

BRAZIL

CAT A/56/44 (2001)

115. The Committee considered Brazil's initial report (CAT/C/9/Add.16) at its 468th, 471st and 481st meetings, held on 8, 9 and 16 May 2001 (CAT/C/SR.468, 471 and 481), and adopted the following conclusions and recommendations.

A. Introduction

116. The Committee welcomes the initial report of Brazil while noting that this report, which should have been submitted in October 1990, arrived after an excessive delay of 10 years. Brazil ratified the Convention on 28 September 1989 without making any reservation. The State party has not made the declarations provided for in articles 21 and 22.

117. The report was not prepared in complete conformity with the Committee's guidelines for the preparation of initial reports of States parties. However, the Committee expresses its appreciation for the remarkably frank and self-critical character of the report, which was, moreover, drafted in cooperation with a non-governmental academic institution. The Committee also welcomes the additional information provided by the State party delegation in its oral presentation and the constructive dialogue which took place.

B. Positive aspects

118. The Committee notes with satisfaction the following:

(a) The political will expressed by the State party to combat the practice of torture, and its eagerness to cooperate with United Nations bodies and regional organizations to this end;

(b) The frankness and transparency with which the Government recognizes the existence, seriousness and extent of the practice of torture in Brazil;

(c) The State party's efforts concerning the implementation of an education programme and the national human rights promotion campaign (scheduled for June 2001) aimed at sensitizing public opinion and the official actors concerned to action to combat torture. The Committee also welcomes the other measures taken by the State party to meet the concerns of the Special Rapporteur on torture following his visit to Brazil;

(d) The promulgation, in April 1997, of Law No. 9455/97 (Torture Act), which introduces into Brazilian criminal law the categorization of torture as an offence, with appropriate penalties;

(e) The establishment of various bodies intended to enhance respect for human rights, notably the Human Rights Commission of the Chamber of Deputies, the National Human Rights Secretariat under the Ministry of Justice, the Federal Procurator for Human Rights and the human rights commissions set up in some states;

(f) The legislation relating to refugees and the establishment of a procedure aimed at ensuring that an asylum-seeker is not returned to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture;

(g) The external monitoring of the police by the Public Prosecutor's Office and the State party's efforts to reinforce external and independent supervision through the appointment of police ombudsmen in several states;

(h) The contributions regularly paid by the State party to the United Nations Voluntary Fund for Victims of Torture.

C. Subjects of concern

119. The Committee expresses its concern about the following:

(a) The persistence of a culture that accepts abuses by public officials, the numerous allegations of acts of torture and cruel, inhuman or degrading treatment - in police stations, prisons and facilities belonging to the armed forces - and the de facto impunity enjoyed by the perpetrators of those acts;

(b) The overcrowding, lack of amenities and poor hygiene in prisons, the lack of basic services and of appropriate medical attention in particular, violence between prisoners and sexual abuse. The Committee is particularly concerned about allegations of ill-treatment and discriminatory treatment of certain groups with regard to access to the already limited essential services, notably on the basis of social origin or sexual orientation;

(c) The long periods of pre-trial detention and delays in judicial procedure which, together with the overcrowding in prisons, have resulted in convicted prisoners and prisoners awaiting trial being held in police stations and other places of detention not adequately equipped for long periods of detention, a fact which could in itself constitute a violation of the provisions of article 16 of the Convention;

(d) The lack of training of law-enforcement officials in general, at all levels, and of medical personnel, as provided by article 10 of the Convention;

(e) The competence of the police to conduct inquiries following reports of crimes of torture committed by members of police forces without effective control in practice by the Public Prosecutor's Office, with the result that immediate and impartial inquiries are prevented, which contributes to the impunity enjoyed by the perpetrators of these acts;

(f) The absence of an institutionalized and accessible procedure to guarantee victims of acts of torture the right to obtain redress and to be fairly and adequately compensated, as provided for in article 14 of the Convention;

(g) The absence in Brazilian legislation of an explicit prohibition on any statement obtained through torture being accepted as evidence in judicial proceedings.

D. Recommendations

120. The Committee makes the following recommendations:

- (a) The State party should ensure that the law on the crime of torture is interpreted in conformity with article 1 of the Convention;
- (b) The State party should take all necessary measures to ensure that immediate and impartial inquiries are carried out, under the effective control of the Public Prosecutor's Office, in all cases of complaints of torture or cruel, inhuman or degrading treatment, including acts committed by members of police forces. During such inquiries, the officers concerned should be suspended from their duties;
- (c) All necessary measures should be adopted in order to guarantee to any person deprived of his or her liberty the right of defence and, consequently, the right to be assisted by a lawyer, if necessary at the State's expense;
- (d) Urgent measures should be taken to improve conditions of detention in police stations and prisons, and the State party should, moreover, redouble its efforts to remedy prison overcrowding and establish a systematic and independent system to monitor the treatment in practice of persons arrested, detained or imprisoned;
- (e) The State party should reinforce human rights education and promotion activities in general and regarding the prohibition of torture in particular, for law-enforcement officials and medical personnel, and introduce training in these subjects in official education programmes for the benefit of the younger generations;
- (f) Measures should be taken to regulate and institutionalize the right of victims of torture to fair and adequate compensation payable by the State, and to establish programmes for their fullest possible physical and mental rehabilitation;
- (g) The State should explicitly prohibit the use as evidence in judicial proceedings of any statement obtained through torture;
- (h) The State should make the declarations provided for in articles 21 and 22 of the Convention;
- (i) The second periodic report of the State party should be submitted as soon as possible in order to conform to the schedule provided for in article 19 of the Convention, and should include in particular: (i) relevant judicial decisions relating to the interpretation of the definition of torture; (ii) detailed information on allegations, inquiries and convictions relating to acts of torture committed by public officials; and (iii) information concerning measures taken by the public authorities to implement, throughout the country, the recommendations of the Committee, and those of the Special Rapporteur on torture to which the State party delegation referred during the dialogue with the Committee.