

MEMO TO THE
SUB-COMMITTEE ON THE PREVENTION OF TORTURE (SPT)

FROM OPCAT BRAZIL RESEARCH PROJECT – NATHAN DUNFORD, TAVO HALL, DANIEL LUBARSKY-FORD AND DANE NEILSON, SUPERVISED BY PROFESSOR DANIEL ROTHENBERG AND EMOLINE FOX, PROGRAM COORDINATOR OF THE CENTER FOR LAW AND GLOBAL AFFAIRS, SANDRA DAY O’CONNOR COLLEGE OF LAW, ARIZONA STATE UNIVERSITY, USA

TO SUB-COMMITTEE ON THE PREVENTION OF TORTURE

SUBJECT PREPARATION FOR SITE VISIT TO BRAZIL

DATE MAY 5, 2011

This memo is designed to assist the Sub-Committee on the Prevention of Torture (SPT) in preparation for their upcoming visit to Brazil. The memo was prepared by the OPCAT Brazil Research Project composed of a team of post-graduate law students working at the Center for Law and Global Affairs at the Sandra Day O’Connor College of Law at Arizona State University.

This memo is organized as follows:

1. Overview of issues for the SPT
2. Key contacts
3. Sites to visit with analysis by the OPCAT Brazil Research Project team

The research team also prepared a detailed Country Brief for Brazil that modeled on SPT material following a site visit to Bolivia.

And the team collected primary and secondary source documents for use by the SPT which can be accessed online as described in separate memo.

The goal of the OPCAT Brazil Research Project is to assist the SPT and to contribute to both the prevention of torture and ill-treatment in Brazil and around the world.

1. OVERVIEW OF ISSUES FOR SPT SITE VISIT AND COUNTRY BRIEF

The OPCAT Brazil Research Team has identified the following key themes for the SPT site visit to Brazil:

OVERARCHING ISSUES

Poverty and inequality – One quarter of Brazilians live below the poverty line and the country has among the highest levels of economic inequality in the Americas. While the country has made great progress in recent years through antipoverty programs such as the *Bolsa Familia*, the nation faces many challenges in establishing basic conditions of equality, rendering more effective governance difficult and contributing to crime, generalized insecurity and demands for rapid and often inconsistent state action.

Rising crime and public perception – There is enormous popular interest and associated fear regarding crime in Brazil, with a general belief that crime is increasing and insecurity is rising. This encourages more aggressive actions on the part of law enforcement and may enable harsher sentences and an attitude less conducive to the full provision of due process protections as required by law.

Legacy of authoritarian rule – From 1964 until 1985, Brazil was ruled by populist and military governments that sanctioned the systematic use of torture in dealing with its political opponents. While the country has benefited from a significant and largely successful process of democratic consolidation, some legacies of the prior authoritarian government remain including the continuing jurisdiction of military courts for allegations of torture by military police and the fact that a full accounting of past violations has not yet occurred as evidenced by the 2009 National Program for Human Rights call for a military abuses inquiry focusing on torture, killings, and disappearances during the military dictatorship.

Structural barriers to effective governance and broad state legitimacy – Severe inequality, rising crime rates, structural problems of governance and other factors contribute to an environment in which poor people accused of committing crimes are often treated in an abusive manner. This often begins at the time of arrest and continues as a result of institutionalized due process violations, further continuing at times of detention (whether pre-trial or post-conviction). In turn, there exists substantial mistrust between less empowered members of Brazilian society and the government, especially in terms of relations with the police and courts. According to a 2009 report by the World Organization Against Torture (OMCT), there is a growing phenomenon of criminalizing poverty in Brazil where police use poverty as a form of social profiling and identifying the “typical” suspect. Brazil’s poorest and most marginalized communities are commonly victims of abuse by the police and the criminal justice system creating profound mistrust and dysfunction that enable ongoing violations and demand more creative substantive responses for any possible resolution.

Sense of impunity – Police and prison abuse is common and few state agents are ever prosecuted, contributing to a general sense of impunity in Brazil. Public prosecutors do not adequately voice concerns regarding this issue and the minimal levels of accountability for state agents severely impacts the way in which state agents are perceived, especially among socially disempowered populations.

Acknowledging Brazil's efforts at reform – While the nation's judiciary, police and prisons fail to meet international standards or domestic law, it is important to recognize the significant advances made by Brazil in the consolidation of democracy and, in the last several years, improvements as regards the passage of new laws and the creation of new institutions to combat torture and other forms of ill-treatment.

KEY RULE OF LAW ISSUES

Institutionalized abuse and torture – Torture and ill-treatment by the police and within prisons is common in Brazil. Police enforcement practices are often brutal, arbitrary, and illegal. Conditions in prisons often violate international and domestic standards. Abusive practices among the five police agencies as well as in various levels of the prison system stem less from a lack of viable legislation than from problems associated with inadequacies within mechanisms for controlling the activity of state agents.

Existing institutions to combat torture and ill-treatment – There is a need to strengthen key institutions – the Special Secretariat for Human Rights, the General Coordination for the Combat of Torture, the National Committee for the Control and Prevention of Torture, the Standing Committee to Combat Torture and Institutional Violence, etc. – and to implement meaningful actions plans. Improved state response to prevent torture and ill-treatment includes clear benchmarks for documenting torture and abuse and then demonstrating that these violations are addressed through substantive actions backed up by statistics. Some of the ideas proposed in the Integrated Action Plan for the Prevention and Fight Against Torture should be implemented including installing cameras in prisons and penitentiaries, frequent unannounced visits to prisons by prosecutors, public defenders, and NGOs, videotaping of all police interrogations and increased organization and training of state committees and community councils to monitor prisons. In addition, efforts could be made to improve the work of the Police Ombudsmen and to strengthen the activities of the Police Internal Affairs units. Additional financial and technical support for community councils may also be beneficial.

General due process violations – Currently, individuals arrested and those processed through the criminal justice system face significant and systematic due process violations. For example, torture or cruel, inhuman or degrading treatment remains a tool often used by police during their unsupervised inquiries, both as of impunity a means to extract confessions as well as to gather information from the defendant or third parties. Under Brazilian law, confessions are allowed as evidence with few restrictions on their use in court. As a result, confessions, including coerced or involuntary confessions, are widely used by prosecutors—possibly encouraging

police torture an abuse during the inquiry stage of criminal investigations. In addition, approximately 80 percent of those prisoners that cannot afford a lawyer are never appointed one by the state, violating yet another of the nation's basic constitutionally protected due process rights.

Lengthy pre-trial detentions – By all accounts, one of the major problems within Brazil's criminal justice system are the very high rates of lengthy pre-trial detention, even for petty crimes. Many times, defendants spend more time in pre-trial detention than the maximum sentences for the crimes they are accused of having committed could possibly carry, and many more remain in detention long after they have officially completed their sentences. In 2009, 44 percent of those held in custody were in pre-trial detention. Many of these pre-trial detainees have been found to be held in security level inappropriate for the crimes they allegedly committed and have been detained for far longer as a pre-trial detainee than they would have expected if sentenced. Most of these prisoners are being held in police stations due to overcrowding in the prisons.

Prison overcrowding and violence – The National Council of Justice reported that in 2009, the population of Brazil's prisons was over 470,000 which makes it the fourth highest prison population in the world. From 1995-2009, the number of prisoners has grown steadily and the Brazilian Government's National Penitentiary Department determined that in June 2008, the number of prisoners being detained in Brazil's prisons exceeded the capacity in which the prisons were designed to hold by 40 per cent. To add to the problem, about 3,000 additional prisoners are being added to the prison population every month. There has been progress towards building new prisons but this has not solved the problem. In 2007, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions observed that the occupancy of the prisons was often three to four times greater than what prisons were designed to hold. Overcrowding is itself a violation and often leads to unrest, violence and riots, many of them leading to fatalities.

Special issues faced by women, minors, children indigenous peoples, LGBT and others – Women, children, indigenous peoples, LGBT populations and others are sometimes subjected to torture, abuse and other violations while in police custody and/or in prisons. For example, government investigations have found that many states do not provide separate prison facilities for women and that female prisoners are sometimes sexually abused. There are reports of significant violations relate to the arrest and trials of minors as well as conditions in juvenile detention facilities. LGBT communities face substantial violence and abuse on the part of police, prison officials and in relation to the denial of due process protections. The treatment of indigenous peoples, who are among the most marginalized members of Brazilian society, often involves a variety of violations that require focused and improved policy responses.

2. KEY CONTACTS

This section presents a list of key contacts that the OPCAT Research Team believes would be useful for interviews by the SPT based on interviews and research (please note that some of the names of specific contacts and their emails and/or telephone numbers may have changed).

BRAZILIAN GOVERNMENT

Brazilian prison system

1. A Secretaria de Administração Penitenciária
(The Department of Penitentiary Administration, Sao Paulo)
Gal Av. Ataliba Leonel, 556 - Santana Ataliba Leonel, 556 – Santana
CEP: 02033-000
São Paulo - SP
e-mail: imprensa@sap.sp.gov.br
Phone: (11) 3206-4801
2. Ministério Público do Estado de São Paulo
(Prosecutor of the State of Sao Paulo – has legal mandate to inspect place of detention)
Rua Riachuelo, 115 - Bela Vista
Sao Paulo, 01007-000, Brazil
Phone: (11) 3119-9000

Conselho da Comunidade (Community Council)

Established by the Criminal Execution law No. 7,210/1984, articles 80 and 81, the Community Council is the organ of the judiciary designed to effectuate the participation of society, through representatives of their various segments, in the execution of criminal sentences, mainly the deprivation of liberty (detention) and the return to family and social life of egress (ex-convict). The Community Council's mission is to bring warmth into the prisons and decrease the distance between the citizen who fulfills his penalty and society where they originated, and where they will return.

The Community Council seeks to develop socio-educational activities, encouraging the prisoner and the egress to return to study, attend lectures and courses of professional improvement developed by this Council; the Council also seeks partnerships with companies and institutions for the promotion of lawful employment and income; provides lectures and presentations that aim to show the difficulties encountered by them (ex-presidiários) on his return to society.

All of the regions shall have a Council of the community, irrespective if the towns members of the regions have prisons or not. In all cities there are people who meet their criminal sentence, and the Board of the community is to

contribute to their social integration. It is the responsibility of the community boards to supervise the prisons and the conditions for compliance, reporting to federal bodies of justice any irregularities.

Rio de Janeiro

E-mail: riodejaneiro@conselhodacomunidade.com.br

Sao Paulo

E-mail: saopaulo@conselhodacomunidade.com.br

Salvador, Bahia

E-mail: salvador@conselhodacomunidade.com.br

Fortaleza, Ceara

E-mail: fortaleza@conselhodacomunidade.com.br

Belo Horizonte, Minas Gerais

E-mail: belohorizonte@conselhodacomunidade.com.br

There is no conselho in the state of Amazonas which includes Brazil's 7th largest city- Manaus.

Recife, PE

E-mail: recife@conselhodacomunidade.com.br

Porto Alegre, RS

E-mail: portoalegre@conselhodacomunidade.com.br

Women's issues

1. Brazilian Special Secretariat of Policies for Women
Secretaria de Políticas para as Mulheres – SPM
Presidenta: Iriny Lopes - Ministra da SPM
e-mail: iriny.lopes@spmulheres.gov.br
Substitute: Rosana Ramos - Secretária Adjunta da SPM
e-mail: rosana.ramos@spmulheres.gov.br
2. Women –only police stations
Delegacia de Defesa da Mulher – Parque Dom Pedro
São Paulo/SP
Phone: (11) 3241-3328, (open 24 hours)
Other DM in São Paulo: <http://copodeleite.rits.org.br/apc-aa-patriciagalvao/home/noticias.shtml?x=162>

Human rights

1. Office for Human Rights of the Presidency - SEDH
Secretaria dos Direitos Humanos da Presidência da República – SEDH
Name: Jana Macedo
e-mail: jana.macedo@sedh.gov.br
Substitute: Patricia Cristina Lessa Franco
e-mail: patricia.franco@sedh.gov.br

Minors and children

1. Center for Specialized Juvenile Attention
(Centro de Atendimento Juvenil Especializado, CAJE)
SGAN 916 s/n md F
Brasília - DF, 70790-160, Brazil
Phone: (61) 3274-5005
2. The State Foundation for the Well-Being of Minors
(Fundação Estadual do Bem-Estar do Menor, FEBEM) in São Paulo
Rua Florêncio Abreu, 848 - Sao Paulo
Phone: (11) 3311-6615

Indigenous Issues

1. FUNAI (Fundação Nacional do Índio) - Ministry of Justice
SEPS Quadra 702/902 Projeção A,
Ed. Lex 70.390-025 - Brasília/DF
Phone: (61) 3313-3500

People with disabilities

General Coordinator of the National Coordination Office for the Integration of People with Disabilities – CORDE
(Subsecretaria Nacional de Promoção dos Direitos da Pessoa com Deficiência – CORDE)
Setor Comercial Sul "B"
Quadra 09, Lote C, Torre A, Edifício Parque Cidade Corporate
70308-200 - Brasília - DF
e-mail: corde@sedh.gov.br
site: www.presidencia.gov.br/sedh
Subsecretária Nacional: Izabel Madeira de Loureiro Maior

DOMESTIC NGOS

Groups working on torture, ill-treatment and human rights

1. Grupo Tortura Nunca Mais do Rio de Janeiro
E-mail: gtnm@alternex.com.br
Phone: +21 2286 8762
2. Movimento Nacional de Direitos Humanos (MNDH)
Address: SEPN 506, Block "C" mezzanine room 14-A, CEP: 70740-503, Brasília- DF
E-mail: denuncia@mndh.org.br
3. Sociedade Paraense de Defesa de Direitos Humanos (SDDH)
Address: Av. Governador José Malcher, 1383 Nazaré 66055-09, Belém Brazil
Phone: +55 91 3225 1950
E-mail: sddh_didh@hotmail.com
Website: <http://www.sddh.kit.net>
4. Centro de Defesa, Garantia e Promoção dos Direitos Humanos (IBISS)
Address: Av. Mem de Sã, 118 Centro 20230-15, Rio de Janeiro Brazil
Phone: +55 21 232 91 44
E-mail: orgdhpl@ruralrj.com.br
Website: <http://www.alcazar.com/rm/rmuk/rmbrazil.html>
5. Gabinete de Assessoria Jurídica as Organizações Populares (GAJOP)
Address: Sossego Street, 432, Boa Vista, Brazil, CEP 50050-080
Phone: + 81 3092 5252
3. Prison Ministry (Pastoral Carcerária)
(Catholic Church)
Address: Clovis Bevilacqua Square, 351, conj.501 - Centro - 01018-001 - São Paulo – SP
Phone: +11 3101 9419
E-mail: imprensa@carceraria.org.br
Site: <http://www.carceraria.org.br>

Groups working on indigenous rights issues

1. Coordinator of Indigenous Organizations of the Brazilian Amazon (COIAB)
President: Jecinaldo Barbosa Cabral
Address: Av. Ayrao, 235 – Presidente Vargas
Phone: 5592-2330749
Fax: 5592-2330209
E-mail: comunicacao@coiab.com.br
Web Site: www.coiab.com.br

2. The Federation of Indigenous Organizations of the Rio Negro (FOIRN)
Associação Saúde Sem Limites
Rua Barão de Itapetininga, nº 120 - sala 906
República, São Paulo- SP
CEP 01042-000
Phone: +11- 3256- 1036

3. Indigenous Council of the State of Roraima (CIR);
CIR (Conselho Indígena de Roraima)
Av. Sebastião Diniz, 2630, São Vicente
CEP 69303-120
Phone: +55-95 3224-5761
Fax: +55-95 3624-2452
Email: cir.@terra.com.br
Departamento Jurídico: cirjuri@terra.com.br

LGBT Rights

1. Grupo Gay da Bahia
Lad S Miguel, 24 - Pelourinho
Salvador - BA, 40026-030, Brazil
Phone: +71 3322-2552 or +71 9989 -4748
Fax: 55 (71) 3322 2552
Website: <http://www.ggb.org.br/ggb-ingles.html>

INTERNATIONAL/REGIONAL NGOs

1. APT (Association for the Prevention of Torture)
Barbara Bernath, Detention Monitoring Program Officer- Chief of Operations
Phone: +41 22 919 2184

2. Sylvia Dias, Acting Director of the Office of APT for Latin America/APT
Delegate for Brazil
Email: sdias@apt.ch
Phone: +507 317 1021

3. Elena Villalba, Administrator of the Office of APT for Latin America
Phone: +507 317 1021

4. World Organization against Torture and Action by Christians against Torture
(ACAT-Brazil)
Email: fi.acat@wanadoo.fr
Address: 27 rue de Maubeuge, 75009 Paris, France
Phone: +33 1 42 80 01 60
Fax: +33 1 42 80 20 89

EXPERTS AND SOURCES FOR RESEARCH

Brazilian law and legal system

1. Edelenice Passos
(Information & Documentation Secretary of the Federal Senate)
Email: edilenice@infolegis.com.br
Sites: <http://www.infolegis.com.br/> -
<http://www.nyulawglobal.org/Globalex/Brazil.htm>
2. Julita Lemgruber
(Director of the Center for Studies on Public Security and Citizenship, at
University Candido Mendes)
Email: jlemgruber@candidomendes.edu.br
Site: <http://www.ucamcesec.com.br/english.php#staff>

3. SITES TO VISIT

This section presents an analysis by the OPCAT Brazil Research Project team to assist the SPT in structuring its site visits to prisons, police stations and other sites.

List of Prisons the SPT may want to visit

1. Aníbal Bruno Prison—Recife, Pernambuco.
Piedade Jaboatao dos Guarapapes PE, CEP 54410 001
Contact- Revd Miguel Uchoa Cavalcanti
Phone +55 81 3462 3121
Relevant Community Council: Conselho da Comunidade de Recife-PE
recife@conselhodacomunidade.com.br
In Pernambuco, 61 prison deaths were reported during the first ten months of 2007, with 23 occurring in the Anibal Bruno prison, including more than a dozen killings in 2007. Amnesty International reported that in Aníbal Bruno Prison, at least three died and 43 were injured after a riot broke out in November 2007.
2. Polinter-Neves penitentiary in Sao Goncalo, Rio de Janeiro
This prison was granted precautionary measures by the IACHR in 2009 because of allegation that inmates did not have adequate access to medical attention and that some inmates with tuberculosis and other contagious diseases shared cells with other persons in a highly over-crowded situation.
3. Novo Horizonte Jail, Espírito Santo
Despite accusations of torture and ill-treatment, the Brazilian government barred entry to prison cells to the Community Council (Conselho Da Comunidade), which has the duty to monitor the prison system under state law. In 2009, The National Council of Justice found detainees confined in metal containers and cells, a lack of hygiene, deaths, dismemberment, torture, abuse and a lack of judicial and administrative control over the situation in Espírito Santo prisons.
4. Cascuvi Prison, Espírito Santo
National Council for Criminal and Penitentiary Policy reported the absence of electricity and showers, inmate advocacy, privacy, legal counsel, and reformatory activity. Drinking water provided once daily and food was sporadically served. There is an infestation of rodents and pests and limited medical access. The facility is designed for 370 prisoners but more than 1,170 prisoners are there.
5. Monte Mor jail in São Paulo
HRW reported overcrowding in this prison 119 female prisoners were reportedly being held in a partially roofless jail cell built for 12.
6. Urso Branco Prison—Porto Velho, Rondonia.
HRW reported that more than 100 inmates have been murdered despite provisional measures issued by the Inter- American Court of Human Rights mandating that Brazil protect inmates.

7. Unidade de Internação Provisório, Amazonas
Amazonas's pretrial detention where nearly every detainee HRW spoke to said they had been hit by police officers while in a local police station.
8. The department of larceny (DEPATRI) of the Secretariat of Public Security in São Paulo
According to the NGO Pastoral Carcerária de São Paulo, 400 to 450 prisoners suffered torture in 1998. According to an investigation undertaken by the Internal Affairs Division, 107 out of 129 examinations resulted in confirmation of bodily harm.
9. Centro de Internação Espaço Recomeço annex, Ananideua, Pará (Espaço Recomeço detention center for youth)
Phone: (91) 3255-2111
Human Rights Watch noted that youth detained here were subject to torture by guards and poor prison conditions. One youth was burned to death. HRW also noted that there were no classes for those in cell confinement.
10. Vicente de Carvalho Police Station
Conectas Human Rights reported that since the closure of the Guarujá Detention Center, inmates were transferred to the Vicente de Carvalho Police Station which reportedly is committing severe human rights violations.

List of Juvenile Detention Centers the SPT may want to visit:

1. The Socio-Educational Internment Facility (Unidad de Internación Socioeducativa, UNIS)
Adolescents in the facility were granted precautionary measures by the IACHR due to allegations that many of the inmates were subjected to beatings and acts of aggression and torture, allegedly by State agents and by other adolescents.
2. FEBEM (Foundation for the Well-Being of Minors) juvenile detention system, São Paulo (Fundação Estadual do Bem Estar do Menor)
Many human rights groups were blocked from visiting the FEBEM juvenile detention system, visited by the Special Rapporteur in 2000, where it is reported that torture and ill-treatment remains widespread and systematic. "Between January 2001 and July 2005, 269 investigations into incidents of torture were passed onto the police by the state public prosecutor's office. Seventeen separate criminal proceedings have been brought against 227 FEBEM employees. Out of these, 17 employees were convicted at first instance." Amnesty International noted "punishments in FEBEM's overcrowded and under-staffed detention centers are arbitrary and often designed to humiliate".
3. The General Department for Socio-Educational Measures (*Departamento Geral de Ações Sócio-Educativas*, DEGASE) in Rio de Janeiro
Diretor Geral: Alexandre Azevedo de Jesus
Chefe de Gabinete: Lilian Souza Alves
Email: dirdegase@degase.rj.gov.br

Phone(s): 2334-6645 / 2334-6698

DEGASE run juvenile detention centers are the site of many youth riots and HRW reported a 17-year-old was tortured to death by guards in one of their facilities)

4. Centro de Internação Provisória, Amapá
(Provisional detention center, Amapá)

HRW noted that most youth were in pre-trial detention for no more than 45 days but hear that some were detained longer by judicial order which violates Chapter III of the Statute of the Child and Adolescent.