

# Universal Periodic Review of Brazil

## Human Rights Watch's Submission to the Human Rights Council

### **I. Summary**

1. Brazil has taken some positive measures that address recommendations it received during the previous UPR cycle, such as the creation, in 2013, of a National System to Prevent and Combat Torture, and a 2015 disability rights law. Its judiciary has also taken an important step toward addressing prison overcrowding and potentially combatting police abuse by starting, in 2014, to bring some detainees before a judge promptly after arrest, as required by international law.

2. However, other serious concerns addressed by the UPR recommendations require further measures by Brazil's government. Confronted with high levels of violent crime, some Brazilian police officers continue to engage, with impunity, in abusive practices, including extrajudicial executions. Torture and ill-treatment in police custody and in prisons and jails is an enduring problem in various states. Many Brazilian detention facilities are severely overcrowded and experience high levels of violence. Some juvenile facilities subject children in conflict with the law to degrading conditions. There has also been little progress in prosecuting those responsible for atrocities committed by state agents during the military dictatorship period from 1964 to 1985.

### **II. Human Rights Issues**

#### **Public Security and Police Conduct**

3. Widespread violence, often perpetrated by criminal gangs, plagues many Brazilian cities. Police are also implicated in violent abuses, including extrajudicial executions.

4. The number of killings by police officers, including those off-duty, rose by almost 40 percent, in 2014, to more than 3,000, according to official data compiled by the nongovernmental organization (NGO) Brazilian Forum on Public Security.<sup>i</sup>

5. Police routinely report these deaths as resulting from shoot-outs with criminals. While some police killings do result from legitimate use of force, others are extrajudicial executions.

6. In our 2016 report “‘Good Cops are Afraid,’ The Toll of Unchecked Police Violence in Rio de Janeiro,” we documented 64 cases showing credible evidence that police sought to cover up unlawful killings.<sup>ii</sup> The 64 cases reflect a much broader problem, according to local justice officials, who told Human Rights Watch that a large number of the “shootouts” reported by police in the state in recent years were in fact extrajudicial executions. Official government data supports this conclusion. For instance, Rio police killed five people per each person they injured from 2013 to 2015, the reverse of what one would expect.

7. Unlawful killings by police officers take a heavy toll, not only on the victims and their families, but on the police force itself. The killings escalate cycles of violence and poison the police relationship with communities, making residents reluctant to alert officers to criminal activities, including ambushes, or to testify as witnesses. Without the cooperation of local communities in fighting crime, officers become more vulnerable. In 2014—the latest data available—398 police officers were killed in Brazil.<sup>iii</sup>

8. Justice officials in Rio de Janeiro and São Paulo told Human Rights Watch that officers responsible for abuses are rarely brought to justice. A notable exception was the conviction of homicide of 73 military police officers in 2013 and 2104 for their participation in the 1992 killing of 111 detainees in the Carandiru prison in São Paulo state. However, on September 27, 2016, an appeals court voided the convictions. One of the members of the three-judge panel claimed that “there was no massacre” and all killings were in self-defense, despite the overwhelming evidence that the detainees were executed by police.

9. The prosecutor’s offices in a few states have taken important steps to address police violence by establishing special units to investigate cases of police abuse.<sup>iv</sup> Such units should be created in every state, and in states where they exist, authorities should strengthen them by assigning sufficient personnel, resources, and expertise to ensure

effective investigation and prosecution of police abuse cases. Further steps should be taken to implement recommendations 65, 122 and 123, accepted by Brazil during the UPR in 2012, and to ensure that police who commit abuses are held accountable.

### **Prison Conditions, Torture, and Ill-Treatment of Detainees**

10. Many Brazilian prisons and jails are severely overcrowded and violent. The number of adults behind bars jumped more than 72 percent during the past decade and exceeds 622,000 people, 67 percent more than the prisons were built to hold, according to the latest figures released by the Ministry of Justice's Integrated System of Penitentiary Information (InfoPen).<sup>v</sup>

11. A key contributor to the dramatic rise of Brazil's prison population has been a 2006 drug law that replaced jail sentences for drug users with such penalties as community service but increased sentences for traffickers. The law was worded vaguely, allowing users to be prosecuted as traffickers, the reverse of the law's intent. In 2005, only nine percent of those in prison had been detained on drug charges. By 2014, the percentage had risen to 28, and among women, 64, according to the latest data available.<sup>vi</sup>

12. In a January 2016 report to the UN Human Rights Council, the UN Special Rapporteur on torture and cruel, inhuman, or degrading treatment or punishment wrote, after a visit to Brazil, that severe prison overcrowding had led to chaotic conditions that amounted to cruel, inhuman, or degrading treatment.<sup>vii</sup> Similarly, the National Mechanism for the Prevention and Combatting of Torture, whose members are appointed by Brazil's government, found human rights violations that could constitute torture and cruel, inhuman or degrading treatment in "most, if not all" of the 17 jails and prisons it inspected from April 2015 to March 2016.<sup>viii</sup>

13. In our 2015 report "The State Let Evil Take Over," Prison Crisis in the Brazilian State of Pernambuco," we documented dangerous, unhealthy and inhumane conditions in prisons that hold three times as many inmates as their official capacity. For instance, a researcher from Human Rights Watch entered a cell in Curado, the largest prison complex in Pernambuco, which provided only six cement bunks for 60 men and lacked even enough floor space for all to sleep at the same time. Detainees and two state officials told Human Rights Watch that prison officials had delegated

authority over prison grounds at Curado and the state's other detention facilities to inmates known as "keyholders," who sell drugs and extort payments from fellow prisoners.

14. The situation in the Curado complex continued dire in June 2016, when the Interamerican Court of Human Rights visited. The Court reported that "alarming" conditions there put at risk the lives of both detainees and prison staff.<sup>ix</sup>

15. In 2015, Human Rights Watch documented a lack of security at prisons in the state of Maranhão. This, aggravated by overcrowding, has been a major factor in the creation of gangs that have spread outside prison walls.<sup>x</sup> Recruitment into gangs has been facilitated by a routine practice of housing pretrial detainees—who accounted for 66 percent of all inmates, in December 2014<sup>xi</sup>—with convicted criminals, in violation of international standards. More than 90 inmates were killed in Maranhão's prisons in 2013 and 2014, most by members of rival gangs, according to data from the National Council of Justice and the Maranhão Human Rights Society.<sup>xii</sup>

16. Brazil's judiciary took an important step toward addressing prison overcrowding by starting, in 2014, to bring detainees before a judge promptly after arrest—as required by international law—in state capitals and some other jurisdictions. Such "custody hearings" help judges determine who should be in preventive detention and who should be set free pending trial. In the absence of custody hearings, detainees may wait many months to see a judge for the first time. In Brazil, 40 percent of people in prison are pretrial detainees.<sup>xiii</sup> At time of writing Brazil's Congress was examining a bill to make such hearings mandatory throughout the country.

17. Custody hearings have potential as a powerful weapon against police abuse of detainees. They allow judges to detect and hear about mistreatment soon after arrest. However, the Institute for the Defense of the Right of Defense (IDDD), an NGO, analyzed more than 700 custody hearings in São Paulo in 2015 and showed that judges asked detainees about their treatment in custody in only about 40 percent of cases, and took no action in a third of the 141 cases of alleged abuse that they heard.<sup>xiv</sup> Judges sent the rest to police internal-affairs divisions. When the IDDD published its report in May

2016, it had received no information from those divisions as to the result of any inquiry into such cases.<sup>xv</sup>

18. In its January 2016 report, the UN Special Rapporteur on torture and cruel, inhuman, or degrading treatment or punishment found that torture and ill-treatment by police and prison staff are “frighteningly regular occurrences” in Brazil.<sup>xvi</sup> Impunity for abuses remains the rule rather than the exception, the Rapporteur wrote. The government’s National Mechanism for the Prevention and Combatting of Torture, on visits to six states from April 2015 to March 2016, found cases of torture by police that ranged from beatings to electric shocks to near drownings.<sup>xvii</sup>

19. Human Rights Watch found compelling evidence that security forces or prison authorities, in 64 cases in five Brazilian states from 2000 to 2014, engaged in cruel, inhuman, or degrading treatment of people in custody.<sup>xviii</sup> In 40 of these cases, the evidence supported the conclusion that the abuse rose to the level of torture.

20. Further efforts are needed to ensure the implementation of recommendations 63, 64, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, and 78, accepted by Brazil during the previous UPR.

### **Children’s Rights**

21. Children in conflict with the law live in overcrowded conditions in some juvenile centers in Brazil. Juvenile centers held close to 22,000 children in 2014, but had capacity for only about 18,000, according to the latest data published by the National Council of the Prosecutor’s Office, which inspects those units.<sup>xix</sup>

22. The National Mechanism for the Prevention and Combatting of Torture visited nine juvenile centers in three states from April 2015 to March 2016, and found that their physical infrastructure did not comply with the Federal Government’s regulations: Instead of promoting rehabilitation and education, those centers were built as places of isolation and punishment.<sup>xx</sup> In most units, children spent more than 20 hours—and in one unit, 24 hours—locked in their rooms.<sup>xxi</sup> Conditions were especially dire in the state of Ceará, where children were kept in units that lacked mattresses, basic hygiene

products, and adequate sanitation and ventilation--and that were infested with rats and cockroaches. In one case, children were temporarily held in an adult prison, in violation of Brazilian law and international standards.<sup>xxii</sup> In all the units it visited, the Mechanism collected and reported allegations of torture and ill-treatment. It found that victims of mistreatment were usually not granted medical exams to document their injuries, and their allegations were not properly investigated by Brazilian authorities. <sup>xxiii</sup>

23. Brazil's Chamber of Deputies is examining a bill, already approved by the Senate, to raise the maximum time of internment for children in conflict with the law from 3 to 10 years. If enacted, the bill would aggravate overcrowding in the juvenile detention system. <sup>xxiv</sup>

24. Furthermore, Brazil's Senate is considering a Constitutional amendment—a version of which was approved by the Chamber of Deputies in 2015—that would allow 16- and 17-year-olds accused of serious crimes to be tried and punished as adults.<sup>xxv</sup> If enacted, the proposal would violate international norms enshrined in human rights treaties ratified by Brazil, which hold that people under 18 should not be prosecuted as adults.

### **Confronting Past Abuses**

25. Under international law, governments have an obligation to provide victims of serious human rights abuses with an effective remedy, including justice, truth, and adequate reparations.

26. In a 2014 report, a national truth commission found that human rights violations during military rule, from 1964 to 1985, were “widespread and systematic,” and planned by officials at the highest level. The report identified 377 individuals responsible for abuses, including torture, killings, and enforced disappearances.

27. The perpetrators have been shielded from justice by a 1979 amnesty law that was upheld by the Supreme Court in 2010 in a decision that the Inter-American Court of Human Rights quickly ruled was a violation of Brazil's obligations under international law.

28. Federal courts did allow the prosecution of at least two former military officers for killings during military rule, but the Supreme Court temporarily halted those prosecutions in 2014 and 2015, pending its re-examination of the validity of the amnesty law.

### **III. Recommendations to be made to the government of Brazil**

#### **Regarding Public Security and Police Violence:**

29. Ensure that all police officers who commit serious human rights abuses are brought to justice. To this end, Brazil should be urged to create or strengthen permanent units of prosecutors at the state level tasked with investigating and prosecuting police abuses, including extrajudicial killings.

30. Ensure that homicide divisions within the civil police carry out thorough and independent investigations into all police killings and cover ups.

#### **Regarding Prison Conditions, Torture, and Ill-Treatment of Detainees:**

31. Ensure respect for and protection of the human rights of all detainees, including guarantees of due process, detention conditions that comply with international and Brazilian law, and protection against cruel and inhumane treatment.

32. Establish Mechanisms to Prevent and Combat Torture, which are torture-prevention bodies, in all states.

33. Broaden the current custody hearings programs to cover all detainees and approve a bill that is pending in Congress at time of writing that would require those hearings by law.

34. Ensure thorough investigations of all allegations of torture and ill-treatment of detainees.

35. Decriminalize the possession of drugs for personal use.

#### **Children's Rights:**

36. Ensure that conditions at juvenile centers comply with international and Brazilian law.
37. Ensure thorough investigations of all allegations of torture and ill-treatment of children confined in juvenile centers.
38. Ensure that children under 18 in conflict with the law are not tried as adults, but rather are processed in juvenile justice systems designed to protect children's rights, and ensure that, in accordance with international standards, children are never incarcerated with adults.

**Regarding Confronting Past Abuses:**

39. Ensure that those responsible for grave human rights abuses committed during the military dictatorship are brought to justice.

<sup>i</sup> Fórum Brasileiro de Segurança Pública, "Anuário Brasileiro de Segurança Pública 2015," October 2015, <http://www.forumseguranca.org.br/produtos/anuario-brasileiro-de-seguranca-publica/90-anuario-brasileiro-de-seguranca-publica> (accessed October 4, 2016).

<sup>ii</sup> Human Rights Watch, "‘Good Cops are Afraid.’ The Toll of Unchecked Police Violence in Rio de Janeiro," July 2016, <https://www.hrw.org/report/2009/12/08/lethal-force/police-violence-and-public-security-rio-de-janeiro-and-sao-paulo>. See also Amnesty International, "You Killed My Son: Homicides by military police in the city of Rio de Janeiro," AMR 19/2068/2015, <https://www.amnesty.org/en/documents/amr19/2068/2015/en/> (accessed September 13, 2016).

<sup>iii</sup> Fórum Brasileiro de Segurança Pública, Anuário de Segurança Pública 2015, 2015, [http://www.forumseguranca.org.br/storage/download/anuario\\_2015.retificado\\_.pdf](http://www.forumseguranca.org.br/storage/download/anuario_2015.retificado_.pdf) (accessed September 13, 2016).

<sup>iv</sup> For instance, such units exist in the states of São Paulo and Rio de Janeiro.

<sup>v</sup> Departamento Penitenciário Nacional, "Levantamento Nacional de Informações Penitenciárias," December 2015, [http://www.justica.gov.br/seus-direitos/politica-penal/infopen\\_dez14.pdf](http://www.justica.gov.br/seus-direitos/politica-penal/infopen_dez14.pdf) (accessed September 13, 2016).

<sup>vi</sup> Luciana Baiteux and João Pedro Pádua, "A lesproporcionalidade da Lei de Drogas. Os Custos Humanos e Econômicos da Atual Política do Brasil," Coletivo de Estudos Drogas e Direito, November 2013, [http://www.drogasyderecho.org/publicaciones/prop\\_del/proporcionalidad-brasil.pdf](http://www.drogasyderecho.org/publicaciones/prop_del/proporcionalidad-brasil.pdf) (accessed September 13, 2016). Departamento Penitenciário Nacional, "Levantamento Nacional de Informações Penitenciárias," December 2015, [http://www.justica.gov.br/seus-direitos/politica-penal/infopen\\_dez14.pdf](http://www.justica.gov.br/seus-direitos/politica-penal/infopen_dez14.pdf) (accessed September 13, 2016).

<sup>vii</sup> Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Brazil, UN Doc. A/HRC/31/57/Add. 4 (January 29, 2016), p. 1, <http://www.ohchr.org/EN/Countries/LACRegion/Pages/BRIndex.aspx> (accessed September 14, 2016).

<sup>viii</sup> Mecanismo Nacional de Combate à Tortura, "Relatório Anual 2015-2016," 2016, p. 28, <http://www.cnj.jus.br/files/conteudo/arquivo/2016/06/4b63892a5643662be57c9faf221ac9d0.pdf> (accessed September 14, 2016).

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x Interamerican Court of Human Rights, "Corte Interamericana observó in situ las condiciones de detención de personas privadas de libertad en el complejo penitenciario Curado en Brasil," June 10, 2016, [http://www.corteidh.or.cr/docs/comunicados/cp\\_17\\_16.pdf](http://www.corteidh.or.cr/docs/comunicados/cp_17_16.pdf) (accessed September 14, 2016).

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x Human Rights Watch, "Brazil: Prison Crisis Spurs Rights Reform," April 8, 2015, <https://www.hrw.org/news/2015/04/08/brazil-prison-crisis-spurs-rights-reform>

xi Departamento Penitenciário Nacional, "Levantamento Nacional de Informações Penitenciárias," December 2015, p. 25, [http://www.justica.gov.br/seus-direitos/politica-penal/infopen\\_dez14.pdf](http://www.justica.gov.br/seus-direitos/politica-penal/infopen_dez14.pdf) (accessed September 14, 2016).

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xii Human Rights Watch, "Brazil: Prison Crisis Spurs Rights Reform," April 8, 2015, <https://www.hrw.org/news/2015/04/08/brazil-prison-crisis-spurs-rights-reform>

xiii Departamento Penitenciário Nacional, "Levantamento Nacional de Informações Penitenciárias," December 2015, [http://www.justica.gov.br/seus-direitos/politica-penal/infopen\\_dez14.pdf](http://www.justica.gov.br/seus-direitos/politica-penal/infopen_dez14.pdf) (accessed September 13, 2016).

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xiv Instituto de Defesa do Direito da Defesa, "Relatório do IDDD de monitoramento das audiências de custódia em São Paulo é apresentado em evento do CNJ sobre tortura e violência," June 27, 2016, <http://www.iddd.org.br/index.php/2016/06/27/relatorio-do-idd-de-monitoramento-das-audiencias-de-custodia-em-sao-paulo-e-apresentado-em-evento-do-cnj-sobre-tortura-e-violencia/> (accessed September 13, 2016).

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xv <http://www.iddd.org.br/index.php/2016/06/27/relatorio-do-idd-de-monitoramento-das-audiencias-de-custodia-em-sao-paulo-e-apresentado-em-evento-do-cnj-sobre-tortura-e-violencia/>

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xvi Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Brazil, UN Doc. A/HRC/31/57/Add. 4 (January 29, 2016), p. 1, <http://www.ohchr.org/EN/Countries/LACRegion/Pages/BRIndex.aspx> (accessed September 14, 2016).

xvii Mecanismo Nacional de Combate à Tortura, "Relatório Anual 2015-2016," 2016, p. 28, <http://www.cnj.jus.br/files/conteudo/arquivo/2016/06/4b63892a5643662be57c9faf221ac9d0.pdf> (accessed September 14, 2016).

xviii Human Rights Watch, "Brazil: Reforms Fail to End Torture," July 28, 2014, <https://www.hrw.org/news/2014/07/28/brazil-reforms-fail-end-torture>

xxix [http://www.cnpm.mp.br/portal/images/Um\\_Olhar\\_mais\\_Atento\\_09.06\\_WEB.pdf](http://www.cnpm.mp.br/portal/images/Um_Olhar_mais_Atento_09.06_WEB.pdf)

xx Mecanismo Nacional de Combate à Tortura, "Relatório Anual 2015-2016," 2016, p. 49, <http://www.cnj.jus.br/files/conteudo/arquivo/2016/06/4b63892a5643662be57c9faf221ac9d0.pdf> (accessed September 14, 2016).

xxxi Mecanismo Nacional de Combate à Tortura, "Relatório Anual 2015-2016," 2016, p. 54, <http://www.cnj.jus.br/files/conteudo/arquivo/2016/06/4b63892a5643662be57c9faf221ac9d0.pdf> (accessed September 14, 2016).

xxxii Mecanismo Nacional de Combate à Tortura, "Relatório Anual 2015-2016," 2016, p. 50, <http://www.cnj.jus.br/files/conteudo/arquivo/2016/06/4b63892a5643662be57c9faf221ac9d0.pdf> (accessed September 14, 2016).

xxxiii Mecanismo Nacional de Combate à Tortura, "Relatório Anual 2015-2016," 2016, p. 55, <http://www.cnj.jus.br/files/conteudo/arquivo/2016/06/4b63892a5643662be57c9faf221ac9d0.pdf> (accessed September 14, 2016).

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<sup>xxiv</sup> Bill No. 2517/2015, 2015.

<sup>xxv</sup> Proposal of Constitutional Amendment No. 33/2012, 2012