



Brazil

Amnesty International submission to the UN Universal Periodic Review 13th session of the UPR Working Group, May-June 2012

Follow up to the previous review

During its previous review in 2008, Brazil supported recommendations to evaluate outcomes of activities relating to the promotion of human rights,¹ to continue efforts to reduce poverty and inequality,² to intensify efforts to guarantee the security of human rights defenders,³ to establish a National Human Rights Institution,⁴ to enhance access to justice,⁵ and to improve prison conditions.⁶ While Brazil has made progress in addressing poverty and recognizing the need to address economic and social violations, serious human rights violations continue to pervade the country.

With respect to evaluating outcomes of activities related to the promotion of human rights, Brazil has failed to establish mechanisms for monitoring and evaluating its compliance with international human rights standards. The collection of relevant statistics at municipal, state and federal level is inconsistent, severely hindering effective policy making. While the Minister of Justice has promised to institute a system of conditionality on the transfer of federal public security funds, pending the provision by states of regular statistics on crime, the promised system of human rights benchmarks has yet to be instituted. The federal government has also failed to comply with international recommendations to produce a yearly national human rights report, as part of its national human rights plan of action, and to provide a voluntary mid-term report for the UPR.

Brazil has made notable and well-documented advances in the reduction of poverty. Nevertheless, the most recent census showed that 16.2 million Brazilians continue to live in extreme poverty with 4.8 million receiving no income. Over sixty per cent of those living in extreme poverty are black or of mixed-race. This sector of the population persistently suffers the most severe human rights violations, including denial of access to basic services, police violence, lack of protection from criminals and forced evictions.

Similarly, while the federal authorities have taken positive steps on the issue of human rights defenders – including through recognizing their role and creating a National Program for the Protection of Human Rights Defenders - long-awaited legislation to confirm the official status of the program has yet to be passed, and even in states that have adopted the program concerns remain for their security.⁷

Brazil has still to create a National Human Rights Institution that complies with the requirements set out under the Paris Principles.⁸ The long-awaited legislation to create the National Human Rights Council (*Conselho Nacional de Direitos Humanos*), to replace the existing *Conselho de Defesa dos*

Direitos da Pessoa Humana, has been pending in Congress since 1994.⁹ There is concern, however, that the proposed legislation does not go far enough to ensure that the new Council is fully independent of the executive functions of government.¹⁰

In terms of access to justice, the process which transfers the investigation and prosecution of human rights crimes to federal jurisdiction remains slow and cumbersome.¹¹ Though some public defenders' offices have been created in certain states, where they did not exist previously, the criminal justice system remains discriminatory, with the poorest Brazilians struggling to attain access to justice. Thousands of detainees, very often poor afro-descendants, spend months or even years in pre-trial detention awaiting court hearings, or remain detained following the completion of their sentence.

As regards the detention system, little progress has been made since the previous UPR. Prisons continue to suffer from extreme overcrowding, corruption and inadequate structures, resulting in detainees being held in cruel, inhuman and degrading conditions.¹² Many detention centers continue to be dominated by gangs, contributing to riots and violence between prisoners. In the northern state of Maranhão, for example, 94 detainees have been killed since 2007.¹³ In October 2010, 18 prisoners were killed by rival factions, four through decapitation, during riots against overcrowding. In February 2011 a further six were killed in similar incidents in a police cell. Across the country, violence and abuse against women and juveniles in detention is similarly endemic, with reported cases of women and juveniles detained with adult males and suffering violence and sexual abuse.¹⁴

Normative and institutional framework of the State

Crimes of the past

On 18 November 2011, President Rousseff ratified two laws: the first creating an access to information law, limiting the period state secrets can be held to fifty years; the second creating a Truth Commission to investigate human rights violations committed between 1946 and 1988, well beyond the 21 years of the military dictatorship that it was initially intended to cover. While some have welcomed the creation of such a commission, concerns remain that the limitations placed on it, most notably upholding the 1979 Amnesty law, will not provide justice for thousands killed, disappeared or tortured.¹⁵

In April 2010, the Federal Supreme Court ruled that law 6,883/79, known as the Amnesty Law, which had been interpreted to include acts of torture and extra-judicial execution as political acts and thus exempt from prosecution, could only be overturned by the legislature. However, in December 2010, the Inter-American Court of Human Rights ruled on the *Julia Gomes Lund and Others* case that the provisions preventing sanction and investigation of past human rights violations were invalid.¹⁶ A bill reinterpreting the Amnesty Law has been presented to Congress, where it is still pending.¹⁷

National Human Rights Plan

The presentation of Brazil's Third National Human Rights Plan (*Terceiro Plano Nacional de Direitos Humanos*) in December 2009, following widespread consultations, demonstrates the importance that federal authorities accord to their obligations under international law. However, the decision by former President Lula to revoke passages relating to the right to abortion, the protection of land

activists, and crimes of the past, following pressure from the Catholic church, the landowners lobby and the military, highlights the continued vulnerability of human rights policy to vested political interests.¹⁸

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and its Optional Protocol

The Subcommittee on Prevention of Torture visited Brazil in September 2011, and a confidential report will be submitted to the government. In October 2011, a bill was sent to Congress for the creation of a National Preventative Mechanism and a National Committee for the Prevention and Eradication of Torture in line with requirements under the Optional Protocol. Last-minute alterations allowing the president alone to select all members of the National Committee were challenged by civil society.¹⁹ Legislation for the creation of state-level preventative mechanisms has been passed in Paraíba, Alagoas and Rio de Janeiro, although a lack of financial resources has hindered its effective implementation.²⁰

Promotion and protection of human rights on the ground

Public security

This year, according to media reports, federal budgets for projects under the National Program for Public Security with Citizenship have been severely cut. At the same time reductions in homicide rates in the south and southeast have been matched by notable increases in the north and centre of the country. In 2010 there were 40,974 homicides in Brazil.²¹ According to a 2011 study on national homicide rates, 39.7% of all youth deaths were the result of homicides.²² The vast majority of these were Afro-Brazilians from deprived backgrounds.²³

Policing continues to be discriminatory and abusive in the context of military-style operations which persistently put the poorest communities at greater risk.

The lack of effective systems for registering, investigating and monitoring cases of excessive use of force by the police have virtually institutionalized impunity. This has contributed to the high numbers injured or killed by law enforcement agents.²⁴

The endemic culture of human rights violations and impunity, which characterizes policing in Brazil, has fostered criminality amongst law enforcement agents. Parliamentary and police investigations show the continued existence of death squads around the country. These gangs, predominantly made up of off-duty police officers, act as paid vigilantes for local businessmen, to perform acts of social cleansing. In February, in the state of Goiás, the federal police operation *Sexto Mandamento* led to the arrest of 19 military police officers, including the sub-commander of the military police, accused of involvement in death squads. In São Paulo a report by the Civil Police attributed 150 deaths between 2006 and 2010 to death squads in the city.

In Rio de Janeiro, off-duty and former law enforcement agents have set up organized crime gangs, known as *milícias*, involved in extorting poor communities and running illegal and irregular businesses, while also developing increasing political power bases over the communities they dominate.

In August 2011, Rio de Janeiro state judge Patrícia Acioli was killed outside her home in Niterói. She had been overseeing numerous cases of police officers involved in criminal and corrupt practices. Shortly after her death 11 military police officers, including one senior officer, were charged with her murder. In the wake of her assassination, State Deputy Marcelo Freixo, who presided over a parliamentary inquiry into the *milícias*, suffered seven death threats in the space of a month, and was forced to travel abroad for a short period.

Torture and ill-treatment in the detention system

Eleven years after the Special Rapporteur on torture visited Brazil, the use of torture remains entrenched across the country. In April 2010, Eduardo Luís Pinheiro dos Santos, a 30 year old Afro-Brazilian motorcycle courier, was tortured to death inside a military police base in São Paulo. He died after being repeatedly kicked in the face and beaten with sticks and a chain by a group of police officers. Twelve police officers were later charged in connection with his death.

Efforts have been made to combat this scourge, with the federal government launching a number of initiatives, including hotlines, training projects and publicity campaigns. However, the lack of statistics relating to prosecutions under Brazil's torture law makes it difficult to evaluate the extent of impunity.²⁵

Indigenous Peoples

Indigenous Peoples across Brazil continue to suffer discrimination, extreme deprivation, threats, attacks and even killings. Often they suffer these abuses as a result of defending their constitutional rights to ancestral land, a process obstructed by government negligence and a slow and sometimes partial judicial system.²⁶

The expansion of agro-industry as well as large-scale development projects are also placing Indigenous Peoples, even those already settled on ancestral lands, in increasing peril. In October 2011, President Rousseff presented a decree to facilitate the provision of environmental licenses for major development projects, especially those impacting on Indigenous lands. Indigenous groups and human rights organizations have launched a campaign in protest at the move.²⁷

Proposals to develop the Belo Monte dam in the state of Pará threaten the future of numerous Indigenous Peoples and local fishing communities. The UN Special Rapporteur on the rights of indigenous peoples said that Indigenous Peoples affected by the dam had not been "adequately consulted" prior to initiating construction.²⁸ Several challenges are still pending in the courts, though construction has continued. In April 2011, the Inter-American Commission on Human Rights issued precautionary measures on behalf of the Indigenous communities of the Xingu River Basin, calling on Brazil to suspend the licensing process pending free, prior and informed consultations with affected groups, the adoption of measures to safeguard the lives of those living in voluntary isolation and measures to prevent the spread of diseases.²⁹ Brazil responded that all necessary consultations and impact studies had already been undertaken and that the Commission's measures were "precipitous and unjustified". Brazil subsequently withdrew its representative to the Organisation of American States, withdrew a future candidate for the Inter-American Commission on Human Rights and

suspended its annual payment of US\$800,000 to the Commission. The government refused to attend a hearing in Washington in October 2011 to discuss a modified version of the precautionary measures which are still in place. These actions flout Brazil's promise, made on its accession to the UN Human Rights Council, to "continue to work for the strengthening of the Inter-American Human Rights System".³⁰

Access to land and housing

Millions of Brazilians continue to live without security of tenure. Those fighting for access to land in rural areas suffer forced evictions, intimidation, threats and killings. On 30 October 2010, Flaviano Pinto Neto, leader of the Charco community, was killed by local landowners while fighting for the right to be officially recognized as a *quilombo* (a constitutionally recognized community formed by Afro-Brazilian descendants of freed slaves).

In Brazil's urban centres, large-scale development projects have left poor communities vulnerable to intimidation and forced eviction. In April 2011, the UN Special Rapporteur on adequate housing expressed concern about the "lack of transparency, consultation, dialogue, fair negotiation, and participation of the affected communities in processes concerning evictions undertaken or planned in connection with the World Cup and Olympics".³¹ On 22 October 2010, bulldozers arrived at the Restinga community and began demolishing homes and small shops that had operated in the area for more than 20 years, to make way for the construction of a highway in Recreio dos Bandeirantes, Rio de Janeiro. Many of the families that used to live and work in Restinga have since lost their jobs and sources of income.³²

Recommendations for action by the State under review

Amnesty International calls on the government of Brazil to:

Follow up to the previous review:

- Ensure that the federal and state authorities work more effectively in producing data, statistics and regular human rights reports, to allow for the better creation and evaluation of policy and legislation;
- Pass legislation to confirm the official status of the National Program for the Protection of Human Rights Defenders;
- Take action to improve prison conditions, in line with the commitment it made during its previous review.

Crimes of the past:

- Ensure that the Truth Commission is properly mandated, independent and resourced to guarantee that the victims of violations perpetrated by the 1964-1985 military regime have full access to justice as well as truth and reparation;
- Fully implement the ruling of the Inter-American Court of Human Rights in the *Julia Gomes Lund and Others* case, especially in relation to law 6,883/79 (the Amnesty Law) to enable the prosecution of acts of torture and extra-judicial executions, and ensure that victims of human rights violations and their families have full access to justice.

The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and its Optional Protocol:

- Complete efforts to create national and state preventative mechanisms, with all states creating and implementing the necessary legislation for this process, and ensuring that all such mechanisms operate in accordance with the Paris Principles and are fully and independently funded so as to be effective;
- Submit its second periodic report to the Committee against Torture, mindful that the initial report was submitted 11 years ago;
- Agree to the publication of the report of the Subcommittee on the Prevention on Torture, following its visit to Brazil in September 2011.

Public security:

- Pass legislation to bring the registration and investigation of all killings by the police in line with international human rights law and standards; to end the description of police killings as “acts of resistance” in national law; to ensure that all crime scenes are properly secured and that forensic teams are independent of the police; and to create a national register to ensure effective national oversight;
- Investigate and prosecute criminality in the police service, and to pass pending legislation to allow for the federalization of investigations into the activities of *milícias* and death squads, and the classification of such groups as criminal;
- Ensure the protection of those involved in denouncing, investigating and prosecuting police criminality, and to conduct thorough investigations into the killing and threats against those conducting such investigations.

Indigenous Peoples:

- Ensure that Indigenous Peoples are able to defend their constitutional right to ancestral lands without suffering discrimination, deprivation, threats, attacks or killings;
- Fully implement the requirements, set out in the 1988 Constitution, to demarcate and ratify Indigenous lands;
- Establish mechanisms and procedures, in consultation with Indigenous Peoples and in line with international human rights standards, to guarantee their right to free, prior and informed consent before projects that may affect Indigenous rights are initiated;
- Abide by promises made by Brazil on election to the UN Human Rights Council to comply with and strengthen the Inter-American Human Rights system.

Access to land and housing:

- Address the plight of individuals and communities fighting for access to land and security of tenure in rural areas, and protect them from forced evictions, intimidation, threats and killings;

- Fulfill obligations under the International Covenant on Economic, Social and Cultural Rights, municipal law and the Brazilian Constitution, including by giving residents full and timely information about government proposals affecting their community; engaging in a genuine negotiation with the community to explore all alternatives to eviction; and where necessary offering full compensation or alternative, adequate housing close to the existing community.

¹ Report of the Working Group on the Universal Periodic Review of Brazil, 22 May 2008 (A/HRC/8/27) recommendation 83.3 (United Kingdom).

² A/HRC/8/27, recommendation 83.1 (Belgium).

³ A/HRC/8/27, recommendation 83.4 (Belgium).

⁴ A/HRC/8/27, recommendation 83.14 (Mexico).

⁵ A/HRC/8/27, recommendation 83.8 (Mexico).

⁶ A/HRC/8/27, recommendation 83.5 (Republic of Korea) and recommendation 83.6 (Germany).

⁷ At time of writing, five states have adopted the program as pilot schemes. Two states are in the process of joining.

⁸ Principles relating to the Status of National Institutions (The Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993.

⁹ Projeto de Lei no 4.715, de 1994.

¹⁰ See Amnesty International, "Amnesty International's recommendations on national human rights institutions" (Index: IOR 40/007/2001).

¹¹ To this day only one human rights case, that of the killing of lawyer and former town councillor Manoel Mattos who worked against the spread of police-led death squads, has been federalized.

¹² The numbers of people held in detention nationally rose from 232,755 in 2000 to 496,251 in 2010, when there was a short fall of 181,379 spaces. See Departamento Penitenciário Nacional do Ministério da Justiça – InfoPen, available at:

<http://portal.mj.gov.br/depen/data/Pages/MJD574E9CEITEMIDC37B2AE94C6840068B1624D28407509CPTBRNN.htm> (accessed 18 November 2011).

¹³ Statistics from the State Bar Association.

¹⁴ In September 2011, a 14 year old girl escaped from the Colônia Penal Agrícola Heleno Fragoso, a semi-open prison in the municipality of Santa Isabel do Pará, where she had been lured to and subsequently drugged and raped for a period of four days.

¹⁵ These include, among other things: recognizing the validity of the 1979 Amnesty law, thus strongly undermining the possibility of justice; extending the period to be investigated to double that of the 1964-1985 military regime, further hindering the Commission's work; withdrawing all mention of the military from the mandate of the Commission; and, threatening the Commission's independence as the selection of its members will fall to the president alone.

¹⁶ The ruling on the 'Julia Gomes Lund and Others' case, concerning the disappeared of the "Guerilha do Araguaia", stated that the Amnesty Law's provisions preventing sanction and investigation of past human rights violations contravene the American Convention on Human Rights and thus are invalid.

¹⁷ Federal deputy Luisa Erundina has presented a bill to Congress (Projeto de Lei N° 573, de 2011) which reinterprets the Amnesty Law and the provisions which protect perpetrators of crimes against humanity.

¹⁸ Under Decree No. 7,177 in March 2010.

¹⁹ In a public statement the Catholic Church's prisons ministry and local NGO *Justiça Global* repudiated the changes, stating that they contravened the requirement under the Optional Protocol to comply with the Paris Principles.

²⁰ Only Rio de Janeiro has implemented the mechanism.

²¹ Waiselfisz, Julio Jacobo, "Mapa da Violencia 2011: Os Jovens do Brasil", Instituto Sangari, 2011 page 8.

²² Waiselfisz, Julio Jacobo, "Mapa da Violencia 2011: Os Jovens do Brasil", page 7.

²³ Waiselfisz, Julio Jacobo, "Mapa da Violencia 2011: Os Jovens do Brasil", page 20.

²⁴ Police in São Paulo killed 1,804 people between January 2008 and September 2011, while in Rio de Janeiro 3,414 were killed between January 2008 and June 2011.

²⁵ Law No. 9.455, 7 April 1997.

²⁶ In 2011, newly elected President Dilma Rousseff insisted that the creation of all "working groups" to identify and demarcate indigenous lands should pass through her office, leading to protests from Indigenous and human rights groups. No Indigenous land has been ratified in 2011.

²⁷ Portaria 419/2011 signed by the Ministries of Health, Justice and Environment.

²⁸ See Cases Examined by the Special Rapporteur, June 2009 – July 2010, Addendum to the Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (UN Doc: A/HRC/15/37/Add.1) 15 September 2010, V.

"Brazil: Situation of the Belo Monte Dam in Pará". Also available at: <http://unsr.jamesanaya.org/cases-2010/05-brazil-situation-of-the-belo-monte-dam-in-the-state-of-para> (accessed 18 November 2011).

²⁹ PM 382/10: Indigenous Communities of the Xingu River Basin, Pará, Brazil, Precautionary Measures Granted by the Commission during 2011, Inter-American Commission on Human Rights, available at: <http://www.cidh.oas.org/medidas/2011.eng.htm> (accessed 28 November 2011).

³⁰ *Note verbale* from the Permanent Mission of Brazil to the United Nations addressed to the President of the General Assembly, 17 March 2008, Distr: General 1 April 2008.

³¹ Raquel Rolnik said that she had received denunciations of evictions involving human rights violations in cities across Brazil, including: São Paulo, Rio de Janeiro, Belo Horizonte, Curitiba, Porto Alegre, Recife, Natal and Fortaleza.

³² See Amnesty International, *Brazil: Urgent Action - Community at Imminent Risk of Forced Eviction*, UA: 229/10 (Index: AMR 19/015/2010) 29 October 2010.