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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1990

Addendum

BRAZIL

[26 May 2000]

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CONTENTS

INTRODUCTION

1. With the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in September 1989, Brazil committed itself, under the terms of the Convention, to ensure that acts of torture would be considered a crime, according to its domestic criminal legislation. However, only with the promulgation of Law 9.455/97, in April 1997, was torture legally characterized as a criminal act.

2. In 1999, Brazil presented to the international community its first report on the situation regarding torture in the country, with a broad picture of the legal and real situation of torture and cruel, inhuman or degrading treatment or punishment. The present text reviews the main aspects of the torture issue in Brazil throughout the 1990s, indicating legislative, executive, and judicial measures which have been adopted by the Brazilian Government, mainly the initiatives which have been taken since the promulgation of Law 9.455/97.

3. By means of the ratification of the Convention, Brazil has acknowledged that the protection of basic human rights is not limited to action by the State. Human rights, due to their universal characteristics, are the legitimate interest of the international community and one of the most relevant items on the global agenda. International instruments of protection are an additional guarantee of such rights when domestic institutions are ineffective or neglectful. Thus, the internationalization process of human rights enhances the ability of the victims of human rights violations to take legal proceedings, and contributes to the gradual overcoming of the notion that the State is exclusively responsible for the issue. As State parties subscribe voluntarily to the Treaty, they cannot claim that the implementation of international obligations represents undue interference in domestic affairs.

4. In addition to the legal advance which occurred in Brazil regarding human rights, it is important to point out that the democratically elected authorities have changed their practice concerning human rights when compared to that of previous governments in the military regime. Today, there is a permanent dialogue between Federal, State, and municipal governments and representatives of national or international human rights entities, which freely document and divulge violation cases, and meet with authorities at all government levels. In the past, mainly during the military regime, the Government simply ignored or denied denunciations of human rights violation. Today, in practice and theory, respect of these rights is increasingly important to the governmental agenda.

5. Since the preparation of the governmental agenda for the World Conference on Human Rights, held in Vienna in June 1993, the Brazilian Government has taken the initiative to call on the organizations of civil society to prepare together an analysis of the main difficulties of the country in the human rights field. This dialogue culminated with the preparation of a national programme on human rights in 1996.

6. To correctly understand the issue of torture and inhuman treatment in the country, it is necessary to present a brief background on those practices within Brazilian society. The problems faced in Brazil in this field, as in other fields linked to the protection of human rights, mostly result from the authoritarian legacy which Brazil experienced for about 20 years. However, torture did not start with the military regime in 1964, and for that reason, it was not

systematically eliminated after the regime changed. During the authoritarian regime, the number of victims of torture increased due to the inclusion of political enemies. Torture became sophisticated in its methods, and relied on the complicity or inaction of the authorities and even on its formal support at times.

7. The present report is composed of two parts. The first one gathers overall information on the country - demographic, social, and economic - and presents a brief background report on the occurrence of torture in Brazil, mainly during the most recent decades. The second part refers to the articles of the Convention against Torture followed by initiatives of the Brazilian Government in relation to each of them, the difficulties for their implementation, and also reports cases to illustrate such difficulties. When necessary, information has been added concerning the legislative, political-institutional and administrative measures of Federal and State governments, aiming at the elimination of the practice of torture and cruel, inhuman or degrading treatment.

8. Basic legislation adopted by the country to curb torture is cited in annex I. Preparation of the report is given in annex II.

I. GENERAL INFORMATION

A. Overall characteristics of the country

9. Brazil is a federative republic composed of 26 states and one federal district, stretching over 8,547,403 km^2. It had 5,024 municipalities in 1994. In 1998, its population was estimated at 161 million inhabitants. Demographic density in the country is 18.8 inhabitants per square kilometre. However, the population is unevenly distributed. The south and south-east regions represent approximately 17.6 per cent of the total area of the country, whereas in the northern region, which corresponds to 45.2 per cent of the land, lives only 7.3 per cent of the population.

10. In 1996, approximately 78 per cent of the Brazilian population lived in large urban areas. The population concentration is very high in large cities. Approximately 50 million people, that is, almost one third of the total population the country, live in the eight largest metropolitan areas of the country.

11. It was only in 1995 that Brazil joined the countries with a so-called high human development index (HDI), according to UNDP criteria. There are three HDI indicators: life expectancy at birth, level of education, assessed by educational variables, and the income or GNP per capita. The scale ranges from 0 to 1. Countries with an index below 0.500 are considered to have a low human development. Those which present indexes from 0.500 to 0.799 are considered to have an average human development and those whose rate is over 0.800, high development.

12. In 1970, Brazil's HDI was 0.494, which soared to 0.734 in 1980. In 1991, there was no significant variation and the index was 0.787. In 1995, it reached 0.809, going up as high as 0.830 in 1996. From the five geographic regions, only the north and the north-east regions presented average human development in 1996 (0.727 and 0.608 respectively). The south, south-east, and midwest regions presented indexes of 0.860, 0.857, and 0.848.

13. However, the 1999 United Nations report based on 1997 data introduced changes in the criteria of the HDI. The change regarded the income item. Because of this, Brazil dropped back to the group of countries with an average development, presenting a rate of 0.739, whereas in 1996 it was 0.830. Brazil now ranks 79th among the 174 countries in the world, whereas in 1995 it ranked 62nd.

14. The overall mortality rate in Brazil was 9 for 1,000 inhabitants in 1980, and now it is 7 for 1,000. Child mortality rate was estimated to be 43 for 1,000 births in 1996. According to the National Research per Domicile Sample (PNAD) of the Brazilian Institute of Geography and Statistics (IBGE), illiteracy in Brazil was 14.48 per cent in 1996 in contrast with 20.1 per cent in 1991. With a Gross National Product (GNP) of 750 billion *reais* in 1996, Brazil is one of the 10 largest economies in the world. Per capita income in 1996 was US$ 4,743, which actually does not disclose the extreme uneven wealth distribution. In 1995, the 10 per cent poorest had only 1 per cent of the income whereas the 10 per cent wealthiest had 47.1 per cent of the income.

15. According to IBGE, the 1996 distribution of income by sector was cattle raising/agriculture - 12.2 per cent; industry - 33.4 per cent; services - 54.4 per cent. The economically active population represented 73,120,101 people in 1996 according to IBGE. Unemployment figures have been growing recently. In 1994, there were 4.5 million unemployed workers; in 1998, these figures soared to approximately 6.65 million unemployed workers according to IBGE.

16. Brazil has been ruled by a new Constitution since 1988. Within the republican tradition, which was predominant in previous constitutions, the executive, legislative and judiciary branches were autonomous and independent. Public security, understood as a duty of the State, and the right and responsibility of all citizens, is enforced to maintain public order and the invulnerability of the people and the patrimony. The Federal Police are accountable for this duty at the national level, while the Civil Police and the Military Police are at the state level. The Federal Government also has the Federal Road Patrol to patrol and control federal roads. The state military police are responsible for intense patrolling intended to enforce public order, whereas the Civil Police and the Federal Police account for judicial duties at the state level and at the national level, respectively. In 1997, there were 103,002 civil police officers and 378,899 military police officers.[1]

17. Although it is the exclusive competence of the Union to legislate on the Penal Code, it is the responsibility of the states to organize systems aimed at the enforcement of prison sentences. In 1997, there were approximately 170,000 prisoners in the country, whether arrested or convicted, a ratio of 108.3 prisoners per 100,000 inhabitants. In that year, the prison deficit in the Brazilian states was over 95,000 vacancies.

B. Torture and inhuman treatment in Brazil

18. Brazil was a Portuguese colony for more than three centuries. A great part of the organization of economic activities developed in the country during this period, between the fifteenth and early nineteenth century, and it was based on the interests of Portugal. Laws and

political-administrative organization concepts also came from Portugal, as well as all the judicial apparatus. The Statute of the Kingdom, adopted in Brazil until the early nineteenth century, expressed conceptions of punishment which were dominant from the fifteenth to the nineteenth century in all Europe. Thus, corporal punishment was the main instrument to punish a great many felonies. Different penalties, according to the social status of the victim and of the offender, were also a reality.

19. The concern with occupying and exploring the colony drove Portugal to establish a social economic structure based on slave labour, carried out by indigenous people and slaves brought in from Africa. As a result, the arrest and the violent enslavement of natives became a practice. Even though it was not significant in number, the indigenous slavery was essential to the economic organization of some areas in the country. Nevertheless, the relationship between the white man and the indigenous was rather violent.

20. The Africans brought in between the sixteenth and the nineteenth century were much more important to the formation of the Brazilian society and to the configuration of the colonial economy. Slavery paved the way for masters to make use of violent treatment as they wished. In addition to the miserable life and working conditions that the slaves were submitted to, the master could impose whichever punishment he deemed necessary. Privation, whipping, mutilation, slapping or humiliation were common practices in the houses and farms of the owners of slaves during the whole colonial period.

21. In addition to the fact that the imposition of physical punishment was legitimated by the master-slave relationship, many of those practices reached the segments of the colonial low middle class - poor people who lived in cities, ex-slaves, and tenant farmers. These practices had the back-up of the Statute of the Kingdom and of the Legislative Assembly. Frequently, disobeying an order of the Legislative Assembly meant that those individuals would be confined to extremely dangerous prisons, many times with shackles, awaiting the imposition of a punishment such as whipping, payment of fines or even capital punishment by hanging. The so-called good men, the Portuguese landowners or nobles, would never experience this situation.

22. Despite the fact that Brazil became independent in 1822, and that the independence organized its political-institutional structure in new models, slavery was maintained as long as the late nineteenth century. The Imperial Penal Code of 1830 prescribed prison as the main form of punishment, but it also allowed whipping and hard labour for the slaves.

23. Two of the main prisons of the last century were the Rio de Janeiro Penitentiary and the São Paulo Penitentiary, which took in criminals sentenced to hard labour. Inside those facilities, there were specific premises called dungeons, which were intended to receive fugitive slaves or rebel slaves, taken in by the masters themselves. There, slaves would receive their punishment, normally the lash.

24. In 1824, two years after it became independent, Brazil drafted its first Constitution, which ensured political and civil freedom. However, a great many individuals did not meet the requirements to be considered citizens, and slavery was still an obstacle to any attempt for

equality. The conclusive evidence was the text of the 1824 Constitution itself, whose article 179 banned whipping, torture, iron branding and all cruel penalties, whereas the 1830 Imperial Penal Code stated in Chapter I, Title II, that slaves could be punished with the lash:

> *"Article 60 - If the defendant is a slave, whose punishment is not capital punishment or hard labour, he will be condemned to be lashed, and then delivered to his master, who will have him in shackles for the time determined by the judge.*
>
> *The number of lashes will be stated in the sentence and may not exceed 50."*

25. The economic and political power of landowners and of wealthy men in the cities ensured impunity for a great many felonies, since the judicial system had always been shaped according to their power. Therefore, prisons in the country, with few exceptions, continued to be barren places which confined individuals mostly stemming from the low-income levels of the population.

26. In 1889, one year after the abolition of slavery, Brazil became a Republic. In spite of the favourable conditions to establish a more democratic political system which incorporated sectors of the population which had been outcast until then, the Republic was not able to dismantle, in its first decades, the elitist and hierarchical heritage of the Empire. Different opposition political movements, like the *Movimento dos Canudos* or the *Revolta da Chibata*, or even the anarchist movement at the beginning of the century, were often suppressed with violence, and individuals were submitted to torture and degrading treatment.

27. With the Republic, a new Penal Code was drafted, which at last terminated cruel penalties and listed prison as the main instrument to punish a crime. However, few states had means of offering adequate conditions of imprisonment. The industrialization process and consequent urbanization of some areas of the country in the first decades of the century enhanced the mechanisms of social control, i.e., mainly the police, and favoured the continuity of confining practices of the poorest sectors of the population, increasingly composed of urban and rural employees.

28. Addressed in the Constitution of 1891, in cases of states of siege, exile became a resource of widespread utilization in times of political instability in the first decades of the century. Even though the Penal Code of 1890 did not address exile as a form of punishment, it prescribed the sending of those considered vagabonds to marine islands or national boundaries. It was a common practice at that time for governments to establish a state of siege, and promote the removal of those who opposed the regime, as well as vagabonds kept in city prisons, to barren and distant places. In addition to the precarious ways in which they were transported to the destination of their exile, the number of deaths in those places was very high. In one of these sites, known as the Colonial Center of Clevelândia, 444 out of 946 prisoners had died by 1925.[2]

29. From 1937 to 1945, during the time known as "The New State", Brazil lived one of its darkest periods. A dictatorial regime had been established under the command of Getulio Vargas, and the political opposition was strongly suppressed. In addition to ordinary prisoners, the country's prisons started to receive political prisoners who were systematically tortured.

30. With the resumption of democracy in 1945, political opponents would no longer go to prison, but this did not mean that the practice of torture and ill-treatment came to an end. Despite the new Penal Code of 1940, the general situation of prisons in the country still imposed severe conditions for those who had been arrested or convicted. Besides, torture continued to be a means to obtain information and confession by the police as well as an imposition of punishment and illegal penalties.

31. With the 1964 military coup, for the next 20 years torture and ill-treatment to prisoners were enhanced. The opposition was severely persecuted. Many politicians and militants in opposition groups and movements were exiled or disfranchised. Others were randomly arrested, tortured, murdered or simply disappeared.

32. Much of the political repression during the New State and the dictatorship was carried out by police forces controlled by the Federal Government with the support of the state police. The role played by the state police amidst the silence imposed by governmental censorship and suppression enhanced the practice of torture and ill-treatment of ordinary prisoners, whether arrested or convicted, and fostered the participation of police forces, both civil and military.

C. Torture during the military regime

33. Until recently, Brazil experienced a military regime (1964-1985), having had five military presidents. After a troublesome time when rural and city workers mobilized themselves in the early 1960s, Brazilian military took over power in 1964, only relinquishing it in 1985, after the indirect election of a civilian president.

34. Even though not all democratic guarantees had disappeared during the military regime, civil freedom was disfranchised, the Legislative Branch had its operations restricted regarding independence and autonomy, and the Judiciary Branch had its supervision of the rule of law limited, by means of *Institutional Acts*. During this historical time, opposition politicians were disfranchised, and the media and whoever opposed the regime were censored for being suspected of attempts against order; they were kidnapped by security agencies, illegally arrested, tortured and even murdered. Evidence that was later brought out discloses the existence of at least 242 secret detention centres somehow related to the Armed Forces or even under their direct control, like the Department of Information Operation/Operation Center for Internal Defense (DOI-CODI) and the Department of Political and Social Order (DOPS), which carried out political investigation at a state level.

35. Thousands of people were suspected of being enemies of the Government, and were secretly taken to those detention centres, where they were kept incommunicable for weeks. Frequently, law courts, families, or lawyers were not aware of those detentions. The detainees were often interrogated and, under torture, forced to sign a confession and take the blame for a given act. Based on the analysis of 707 lawsuits in Military Courts between 1964 and 1979, a notorious report, called *Brasil, nunca mais* (Brazil, never again), identified the names of at least 1,918 political prisoners who attested to having been tortured during interrogation. This report also lists 283 forms of torture used by security agencies.

36. According to the *Blue Report*, made by the Committee for Citizenship and Human Rights of the State Legislature of Rio Grande do Sul in 1997, "at the end of the Geisel Government, the dictatorship had exiled 10,000, disfranchised 4,682, expelled 245 students from universities by force of Decree 477, and arrested thousands of people (...)" (p. 289).

D. The transition to democracy

37. The transition to democracy started in the late 1970s with more open elections, political amnesty in 1979, curbing of censorship and the revocation of the most arbitrary laws. The failure of the economic model implemented by the military, the electoral victories of the opposition party from 1974 on, the demands of the social groups excluded from the political process, and the internal disputes among the Armed Forces, which would eventually lose control over security agencies, helped streamline the "opening" process. However, the re-democratization process was uneven throughout the Brazilian states. Mobilization of political forces and popular movements in favour of the liberalization of the regime was different in intensity in the several cities and states of the country. These differences determined a stronger or weaker commitment of political forces to the democratic regime and defence of human rights.

38. The performance of the Catholic Church and that of the human rights organizations was of paramount importance to the political transition, being dedicated to the defence of human rights, mainly those of political prisoners who had been arbitrarily arrested and submitted to torture or to other forms of cruel or inhuman treatment. In 1979, Congress approved the Amnesty Law, which enabled the end of political arrest and the return of those who had been exiled for political reasons. This fact was an important step to enhance civic freedom. However, it is worth mentioning that the law declared amnesty to "all crimes of political nature or carried out for political reasons", and therefore encompassed crimes of torture perpetrated during the authoritarian regime.

39. The first civilian president since 1964, Tancredo Neves was elected in 1985, but died on the eve of the day he would have taken office, and was replaced by vice-president José Sarney. The long transition period to the civilian Government in 1985 was characterized by slack initiatives and a very slow rhythm of change. The first president to be directly elected in 30 years was Fernando Collor de Mello in 1989.

40. Direct elections for the bicameral Congress were held in 1986. In 1987, members of the Senate and the House of Representatives gathered to form a Constituent Assembly whose mission was to draft a new Constitution for Brazil. The new Constitution was promulgated on 5 October 1988, revoking the 1967 Constitution of the military Government.

41. After 21 years of the authoritarian regime (1964-1985), Brazilian society resumed democracy and the rule of law in 1988. The new political constitutional regime enhanced the participation and representation channels, fostered basic rights (civil, collective, social and political rights) and bridged communication gaps between organized groups of society and the State. The new Constitution banned censorship to the media, allowing for a significant role of the press in denouncing human rights violations.

42. The torture of political prisoners, as an institutionalized method within the State's apparatus, had been banned at the beginning of the democratization process in the late 1970s. However, torture practised against suspects of crimes at police stations is still an issue of concern in Brazil, despite the legal advancement and the rejection of Brazilian society to violent investigation methods.

43. Different from the torture practised for political reasons in the 1970s, today, the remaining cases of torture have no ideological objective, but are related to power abuse and police corruption. Political torture was then informally accepted by those in power, as a legitimate instrument to fight "eternal enemies", according to the national security doctrine. Torture of ordinary criminals, related to corruption and power abuse by the police is today fought by democratic Governments and repudiated by the population.

44. There are several reasons which explain the difficulties to eradicate torture in Brazil. The first one is the variation of "systems of truth" which may be found in police inquiries, judicial processes or trials in a law court. The characteristics of the Brazilian judicial system are different from those of other countries where negotiation may be an important element in settling conflicts and restoring social order (truth as a result of a decision agreed upon). In Brazil, the main objective is to discover truth as the creation of a social order and the preservation of social harmony; this makes torture, at the police investigation phase, an instrument to discover truth by means of confession.[3] The second reason refers to practices inherited from the authoritarian regime, and the continuity of a great many subaltern employees of the civil and military police, accustomed to impunity. Third, the police need a structure which paves the way for investigation based on scientific methods, and torture is often used as a primitive and illegal form to provide answers to the society, which in turn demands an effective police.

45. The civil police makes use of violent methods mainly in the investigation of crimes against property, insisting on ignoring legal basis. Low-income suspects or those who have an arrest record are at times mistreated by the police during interrogations. Ill-treatment is carried out to draw information and force confessions or as a means of punishment, and many times as economic extortion. Cases of police brutality are hardly ever disclosed to the public, since the victims and witnesses come from low-income families, who ignore their rights and fear revenge.

46. As far as the military police is concerned, violent acts during police roundups as well as persecution of suspects and confrontation are frequent. Information on possible suspects of crimes is obtained by police officers by battering, coercion and threats.

II. THE ARTICLES OF THE CONVENTION

Article 2

47. The Brazilian Constitution of 1988 is the political-judicial keystone to institutionalize human rights in Brazil. The Constitution states that the international relations of the Federative Republic of Brazil are governed by the principle of the prevalence of human rights, inter alia (art. 4, II), and that Brazil is the legal democratic State founded on citizenship and dignity of the human person (art. 1, inserts II and III).

48. The rights and guarantees expressed in the Constitution do not exclude other rights deriving from the regime and from the principles adopted by it or from the international treaties of which Brazil is a party (art. 5 para. 2), allowing the Brazilian constitutional judicial system the protection of other basic rights not expressed in the Constitution of 1988.

49. Accordingly, the declaration of rights included in the Constitution (art. 5) lists the rights described by the International Treaties of which Brazil is a party, which, according to some of the most renowned legal scholars, received the status of constitutional rules prevailing over the ordinary legislation.

50. The Constitution of 1988 was also innovative by including individual rights and guarantees in its "untouchable" core, expressly prohibiting any possibility of amendments which attempt to eliminate or reduce the universality of individual rights and guarantees.

51. As far as torture and cruel, inhuman and degrading treatment are concerned, the Constitution of 1988 expressed as fundamental principles of judicial order:

(a) The dignity of the human person (art. 1, III);

(b) The prevalence of human rights (art. 1, II);

(c) Inviolability of the right to life and to liberty (art. 5, head);

(d) Repudiate torture or any other inhuman or degrading treatment (art. 5, III);

(e) Punishment for any attempt to discriminate against fundamental rights and liberties (art. 5, XLI);

(f) Punishment for torture shall be considered by law as not subject to bail, to grace or amnesty (art. 5, XLIII);

(g) The prohibition of cruel punishment (art. 5, XLVII);

(h) The fact that prisoners have the right to physical and moral integrity (art. 5, XLIX);

(i) Federal intervention to guarantee respect to the rights of the human person (art. 34, VII, b);

(j) The impossibility of amendment to the Constitution aimed at abolishing the separation of the Government Powers (art. 60, para. 4, IV);

(k) The control over police activities by the Public Prosecution (art. 129, VII).

52. The specificity of the international treaties for international protection of human rights is acknowledged by the Brazilian Constitution of 1988, considering that the human rights guaranteed by them, in compliance with paragraph 2 of article 5 of the Constitution, are considered full part of the rights expressed in the Constitution. Accordingly, the provisions defining fundamental rights are immediately applicable (art. 5, para. 1).

53. This fact is particularly relevant since Brazil ratified the main international and regional instruments of protection of human rights when the country resumed democracy.

54. As far as international protection against torture is concerned, it is worth mentioning that in addition to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Brazil on 28 September 1989, and the International Covenant on Civil and Political Rights, ratified on 16 January 1992, Brazil has also ratified the American Convention on Human Rights on 25 September 1992 and the Inter-American Convention to Prevent and Punish Torture, on 20 July 1989.

55. The Constitution of 1988, following the tradition of its antecedents, bans acts of torture in insert III of article 5, according to which "no one shall be submitted to torture or to inhuman or degrading treatment", reproducing article V of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights.

56. With the Constitution of 1988, acts of torture became not subject to bail, to grace or amnesty (art. 5, XLIII). Law 8072 of 25 July 1990, which defined heinous crimes, has equated torture to the latter, adding the impossibility of provisional liberty or amnesty. The Executive Branch presented to the House of Representatives Bill 4716, which defined crimes of torture in 1994.

57. Despite the fact that the Constitution determines precisely that torture must be considered a crime by the legislator, not subject to bail, grace or amnesty, it was only after Law 9455/97 that specific penalties started to be applied for cases of acts of torture.

58. Until 1997, law courts, in cases of torture, applied the provisions of the Penal Code referring to illegal coercion (art. 146), ill-treatment (art. 136), and bodily harm (art. 129), when there was offence to the integrity of body or health due to illegal coercion. The criminal legislation also addressed punishment for arbitrary violation during the performance of public duties (art. 322 of the Penal Code), like authorities who practised power abuses, attempting against the physical integrity of an individual (Law 4898/65).

59. This system was insufficient and defective, because those crimes are subject to bail (art. 323 of the Penal Code), to grace or amnesty, what was therefore a violation of the constitutional principle of article 5, XLIII.

60. Only the Statute of the Child and the Adolescent (Law 8069, from 13 July 1990) addressed punishment for acts of torture of children and adolescents kept in custody. The punishment for this crime is imprisonment for 1 to 5 years (art. 233), and may reach 30 years

if the torture causes death. It is worth mentioning that punishment is only applied in cases where the victim is under 18 years of age. (This article was later revoked with the Law of Torture 9455/97.)

61. Law 7960, of 29 December 1989, which regulates the institution of provisional arrest, also attempts to control the incidence of acts of torture. The law establishes that an individual under temporary arrest may be submitted to medical examination when taken into custody and at the time of release; that the time of temporary arrest may not exceed five days; and that it may only take effect under express judicial order.

62. The Federal and State Governments took several initiatives throughout the 1990s to fight against acts of torture and to reduce inhuman or degrading treatment in prisons, namely:

(a) Creation of the Human Rights Committee in the House of Representatives;

(b) Creation of the State Program for Follow-up on Police Officers Involved in High Risk Occurrences (PROAR), in the State of São Paulo. The Program promotes the removal of police officers involved in shootings from the region where they took place, assigning the officers different tasks. The officers are submitted to a follow-up and psychological assessment for three months, in order for PROAR authorities to decide if the officer is able to resume his activities. One of the main objectives of the Program is to reduce the number of civilian casualties caused by the police;

(c) On 4 December 1995, by means of Law 9140, the Government started to acknowledge as deceased the people who were missing due to the participation, or alleged participation in political activities between 2 September 1961 and 15 August 1979. The law had already acknowledged 136 missing people. Besides, article 4 created a Special Committee, whose duty, among others, was to proceed to the recognition of those who “had deceased from non-natural causes, on police premises or the like” for having participated or having been accused of participating in political activities during that time;

(d) Launching of a broad programme for protection and promotion of human rights by the Federal Government in May 1996, referred to as National Program on Human Rights. The National Secretariat of Human Rights of the Ministry of Justice was created in order to monitor and implement the Program and to develop policies aimed at the defence and promotion of human rights. In 1999, it became State Secretariat of Human Rights;

(e) After the Federal Government launched the National Program on Human Rights in 1996, the government of the State of São Paulo launched in September 1997, the State Program on Human Rights. Both encompassed several suggestions to curb acts of torture and promote the respect of prisoners’ human rights. Other states and municipalities are preparing their state programme on human rights;

(f) Law 9299/96, sanctioned by the President of the Republic in August 1996, transferred from the Military Justice to the Civil Justice the competence to prosecute military police officers indicted for felony against life;

(g) In the State of Rio Grande do Sul, the State Law 11.042 of November 1997, "Acknowledges the accountability of the State of Rio Grande do Sul for physical and psychological injury caused to those under custody and establishes norms for them to receive compensation". Following the example of that State, the State of Paraná and the State of Santa Catarina created the Special Committee to Award Compensation to Former Political Detainees, whose objective is to analyse the requests for payment of compensation for physical and psychological suffering of the victims of torture and arbitrary detention during the military regime;

(h) Interactive and community police experiments were implemented in the States of São Paulo, Amapá, Ceará, Espírito Santo, and in the Federal District meant to bring the police closer to the community, in an attempt to reduce acts of torture and other forms of violence by police officers;

(i) São Paulo and Paraná created human rights committees within their military police departments. The Central Committee on Human Rights of the Military Police of Paraná, for example, aims at preventing, avoiding, and punishing acts which attempt against human rights perpetrated by military police officers;

(j) Transformation of the State Secretariat of Justice of the State of Minas Gerais into State Secretariat of Justice and Human Rights, and the creation of an Under-Secretariat of Human Rights to monitor the State programme on human rights, forward denunciations of human rights violations, and foster educational actions related to human rights;

(k) The State of São Paulo passed the administrative rule DPG on 25 November 1998, which describes the measures to be adopted in the preparation of police investigation to guarantee the rights of the human person;

(l) Law 9455/97, which characterizes crimes of torture, was approved in April 1997.

63. Two years have passed since the promulgation of Law 9455/97, known as the Law of Torture. Acts of violence perpetrated by the military police in *Favela Naval* (a slum area) in São Paulo in March 1997, drove Congress to pass the Law, after years and years in which torture issues and respective bills were negotiated slowly. The violence was videotaped and broadcast nation and worldwide. Police officers battered inhabitants of the slum with batons, kicks, and slaps, threatening them at gunpoint. It culminated with the shot by a police officer against the car of an inhabitant, causing his death. The outrage of civil society and policy makers urged Congress to immediately vote laws which defined crimes of torture. Despite the fact that some legal scholars define the law as deficient, it was acknowledged as a significant advance for the Penal Code and as an instrument to curb acts of torture.

64. From article 136 on, the 1988 Brazilian Constitution determines that restrictive measures may only be decreed if a state of defence or a state of siege is in force. As exceptional measures, the period of their duration and areas encompassed will be limited, within constitutional restrictions. The state of defence is intended to preserve or promptly re-establish the public

order or the social peace threatened by serious and imminent institutional instability or affected by major natural catastrophes. The presidential decree which establishes the state of defence shall be submitted to Congress within 24 hours, which will in turn consider its approval in 10 days. If it is turned down, the state of defence will cease immediately.

65. The decree instituting the state of defence, with legal justification, shall determine the period of its duration, which shall not exceed 30 days and it may be extended once for an identical period if the reasons that justified its decreeing persist. It shall also specify the areas to be encompassed. The same decree shall list the coercive measures to be in force, such as: restrictions to the right of assembly, confidentiality of correspondence, telegraph and telephone communication.

66. During the period in which the state of defence is in force, arrest for crime against the State may be determined by the party executing the measure, and shall be immediately communicated by such party to the competent judge; the communication shall be accompanied by a statement by the authority as to the physical and mental state of the arrested person at the time of the filing of the charges. The imprisonment or detention of a person shall not exceed 10 days, unless authorized by the Judicial Power.

67. The state of siege may be decreed in the event of serious disturbances with nationwide effects or declaration of a state of war or response to foreign armed aggression. The President of the Republic, after hearing the Council of the Republic and the National Defence Council shall request authorization to decree the state of siege.

68. The decree of the state of siege shall specify the period of its duration, the rules of its implementation and the constitutional guarantees that are to be suspended, and after it is published, the President of the Republic shall designate the executor of the specific measures and the areas encompassed. The state of siege decreed with basis on insert I of article 137, that is, in the event of serious disturbances with nationwide effects or ineffectiveness of the state of defence, will only admit these measures against persons: obligation to remain at specific places; detention in a building not intended for persons accused of or convicted for common crimes; restrictions regarding the inviolability of correspondence, the secrecy of communications, the rendering of information, and the freedom of press, radio and television broadcasting, as established by law; suspension of freedom of assembly; home search and seizure; intervention in public utility companies; and requisitioning of property.

69. Even though the range of measures that restrict the rights of a citizen is broad, torture is forbidden in any case, even in the event of such exceptional circumstances. In compliance with the Constitution of 1988, the defence measures of the democratic State are not to be considered exceptional measures, once their limits are carefully described in the constitutional text. Besides, measures taken in the event of a state of defence or state of siege shall be submitted to political control by the Legislative and Judicial branches. Judicial control will occur during the implementation of the emergency measures and at its end, upon the accountability of those who perpetrated abuse during its execution.

Article 3

70. As far as article 3 of the Convention is concerned, according to which no State party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture, the 1988 Brazilian Constitution already expressed in article 4 that the international relations of the country are governed by the principle of the prevalence of human rights and by the principle of granting political asylum (inserts II and X) to those persecuted in other countries. Article 5 guarantees that foreigners living in the country have the inviolability of the right to life, liberty, equality, security, and property. Insert LII of the same article ensures that foreigners shall not be extradited on the basis of political or ideological crime. Article 5 of Law 7209 of 1984 establishes the principles of territoriality in the application of the criminal law.

71. The issues pertaining to emigration and immigration, entrance, extradition and expulsion of foreigners fall within the exclusive legislative competence of the Union (art. 22, XV). The proceedings and the analysis of requests of extradition made by a foreign State fall within the competence of the Supreme Federal Court (art. 102, I, *g*). There is one example of denial of a request for extradition made by the People's Republic of China. The Supreme Federal Court, in proceedings 633-9, whose rapporteur was minister Celso de Mello, in August 1996, denied the request, presenting, among other justifications, the question of violation of human rights, lack of guarantee to a just trial, and also the possibility of application of death penalty.

72. The Statute of the Foreigner reinforces that extradition will not be granted when the fact constitutes a political crime; it also states that extradition will not be granted when an individual has to go through a trial or court of pleas.

Article 4

73. On April 7, 1997, the President of the Republic sanctioned Law 9455, which the National Congress approved. Its article 1 states that it is a crime of torture "to coerce someone with the use of violence or grave threat, causing physical or mental suffering: (a) with the intent of obtaining information, declaration or confession from the victim or third party; (b) to provoke action or omission of criminal nature, and (c) due to racial or religious discrimination". It also constitutes a crime of torture to "submit someone, under his custody, power or authority, with use of violence or serious threat to intense mental or physical suffering, as a means of applying personal punishment or as a preventive measure".

74. Imprisonment for 2 to 8 years is anticipated for crimes of torture. Paragraph 2 determines that "those who absent themselves before the practice of torture, when he/she was able to prevent it or ascertain it, is subjected to imprisonment for 1 to 4 years". However, if serious bodily harm results from the crime of torture, the penalty is 4 to 10 years, and in the event of death, from 8 to 16 years.

75. Punishment may be increased by one sixth to one third of the sentence if the crime is perpetrated: (a) by a public agent; (b) against children, pregnant women, the impaired, or adolescents; (c) upon kidnapping. Paragraph 6 of article 1 determines that "crimes of torture are not subject to bail, to grace or amnesty".

76. An overview of the law enforcement after almost two years in effect shows positive but limited results. Throughout all Brazilian states, there are few ongoing police inquiries to investigate the practice of torture. The low figures indicate that there are few ongoing or terminated proceedings at the judicial level. Information stemming from 22 states indicate the modest number of 200 ongoing police inquiries to investigate practices of torture and ill-treatment between the promulgation of the law in April 1997 and November 1998. State Law Courts, in turn, informed that fewer than 100 legal proceedings were submitted in the same period. However, the same Law Courts did not inform how many of these proceedings had been terminated or if there was specific conviction with basis on the Law of Torture. To have an idea of the limited number of ongoing police inquiries in Brazil relating to torture, only in the State of São Paulo, according to SEADE Foundation, over 90,000 police inquiries had been established to investigate a variety of crimes, 29,000 of which were related to crimes against the person. Crimes of torture had not yet been characterized in that year, as there was no specific law, but there were 5,968 police inquiries for felonious bodily harm, 334 for ill-treatment, and 165 for illegal coercion.

77. As crimes of torture are often committed by a public official as an employee of a penitentiary, or a police officer, whether civil or military, investigation is made by means of internal administrative proceedings, such as disciplinary proceedings or inquiries. In 14 Brazilian states,[4] there were 150 disciplinary proceedings, inquiries, or administrative proceedings to investigate crimes of torture or ill-treatment imposed on prisoners between April 1997 and November 1998. Some of these proceedings brought about Police Inquiries, others resulted in temporary or permanent loss of the job or were simply filed. A more thorough investigation often happens in cases which have public visibility or which are being followed by organized groups of civil society. Nevertheless, the punishment of public officials for the practice of torture is insignificant within a reduced universe of cases which are to be investigated by agencies in charge of the matter.

78. An analysis of various cases of torture reported by state security agencies or even by the press indicate that police inquiries are being established to investigate the practice of torture not only by public officials, mainly civil and military police officers, but also involving other individuals. An example is inquiries established to investigate prisoners who torture employees or other prisoners during rebellions; criminals who kidnap individuals and use torture during the captivity; individuals who batter, or impose other forms of ill-treatment to family members in daily life.

79. This was made possible by the fact that the Brazilian law enhanced what was addressed in the 1984 Convention as far as the perpetrator of torture is concerned. The Convention against Torture, in article 1, 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*”. However, Law 9455/97 has not bound crimes of torture exclusively to acts perpetrated by public officials.

Description of a few cases of torture and ill-treatment

80. The existence of a law which characterizes crimes of torture, the disposition of the Federal Government and some State Governments to curb the perpetration of this crime as to prevent inhuman treatment from being imposed on prisoners are initiatives which are slowly changing the situation of the issue in Brazil.

81. The persistence of this situation means that police officers are still making use of torture to withdraw information and force confessions, as a means of extortion or punishment. The number of confessions under torture and the high incidence of denunciation are still significant, mainly from prisoners in police stations, where electrical shocks, beatings, extortion or other threats are used with the intent of obtaining information. Demands of prisoners at police stations for medical, social or legal assistance, or to change certain aspects in the prison routine are not always pacifically welcomed by police officers or agents. It must be observed that retaliation against prisoners involving torture, beatings, deprivation or humiliation are common. In the event of rebellions or escapes, retaliation often occurs by searching cells and seizing and destroying the prisoners' personal objects as well as beatings and other forms of torture. This is how many times rebel prisoners are controlled.

82. Many of these crimes remain unpunished, as a result of a strong feeling of *esprit de corps* among the police forces and reluctance to investigate and punish officials involved with the practice of torture. The predominant *esprit de corps* that remains in the police force allows for impunity of those crimes. Only the gravest cases and those which result in police inquiries, no longer under the protection of such cooperation, have a positive consequence in relation to effective punishment. However, they are not characterized as torture but as power abuse and bodily harm. This fact may be partially explained by the recent characteristic of the Law of Torture. Within the period of time when data was gathered for this report - form April 1997 to November 1998 - there was no indication of the existence of sentences based on the Law of Torture.

83. Besides, the existence of a Military Justice maintained this *esprit de corps*, which allowed many crimes perpetrated by the military not to receive due punishment. It was only in 1996, with Law 9299, that felony perpetrated by military police officers was dealt with by the Civil Justice. The lack of training of police officers and penitentiary officials to carry out their duties is another important aspect concerning the continuity of practices of torture.

84. The introduction of some cases attempts to describe the anatomy of such practices, which are spreading in many of the Brazilian states. The cases below refer to a time after the approval of Law 9455, of April 1997. Some cases report prisoner victims. Others involve low-income people, with poor education, not thoroughly aware of their rights, and who fear retaliation. Many of these cases were disclosed by the press, by organizations of civil society, by police ombudsmen, by human rights committees from legislative agencies, or by Brazilian municipalities. Most of them are or were under investigation with the follow-up by the Public Prosecution.

85. In February 1989, some months before Brazil ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 18 prisoners were asphyxiated in a cell of the 42nd Police Station of the City of São Paulo, after having been confined by officers on duty. The national and international outrage resulting from this event was not enough to prevent arbitrary acts of police authorities, which eventually occurred in the country; scenes of violence and torture against prisoners like that one were seen again, at times with even more intensity.

86. A case known as "Bar Bodega" took place in August 1996, in São Paulo. During a bar robbery located in a middle-class neighbourhood of the city, two youngsters were murdered by the robbers. Crimes involving victims from the middle class usually result in a lot of visibility from the media and consequent pressure on the police to solve the case. The police arrested 11 suspects and under torture, which included electrical shocks on the penis, buttocks, ears, or falangas (blunt trauma to the feet) attempted to get the confession for robbery and murder. The real perpetrators of the crime were later found, prosecuted and convicted. Despite the evidence that was brought about according to which officials would have committed crimes of power abuse, bodily harm, illegal coercion, kidnapping, ill-treatment and torture, the proceedings against them were terminated.

87. According to the *Blue Report*, from the Committee of Citizenship and Human Rights of the Legislative Assembly of Rio Grande do Sul, in August 1997, police officers of the Police Station for Robbery of the State capital arrested a 22-year-old Afro-American man. He was kept in a house, beaten and tortured. Then he was taken to the Police Station where he remained for two weeks, having been beaten and deprived of food, even though his family would bring it to him regularly. During the time he was at the police station, officers broke into his house and seized many objects and equipment. The man was then taken to the Central Penitentiary, where examinations detected bodily harm. The Committee denounced the manoeuvres of the officers in charge of the Police Inquiry, who hindered the investigation and protected the offenders.

88. One of the cases received by the Council on Defence of Human Rights in Ceará against civil or military police regarding the practice of arbitrary acts, beatings or homicide took place in the municipality of Crato in September 1997. According to the investigation conducted by the Council, Aldo Romão da Silva, known as "Pimentinha", suffered several arbitrary acts and acts of torture and was executed by military police officers commanded by an officer known as Almeida. Aldo was arrested on 19 September by officer Almeida, who approached him concerning the theft of a TV set. The officer shot him, and even though Aldo was severely wounded, he pulled out two of his toenails. Aldo was then taken to the hospital, where he was threatened with death by the same officer. Aldo ran away from the hospital, but was captured a few hours later by officers who took him to the premises of the 5th Military Police Company where he was again submitted to torture. His wounds were aggravated and again he was taken to the hospital, under the constant supervision of Officer Almeida. Aldo went back home a few days later. Three people broke into his house and shot him dead with 16 shots. According to the Council, the case is even more serious because of the intimidation that local judicial authorities were suffering to carry on with the investigation and for evidence that an "extermination group" involving police officers had been formed.

89. In the State of Tocantins, on 13 February 1998, two prisoners of the public jail of Taquarassu do Porto were beaten by the Chief of the Provisional Prison of the Capital, with the intent to obtain a confession and information on the episodes that involved the escape of a prisoner. The Chief wanted the prisoners to sign a confession according to which they would have bribed an officer to give them the keys to the handcuffs of the prisoner who had escaped. When they refused to sign it, they were violently beaten. The torture session took place in a room in the public jail, but later one of them was taken outside to a distant place where he was threatened with death.

90. A case described by the Internal Affairs Division of the System of Public Security of the State of Pará, a member of the State Council of Public Security, raises another issue which is the way police authorities treat prisoners charged with sexual crimes. One individual who had been accused of raping a nine-year-old girl was brought to the Police Station and maltreated by civil police officers. Police officers and warders are often neglectful of their duties, allowing prisoners to torture, sexually assault, and even murder the accused. The same treatment is given to prisoners charged with crimes that outrage public opinion.

91. The Internal Affairs Division of the São Paulo Police reported the following cases, among others, disclosing practices of torture in daily police acts: a denunciation forwarded in February 1998, described juveniles with anti-social behaviour who were kept in a Public Jail in the City of Guariba in the State of São Paulo, for more than 40 days and suffered physical and mental torture. On 3 July 1998, in Pirituba, 11 military police officers mostly in civilian clothes broke into a house without a search and seizure warrant to look for drugs. Six people, two of whom were minors, were tortured for four hours and beaten. The torture included electrical shocks on the genitals and drowning.

92. Three days after a rebellion, and keeping an employee as a hostage for several hours, the prisoners of the Public Jail of Osasco were submitted to beatings, violence and power abuse. The prisoners accused the officers of corruption, having bribed them to keep cellular phones in the cells, to have special time for visits, transfers, etc. On 10 December 1998, a thorough search was carried out, when 50 civil police officers and 50 military police officers beat the prisoners with iron canes, sticks and bats, in the presence of the Magistrate of the Court for Judicial Authorities. The officers broke many objects in the cells and forced the prisoners to walk on broken glass, and applied vinegar, salt and perfume on their wounds.

93. Abuse of authority and practice of torture against landless workers in the State of Tocantins drew the attention of the country through the article published in *O Estado de São Paulo* newspaper on 2 December 1998, with the head: *"Police Violence Unpunished in Tocantins"*, but also through the decisive mobilization of the Centre for Human Rights of Palmas and the Centre for Human Rights of Cristalândia. Landless leader Cícero Denivaldo Gomes da Silva was arrested and beaten in Piraquê by military police officers in civilian clothes. Seven officers who were not on duty had been drinking at a bar when they saw Cícero passing by. They approached him and cuffed him. Then they put him in a pick-up truck belonging to a farmer. On the way to the farm, the officers arrested three other leaders of local workers. Together with a minor court official, they promoted a long session of beatings that lasted two hours. The leaders were then taken to the Police Station. The officers wanted workers who had been camping on a farm to leave the area.

94. Photos and reports of the IML attested to the beatings. According to the Centre for Human Rights of Palmas, it received 20 denunciations against the police in three years. Only nine of them resulted in a police inquiry, but no officer was punished. The Centre believes that there must be many more cases. The population is afraid of retaliation. "Victims and witnesses are afraid of denouncing", says one of the coordinators of the Centre. The Attorney-General in Tocantins stated firmly, "The greatest problem is that the police do not investigate the police." For him, impunity and lack of training are the main causes of police violence expressed in the cases of death and violence.

95. The Internal Affairs Division of the System of Public Security of the State of Pará, a member of the State Council of Public Security, acknowledges how difficult it is to characterize crimes of torture, even with the existence of a specific law, as several acts practised by officials of the public security system or any citizen are addressed in the Penal Code: "arbitrary violence (art. 322 of the Penal Code), arbitrary exercise or power abuse (art. 305), ill-treatment (art. 136), illegal coercion (art. 146) and abuse of authority (Law 4898/65)". According to the analysis of the Internal Affairs Division, "Despite the fact that the Law of Torture revokes the Statutory Law (Process Code and Law 4898/65) whenever they are in conflict, the competent authorities, even knowing the law, do not apply it for unusual reasons or even illegal reasons in clear cases of torture, maybe because the provisions of the law of torture are more severe than the Statutory Law, as it is in the case of crimes of torture."

96. For the last two years, the department of larceny (DEPATRI) of the Secretariat of Public Security in São Paulo has been the object of denunciations for torture committed against prisoners it holds. The article of 8 December 1998, in *O Estado de São Paulo* newspaper entitled "Torture is still practised in prisons", states that according to the NGO *Pastoral Carcerária de São Paulo,* 400 to 450 prisoners suffered torture in 1998. The most serious case occurred in February 1998, when approximately 130 prisoners were tortured at DEPATRI. The IML attested to injuries in 85 per cent of the prisoners. According to an investigation undertaken by the Internal Affairs Division, 107 out of 129 examinations resulted in confirmation of bodily harm.

97. Denunciation for imposition of ill-treatment is still very common in several Brazilian states. The main places where beatings, assault or humiliation take place in several forms are the units of juvenile detention. In Rio de Janeiro, approximately 350 juveniles rebelled at Prison Muniz Sodré protesting because of overpopulation, ill-treatment and poor conditions of the facilities in May 1998. The Foundation for the Well-Being of the Minor (FEBEM) in São Paulo was accused of beating adolescents in its unit located in Tatuapé. Adolescents of FEBEM's 17th Educational Unit and the NGO *Pastoral do Menor* accused the employees of the unit of causing the death of a youngster and wounding 22 others, on 24 December 1998. According to them, 40 adolescents had locked themselves in a dormitory after a rebellion attempt. The employees were accused of setting fire to the dormitory door, and of beating many of the adolescents.

98. On 8 July 1999, retired electrician José Joaquim de Araújo, 45, was murdered inside his house with 15 shots. Araújo had left prison the day before. He had been in prison for a few days, suspected of having killed a civil police officer in the suburbs of Maceió, in the State of

Alagoas. He was tortured by civil police officers with electrical shocks and beatings to confess the crime. However, the actual murderer turned himself in and a prosecutor requested that Araújo be released and that a police inquiry be established to punish the officers and the chief of police of the police station where Araújo had been tortured. Under the request of the Bar Association, Araújo had been submitted to examination of *corpus delicti*, and would testify and identify the perpetrators of the torture. After Araujo's execution, several officers were arrested. Even though the crime had much visibility, causing the involvement of national and international organizations of human rights, the judge, the attorney-general and the prosecutor were threatened with death.

Article 5

99. The Brazilian law accepts the principle of territoriality of the criminal law, without detriment of the International Convention and Treaties. This means that every crime perpetrated in Brazil is subject to Brazilian criminal law. However, due to the International Conventions and Treaties, this principle may suffer attenuation, when foreign laws may be applied under certain circumstances.

100. As far as the application of the principle of territoriality is concerned, the Brazilian territory encompasses all space upon which the State exercises its sovereignty. In compliance with the Penal Code, the extension of the national territory includes Brazilian ships or aircraft, whether of a public nature or at the service of the Brazilian Government, wherever they may be, as well as Brazilian ships and aircraft, whether merchant or private which are offshore or in the correspondent airspace. The Brazilian criminal law is also applicable regarding crimes perpetrated in private foreign ships and aircraft, whether the latter are landed in the national territory or flying in Brazilian airspace and the former are at the harbour or on Brazilian territorial sea.

101. Crimes committed in foreign countries, which Brazil committed itself to suppress by means of Treaty or Convention, such as torture, are also subject to Brazilian law. The extraterritoriality of Brazilian criminal law responds to the interest of the States when it suppresses such practices and acts considered as international crimes.

102. Thus, the recommendation of article 5 of the Convention, regarding the jurisdiction over the offence was met by article 2 of Law 9455/97, which expresses that "the provision of this law is applicable to crimes even if they have not been committed in the National Territory, in the case where the victim is Brazilian or if the offender is in a place under Brazilian jurisdiction".

Article 6

103. The Constitution of 1988 and Brazilian penal law warrant that the same penal procedures applicable to Brazilian citizens are also applicable to foreigners resident in the country. Both are assured with warranties as, for example, that of due process of law, of the adversary system, of presumed innocence and of right to counsel. According to insert LXI of article 5 of the Constitution, "no one shall be arrested unless in *flagrante delicto* or by a written and justified

order of a competent judicial authority". The Constitution also establishes that the prisoner, whether Brazilian or foreigner, has the right to communicate his imprisonment to a person of his choice, who may be the representative of his state or the representative of the state where he resides.

104. The Brazilian legislation admits provisional or preventive arrest, when there are indications that an individual has committed offence or may hinder law enforcement (Law 7960/89). Provisional arrest, with a five-day term, is decreed by the judicial authority, whereas preventive arrest may be decreed at any phase of the police inquiry or criminal instruction, aiming at ensuring criminal instruction (programme of proceedings in a lawsuit) and law enforcement.

Article 7

105. The above-mentioned observations in relation to the prior article are applicable here, as far as the applicability of the same legal proceedings for Brazilians and foreigners is concerned. Regarding crimes of torture, the Convention allows the resort to the universal criminal competence for all States parties. As a result of the universal system for suppression, the State party which does not take legal actions against those held accountable for torture are obligated to extradite them.

Article 9

106. Article 4 of the Constitution of 1988 establishes the principles by which the international relations of Brazil are governed. The principles of the prevalence of human rights and cooperation among peoples stand out. As a fundamental constitutional principle, cooperation among peoples is the aspect that enhances the assistance of individuals at all levels, including the judicial one.

Article 10

107. Police forces are internally regulated by organic laws, prepared at state level, where duties and functions of police forces (civil or military) are specified. An example of this is the Organic Law of the State of São Paulo 207/79 which defines physical or moral ill-treatment and power abuse as disciplinary infringements. In relation to the duties of employees who deal with people under custody, the Penal Code punishes those who arrest or have arrested someone without the legal formalities or with *power abuse* (art. 350) or who submit someone under custody or surveillance to illegal coercion.

108. Also, in the sphere of penal discharge, article 40 of Law 7210/84 (Law of Penal Discharge) imposes on all authorities respect for the physical and moral integrity of those convicted and of provisional prisoners. And under the first paragraph of article 77, this same law allows for admittance of prison personnel, as also function progression depending on specific training courses, in addition to periodic recycling of those government employees in practice.

109. Courses on Human Rights intended for military or civil police officers, ongoing or being implemented, are being held in several states like São Paulo, Rio Grande do Sul, Santa Catarina,

Espírito Santo, Alagoas, Amapá, Paraná, Pernambuco and in the Federal District. The National Secretariat for Human Rights, today called State Secretariat for Human Rights, and Amnesty International signed a Protocol of Intentions with the objective of training police officers on human rights in several states. NGOs have collaborated directly with public entities in the organization and development of courses aimed at training civil and military police officers. In some states like Paraná, Minas Gerais, São Paulo, Rio de Janeiro and Rio Grande do Sul, penitentiary schools were created or reactivated and now offer courses for penitentiary security agents and other employees of the penitentiary system aimed at the respect of human rights. In late 1998, the Red Cross International concluded part of its Project for Diffusion of Norms of Law of Human Rights and Human International Law. A three-week course trained 21 instructors whose ranks went from captain to colonel, representing different Brazilian states. With this training, and under the supervision of a Red Cross expert, 320 other instructors whose ranks went from lieutenant to lieutenant colonel were trained.

110. Several NGOs, such as the *Grupo Tortura Nunca Mais* (Torture Never Again) maintain a work of education on the defence of human rights, particularly on the ways to curb the practice of torture, by means of courses, leaflets, and journals.

111. The Penitentiary Academy, an Institution responsible for the training of penitentiary personnel in the State of São Paulo, included human rights in the courses it teaches to security agents, technicians and directors of prison units. In 1998, two courses - Training of Leaders and Training of Penitentiary Security Agents - involved 404 and 3,217 employees respectively.

Article 11

112. Several aspects relating to the determinations of article 11 of the Convention, which involve interrogation and custody of arrested individuals, are addressed in the Federal Constitution and in the Law of Penal Discharge (Law 7210/84). Article 5 of the Constitution ensures that no one shall be submitted to torture or to degrading or inhuman treatment. Insert XLVIII of this article guarantees that the sentence will be served in the appropriate establishments according to the nature of the crime, age, and gender of the defendant. The constitutional text also ensures that the prisoner has the right to identification of those responsible for his/her arrest and police interrogation. It also establishes the constitutional guarantees given to the prisoner according to which he/she will be informed of his/her rights, such as the right to remain silent, and to receive family and legal assistance. All of section II of the Law of Penal Discharge is dedicated to the rights of prisoners. Article 40 of the same law determines that the authorities must respect the physical and moral integrity of the convicted prisoners and of the provisional prisoners, such as the right to food, clothes, work, medical care, legal and social assistance, among others. Section II of the same law determines that sanctions may not jeopardize the physical and moral integrity of the convicted. It also determines the prohibition of dark cells and collective sanctions. Abuse of authority implies civil and criminal administrative sanctions.

113. With the objective of controlling the incidence of practices of torture, the legislation relating to provisional arrest establishes that the judge may request a meeting with the prisoner and request that a medical examination be carried out (*corpus delicto* exam).

114. The State of São Paulo has been trying to increase capacity in the penitentiary system, especially to absorb convicted prisoners who are awaiting trial in police stations. Since 1997, with the support of the Federal Government, 21 new prison units have been constructed, intended to provide 17,000 vacancies, at an estimated cost of Cr$ 230 million. One of the targets of the State Government and of the National Plan on Human Rights is to dismantle the Detention House of São Paulo - *Carandiru* - one of the largest prisons of the world, with 6,000 to 7,000 prisoners, whether arrested or convicted, a population way beyond its capacity, estimated at 3,500 people. However, this target has not yet been achieved due to the fact that the prison population has increased a great deal in that state. For example, the number of prisoners soared from 55,000 in December 1994, to 74,615 in December 1998, a 33.79 per cent increase, higher than the number of vacancies created by the programme. Therefore, the dismantling of *Carandiru* has been postponed.

115. In August 1998, Provision 22/98 of the Magistrate of the Police Court of the São Paulo Justice prohibited the keeping of convicted prisoners on the premises of police stations and public jails of the state. As new penitentiaries become operational in the State of São Paulo, convicted prisoners who are in police stations have been transferred to prison units.

116. Law 9714, which has changed the provisions of the Penal Code, was promulgated on 25 November 1998, in an effort to curb the growing incidence of imprisonment and consequently reduce problems resulting from overpopulation of prisons. This law enhanced the possibility of making use of deprivation of rights, such as disbursement, loss of assets and values, rendering of services to the community or public entities, provisional deprivation of rights and weekend restriction in cases of light offences.

117. The Government of the State of São Paulo, by means of the Secretariat of Public Security, has signed an Agreement with the Association for Penitentiary Protection and Assistance (APAC) from the city of Bragança Paulista in 1996. By means of the agreement with this NGO, the Government started to render services such as health, social, legal, religious, educational, psychological and material assistance to the prisoners of the Public Jail. The direct participation of the Magistrate of the Police Court, the public prosecutor, a representative of the local Bar Association, and the involvement of social, cultural, and educational entities existing in the city resulted in an important experience in the management of the prison, which had 200 prisoners in 1998. Entities who operate in the defence of human rights, like the *Teotônio Vilela Committee*, have acknowledged that one of the most important aspects of this experience, in addition to the involvement and the participation of the community in the operation of the jail is the reduction of the violence levels which are commonly reported in other jails. Prisoners are called to organize most of the prisons daily services, from cleaning to feeding to internal circulation control, and distribution of cultural and leisure activities, under the supervision of APAC. Therefore, cases of assault among the prisoners and other forms of violence were reduced, with the constant involvement of all authorities in the prison in the search for solutions of their problems.

118. In 1988, the Ministry of Justice launched the Project Zero Deficit aimed at the construction of 52 prisons, with the objective of reducing the deficit of vacancies in the Brazilian penitentiary system by generating more than 14,000 vacancies.

119. In order to improve the current conditions of imprisonment in Brazil, mainly concerning overpopulation, the Federal Government, by means of the Ministry of Justice, has collaborated with other states regarding the procedural situation of the prisoners by promoting mass execution of criminal judgements with the aid of law students who receive a scholarship to work as trainees. Besides, the Ministry has been supporting the computerizing of the penitentiary system in Rio de Janeiro and in Bahia, as well as projects for education and literacy of the prisoners, in partnership with foundations and organizations of the civil society, like *Telecurso 2000*, an educational TV series broadcast by *Fundação Roberto Marinho.*

120. Ranking second in number of prisoners after São Paulo, Rio de Janeiro, with a prison population of 16,000 according to the 1995 Penitentiary Census, has also increased the number of vacancies available in the penitentiary system. In 1997, The Penitentiary Bangu II was inaugurated with 900 vacancies, an investment of Cr$ 13 million, 8 million of which was from the Federal Government. In addition to the investment of the State of Rio de Janeiro, the Federal Government is also investing resources for the construction of new prison units, in an attempt to cover the deficit of over 9,000 vacancies for the penitentiary system.

121. Regarding the conditions of individuals who were imprisoned in Brazil, the re-democratization process throughout the 1980s paved the way for debates to be carried out regarding the rupture of the authoritarian regime. The great visibility of prison conditions as seen by society and the questioning of treatment imposed on prisoners was then not enough to promptly implement practices which were more congruent with a democratic system and policies of respect to human rights. The State Governments elected by direct vote in 1982, after 17 years without direct elections for State Governments, tried to implement a policy of respect to human rights in prisons, but suffered intense political opposition and opposition from the prison administrators themselves, who would turn down proposed new policies and measures.

122. Accordingly, the advancement towards reducing levels of violence and inhuman treatment were rather slow inside Brazilian prisons. When Brazil ratified the Convention against Torture in September of 1989, some events drew the attention of civil society and also of international public opinion.

123. The tough conditions to which prisoners are submitted in Brazil were tragically marked in October 1992. Because of a conflict among prisoners which caused a rebellion inside the Detention House of São Paulo, the military police were called to intervene and killed 111 prisoners. Over 100 of them were shot by the police. Again, the violent act of the police aroused national and international outrage. This event, known as the *Carandiru Massacre* and the event in the 42nd Police Station, mentioned above, were brought to the attention of the Inter-American Committee on Human Rights of the Organization of American States.

124. In February 1997, the Internal Affairs Division of the São Paulo Police, together with several entities in the defence of human rights, denounced the beatings to which 85 female detainees of the Public Jail of Santa Rosa do Viterbo had been submitted the month before. After protesting noisily, yet pacifically, civil and military police officers led by the chief of police invaded the jail and beat the prisoners with batons and broom handles.

125. On 31 July 1997, eight prisoners were murdered in Roger Penitentiary in João Pessoa, State of Paraiba. A group of prisoners rebelled after a frustrated attempt to escape. However, they kept the Warden as a hostage. The group tried to negotiate their escape from the prison, requesting cars, arms, and bullet-proof vests. After hours of negotiation, the Military Police invaded the prison with the aid of a group of prisoners who were collaborating. The prisoners who led the rebellion were violently murdered. Some of them were shot by the police, but others were cruelly slain by other prisoners and were beaten and stabbed, with no intervention of the police or prison authorities.

126. The Brazilian Bar Association forwarded a denunciation to the Internal Affairs Division of the Public Security System of Pará on the practice of torture against 40 prisoners of the Penitentiary of Americano. Military police officers, retaliating against rebellion, committed acts of torture against the prisoners considered leaders of the rebellion. The person responsible for the Disciplinary Proceeding at the Military Police concluded that there was no disciplinary infringement or offence committed by the military police officers. In turn, the Criminal System Superintendent affirmed that Law 9455/97 was not to be enforced because beatings were no longer committed in the State of Pará.

127. A rebellion in the Prison of Sarasate in Fortaleza, in the State of Ceará, ended on 25 December 25 1997 after 25 hours, having killed eight people, seven prisoners and one hostage. A group of prisoners captured visitors to the prison and kept them as hostages, including the coordinator of *Pastoral Carcerária* of Fortaleza, an NGO. Fifteen prisoners escaped from the penitentiary in four cars which were intercepted by the police. According to the coordinator, some prisoners were murdered by police agents, even though they had surrendered and were lying on the floor. Expert reports from the Legal Medical Institute (IML) disclosed a few days later confirmed that five detainees had been shot in the head and four had been shot in the back. Most prisoners were transferred in March of 1998 due to the depredation which the prison suffered during the rebellion. About 850 people were being kept in a warehouse with no partitions. Entities involved in the defence of human rights received denunciations of practices of torture against prisoners.

128. On 5 February 1998, about 30 prisoners tried to escape from Central Penitentiary João Chaves in the city of Natal, Rio Grande do Norte. Military police agents wounded 7 escapees and killed 10. According to forensic reports, only one escapee died due to internal haemorrhage because of having been shot in the leg, and all the others were shot in the head, chest and abdomen.

129. Overpopulation and poor conditions of prisons are ingredients of imprisonment in many of the operational prisons of the country. Obsolete and bureaucratic methods and administration enhance the rebellion movements caused by prisoners. One of the most violent examples of deteriorated conditions in prisons occurred in 1998 in Pernambuco's Penitentiary Barreto Campello whose employees were insufficient and incapable of providing prison security. In May, it had 1,100 prisoners, whereas its capacity was 400. The small number of employees, only 23 on duty, was not able to prevent a set of conflicts between groups of prisoners, which resulted in the death of 25 of them and several wounded; 22 of them were killed on the same day (29 May); 9 were burned and 13 were stabbed or beaten to death.

130. Prison mismanagement, especially regarding the guaranty of security and physical integrity of the detainees, has been responsible for frequent deaths in isolated actions or rebellions. In July 1997, five prisoners were murdered in a fight between rival gangs in the Maximum-Security Prison of Bangu II in Rio de Janeiro. The reduced number of agents allowed for free circulation of detainees from one ward to another, as well as access to individual cells. Two days after the murder in Bangu II, in Bangu I, which is also a maximum-security prison, another prisoner was murdered with a shot, showing the omission or the complicity of prison agents. With these 6 cases, the number of prisoners killed in Rio de Janeiro had gone up to 18 within four months.[5]

131. The State of Rio Grande do Sul did not have convicted prisoners at its Police Stations. However, according to the Committee of Citizenship and Human Rights of the Legislative Assembly, several other problems are found. In 1997, the Committee received 85 denunciations for arbitrary acts, violence and lack of assistance to prisoners.

132. One of the most delicate problems of the penitentiary system of that state is that is has been under the control of the Military Brigade since 1995 because of Administrative Rule 11 of the Secretariat of Justice and Security. The fact that prison employees may carry a firearm constitutes a violation of one of the most basic rules of international prison security. The presence of arms inside the prison causes risks of mutiny, risks to the employee himself, possibility of corruption, threats, and coercion.

133. An example is the search in the Central Prison of Porto Alegre on 29 September 1997. In the search for bullets, the Brigade searched the prison, generating tension and threats of a rebellion. During the search, prisoners were beaten. There were conflicts for some days. The committee indicated that the real problem was the fact that arms were being carried by the security agents, causing one prisoner to get hold of one of the arms. The Committee of Citizenship also observes that the fact that the prison is administered by the Military Brigade results in other problems: deviation of the military police from its function, lack of training to deal with prisoner treatment, constant beatings of prisoners, mainly after rebellions and attempts to escape.

134. The prisoner population in Brazil was 170,207 in 1997, a ratio of 108.3 prisoners per 100,000 inhabitants. There were only 74,197 vacancies representing a deficit of 96,010, which is one of the main problems of the prison system in Brazil. Besides, according to the Ministry of Justice itself, it has been estimated that 250,000 arrest warrants have not been executed.

135. Another problem of the Brazilian prison system was the 58,000 convicted prisoners who were awaiting trial in police stations or public jails according to Penitentiary Census of 1995; these premises had no infrastructure for time serving. In October 1998, there were 73,000 prisoners, 40,000 of whom were convicted and were awaiting vacancies in prisons. There were 33,379 prisoners in public jails and police stations, 15,000 of whom were convicted awaiting vacancies in penitentiaries.

136. The constant investment which the State of São Paulo has been making with the support of the Federal Government in order to build new prisons, did not prevent rebellions from occurring in 1988. In addition to the material loss they cause, these movements risk the lives of the prisoners themselves, civil servants and visitors. Many of them cause people to be killed or wounded. The breakout of rebellions in new units with good conditions, as seen in São Paulo in that year, or even in other states without overpopulation, indicates that in addition to providing new vacancies in prisons, it is essential that the administration of prison units be restructured. Prisoners often rebel against corrupt employees who extort money in exchange for favours; or against the omission of prison authority when they allow groups of prisoners to exploit one another regarding the trade of food, smuggling control, trade of drugs, commercialization of the use of prison facilities and other illegal activities.

137. Lack of medical assistance constitutes one of the most delicate problems of Brazilian prisons. The precarious conditions that many of them present result in an increase of contagious diseases. Despite the lack of figures available for the whole country, those responsible for the medical area in some state penitentiaries point out the sharp increase of TB in prisons, as well as cases of AIDS. HIV+ prisoners are strongly discriminated against inside prisons and abandoned. In some police stations the situation is critical, since these places do not offer even basic medical care.

138. The physically and mentally impaired and homosexuals are discriminated against on a regular basis in prisons. Prisoners with mental problems serve time in regular prisons with no type of treatment and are also submitted to inhuman disciplinary treatment, some of them being locked in their cells for prolonged periods of time. Few states are installing handicapped-access devices in their facilities. Most homosexual prisoners live in confined prison cells and are discriminated against.

139. In March 1999, the Public Prosecutor of São Paulo presented a denunciation against 44 employees of the Secretariat for Prison Administration, having accused them of ill-treatment, neglect to give help followed by bodily harm, criminal acquiescence, and crime against the handicapped. Most of the employees who were denounced were civil servants of the health area: 21 physicians, 6 nurses and 12 nurse aids. Denunciation was made after two years of several occurrences of ill-treatment and neglect to give help in prison units of the State of São Paulo, mainly those intended for medical care, like the State Penitentiary and the Central Penitentiary Hospital.

140. According to data of the Ministry of Justice of 1997, women represented 4 per cent of the total prisoner population in Brazil. Even though many female prisoner's rights are ensured by the current legislation, many states do not have the infrastructure or provide specific medical care to women (for example, gynaecological care). In addition to the fact that some states do not allow women to receive intimate visits, prisoners who are mothers do not have the right to stay with their children to breastfeed due to lack of infrastructure in other prisons. When comparing the treatment given to men and women, strong discrimination occurs in relation to women. The main aspect concerns different hours and criteria for visitation.

141. One of the greatest difficulties relating to the investigation of cases of torture by state agents in prisons is certainly the shallow supervision of external agencies in direct or indirect charge of follow-up on life in prison. Magistrates of Police Court, members of the public prosecution, representatives of state penitentiary councils and representatives of the National Council of Criminal and Prison Policies carry out their duties irregularly and unevenly throughout the country, far short of the real necessities to curb the practice of torture inside prisons. The above-mentioned Public Jail of Bragança Paulista sets a positive example of how the direct supervision and presence of the magistrate of the police court plays a crucial part in the improvement of prison conditions.

142. It was not possible to set Internal Affairs Division in prisons of several states to receive denunciation for ill-treatment and follow-up on investigation.

Article 12

143. In Brazil, the investigation proceedings are in part addressed in article 4 of the Penal Code. The appropriate authority which conducts the investigation of acts of torture is the Judicial Police. When the practice of torture or any other penal infraction becomes known, the Police Authority should take on a series of investigative methods such as going to the scene of the crime, preserving the crime scene, apprehending articles related to the fact, collecting proofs, hearing testimony of the victim and the accused, and when necessary, determining whether or not to proceed with an examination of the crime. The legislation will determine that exams and investigations will be made by official experts and that the investigations will scrupulously describe everything that is found. All of these investigations will make up the Police Inquiry, proceeding towards the destination of assembling the elements for the processing of a Penal Action. To guarantee the highest control over the investigative activities, the Federal Constitution, through insert VII, article 129, attributes to the Public Prosecution the function of "exercising external control over police activity". Once the inquiry has been concluded, and referred to the Public Prosecution, which is the appropriate agency for recommending public penal action, the Penal Code then describes that the police authority is not permitted to register the inquiry, neither is the Public Prosecution, which, however, can ask the Judge to register it. Once the penal action has been proposed on the part of the Public Prosecution, it cannot be ceased.

144. The regulation of the exercise of external control of police activity by the Public Prosecution, foreseen in article 129, insert VII, of the Federal Constitution, was formalized through acts 9/96 and 119/97 of the General District Attorney's Office of the State of São Paulo.

145. Complementary Law 75, of 20 May 1993, gave a new statute to the Public Federal Ministry and attributed the defence of constitutional rights of the citizen to the District Attorney's Office of Citizen's Rights.

146. In São Paulo, one of the measures destined to guarantee that exams and technical examination reports from the Criminal Institute and the Legal Medical Institute (IML) have the maximum independence was the installation of the Technical and Scientific Police Superintendent's Office, directly subordinate to the Cabinet of the Secretary for Public Security's Office in São Paulo, through state decree 42.847/98.

Article 13

147. The Constitution guarantees to every citizen the "right to petition Public Powers in the defence of their rights or against illegality or power abuse" (art. 5, XXXIV), apart from various instruments for civil and penal processes assured by ordinary legislation. The right to physical and psychological integration, as well as the rights of the individual, may be pleaded before the Tribunals when violated, in function of the origin of access to Judicial Power. For this access, constant in insert XXXV, article 5, of the Constitution of 1988, the law will not exclude the appreciation of judiciary power that hurts or threatens the right. To cure and correct illegality and power abuse harmful to individual or collective rights, constitutional guarantees exist, such as *habeas corpus*,[6] court injunction,[7] writ of injunction[8] (individual and collective), *habeas date*,[9] class action[10] and public civil action[11]. The Penal Code, to guarantee reliability in testimony, designates that the defendant and the witness will be separated when the presence of the defendant is harmful to the truth of the statement, in this way protecting the witness from intimidation and from being intimidated or influenced by the defendant (arts. 217 and 226).

148. One of the most important methods of the National Program for Human Rights, of 1996, which is being reached is the creation of Internal Affairs Divisions, as has occurred in the States of São Paulo (1995), Pará (1997), Minas Gerais (1998), and Rio de Janeiro (1999). The Police Internal Affairs Division receives and investigates accusations of irregularities committed by civil and military police agents. These have evolved into playing an important part in the reduction of cases of torture once they are autonomous agencies and independent, run by representatives of civil society and directed towards complementing the control of State Police Action. The Listening Centers have been revealed as one of the most important instruments at the disposition of the public to present accusations in cases of torture and to follow up on their examination.

149. In what is referred to as witness protection, the emergence of various programmes has occurred in Brazil in the last few years. These programmes are directed at giving protection to witnesses and crime victims. One of the pioneer projects was created in the State of Pernambuco, known as PROVITA, an agreement formed between the non-governmental organization GAJOP (The Cabinet of Juridical Advisors for Popular Organizations) and the State Government. The project involves activities formed by governmental agencies and civil society entities in the instalment of services for psychological aid for the victims of violence. The programme also has as an objective the creation of locales which will assure the protection of witnesses who think they are being threatened. Other programmes with the same purpose were created in the State of Rio de Janeiro, through an agreement between the Ministry of Justice and the non-governmental organization *Viva Rio*. Bahia, Espírito Santo and Rio Grande do Norte are some of the States, among others, which have been taking initiatives to establish similar programmes. In the State of São Paulo the Reference Center for Victim Support (CRAVI) was created. In the State of Paraná, the Restructuring and Reorientation for the Crime Victim (PROVIC) was created and in the State of Santa Catarina the Center for Taking Care of Crime Victims (CEVIC) was created.

150. Using the experiment that took place in Pernambuco as a model, the signing of an agreement between the Justice Ministry and the Cabinet of Juridical Advisors for Popular Organizations (GAJOP), took place, for the construction of a protecting network for the witnesses to and victims of crimes in Brazil.

151. All of these experiments have been strengthened with the entrance of Federal Law 9.087, of 13 July 1999, which establishes "principles for the organization and maintenance of special programmes for the protection of victims and witnesses that are being threatened", instituted by the Federal Program for Assistance to Victims and Threatened Witnesses and that makes available protection for the accused or the condemned who have voluntarily given effective collaboration to police investigation in a criminal process. The Government has designated funds in the order of Cr$5 million for states to develop this programme.

152. The creation of dial and denounce services, as found in Ceará, Rio de Janeiro, the Federal District and São Paulo, has been an important instrument to guarantee the presentation of accusations of torture and abuse of authority or any other violation of human rights. In Santa Catarina, a Direct Line with PM/SC was established, through the telephone 0800-40-1717, to allow for accusations, complaints, or suggestions (without the need of identification).

153. Besides, in the State of São Paulo, the District Attorney's Office created in 1995 the Work Group of Human Rights, which established agreements with public agencies, like the Internal Affairs Division of the Police, and with civil society to receive denunciations of violations of human rights and propose judicial actions in favour of the victims and their family members.

154. By disclosing cases of torture or denouncing conditions of imprisonment in the country, the media has played an important role in fighting the serious human rights violations in Brazil. Many of the incidences of torture, beatings and ill-treatment of prisoners occur out of sight of the public (in prisons, police stations, police operations in the suburbs of large cities). Only specific entities would have access to the knowledge of these occurrences - organizations in defence of human rights, agencies for the investigation of irregular behaviour of state agents - if the media did not emphasize this issue.

155. Non-governmental organizations in defence of human rights, whether national or international, have performed freely in the country and have played an important role in receiving and presenting denunciations of acts of torture, mainly those committed by state agents, and also in relation to cruel and inhuman treatment to which many detainees and convicts are submitted. The Teotônio Vilela Committee for Human Rights (CTV), the Group *Tortura Nunca Mais* (Torture Never Again), the Center for Human Rights Santo Dias, the Brazilian Bar Association (OAB), the *Pastoral Carcerária* (an NGO) and the human rights groups existing in several cities of the country are some of the organizations which investigate on a regular basis the practices of torture committed by state agents and also the condition of prisons in the country. Among the international entities for human rights performing in Brazil, Amnesty International and Human Rights Watch/Americas are two of the most important organizations which have been following up on human rights violations for years.

156. Other entities have been created recently and perform as channels to receive denunciation and investigate human rights violation. The Internal Affairs Division of the Police and other ombudsman's offices, committees for human rights of legislative assemblies, city halls, and state or municipal councils in defence of human rights in the country have been working more directly with cases of torture or imposition of inhuman treatment. An example of this is the initiatives of the State of Paraná and its Internal Affairs Division, the Internal Affairs Division of the Public Security System of the State of Pará, the Internal Affairs Division of the Police of the State of São Paulo, the Committee for Human Rights of the Legislative Assembly of the State of Ceará, the Committee for Citizenship and Human Rights of the Legislative Assembly of the State of Rio Grande do Sul, the Committee of Human Rights of the City Council of Belo Horizonte in Minas Gerais.

157. There were 179 denunciations of police violence made to the Committee for Citizenship and Human Rights of the Legislative Assembly of Rio Grande do Sul in 1997, 104 of which related to military police officers and 75 related to civil police officers. According to the Committee, the vast majority of the cases have not received a conclusive result from the agencies responsible for the investigations. This fact may suggest that this issue is not under the exclusive responsibility of the State. It also suggests strong *esprit de corps* because it covered up for police offenders, and inability to accept the supervision duties of the Committee.

158. The Internal Affairs Division of the Public Security System of the State of Pará attests that it gathers data from governmental and non-governmental entities to prepare its report on torture in the State. The Justice Court, the Public Prosecution, the Justice Secretariat, the Police Station General Office, the Civil and Military Police Courts, and councils in the defence of the child and the adolescent, and in the defence of the black population. Based on the material collected at these agencies, in addition to denunciations made, the Ombudsman attests that "cases with characteristics of torture are practices which often occur in the State of Pará, as shown by the news and denunciations made to the Internal Affairs Division by the victims, and others forwarded by other entities like the Pará section of the OAB - the Brazilian Bar Association - on torture of prisoners in prison Fernando Guilhon."

159. As for data from the Civil Police Court of the State of Pará, the Internal Affairs Division was informed that there were 222 cases of physical assault involving civil police officers from January 1997 to September 1998. In 1997, 112 out of 137 denunciations resulted in Immediate Administrative Investigation and 29 in Internal Administrative Investigation. According to the Police Court, despite the high number of denunciations, it was not possible to indict the offenders with basis on the Law of Torture, since expert reports did not even suggest that the injuries had been caused by torture. The Internal Affairs Division was against the interpretation according to which the identification of the crime of torture would only be possible through the evidence of the expert report. It pointed out that torture, in accordance with the law, is the coercion of an individual with the use of violence or serious threat causing physical or mental sufferings. The director of the Legal Medical Institute (responsible for the expert report) acknowledged that the queries of law answered by the experts were outdated and jeopardized the validity of any report in characterizing a crime of torture.

160. The Internal Affairs Division affirms that torture is still used as a simple means of police investigation, a practice which is encouraged by conviction sentences with basis on confessions obtained in police interrogations not legally confirmed. Also according to the Internal Affairs Division, there were only nine legal proceedings for crimes of torture in the State of Pará. It also points out to the need for specific training so that the sectors responsible for the rendering of information may indicate exactly the existence of legal proceedings for torture.

161. In a proactive performance, the Internal Affairs Division of Pará presented a report with the following suggestions to curb the practices of torture and promote law enforcement.

(a) Creation of specific queries in Legal Medical Institutes' forms to conform to Law 9455/97;

(b) Implement inter-discipline teams (with psychologists, anthropologists, and psychiatrists) in the Legal Medical Institutes aiming at assessing psychological torture as a means of evidence;

(c) Promote articulation of Legal Medical Institutes with Universities, according to the proposals made by the National Programme on Human Rights in its chapter on Protection of Life;

(d) Create legal provisions which allow putting on inactive duty officers accused of serious offences, like torture, requesting their badge and arms;

(e) Specific training of police officers on the Law of Torture, mainly to agents for documentation and expertise;

(f) Adaptation of documentation instruments and data processing in the police stations according to Law 9455/97. In municipalities in the interior of the State of Pará where systems are not computerized, forward a printed document to the police stations so that information may be included in the system programs of Public Security.

162. In São Paulo, 3,784 proceedings were forwarded by the Police Internal Affairs Division in 1997, 243 of which were about beatings and torture, representing 6.42 per cent of all categories (abuse of authority with 15.83 per cent and disciplinary infringement with 13.21 were the categories with highest incidence). Out of 243 cases, 132 were related to the Civil Police and 111 to the Military Police.

163. In 1998, the forwarded cases attained 3,806, 124 of which were related to cases of beating and torture, representing 3.26 per cent of the total. There is no study or information about whether the reduction in the number of denunciations in contrast with the prior year occurred because in 1997 there was a great many numbers of cases taken to the Internal Affairs Division after the incidence in *Favela Naval*, or if the firm and independent performance of the Internal Affairs Division in the investigation of cases at the responsible agencies resulted in a reduction in the cases of torture and beatings committed by police officers. Such "investigation" proceedings involve low-income people who do not have resources to face police violence.

164. Also in relation to 1998, out of 124 cases, 83 were related to the Civil Police, and 41 to the Military Police. The two categories which ranked first were abuse of authority, with 15.24 per cent, and disciplinary infringement with 14.14 per cent. Like the previous year, most cases refer to the Civil Police (66.94 per cent in 1998 and 54.32 per cent in 1997).

165. According to the Ombudsman of the Police of São Paulo (*Ouvidor da Polícia*), only 21.5 per cent of all denunciations result in administrative punishment and criminal indictment. Some of the issues still pointed out by the Ombudsman were: the Office of the Corregidor (*Corregedoria*) performs only in the Capital; the disciplinary regulations of Military Police are incompatible with the democratic rule of law; the *corregedorias* are composed of police officers with no autonomy or independence, in relation to the Military Police command or to the Chief General of the Civil Police to carry out their work. Other aspects which foster impunity of the cases of police violence: a slack performance of the Public Prosecution Office in the external control over police activities; police *esprit de corps*; limited competence of the non-Military Justice (*Justiça comum*) to prosecute military police officers accused of crimes.

166. Among the proactive actions existing in the 1998 Report of the Ombudsman Office are the following:

(a) Enhance and give state competence to Military Police Corregidors, and study the possibility to make it an independent agency, ensuring the immovability of Military Police Court personnel;

(b) Establish a social assistance programme at police stations and in public jails undertaken by professionals not belonging to the police;

(c) Examine the possibility of creating and enhancing an autonomous career for the Military Police Corregidor Office;

(d) Create mechanisms which streamline the conduct of administrative proceedings, immediate disciplinary proceedings, and Disciplinary Councils for police officers who committed crimes, and ensure that the same officers do not perform their police duties in the progress of the proceedings.

167. In 1997, the Permanent Forum against Violence in Alagoas gathered the following proposals of the civil society to reduce the practice of torture in order to facilitate investigation and ensure that crimes do not go unpunished:

(a) Creation of an Internal Affairs Division in the area of Public security, not linked to the police organization;

(b) Disengage the IML, the Criminal Institute, and the Identification of Public Security as a means of ensuring autonomy of these agencies;

(c) Operational unification of the police;

(d) Creation of a follow-up programme for police officers involved with risky operations;

(e) Creation of a witness protection programme.

168. The Final Report of the Legislative Seminar "Human Rights and Citizenship" of August 1998, held in Minas Gerais, presents the following suggestions aimed at the combat of the practice of torture:

(a) Point 471 - Provide the Internal Affairs Division of the Minas Gerais Police with necessary resources and infrastructure for the development of its activities and guarantee of its autonomy;

(b) Point 472 - Streamline investigation and criminal liability of public agents accused of acts of violence, *power abuse*, torture, and corruption, respecting due process of law and guarantee of transparency of proceedings and disclosure of results;

(c) Point 473 - Consolidate and strengthen the external control over police activity by the Public Prosecution, in compliance with article 129, VII of the Constitution;

(d) Point 483 - Strive for the revoking of provision in article 4 of Law 9455 of 7 April 1997, which addresses crimes of torture and strive for the effectiveness of paragraphs 2 and 3 or article 233 of Law 8069 of 13 July 1990 - the Statute of the Child and the Adolescent, and for changing the provision in paragraph 1 of article 1 of Law 9455;

(e) Point 486 - Put on inactive duty the civil servant who on his duties is judicially denounced for torture and ill-treatment, with his discharge pending on the process of law;

(f) Point 491 - Ensure the autonomy of the Criminal Institute, the Identification Institute and the IML;

(g) Point 507 - Support the training of personnel in the penitentiary system by including human rights in the training course;

(h) Point 521 - Foster projects which aim at police training in human rights.

Article 14

169. The Constitution determines in article 5 insert X that "the privacy, private life, honour and image of persons are inviolable, and the right to compensation for property or moral damages resulting from their violation is ensured." Insert LXXV of the same article ensures that the State shall compensate a convict for judicial error, as well as a person who remains imprisoned for a period longer that the one established by the sentence. As the Constitution accepts the principle of objective liability of the State, that is, if there is a connection between the act or fact and the resulting injury, the State will be liable for that injury. Therefore, compensation for an act of torture may be claimed by means of a lawsuit for civil liability against the State in accordance with paragraph 6 of article 37 of the Constitution.

170. In the case of the 42nd Police Station, where 18 prisoners were asphyxiated, the Inter-American Committee for Human Rights of the OAS declared that the Brazilian State was liable for the violation of articles 1 (right to life and personal security) and 18 (right to justice) of the American Declaration of Rights and Duties of Man, as well as articles 8 (right to judicial guarantees) and 25 (right to judicial protection) of the American Convention on Human Rights. The Committee recommended that the Brazilian Government transfer to Civil Justice the trials for common crimes committed by police officers; the punishment of military and civil police officers involved, according to the degree of crime; the payment of due compensation to the victim's dependents. On 22 September 1997, the Brazilian Government proposed an amicable settlement to the executive secretariat of the Committee. As part of the amicable settlement between the Brazilian Government and the Committee, the Government of the State of São Paulo authorized payment of compensation to the families of the victims upon the Decree published on 8 January 1998.

171. José Ivanildo Sampaio de Souza, 33, died on the premises of the Federal Police Station in Fortaleza, Ceará. He had been arrested in *flagrante delicto* for infringement of article 12 of Law 6368/76, which relates to trafficking of narcotics. Less than 24 hours after the arrest, the corpse of José Ivanildo was admitted to the IML in Fortaleza with several bruises on the chest and abdomen. The expert report attested to the fracture of four ribs, torsion of the left kidney and liver lobes, concluding that the cause of death was internal abdominal haemorrhage as a result of traumatic injuries caused by a contusive instrument. Some of his inmates confirmed the torture. An investigation was started, having been determined by then Minister of Justice Nelson Jobim, who put the officers on inactive duty to investigate the case. An attorney-general was assigned to follow up on the case. On 13 February 1996, after the investigations attested that the practice of torture caused José Ivanildo's death, the President of the Republic acknowledged civil liability for the death of José Ivanildo on the premises of the Federal Police Station in Fortaleza, and forwarded to Congress a bill according to which the Union should pay pension to the family for life. The bill was approved and became Law 9305/96, which grants special pension as compensation to the dependents of José Ivanildo.

Article 15

172. Insert LVI of article 5 of the Constitution of 1988 determines that "evidence obtained through illicit means is unacceptable in the proceedings." Besides, insert LXIII of the same article also ensures the prisoner the right to remain silent.

173. Article 199 of the Code of Criminal Procedure relating to confession is a troublesome issue of the Brazilian legislation, which allows confession to be obtained before or after the interrogation process. The burden to prove the occasional falsehood of a confession out of the interrogation process is the responsibility of the defendant.

174. However, there are cases of acquittal of defendants because of evidence or possibilities that the confession was obtained by means of torture.

Article 16

175. Death penalties were prohibited by the Constitution of 1988 (except in cases of war crimes), as well as life imprisonment, hard labour, banishment, and cruel punishment (art. 5, XLVII). In article 136 of the 1940 Brazilian Penal Code, ill-treatment is defined as "the act of exposing to danger the life and health of a person under his authority, protection or surveillance for purposes of education, teaching, treatment or custody, whether by depriving him/her of food or indispensable care, or by submitting him/her to excessive or improper work, or abusing of means of correction or discipline". The Code of Criminal Procedure itself, when referring to procedures related to arrest, prohibits the use of force against the arrested person, except in cases of resistance or attempt to escape. The Military Penal Code also addresses instruments of protection against ill-treatment of those who are under military authority, protection or even if they are exercising their duties as police officers. The Military Code of Criminal Procedure determines that the conditions of imprisonment be adequate, clean, with circulation of air, and respect the physical and moral integrity of the detainee. Special protection was given to children and adolescents by means of Law 8.069 of 13 July 1990 (Statute of the Child and the Adolescent). In article 5, it ensures that "no child or adolescent shall be the object of any form of neglect, discrimination, exploitation, violence, cruelty, or oppression, and any attempt, act or omission to their fundamental rights will be punished in accordance with the law".

Notes

[1] Source: The Ministry of Justice.

[2] Pinheiro, Paulo S. (1991, p. 87-104).

[3] Kant de Lima, Roberto (1997, pp. 174-179).

[4] Alagoas, Amapá, Ceará, Espirito Santo, Mato Grosso, Mato Grosso do Sul, Pará, Pernambuco, Piauí, Rio de Janeiro, Rio Grande do Norte, Santa Catarina, São Paulo, Tocantins.

[5] *Folha de São Paulo* newspaper, 10 July 1997.

[6] *Habeas corpus* - is the procedural instrument granted at any time that a person shall be subject to or find himself threatened by violence or coercion in his freedom of locomotion, through illegality or *power abuse*. (*Federal Constitution, 1988 edition, up-dated, Article Fifth.)*

[7] Court injunction - a constitutional means available to any person whether individual or legal entity, agency of procedural capacity, or universally acknowledged by law for the protection of individual or collective rights, clearly legal, not supported by *habeas corpus* or *habeas date*, injured or threatened with injury, by act of public authority or agent of legal entity in the exercise of attributions of Government Powers, collective court injunction - constitutional means intended to protect collective rights, it being possible to be solicited by political organization, a class entity

or association legally constituted and operational for at least one year, in the defence of the interest of their members or associates; (Meirelles, Hely Lopes "*Court Injunction, Class Action, Public Civil Action, Writ of Injunctio*n, *Habeas Data*", São Paulo, Malheiros Editores Ltda., 17th Edition, 1996, p. 17).

8 Writ of Injunction - constitutional means available to those who regard themselves as having suffered damages in the absence of a regulamentory norm, that shall render non-viable the exercise of constitutional rights and liberties and prerogatives inherent to nationality, to sovereignty and to citizenship (i*dem* ibid., p. 171).

9 *Habeas date* - a constitutional means available to individuals or legal entities to ensure the knowledge of records concerning the petitioner and included in records or data bases of government entities or of a public nature or, yet, adjustment of data, when he prefers not to do so by a secret, judicial, or administrative procedure (*idem* ibid., p. 185).

10 Class action - a constitutional instrument available to citizens to annul an act/deed injurious to common wealth or morality, environment, and to the historical and cultural patrimony (*idem* ibid., p. 119).

11 Public civil action - is a procedural means adequate to repress or impede damage to the environment, to consumers, to goods and rights of artistic, aesthetic, historical, tourist and scenic value thus protecting diffused corporation rights (*idem* ibid., p. 119).

Annex I

LIST OF ANNEXES*

Constitution of the Federative Republic of Brazil, of 5 October 1988

Law-Decree No. 2,848, of 7 December 1940 - Penal Code

Law No. 7,209, of 11 June 1984

Law No. 7,210, of 11 July 1984

Law No. 7,960, of 21 December 1989

Law No. 8,072, of 25 July 1990

Law No. 8,930, of 6 September 1994

Law No. 9,140, of 4 December 1995

Law No. 9,299, of 7 August 1996

Law No. 9,455, of 7 April 1997

Law No. 9,714, of 25 November 1998

Law No. 9,807, of 13 July 1999

Decision of the Federal Supreme Court on extradition Process 633-9

* The documents listed above are available for consultation in the files of the Secretariat.

Annex II

PREPARATION OF THE REPORT

Contacts with the secretariats of justice and/or security, military auditory, and state law courts to gather information on the situation of torture since the approval of Law 9455 on 7 April 1997, have been made since August 1998. Information on the number of police inquiries established with basis on the same law was requested, as well as the number of investigations, the situation of legal proceedings and other administrative proceedings to investigate acts of torture committed by civil and military police officers and penitentiary agents.

Until early 1999, the Secretariats of Security from six states (Bahia, Minas Gerais, Paraíba, Rondônia, Roraima and Sergipe) had not forwarded any information. Eight Law Courts had not forwarded any information: Espírito Santo, Maranhão, Minas Gerais, Pernambuco, Paraná, Roraima, Sergipe and Tocantins. Law Courts of the States of Amazonas and Ceará did not submit information consistent enough to be included in this report.

In addition to the information rendered by these agencies, several official sources have been consulted, such as reports of other state secretariats, the Minister of Justice, and the Brazilian Institute for Geography and Statistics. Several other data related to the practice of torture were collected in reports of national and international non-governmental organizations, reports of Internal Affairs Divisions, and reports of councils and centres in defence of human rights. All such sources have been listed at the end of the present report. Footnotes were avoided in order to preserve the fluency of the text. Finally, data and information were obtained from the main newspapers and Web pages.

Even though available data on torture in Brazil are rather inconsistent and uneven, the report tried to draw from the available information the essential elements to describe the existing situation in the last two years. Likewise, after synthetically describing the overall characteristics Brazil presents today, the report covers the torture issue under a historic perspective at a time when torture was tolerated. It also provided the context of the elements that favoured and fostered the approval of the bill, which resulted in Law 9455 of April 1997.

The report describes and analyses how Brazil is coping with the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Due to the lack of data and the fact that the law is recent, conclusions regarding the effectiveness of the law cannot yet be drawn. Quantitative size of some data present in the report refer to the period of time between April 1997, when the law entered into effect, and November 1998.

A great many cases of torture occurred inside and outside of police stations, prisons, and penitentiaries even after the law entered into effect. Nevertheless, cases of law enforcement are equally important in spite of being few. Its use is certainly still limited, but seems to indicate that the decisive performance of the Public Prosecution and entities like the Internal Affairs Divisions and those in defence of human rights may foster its use more and more.

Even though the Law of Torture does not restrict the characterization of this crime only to acts committed by state agents, it was chosen to describe the cases which involved them. Following the definition of torture existing in article 1 of the Convention against Torture, and proceeding to a simple analysis of the torture issue in Brazil, it is noted that public agents are the focus of the issue in the country. Crimes of torture committed by individuals who are not public agents are equally blame-worthy and often associated to the practice of other crimes, such as kidnapping. However, it is not as serious as the practice of a public agent who in the exercise of his police duties makes use of torture to obtain information, confessions or for extortion.

Some viewpoints of civil society entities on torture and means to curb it are presented in the report. Some cases have been described by it and presented hereby.

Finally, the main initiatives taken by the Federal and State Governments to fight the practice of torture and imposition of inhuman and degrading treatment were summarized. Measures which directly or indirectly interfere with those practices were presented, focusing on most recent measures, but other measures taken before the promulgation of the Law of April 1997 were also included when deemed important.
