



Fédération internationale de l'Action des chrétiens pour l'abolition de la Torture
International Federation of Action by Christians for the Abolition of Torture
Federación Internacional de la Acción de los Cristianos para la Abolición de la Tortura

FIACAT and ACAT Brazil¹: Submission to Brazil's Second Review

Human Rights Council, Universal Periodic Review's
Second Cycle

13th session, 21 May – 1 June 2012

28th November 2011

¹ACAT Brazil is a human rights organisation established in 1998 and is affiliated to FIACAT (International Federation of Action by Christians for the Abolition of Torture). FIACAT is an International Non Governmental Organisation for the defence of Human Rights which fights for the abolition of torture and the death penalty.

1. Follow up to the 2008 review

Implementation of the recommendation from Belgium to: “Intensify efforts for the security of human rights defenders and reinforce cooperation with all stakeholders, in particular, the states and the military police.”

The program to protect Human Rights Defenders is still not working in all States. This year several human rights defenders were executed. The Federal Government agreed they are not able to ensure the safety of all Indian leaders, maroon, landless and environmentalists who risk their lives in the country. The Pastoral Land Commission (CPT) gave the government a list of 207 people who had been threatened between 2000 and 2011, 42 of whom had been killed. Without protection, many of the remaining 165 abandoned their homes. After the murder of four environmental activists in the Amazon, the Brazilian government has not implemented tools and conditions to ensure the safety of all leaders who are at risk of being murdered in the field.²

During 2011, there were several defenders killed. Among them: the farmer Marcos Gomes da Silva, 33, in Eldorado do Carajás (PA); the community leader João Chupel Primo em Miritutuba, city of Itaituba, PA; Sebastião Bezerra da Silva, coordinator of the Center for Rights Human Cristalândia (TO) and secretary of the Midwest Regional of the National Movement for Human Rights (MNDH) in Gurupi in the State of Tocantins.³

Implementation of the recommendation from Germany to: “Take action to improve prison conditions and implement recommendations made by the Committee against Torture and by the Human Rights Committee.” Similarly, the one from Uruguay to: “Make greater efforts regarding prisons systems in a number of states of the federation in order to be transformed into rehabilitation centers.”

Currently, Brazil has the fourth largest prison population in the world, with almost half a million inmates⁴. The lack of jobs and decent conditions in prisons contribute to human rights violations, among them torture, ill-treatments, abuses, lack of health care for the male and female prisoners and lack of legal counsel.

² Source: O Globo/ Primeira Página: Governo não protegerá nem 30 de 165 ameaçados de morte. Ministra dos Direitos Humanos diz que segurança para todos é ‘ilusão’.

Evandro Éboli. BRASÍLIA. <http://www.itamaraty.gov.br/sala-de-imprensa/selecao-diaria-de-noticias/midias-nacionais/brasil/o-globo/2011/06/01/governo-nao-protegera-nem-30-de-165-ameacados-de>

³Source:<http://www.jornalpequeno.com.br/2011/9/29/mais-um-lavrador-e-assassinado-em-assentamento-de-santa-luzia-171749.htm>;

http://www.direitoshumanos.etc.br/index.php?option=com_content&view=article&id=10563:defensor-de-direitos-humanos-sebastiao-bezerra-da-silva-foi-assassinado-em-tocantins&catid=30:movimentos&Itemid=172

⁴ InfoPen. Estatística. Brasília, 2000-2010. Disponível em:

<http://portal.mj.gov.br/data/Pages/MJD574E9CEITEMIDC37B2AE94C6840068B1624D28407509CPTBRNN.htm>. último acesso em 26/09/2011.

The practice of torture and ill-treatment in prisons is still routinely used in these establishments. According to the Prison Ministry Report on Torture (2010)⁵ there are several violations, especially the practice of torture against prisoners. ACAT-Brazil continues to receive allegations of torture committed by police and prison officers. Torture, as a form of corporal punishment, is still practiced in order to get confessions.

Despite some efforts by the Federal Government in advancing public policies to prevent and combat torture, they have not yet been implemented. Brazil has yet to establish a Preventive Mechanism, leaving its commitment to the UN Optional Protocol to the Convention against Torture (OPCAT) unfulfilled. Since October 2011, the National Congress has considered Bill No. 2.442/2011, which aims to establish the National System for Prevention and Fight against Torture, as well as a Committee to create a Mechanism for the Prevention and Fight against Torture. However, the project is not in accordance with the stipulations of the Protocol due to a change in the selection method of members of the Committee and of the mechanism. According to the current text, the Committee members shall be appointed by the President (Art. 7) and the mechanism members will be chosen by the Committee and appointed by the President (Art. 8, § 1). This form of selection of members directly compromises the autonomy and independence of the two bodies.

Some Federal States, such as Rio de Janeiro, Alagoas and Paraíba, have created their own State mechanisms in line with the Protocol, but none is yet effective.

Torture against women is also common practice. On November 18, 2011, the press reported cases in São Paulo, already denounced by Human Rights Groups, which revealed that female prisoners in State hospitals are kept shackled during childbirth. Public defender Patrick Cacicedo pointed more than 60 cases of similar humiliation, of which only eight were heard in a formal investigation process. There are cases of women who had their feet shackled immediately after surgery and had to walk with their child in their arms, putting the newborn at risk. The inadequacy of the female prison facilities exposes these women to a series of human rights violations. There is a need in Brazil for a penitentiary model specifically adapted to the needs of women (maternity, childbirth, etc).

There is torture and ill-treatment against people in psychiatric hospitals. In July 2011, four patients died of cold in the Sorocaba, São Paulo hospitals of Valley of Hydrangeas and Vera Cruz. The environment eases the practice of torture and various other human rights violations, such as deprivation of liberty, no right to family life or community.⁶ In October 2011, there were many allegations of assault against a boy admitted in the psychiatric hospital in Sorocaba. Arriving for a routine visit, the boy's family saw clear signs of abuse on his face, and arms, as well as a wound on his mouth. According to the family, he was bleeding from the mouth, his whole face was purple, and he was unable to eat.

⁵ Access report through the website: <http://www.carceraria.org.br>

⁶ Source: <http://osm.org.br/osm/sobre-as-denuncias-de-mortes-por-frio-em-hospitais-psiquiaticos-de-sorocaba-sp/>. Ver Relatório: <http://flamasorocaba.wordpress.com/dossie-dos-manicomios/>

ACAT-Brazil and the CONDEPE⁷ also identified cases of torture in the Judicial Asylum of *Franco da Rocha*.

ACAT-Brazil also identified several cases of torture, abuse and subjection to inhumane treatment of adolescents in units for young offenders. According to inspection reports, there are many violations: lack of health care, family visits, education, etc.

Implementation of the recommendation from the United Kingdom: “While continuing its positive initiatives, invest more seriously in evaluating the outcomes of planned activities in many of these areas: prisons conditions, criminal justice system, juvenile justice system, violence and extrajudicial killings committed by state military police, torture, protection of human rights defenders, violence against women, indigenous communities, rural violence and land conflict, child and slave labor, impunity for those involved with human trafficking and corruption.”

There is a lack of information and data regarding the judiciary and the prison system. There are no data indicating the profile of Brazilian prisoners in relation to income, family structure, religion and length of provisional detention.⁸

There are a number of problems in securing the right of defense in Brazil. There are insufficient Public Defenders to serve the entire prison population. The first contact between the Public Defender and the inmate can take three to six months⁹

Implementation of the recommendation from Ghana to: “Continue its commitment to resolving the issue of abuse of power and excessive use of force.”

The Brazilian military and civil police continue executing people. They claim the deaths resulted from what they call “resistance followed by death”, situations in which police say they had to shoot because the suspect was resistant, exchanged gunfire with the police or refused to accompany police to the station. Figures show that executions occur frequently even if they are not properly authorized.¹⁰

Summary or extrajudicial executions continue to be performed by military police in the course of their work, at the behest of state officials, as well as by military police, civilian police, civil guards and prison guards.

Police officers form death squads to execute the “marked for death” - ex-prisoners, drug addicts and all deemed “harmful to society”. “The killers of the 18th”, a group of about 20 police officers from the 18th Military Police Battalion working in northern Baghdad,

⁷ Council for the Defense of Human Personnel of the State of São Paulo.

⁸ BRASIL, Congresso Nacional. Câmara dos Deputados. Comissão Parlamentar de Inquérito do Sistema Carcerário. Brasília: Câmara dos Deputados, Edições Câmara, 2009.(série ação parlamentar, n. 384). P.74.

⁹ Fonte: Relatório de Pesquisa *Prisão Provisória e Lei de Drogas: identificando os obstáculos e oportunidade para Mario eficácia*. Site: www.nevusp.org.

¹⁰ Ver dados no site do Núcleo de Estudos da Violência da USP:

http://www.nevusp.org/portugues/index.php?option=com_content&task=view&id=2477&Itemid=1

were blamed for the murder of Colonel Jose Herminio Rodriguez in January 2008. The death squad known as the “Highlanders”, formed by military police from the 37th Battalion, beheads their victims. Finally, the group known as “Ninjas”, which wear masks, committed several extrajudicial executions in Santos in April and May 2010.¹¹

Implementation of the recommendation from Mexico to: “Encourage the establishment of a national human rights institution compliant with the Paris Principles.”

Brazil still lacks any institutions that are in accordance with the Paris Principles. The civil society organizations still find little space for human rights in the political arena.

2. Recommendations for action by the State under review

- Strengthen the National Program for the Protection of Human Rights Defenders in Brazil; create and promote programs in the States.
- Using the UN Optional Protocol to the Convention against Torture (OPCAT) and the Paris Principles as a model to create a Committee Against Torture and both a State and a National Preventive Mechanisms Against Torture. The members of the Preventive Mechanism should be selected by the Committee in partnership with civil society.
- Strengthen the Public Defender's Office, increasing the number of lawyers available. Guarantee immediate contact between the defendant and defense immediately after arrest, to ensure adequate defense. Immediate legal counsel can help reduce physical abuse or torture, and it can ensure appropriate State action, ensuring a fair trial.
- Present “caught-in-act offender” and their lawyers to a judge as soon as possible for the evaluation of the legality of their imprisonment. In this way, the judge can evaluate the need for pre-trial detention, thus guaranteeing the offender's fundamental rights. Merely notifying the judge is not enough - Police Evidences in Drug Offenses are too fragile and the defendant’s version of the facts is systemically ignored. It should be a requirement for pretrial detention that the Judge listens to both parties before deciding.
- Improve the prison conditions to make it suitable for women.

¹¹Fonte: <http://carosamigos.terra.com.br/index2/index.php/artigos-e-debates/2148-sao-paulo-as-execucoes-sumerias-continuam>