protocol.

*“(cc) The State party is also encouraged to accept the right of individual petition to the Committee, by making the declaration envisaged under article 22 of the Convention.”*

384. On June 27 2006, International Day of Support to Victims of Torture, Brazil deposited the optional declaration provided for in article 22 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, thus recognizing the competence of the Committee Against Torture to receive and evaluate denunciations of violations of the provisions of the Convention. The realization of the declaration provided for in article 22 was made possible after the necessary prior approval by the National Congress by means of Legislative Decree no. 57, of April 17 2006.

385. The acceptance of the competence of the Committee to receive and evaluate individual petitions reinforces the recognition by Brazil of the legitimacy of the international concern for human rights and the superior interest of possible victims, who now can count on an additional mechanism for protection against eventual violations. The recognition of that competence also responds to recommendations from the former Special Rapporteur of the Commission on Human Rights of the United Nations, Sir Nigel Rodley, and of the Committee itself, following the examination of the initial report by Brazil on compliance with the Convention, in 2001.

386. It is important to stress that even before Brazil made the declaration provided for in article 22 of the Convention against Torture, any individual who considered himself (or herself) to be a victim of torture or cruel and inhuman treatment attributable to the Brazilian State could already count on international protection mechanisms. As already mentioned, Brazil is a Party to the Inter-American Convention to Prevent and Punish Torture since June 1989. Since September 1992 Brazil is also a Party to the American Convention on Human Rights. Its article 5.2 prohibits torture and other cruel, inhuman or degrading treatment or punishment. The combination of both regional instruments guarantees to any individual or group the right to petition before the Inter-American Human Rights Commission in case of alleged violations related to torture and other prohibited treatment or punishment. In the regional system, possible victims have the additional possibility of communicating in the national language, Portuguese, an official language of the Organization of American States.

387. Since December 10 1998, when Brazil recognized the contentious jurisdiction of the Inter-American Court of Human Rights, it became possible for individual petitions to the Inter-American Commission on Human Rights to be brought before the Inter-American Court of Human Rights.