

## Police Violence and Torture in Brazil

### 3<sup>rd</sup> Cycle of the Universal Periodic Review

6<sup>th</sup> of October, 2016



Conectas is a non-governmental and not-for-profit organization founded in São Paulo/Brazil in September 2001.

Conectas was accorded consultative status with the ECOSOC-UN in 2006, and observer status with the African Commission on Human and Peoples' Rights in 2009.

Employing legal and administrative actions (strategic litigation), as well as political action (advocacy), the Justice program of Conectas works each day to change this situation.

Conectas is the civil society organization that has participated most frequently in the Supreme Court in the defense of human rights. Through the so-called *amicus curiae*, the organization has contributed to lawsuits pending in the highest court in the country, by presenting its critical viewpoint on the cases being heard.

Another strategic action is to call upon international human rights protection mechanisms, such as the Inter-American Commission on Human Rights (IACHR) and those of the United Nations.

## **I. Police Lethality and Raising Death toll**

São Paulo's military police killed 11,358 people over the last 20 years, according to data from the São Paulo Military Police Intelligence Center obtained by Ponte. That number is greater than all the killings committed by US police during the same period. Another 1,248 military police officers were killed in São Paulo state during that time.

According to quarterly statistics released by the São Paulo Public Security Department – that do not include so-called ‘suspicious deaths’ – the civil and military police in the state were responsible for 4,892 killings between 2007 and 2015 – an average of 1.5 per day. In the first quarters of both 2015 and 2016, there were 201 such killings, the highest number for a first quarter since 2003.

According to Human Rights Watch, “police in the state of Rio de Janeiro have killed more than 8,000 people in the past decade, including at least 645 people in 2015. One fifth of all homicides in the city of Rio last year were police killings. Three quarters of those killed by police were black men.”

According to a research from the State University of Rio de Janeiro, the 41st Military Police Battalion - where the officers accused of the murders in Costa Barros were stationed - has topped the ranking of murders in supposed confrontations with the police for the past three years. This large number of killings and personal vindictiveness is only possible due to the military mindset - of war against the enemy - under which Brazil's security forces are trained.

Brazil has taken a symbolic big step towards putting an end to the ‘resistance’ classification in police reports – used to record killings by police officers and that are frequently used to cover up executions, since these deaths are never investigated. In addition to banning the use of the classification created during the military dictatorship, the joint resolution of the Higher Police Council, a body of the Federal Police, and the National Council of Civil Police Chiefs published in the Federal Gazette this Monday, January 4, establishes the procedures to be followed in cases of deaths or bodily injury caused by police officers.

According to the text of the resolution, “if the use of [police] force results in an assault on the

bodily integrity or the life of the person resisting, a police inquiry must be immediately opened to determine the facts, and it shall be given priority status”. It also states that the Public Prosecutor’s Office and the Public Defender’s Office must be notified of the inquiry. Moreover, weapons, bullet cases and vehicles involved in the incident must also be seized by the police officer responsible for the investigation, who must also order a forensic examination of the scene.

As far as Conectas is concerned, to definitively put a stop to executions by the police, three measures are urgently needed:

- **Independence of forensic bodies:** Medical forensic examinations need to be autonomous and independent from the security forces, to guarantee that they are impartial and free from pressures, particularly in cases that involve other government agents;
- **Independent Internal Affairs Bodies and Ombudsman:** Internal Affairs (Corregedoria) and the Ombudsman (Ouvidoria) must be independent bodies and have civil society direct oversight. Data and periodic reports must be made public.
- **Police oversight by the Public Prosecutor’s Office:** The Public Prosecutor’s Office must do more to fulfill its constitutional role in the oversight of police activity and to rigorously and accurately investigate all the circumstances surrounding the deaths caused by police officers;
- **Reform of the model of militarized policing:** There is an urgent need to reform the model of militarized policing that still views citizens as potential enemies to combat. This structural reform should be underpinned by at principles: the full-cycle of police work, wherein street policing and criminal investigation are performed by the same police force; a single career path, enabling recruits to be promoted in accordance with their professional merits, until they become officers; and independent ombuds offices and internal affairs units.
- **Ending the ‘resistance’ classification.** Standards urgently need to be adopted to help put a stop to massacres by the police. The approval of Bill 4471, which has been pending

for two years in the Lower House of Congress, could represent an important step in this direction. The bill, drafted by the congressmen Paulo Teixeira, Fabio Trad, Protógenes Queiroz and Miro Teixeira, establishes that inquiries be opened into all cases of death caused by the police. It also requires the preservation of the crime scene, prevents the police from transporting victims and substitutes the expressions ‘act of resistance’ and ‘resistance followed by death’ in police reports, which were created during the military dictatorship, for ‘death resulting from police intervention’.

## **II. The Crimes of May and Federal Investigations**

A bloodstained chapter in the history of São Paulo remains unresolved.

Between May 12 and 21, 2006, a total of 505 civilians were killed and 97 were wounded in shootings in the state of São Paulo. The number of killings was almost four times higher than usual for the period, compared to the previous year. Most of the victims were men up to 35 years of age with no criminal record and residents of neighborhoods in the poor urban outskirts. Over the course of these 10 days, 59 government agents were killed and another 13 were injured.

Ten years after the so-called Crimes of May, there has been a shortage of answers but an excess of negligence on the part of the state authorities and indignation and pain by the families of the hundreds of victims.

### **The “Parque Bristol” Case**

The young men Edivaldo, Eduardo, Israel, Fernando and Fábio feature on the long list of victims of the attacks of 2006. Aged 21 to 25, they were all shot by a group of masked men on May 14, 2006, in front of their house in Parque Bristol, a neighborhood in the far south of São Paulo. On November 2008, without the perpetrators having been identified, the case was shelved at the request of the São Paulo Public Prosecutor’s Office.

Since an appeal was no longer possible, Conectas and the families of the victims denounced the case to the IACHR (Inter-American Commission on Human Rights of the Organization of American States) in May 2009, alleging that the Brazilian State was in violation of the American Convention on Human Rights, which was ratified by the country in 1992. The Commission has yet to decide on the admissibility of the complaint.

In the same year, a request was filed with the Office of the Attorney General to federalize the case, which in practice would lead to a reopening of the investigations by the Federal Police and the Federal Prosecutor's Office and holding a trial in federal courts.

Last May 9, seven years after the request was originally filed, the Office of the Attorney General finally decided to pursue the case and asked the Superior Court of Justice to investigate the Parque Bristol massacre in the federal sphere. It is not known when the case will be examined by the court.

Although of notice, this case is merely a fraction of the wave of violence that took place in May 2006 and, furthermore, displays the reluctance of federal bodies to intervene in massive human rights violations on the state level, as well as the lack of a clear and effective set of instruments designed to include multiple levels of authorities in these investigations.

The lack of federal oversight creates a culture of impunity in which these episodes are recurrent. According to data obtained by the Sou da Paz Institute through the Freedom of Information Law, there were 97 massacres –i.e. when three or more people are killed in one episode - in the state of São Paulo between 2012 and 2015, which resulted in the death of at least 355 people. Another important change is for the São Paulo government to improve the collection and systematization of data on massacres in the state. There is currently little transparency, or even standardization, on the official criteria used to establish when situations involving deaths are defined as massacres. The compilation of this type of data would help formulate public policies to prevent them and to hold the perpetrators accountable.

- **Establish a Federal Investigation on the ‘Crimes of May’:** the São Paulo episode must be fully taken to federal authorities. The Federal Government must prioritize this case and grant resources for the thorough investigation of said events.
- **Create more effective mechanisms of Federal Investigation of Gross Violations of Human Rights:** The current system takes more than 10 years to bring an investigation to federal authorities. The Federal Government must implement a system of permanent oversight of local authorities on investigation of gross violations of Human Rights. Civil Society must have access to Federal Ombudsman bodies when they are not comfortable with local authorities investigating a case. The

mere suspicion of the existence of “death squads” must be understood as a human rights violation and attract federal investigations.

### III. Police Violence and Torture

Juan Mendez had strong words after his visit to Brazil last year: “*Torture and mistreatment by police and prison staff is still alarming and a regular occurrence, mainly against persons belonging to racial, sexual, gender and other minority groups,*” said the rapporteur. “*I urge the Brazilian government to take steps to close the gap between the country’s ambitious laws and policies on the one hand, and the everyday situation of people deprived of their liberty on the other.*”

Brazil has recently established the National System to Combat and Prevent Torture, but this initiative, due to the country huge territory and internal discrepancies, must be reproduced on all major states urgently. In order to be effective, the Federal Government must facilitate and finance the creation of integrated state systems against torture.

The judicial response to torture was displayed in the report “Judging Torture: Analysis of jurisprudence in Brazil’s State Courts of Appeals (2005-2010)”. The study was produced by Conectas, [IBCCrim](#) (Brazilian Criminal Sciences Institute), [NEV](#), [Pastoral Carcerária](#) (the Catholic Church’s prisoner outreach service) and Acat-Brazil (Action of Christians for the Abolition of Torture).

Through an analysis of 455 rulings from all Brazil’s State Courts of Appeals, the study concluded that public officials involved in torture cases are more likely to be acquitted than private individuals (relatives, spouses, private security guards, etc.). The state employees who were convicted by trial courts were acquitted in the appeals courts in 19% of the cases. For private individuals, the rate was 10%. The data show that the courts rule differently depending on the profile of the defendant and the victim. Many of the acquittals, in the cases involving public officials, are justified by a lack of evidence. This could reveal either an alarming inability of the State to investigate torture committed by its employees or a tendency to discredit the testimony of victims who are suspected or already serving a sentence for another crime.

The recent implementation of Custody Hearings, i.e. the initial presentation of a detainee in front of a judge, public prosecutor and defender in 24 hours or less after arrest could be an important tool in preventing street torture.

In recent research, Conectas analysed the response given by authorities to torture and other dehumanizing treatments narratives that appeared in the custody hearings. Through the analysis of 420 individual cases in which an allegation or visual vestiges of torture and violence were surface during the hearings, the omission of the state was evident, with no application of the Istanbul Protocol: judges and prosecutor seldom asked direct questions aimed at elucidating the case, follow-up was obscure and could take months, no relevant questions or facts were pointed to the forensics – limiting its effectiveness in documenting torture.

- **Custody Hearings must be used as a tool against torture:** the potential of taking a person to judicial authorities less than 24 hours after arrest is an unprecedented case in the Brazilian system. The prevention of torture, including documentation of evidence as well as psychological attention to victims, must be a priority in the hearings.
- **Authorities Training:** Judges and public prosecutors that work in the custody hearings must go through specific training according to the Istanbul Protocol.

Cycle	# of Recommendation	Country	Recommendation	Topic	Evaluation	Suggestions
2012	119.60	Denmark	Work towards abolishing the separate system of military police by implementing more effective measures to tie State funding to compliance with measures aimed at reducing the incidence of extrajudicial executions by the police. (Rejected)		Despite State allegations, the separate system can be abolished through a Constitutional Amendment.	<p>Reiterate the recommendation.</p> <ul style="list-style-type: none"> <li>• <b>Independence of forensic bodies:</b> Medical forensic examinations need to be autonomous and independent from the security forces, to guarantee that they are impartial and free from pressures, particularly in cases that involve other government agents;</li> <li>• <b>Independent Internal Affairs Bodies and Ombudsman:</b> Internal Affairs (Corregedoria) and the Ombudsman (Ouvidoria) must be independent bodies and have civil society direct oversight. Data and periodic reports must be made public.</li> <li>• <b>Police oversight by the Public Prosecutor's Office:</b> The Public Prosecutor's Office must do more to fulfill its constitutional role in the oversight of police activity and to rigorously and</li> </ul>

					<p>accurately investigate all the circumstances surrounding the deaths caused by police officers;</p> <ul style="list-style-type: none"><li>• <b>Reform of the model of militarized policing:</b> There is an urgent need to reform the model of militarized policing that still views citizens as potential enemies to combat. This structural reform should be underpinned by at principles: the full-cycle of police work, wherein street policing and criminal investigation are performed by the same police force; a single career path, enabling recruits to be promoted in accordance with their professional merits, until they become officers; and independent ombuds offices and internal affairs units.</li></ul> <p><b>Ending the ‘resistance’ classification.</b> Standards urgently need to be adopted to help put a stop to massacres by the police. The approval of Bill 4471, which has been pending for two years in the Lower House of Congress, could represent an important</p>
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						step in this direction. The bill, drafted by the congressmen Paulo Teixeira, Fabio Trad, Protógenes Queiroz and Miro Teixeira, establishes that inquiries be opened into all cases of death caused by the police. It also requires the preservation of the crime scene, prevents the police from transporting victims and substitutes the expressions ‘act of resistance’ and ‘resistance followed by death’ in police reports, which were created during the military dictatorship, for ‘death resulting from police intervention’.
2012	119.61	Coreia do Sul	Take stronger action, at the federal government level, to counter “death squads”		Not implemented by omission.	<ul style="list-style-type: none"> <li>• <b>Establish a Federal Investigation on the ‘Crimes of May’:</b> the São Paulo episode must be fully taken to federal authorities. The Federal Government must prioritize this case and grant resources for the thorough investigation of said events.</li> <li>• <b>Create more effective mechanisms of Federal Investigation of Gross Violations of Human Rights:</b> The current system takes more than 10 years to bring an investigation to federal authorities. The Federal Government must implement a system of permanent oversight of local authorities on</li> </ul>

						<p>investigation of gross violations of Human Rights. Civil Society must have access to Federal Ombudsman bodies when they are not comfortable with local authorities investigating a case. The mere suspicion of the existence of “death squads” must be understood as a human rights violation and attract federal investigations.</p>
2012	119.63	Uzbequistã o	<p>Implement further measures to combating and preventing torture, as well as strengthen existing mechanisms for the implementation of the recommendations of the United Nations Committee Against Torture and other international bodies</p>		Partially Implemented	<p>Take further effort to create and integrate the national system to combat and prevent torture, facilitating the creation of local institutions.</p>

2012	119.64	Indonésia	Continue the authorities' efforts to prevent and combat torture both at the federal and state levels		Partially Implemented	<ul style="list-style-type: none"> <li>• <b>Custody Hearings must be used as a tool against torture:</b> the potential of taking a person to judicial authorities less than 24 hours after arrest is a unprecedented case in the Brazilian system. The prevention of torture, including documentation of evidence as well as psychological attention to victims, must be a priority in the hearings.</li> <li>• <b>Authorities Training:</b> Judges and public prosecutors that work in the custody hearings must go through specific training according to the Istanbul Protocol.</li> </ul>
2012	119.65	Espanha	Revise the human rights training programmes for the security forces, emphasizing the use of force according to the criteria of necessity and proportionality and putting an end to extra-judicial executions		Not Implemented. Military training for police forces limits the possibility of human rights specific topics.	

2012	119.79	Holanda	Adopt a policy of taking an explicit and published decision on instituting a federal investigation and prosecution in all cases involving violence against human rights defenders		Not implemented by omission.	Take further efforts to expedite the federal investigation of massive violations of human rights.  Develop detailed procedures to establish a permanent federal oversight over local authorities in the investigation of massive violations of human rights.
2012	19.110	Santa Sé	Accelerate the improvement of the judicial, police and prison systems in line with international human rights standards		Not implemented. Changes have not been accelerated.	

2012	119.122	República Tcheca	Ensure that all members of the police and prison officers that commit human rights violations and abuses, such as torture and ill-treatment, are held accountable		Not implemented by omission.	
2012	119.123	Alemanha	Effectively fight against arbitrary and on-duty police killings, in particular by creating a strong framework for impartial investigation		Not Implemented.	

2012	119.120	Eslováquia	Ensure that all killings by law enforcement personnel are properly registered and thoroughly, independently investigated		Not Implemented.	
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