

Universal Periodic Review Submission

Brazil

November 2011

I. Summary

Brazil's congress adopted a law on October 25, 2011 expanding public access to government information, implementing a recommendation accepted by Brazil during the previous UPR cycle. However, other serious concerns addressed by the UPR recommendations –all of them being accepted by Brazil in 2008 – require further measures by the Dilma Rousseff administration. Faced with high levels of violent crime, some Brazilian police units throughout the country engage in abusive practices with impunity, instead of pursuing sound policing practices. Many Brazilian prisons and jails are severely overcrowded and experience high levels of violence. Torture is a chronic problem at certain detention centers and police stations in various states. 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

Widespread violence perpetrated by criminal gangs and abusive police plagues many Brazilian cities. Unlawful police violence, including extrajudicial executions, is an enduring problem, particularly in Rio de Janeiro and São Paulo. Police officers often claim these are "resistance" killings that occur in confrontations with criminals. While many police killings may result from legitimate use of force by police officers, many others do not, a fact documented by Human Rights Watch and recognized by Brazilian criminal justice officials.

Militias composed of police, jail guards, firefighters and others have been implicated in far-reaching extortion schemes and execution-style killings throughout Brazil. Justice and elected officials who investigate cases of unlawful violence by police officers face threats of violence.

According to the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, state criminal justice systems rely almost entirely on police investigators to resolve cases of police violence, leaving police largely to police themselves. In 2010 São Paulo's attorney general took an important step to address the problem of police violence by establishing that all cases involving alleged police abuse be investigated by a special unit of prosecutors. Another positive example can be found in Brasilia, where a police oversight unit in the Prosecutor's Office of the Federal District routinely investigates police killing and torture cases. Further steps must be taken to implement the recommendations 2 and 3 accepted by Brazil during the previous UPR in 2008 and to ensure that police who commit abuses are held accountable in Brazil.

Detention Conditions

Further efforts are needed to ensure the implementation of recommendations 3; 6 and 7 accepted by Brazil during the previous UPR in 2008. Many Brazilian prisons and jails remain violent and severely overcrowded. Delays within the justice system contribute to the overcrowding: almost half of all inmates are in pre-trial detention. Detainees frequently have no access to a lawyer or to bail and may wait months even for an initial appearance before a judge. HIV and tuberculosis prevalence rates in Brazilian prisons are far higher than rates in the general population; inhumane conditions facilitate the spread of disease, and prisoners' access to medical care remains inadequate.

Physical abuse only compounds the ill health of inmates. Torture is a chronic problem at certain Brazilian detention centers and police stations.

On September 30, 2011, President Dilma Rouseff proposed legislation to create a National System to Prevent and Combat Torture to monitor detention centers throughout the country and investigate allegations of torture and ill-treatment. The bill is under the consideration of the Congress.

Confronting Past Abuses

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. The

Inter-American Court of Human Rights determined in November 2010 that Brazil's amnesty law is incompatible with this obligation, holding that the amnesty law cannot bar the investigation and prosecution of those responsible for serious human rights violations. Calls for accountability in Brazil have grown in the past two years.

State agents were responsible for systematic human rights violations during the military dictatorship period from 1964 to 1985, including extrajudicial killings, forced disappearances, torture, arbitrary detention, and the curtailment of free expression. According to official estimates, around 50,000 persons were detained just in the first months of the dictatorship and roughly 10,000 went into exile during that period. *Brazil: Never Again (Brasil: Nunca Mais)*, an authoritative report secretly researched using the archives of Brazil's military justice system and released by the São Paulo Archdiocese in 1985, described 1,918 accounts of torture from 1964 to 1979 and noted that its source material excluded an "incalculable" number of other cases.

To date, more than 12,000 victims of these abuses have been granted financial compensation by the government. In October 2011, Congress also approved a law creating a truth commission charged with "examining and clarifying" human rights abuses committed between 1946 and 1988. However, there has been little progress in prosecuting those responsible for atrocities. No Brazilian official has been criminally charged for human rights violations committed during the dictatorship. A 1979 amnesty law has thus far been interpreted to bar prosecutions of state agents, an interpretation that the Supreme Court reaffirmed in April 2010.

III. Recommendations to be made to the government of Brazil

Regarding Public Security and Police Violence:

- Ensure that all police officers who break the law are brought to justice. To this end, Brazil should be urged to actively promote the creation of permanent units within public prosecutors offices at the state level specialized in police killing cases, with sufficient personnel, resources, and expertise to ensure effective investigation and prosecution of police abuse cases.

- Link the disbursement of federal funds for state programs to strict benchmarks mandating a sharp reduction in killings by police officers, with particular attention to “resistance” killing by police.
- Increase the involvement of the federal police in efforts to counter militias and death squads, particularly when and where states are unwilling or unable to address the problem.
- Ensure that state Ombudsman offices have the resources to provide effective external oversight.
- The Attorney General of Brazil, for his part, should take a more active role in ensuring that individual rights are respected by Brazilian state and local police forces.
- The Secretariat for Human Rights of Brazil should create a permanent federal forensics team specializing in the investigation of human rights crimes. The team should conduct direct examinations or review the performance of state-level forensics investigators.

Regarding Detention Conditions:

- Ensure respect for and protection of the human rights of all detainees, including guarantees of due process and protection against cruel and inhumane treatment.
- Ensure that Congress, for its part, quickly approves the legislation proposed on September 20, 2011 creating a National System to Prevent and Combat Torture to monitor detention centers throughout the country and investigate allegations of torture and ill-treatment.
- Take prompt action to improve medical care throughout detention centers and decrease overcrowding by increasing the use of bail, parole, and non-custodial sentencing options. Specifically, federal and state officials must monitor the

enforcement of the law passed on July 4, 2011 prohibiting pre-trial detention for crimes punishable by less than four years in jail.

Regarding Confronting Past Abuses:

- Take immediate steps to investigate the atrocities committed during the military dictatorship period and ensure that perpetrators are brought to justice. Efforts should be made to ensure the right of victims to an effective remedy, including justice, truth, and adequate reparations.
- Guarantee that the National Truth Commission can carry out its work with independence and sufficient resources and personnel.