

Universal Periodic Review of the UN Human Rights Council – BRAZIL
Information submitted by the NGO Conectas Human Rights www.conectas.org

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Torture, Summary Executions and Access to Justice in Brazil

Conectas Human Rights is an international non-governmental, not-for-profit organization founded in São Paulo, Brazil in October 2001 to promote respect for human rights and contribute to the consolidation of the Rule of Law in the Global South (Africa, Asia, and Latin America).

Accordingly, Conectas develops programs that aim at strengthening activists and academics in the southern hemisphere and increasing their interaction both with the United Nations and among themselves. In Brazil, and in the wider region, Conectas promotes strategic and public interest litigation.

With the intention of contributing to an effective universal periodic review process, we are hereby providing some input on torture, summary executions and access to justice in Brazil. We regret the extremely tight deadline for sending information to the High Commissioner for Human Rights, something that has precluded a bigger and better contribution by Brazilian NGOs.

I. Introduction

Brazil ratified all the major United Nations human rights treaties during the 80s and 90s, incorporating their principal guidelines into the Federal Constitution of 1988 and also into more specific domestic legislation, namely the laws dealing with the rights of children and adolescents and combating torture.

The Brazilian Constitution was amended in 2005 with the incorporation of Constitutional Amendment 45, known as the “Reform of the Judiciary”, which affords constitutional status to the human rights treaties ratified in Brazil by a qualified majority, introduces the fundamental right to prompt legal proceedings and also recognizes the possibility of federalizing severe human rights violations that have not been properly investigated in state-level arenas, therefore making the Brazilian State responsible in international jurisdictions.

However, despite boasting a legal framework that guarantees rights and having made significant legal headway in assuring accountability for human rights violations, the reality on the ground reveals a stark contrast between what the law says and what actually happens in practice.

In recent years, various United Nations Special Rapporteurs have visited Brazil to examine the human rights situation in loco: Sir Nigel Rodley (2000), Asma Jahangir (2003), Leandro Despouy (2004), Hina Jilani (2005). Following their missions, the rapporteurs presented a series of recommendations, whose key points we address below:

II. Torture

The United Nations Special Rapporteur on Torture, Sir Nigel Rodley, was in Brazil in 2000 on a comprehensive tour of youth and adult detention centers across the country. He discovered that torture is a systematic and widespread practice in Brazil and, among his recommendations, he identified: the need for

police authorities to emphatically declare that torture will not be tolerated; that pre-trial detention facilities should guarantee a series of rights for detainees, such as contact with their families, the services of a lawyer and protection in adequate detention facilities; and the need for training in human rights for police officers and prison guards. He emphasized the need for complaints of torture to be promptly and diligently investigated, using the law against torture on a national level, and the need for inspections of detention facilities by non-governmental organizations and public institutions.

In spite of the recommendations of the Special Rapporteur and the legal framework prohibiting torture, its practice remains widespread and systematic both at detention centers and as a form of police repression.

Torture is used at detention centers to maintain order and authority in facilities that are generally overcrowded and that hold rival criminal factions. On other occasions, it is practiced as a form of punishment for disciplinary infractions.

Generally speaking, the practice of torture is rarely and still very inefficiently investigated. Between 2001 and 2003, the National Campaign to Combat Torture¹, an official federal government program, forwarded to the Public Prosecutor's Office 778 cases of institutional torture, that is, torture carried out by agents of the State. Of these cases, the office failed to respond to 498 of them, 201 were ongoing, 37 were ruled out due to insufficient evidence and 20 were dismissed. Only 31 of the 778 forwarded cases resulted in charges, that is, just 4%. Of these, only 6 resulted in convictions, or just 0.7% of the original cases.

The following two paragraphs are accounts of two of the cases being accompanied by Conectas Human Rights that reflect the aforementioned structural problems.

On 11 January 2004, 111 juvenile detainees were brutally tortured at Internment Unit UI-41, Vila Maria, of the FEBEM youth detention center. According to the testimony of the young victims, on 11 January 2004, guards from the UI-41 unit, in order to establish the authority of a group of newly appointed staff at the unit, began removing the juvenile detainees from their cells and beating them with wooden sticks and iron bars. This abuse was repeated in all the unit's cells, all day and all night, until the following day, 12 January, when the torture was discovered by Conceição Paganele, President of AMAR (Association of Mothers and Friends of Children and Adolescents at Risk), and reported to the authorities. Although the accused guards were temporarily arrested at the time, they are now all awaiting trial in freedom and, nearly four years after the incident, they have yet to be convicted in a court of law.

On 10 April 2005, 70 juvenile detainees at the Tupi Paulista Emergency Unit (Tupi Paulista Penitentiary), located 663 kilometers from the São Paulo state capital, were found to have marks on their backs, chests and heads. According to the testimony of the young detainees, they were beaten by prison guards in reprisal for having requested medical attention for a detainee who was not feeling well. The incident was discovered by the non-government organizations (AMAR, Conectas) that carry out inspections of the penitentiary and was immediately reported to the authorities. The ensuing investigation, which was conducted in secrecy and without the presence of the victims' lawyers, concluded that the young detainees had performed "self-flagellation". As a result, the investigation into torture was dropped and instead a new case, of false accusation, was opened against the detainees.

¹ Final Report of the Permanent National Campaign to Combat Torture and Impunity, 2004.

- Although non-governmental organizations can play a crucial role inspecting the detention facilities, a role that has been acknowledged by the Special Rapporteur, the state of São Paulo has banned inspections of prisons and detention centers by non-governmental organizations.
- Similarly, it is important to stress that Brazil does not possess a database of information about torture, the agents involved, the victims and the progress of the investigations, in disregard of the recommendations made by the Special Rapporteur.

III. Summary Executions

The United Nations Special Rapporteur on Extrajudicial, Arbitrary and Summary Executions, Asma Jahangir, visited Brazil in 2003 and heard allegations of unauthorized deaths, in particular cases involving agents of the State. Among the recommendations made by the Rapporteur following her mission to Brazil were: the need to train police officers and prison guards in human rights; reliable and transparent classification by the State of statistics on deaths by the police and the investigations of these deaths. She also highlighted the importance of compensating the families of the victims of summary executions and of staging rapid and transparent investigations.

In spite of the harsh recommendations made by the Rapporteur, Brazil continues to register record homicide levels, many caused by police officers, and a relative lack of accountability.

In 2006, there were 34,647 firearm deaths in Brazil, an extremely high number even though the Disarmament Statute has contributed to reducing the number of people killed with firearms (there were 39,325 firearm deaths in 2003, 37,113 in 2004 and 36,060 in 2005)².

Between 2000 and 2006, however, the number of police killings per 100,000 inhabitants rose 134%. The world average proportion of civilians and police officers killed is 10 civilians for each police officer. In the Brazilian state of Rio de Janeiro, this proportion is 41 civilians killed for each police officer, a figure four times higher than the world average³.

Contrary to the recommendations made by the Special Rapporteur, there are no official integrated statistics on the number of people killed by civil and military police, or on how many can be attributed to illegal or abusive behavior by the police. All we have are some figures from the Public Security Secretariats of some states: for example, in Rio de Janeiro, there are records of 961 people killed by the police in the state between 1 January and 30 September. Together, the states of São Paulo and Rio de Janeiro registered, from 2002 to 2005, 7,000 deaths caused by the civil and military police. There are, however, no official nationwide statistics⁴.

Also hard to come by are data on the investigations and the accountability of police officers involved in illegal and arbitrary deaths; this information is decentralized and unreliable. According to a report by the São Paulo Police Internal Affairs Unit, only 7.2% of civil police accused of civil rights abuses are ever punished, and this figure falls to 2.4% for military police⁵. In Rio de Janeiro, the culture of impunity runs even deeper: just 0.7% of civil police and 12% military police accused of civil rights violations are

² Report on the Reduction of Homicides in Brazil – Ministry of Health, Health Surveillance Secretariat, 2007.

³ Data gathered from the São Paulo and Rio de Janeiro Public Security Secretariats, 2000 – 2006.

⁴ Third National Report on Human Rights in Brazil, Center for Studies on Violence - NEV, 2007.

⁵ Second Report on Human Rights in Brazil, Ministry of Justice, p. 234

punished⁶. Note that these figures refer to the total number of accusations, without specifying how many refer to summary executions.

It is worth emphasizing the extreme violence that occurred in May 2006, which will be forever labeled as one of the most violent months in the history of the state of São Paulo. Early in the month, a criminal gang known as the PCC (First Capital Command) staged a series of attacks on police stations and organized rebellions at prisons across the state of São Paulo. The state authorities responded publicly, granting the police sweeping powers to repel the attacks. The result of this policy was 492 people killed over a period of eight days, between 12 and 20 May 2006. According to police reports and official accounts, many of these victims were killed in alleged clashes with the police. In the vast majority of cases, however, people were killed by masked individuals, making it impossible to identify who fired the shots. Human rights organizations received, right from the outset, accusations and information that police officers were either filing fraudulent criminal incident reports in order to kill people or taking part in death squads.

The following paragraph is an account of one of the cases being accompanied by Conectas Human Rights:

On the evening of 14 May 2006, Fábio de Lima Andrade, Edvaldo Soares de Andrade, Israel Alves de Souza, Eduardo Barbosa de Andrade and Fernando Elza were outside a friend's house when three masked gunmen got out of a green Vectra car and started shooting at them, fleeing the scene immediately afterwards. Fábio de Lima Andrade, Edvaldo Soares de Andrade and Israel Alves de Souza were killed by the gunshots, while Eduardo Barbosa de Andrade and Fernando Elza survived. These events led to the opening of a police inquiry that is still underway, without any significant progress made in identifying the perpetrators (IP 1124/2006 – DHPP). There is information in the judicial records that somebody saw a car fitting the description given by the survivors parked in the region's Police Station (83 DP). On 3 December, Mr. Elza, a key witness in the investigations into the massacre, who had been subpoenaed to give new evidence in the police inquiry, who also killed in a similar drive-by shooting. A police internal affairs investigation has revealed that the murder of Mr. Elza's friends is just one of 23 cases reportedly attributed to the same death squad, all of which occurred between 14-17 May, involving 52 victims. In most of the incidents, the criminals were wearing balaclavas⁷.

- It is important to point out that the recommendations made by the Special Rapporteur have not been acted upon: there are no programs to compensate the families of the victims of illegal killings, there are no official nationwide figures on the number of police killings, nor information on the progress of the investigations against police officers, which has only helped strengthen the culture of impunity.

IV. Access to Justice

The Special Rapporteur on the Independence of Judges and Lawyers, Mr. Leandro Despouy, was in Brazil in 2005 and met with lawyers, judges, public prosecutors and non-governmental organizations working in the field of justice. He prepared a series of recommendations, such as: the need to strengthen the Public Defender's Service, given the serious problem of the population's lack of access to justice; the placement of limitations on the scope of the role of military justice; the need to provide human rights training for staff in

⁶ Rio de Janeiro Police Internal Affairs Report, 2002, in Second Report on Human Rights in Brazil, Ministry of Justice, p. 222.

⁷ This case was presented to the Special Rapporteur of the United Nations on Summary or Arbitrary Executions, Dr. Philip Alston, during his visit to the state of São Paulo on 4 November 2007.

the justice system, as well as the need to develop an adequate and reliable system of information on the justice system.

As we have already explained in the introduction of this report, the visit by the Special Rapporteur preceded the Reform of the Judiciary, instituted by Constitutional Amendment 45 in 2005 and which enabled the judicial system to make headway in several areas, namely the possibility of federalizing cases and the right to prompt proceedings. Similarly, 2006 saw the creation of the São Paulo Defender's Service, something that human rights movements in Brazil have been demanding for some time.

- In spite of this progress, prospects for accessing justice in Brazil are still drastic: the number of public defenders at the service of the poor in the country is negligible: in São Paulo, for example, there is one public prosecutor for every 31,000 potential users of the free legal service, that is, people who earn less than three times the minimum wage (R\$1,200 or US\$600). In the state of Amazonas, this proportion is one public defender for every 24,000 people; in Paraná it is one public defender for every 68,000 people; and in Goiás, one public defender for every 45,000 people⁸.
- It is clear that there are major obstacles in the way of access to justice. In a country like Brazil, which violates human rights, this means victims are not compensated and violators are not held accountable, which in turn fuels impunity and the perpetuation of human rights abuses.

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⁸ Data from the 2nd Diagnosis on Public Defenders in Brazil, 2005 and PNAD – National Household Survey 2006.