United Nations CAT/OP/BRA/2/Add.1

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
31 March 2014
English
Original: Spanish

Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

First response of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to replies of Brazil to the recommendations and requests for information made by the Subcommittee on Prevention of Torture in its report on its first periodic visit to Brazil

Addendum

Replies by Brazil to the first response of the Subcommittee* **

* The present document is being issued without formal editing.

** On 28 February 2014, the State party announced its decision to make public its replies to the Subcommittee's first response. This document is published in accordance with article 16, paragraph 2, of the Optional Protocol.

GE.14-42059 (E) 020614 040614
1442059

Contents

*** The annexes may be consulted in the files of the Subcommittee secretariat.

I. Introduction

1. The Brazilian State is firmly committed to combating torture and other cruel or inhuman treatment or punishment, and to achieve this aim it implements specific and effective solutions to improve the situation of persons deprived of liberty throughout the national territory.

2. In this context, Brazil welcomes the dialogue with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in follow-up to the visit that the Subcommittee paid to the country in September 2011, and values the recommendations received, which complement and strengthen the role of reports from national supervisory bodies, such as the National Council of Justice, the National Council of the Department of Prosecution, the Office of the National Prison Ombudsman and the Human Rights Secretariat of the Office of the President, in addition to the newly created National Mechanism to Prevent and Combat Torture.

3. At the highest levels of the State, Brazil is acting with the intention of sending a clear message against torture, be it through declarations, the adoption of new legal instruments to prevent this kind of violation, or the development of public policies on the matter. It is worth highlighting, in this regard, the adoption of Act No. 12847 of 2 August 2013, creating the National Mechanism to Prevent and Combat Torture and the National System for the Prevention of Torture, in accordance with the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Details of the Mechanism are provided in the next section. Attention should also be drawn to the recent speech by the President of the Republic, Dilma Rousseff, at the nineteenth Human Rights Prize award ceremony on 12 December 2013, in which she stated:

> "We are, ladies and gentlemen, concerned with the need to create all the conditions to ensure respect for our Constitution, which prohibits the subjection of any citizen to torture or other cruel, inhuman or degrading treatment. … Having undergone torture, I know that it entails utter disrespect for the basic fact that a person is a human being. We are determined to change that situation. **So we welcome the issuance of implementing regulations for the Act establishing the National System to Prevent and Combat Torture. The Brazilian State does not accept, nor will it ever accept, the use of torture on any citizen.**" [Emphasis added]

4. Owing to the strength of this commitment, it should be made clear from the outset, regarding the Subcommittee's comments about the federal structure of the country, that the Brazilian State does not use federalism as an excuse to justify the occurrence of human rights violations in the prison system. On the contrary, the idea behind a constitutional division of competences between federal entities is to create joint lines of action to fulfil the commitment shared by the entire Brazilian State to prevent and combat torture. The federal structure of Brazil certainly poses challenges in terms of the effectiveness of policies, but it in no way weakens the nature of the country's commitment.

5. Cooperation with federal entities and local movements are of great importance in the implementation of effective measures to combat torture and inhuman or degrading treatment. The role of the Federal Government is to introduce improvements to the prison system of states through the use of resources and training. Moreover, the National Council of Justice and the National Council of the Department of Prosecution work directly to handle complaints, reduce incarceration rates and ensure that sentences are served appropriately in the federal entities.

6. An example of this work of initiating improvements, which involves the Federal Government, the states and the Department of Prosecution, is the method used to disseminate the report on the Subcommittee's visit – one of the questions put to the Brazilian State. On 14 June 2012, thanks to the wide publicity given to the report by the Federal Government, the Office of the Federal Attorney for Citizens' Rights, of the Federal Department of Prosecution, chose as one of its priorities for action the monitoring of the implementation of the Subcommittee's recommendations. Through its Working Group on the Prison System, the Federal Attorney's Office wrote to the state secretariat and ministries responsible for prison administration in the states of São Paulo, Rio de Janeiro, Goiás and Espírito Santo, requesting detailed information on the measures adopted to implement the Subcommittee's recommendations. Thus monitoring is done directly through the institutional authority of the Department of Prosecution.

7. With regard to publicizing the Subcommittee's reports, the Brazilian State maintains that disseminating the recommendations in the report makes it possible for the debate on guaranteeing the rights of the prison population to be conducted in a transparent and constructive manner, in a spirit of international cooperation and productive dialogue with civil society. Following this reasoning, the country also published its October 2012 reply, and will do the same with the Subcommittee's comments of May 2014 and this communication from the State.

8. Another example showing that the aim of cooperation between Brazil's federal entities is compliance with international norms, and not the opposite, is the complementarity between the National Mechanism to Prevent and Combat Torture and state mechanisms. As will be shown below, the law establishing Brazil's national preventive mechanism is not limited to encouraging the creation of state mechanisms. It also provides that, in federal entities that do not have their own mechanisms, the national mechanism can operate independently and directly.

9. The policy to combat torture in Brazil is not carried out by the Federal Government alone, then, but rather by various authorities in concert. The State's efforts thus centre on coordinating initiatives by the Federal Department of Prosecution, the National Council of Justice and the National Council of Public Defenders, in addition to those of the Executive. Similarly, the Judiciary is determined to improve oversight of prison sentences and of socio-educational measures by means of on-site inspections and recommendations by the National Council of Justice to criminal court judges.

10. Given that these efforts at inter-institutional coordination are key to eradicating the practice of torture in Brazil, an inter-institutional cooperation agreement on "measures to improve the prison system and reduce the shortfalls in capacity" has been in force since October 2013, involving the executive, legislative and judicial branches and the Department of Prosecution, with clearly defined goals and actions. Details are given in section 3 of this report.

11. It is hoped that this report can show how the efforts of the different institutions of the Republic can be concentrated in order to produce concrete and effective improvements in the situation of persons deprived of their liberty in Brazil as quickly as possible. It is structured around three central concepts — preventing and combating torture, the prison system and the socio-educational system — on the basis of which the majority of the questions raised by the Subcommittee in its communication to the Brazilian State will be answered.

12. In emphasizing the main activities related to the implementation of the Subcommittee's recommendations, the State recognizes the difficulties faced and describes the efforts being made by the different bodies of the executive, legislative and judicial branches, and by state governments. It is hoped that this exercise will promote more

constructive engagement by the various national and international actors that can help improve the detention conditions of persons deprived of their liberty in Brazil.

II. Preventing and combating torture

13. The Brazilian State first wishes to highlight the establishment of the National Mechanism to Prevent and Combat Torture. As noted on a number of occasions by the Subcommittee in its communication, the Brazilian State shares the view that the establishment of an effective, fully independent and adequately funded national preventive mechanism provides a comprehensive answer to all the Subcommittee's recommendations.

14. The section detailing additional preventive measures gives more of the clarifications sought by the Subcommittee in its communication, particularly in respect of the creation of regional mechanisms to prevent and combat torture, the development of campaigns and training courses as part of a "zero-tolerance" approach to torture, and the establishment of complaints systems.

A. National Mechanism to Prevent and Combat Torture

15. In the Subcommittee's report on its visit to Brazil (CAT/OP/BRA/1), the establishment of a national preventive mechanism was addressed in paragraphs 15 to 17.[1] In the first response of the Subcommittee to Brazil's replies to the Subcommittee's recommendations and requests for information (CAT/OP/BRA/2), the establishment of the mechanism is the subject of further comments,[2] in which the Subcommittee requests the latest version of the bill, an amendment guaranteeing the independence of visits, and urgent adoption of the bill. It is important to state that these concerns were addressed with the entry into force of Act No. 12847 of 2 August 2013 (annex I).

16. Act No. 12847 was an important step towards the formulation of a State policy to tackle serious human rights violations in places of deprivation of liberty. The new Act is the result of the rich, intense, transparent and lengthy consultation process launched when Brazil ratified the Optional Protocol to the Convention against Torture on 12 January 2007.

[1] "The SPT recommends that the State party introduce the necessary changes, so as to guarantee an open, transparent and inclusive process, in particular of civil society, for the selection and appointment of NPM members. The SPT also recommends that provision be made for gender balance and ethnic and minority representation in the NPM composition." (CAT/OP/BRA/1, para. 17).

[2] The Subcommittee made five requests in relation to the national preventive mechanism for Brazil:

(a) "Regular independent oversight through visits by members of the judiciary, the NPM (which the SPT hopes will soon be established), the regional preventive visiting mechanism […] and other groups such as NGOs" (CAT/OP/BRA/2, para. 25);

(b) "That this process should be expedited and that the legislation should be in force with the least possible delay. The SPT requests further details of the Bill's status and progress through Parliament" (ibid., para. 27);

(c) "The SPT repeats the recommendation which it made at paragraph 17 of its visit Report. The SPT further requests to be sent a copy, for its comment, on the most recent legislative Bill as it is being decided before Parliament" (ibid., para. 28);

(d) "The SPT requests that Brazil clarifies the NPM's rights of access provided for in the draft legislation" (ibid., para. 30);

(e) "The SPT requests a copy of the most recent draft legislation for its comments, and requests to be kept informed of its progress as the draft Bill is adopted" (ibid., para. 31).

17. As April 2007, aware of the obligation to establish independent national preventive mechanisms for the prevention of torture at the domestic level, as set out in article 17 of the Optional Protocol, the Brazilian State organized a national seminar together with the Association for the Prevention of Torture (APT), during which there was a debate about the general principles of preventive mechanisms to combat torture.

18. In February 2008, during the drafting of the report of the universal periodic review mechanism of the United Nations Human Rights Council, the Brazilian State reaffirmed its commitment to creating a national preventive mechanism, which, after countless discussions, was called the National Mechanism to Prevent and Combat Torture, in accordance with the guidelines and requirements laid down in the Optional Protocol.

19. The bill that became Act No. 12847/2013 was based on the Optional Protocol and also complied with the recommendations in the Subcommittee's preliminary guidelines for the ongoing development of national preventive mechanisms (CAT/C/40/2, chap. IV, sect. B).

20. Act No. 12847/2013 guarantees the autonomy of the National Mechanism. It establishes that the members of the Mechanism must possess the professional skills and knowledge to fulfil their mandate, and states that the National Mechanism must be given the resources it needs to function properly. It should be underlined, in this context, that the members of the National Mechanism will be completely independent in their actions and their mandate will be fully guaranteed. They can only be removed by the President of the Republic, and only if convicted in court of a criminal offence, or following disciplinary proceedings, in accordance with Act No. 8112 of 11 December 1990, on the legal regime governing civil servants of the Union, and Act No. 8429 of 2 June 1992, on the penalties applicable to public officials for illicit enrichment while discharging their mandate, post, office or function in public administration. In other words, a member of the National Mechanism may be removed only after being convicted of a crime in court, or following disciplinary proceedings for illicit enrichment.

21. One innovation is that the National Mechanism establishes a system of regular visits to places of deprivation of liberty with the aim of preventing torture rather than reacting to it, in addition to carrying out regular, periodic monitoring of custodial units. To ensure its effective functioning, article 10 of Act No. 12847/2013 guarantees the National Mechanism and its members access without special authorization to all the information and records related to the number, identity, detention conditions and treatment of persons deprived of their liberty; independence of position and opinion in the exercise of their functions; the right to interview persons deprived of their liberty or any other person who might be able to give relevant information, in confidence and with no witnesses, in a place where the necessary security and secrecy are guaranteed; and freedom to choose what places to visit and who to interview. The Mechanism can also request reports from government experts, and its own reports may be used as evidence in court.

22. Moreover, to make the Mechanism's work more transparent, the law provides that the information obtained in its inspections shall be made public, as stipulated in the Access to Information Act (Act No. 12527 of 18 November 2011). This enables any citizen to access the Mechanism's reports and contribute to the debate in Brazilian society on preventing and combating torture.

23. In addition to creating the National Mechanism, the new Act established the National System to Prevent and Combat Torture to coordinate the work of public and private bodies and entities with legal or statutory powers of monitoring or oversight of facilities and units housing persons deprived of their liberty, or that defend the rights and interests of persons deprived of their liberty.

24. Accordingly, Act No. 2847/2013 provides that the National System shall be composed of the National Committee on Preventing and Combating Torture in Brazil, the National Mechanism itself, the National Council on Criminal and Penitentiary Policy and the Ministry of Justice body responsible for the national prison system, and may also include national or state bodies, entities and authorities. Thus the National System, balances the needs of the various national institutions with relevant competence and powers for independence, effectiveness, efficiency and cooperation.

25. The Act also defined the concept of persons deprived of their liberty: persons obliged, by order of a judicial or administrative authority, to live in public or private premises, that they cannot leave independently or freely; such premises to include long-term internment facilities, detention centres, prisons, psychiatric hospitals, short-term detention centres, socio-educational institutions for adolescents in conflict with the law and military disciplinary detention centres, such as facilities run by the bodies listed under article 61 of Act No. 7210 of 11 July 1984.

26. The new definition covers all places of deprivation of liberty, and any form of detention, imprisonment, containment or custody, in public or private control or supervision facilities, or in public or private internment, shelter or treatment units. The definition of deprivation of liberty follows relevant international guidelines, and opens up new areas where the State can intervene directly to prevent torture.

27. In addition to the National Committee, the National Mechanism, the National Penitentiary Department and the National Council, the new legislation gives state committees and mechanisms, and other bodies and entities, a stronger role in the National System. As a result, states are accountable to the National System and are also eligible for resources from the Human Rights Secretariat of the Office of the President to develop policies to prevent and combat torture. This relationship will be fundamental in the coordination of public policies because, on the one hand, it will ensure that there are guidelines for action to prevent and combat torture in Brazil, and on the other, it will guarantee that states and the Federal District have federal resources to equip their committees and mechanisms[3] with social participation, autonomy and independence, as stipulated in Act No. 12847. As a preventive and complementary measure, the Act establishes that, in federal entities that have not yet established their own mechanisms, or where the mechanisms are inoperative or compromised, the National Mechanism will take direct action independently.

28. With the specific objective of ensuring the operation of the National Committee and the National Mechanism, the Office of the President presented a preliminary bill to create posts in the administration of the National System. In that context, Act No. 12857 of 2

[3] The structure of the Brazilian State gives states, the Federal District and local councils autonomy in respect of policies formulated by the Union. Thus Brazil's model of public policy means that policies are not automatically binding on states or the Federal District. In order to improve the situation, the Federal Government ties resource allocations to observance of a given policy. For the policy to prevent and combat torture, the situation is no different: the Federal Government has adopted a system to prevent and combat torture, and hopes that by providing resources it can implement the same system in the federal entities. The question of torture can then be analysed in terms of adherence by committees and mechanisms to the National System, and also in terms of participation in the decisions taken by the National Penitentiary Fund, the National Public Security Fund, the National Fund for Older Persons and the National Fund for Children and Adolescents, based on the analyses conducted by the National System, the National Committee and the National Mechanism.

September 2013[4] guarantees resources to maintain the National Mechanism and pay the salaries of its 11 members.

29. With the aim of regulating Act No. 12847/2013 and establishing guidelines regarding the composition and operation of the National Committee on Preventing and Combating Torture, the President of the Republic solemnly signed Decree No. 8154 of 16 December 2013 during the first World Human Rights Forum (see annex II). The Decree formally establishes that the National Mechanism to Prevent and Combat Torture shall comprise 11 experts, who shall be selected by the National Committee and appointed by the President of the Republic on a three-year renewable mandate. The selection of National Mechanism members shall reflect diversity of race, ethnicity, sex and religion, in full conformity with the Optional Protocol.

30. Lastly, it is important to mention the publication of the first call for nominations of 30 January 2014, in which national professional associations and civil society organizations are invited to present names for the National Committee for the biennium 2014–2015 (see annex III). This invitation illustrates the commitment of the Brazilian State to transparency in forming the National Committee, as well as independence of action and opinion.

31. Act No. 12847 is therefore a major step forward in the development of a State policy to deal with serious human rights violations in places of deprivation of liberty. By creating the National System, the Brazilian State has consolidated a network of actors at the national and local levels that will help coordinate action to prevent and combat torture. The network will, for example, facilitate the exchange of good practices, the organization of measures to implement the recommendations of the National Mechanism, and the negotiation of solutions to issues raised by international bodies with regard to deprivation of liberty.

B. Additional measures for the prevention of torture in Brazil

32. Brazil has been putting its Plan of Integrated Action for Preventing and Combating Torture in Brazil into effect through the Human Rights Secretariat of the Office of the President[5] since 2006.

33. The Torture Prevention Plan is a Federal Government policy and as such is not automatically binding on the federal entities. The Government has thus negotiated acceptance by the states and the Federal District and persuaded state governments, judiciaries, prosecution services and legislatures to agree to take steps to implement the Plan.

34. In particular, state governments have committed themselves to establishing and running committees and mechanisms to prevent and combat torture. To date, 18 states have

[4] It is important to clarify that the posts created by Act No. 12857/2013 are commission posts, that is to say, of indeterminate duration and indefinite resources, provisional and destined only for managerial, executive and advisory positions. In other words, National Mechanism experts may be civil servants, who have passed public examinations, or may become public servants through appointment. In the latter case, they will not be employed on a permanent basis, and may be removed from their post even in the absence of a court conviction, through an administrative process or a periodic performance appraisal process.

[5] The second version of the Plan of Integrated Action for Preventing and Combating Torture in Brazil, which came out in 2010, included provision for the creation of state preventive mechanisms and guidelines for the third National Human Rights Programme (PNDH-3).

joined the Torture Prevention Plan,[6] 16 have established state committees[7] and 5 have set up state mechanisms.[8]

35. In exchange for states' joining the Torture Prevention Plan, the Federal Government supports and coordinates joint action to combat and prevent torture, for example by conducting training courses on the monitoring of places of deprivation of liberty, on expert forensic examinations in torture cases and on the role of legal professionals in efforts to combat torture.

36. With a view to broadening efforts to combat the use of torture, promoting the establishment of committees and encouraging mutual learning from experience, the Human Rights Secretariat of the Office of the President also recently carried out the following activities:

(a) A seminar on torture was held under the auspices of the Peace and Human Rights Study Unit of the University of Brasilia in 2010. It was aimed at people working in fields connected with torture prevention, in government and elsewhere: judges, prosecutors, delegates, public defenders, forensic doctors, crime experts, representatives of human rights bodies and civil society groups focusing on torture issues. At the event, the Human Rights Secretariat, in association with the Ministry of Justice Amnesty Commission, launched the Torture is a Crime information campaign. During that campaign, 600,000 information leaflets, posters and stickers with such slogans as "Torture is a crime", "Torture is a crime against humanity", "There is no bail for the crime of torture" and "Torture cannot go unpunished" were distributed;

(b) The first regional meeting of the state anti-torture committees in the North-east and Acre took place over three days in June 2010 in the city of Teresina, in Piauí. Representatives of state anti-torture committees, governmental or not, took part and discussed federal and state anti-torture policy, as well as the third National Human Rights Plan and the Torture Prevention Plan. Committee representatives were able to share experiences and establish priority goals to guide their work between August 2010 and August 2011. The first national meeting of state anti-torture committees took place in October 2010 in Brasilia. Its main objective was to provide a forum for the exchange of information and experience regarding how the matter of torture is dealt with in the different states, which have implemented the Torture Prevention Plan to varying degrees;

(c) The first national meeting of state anti-torture committees and mechanisms took place on 9–10 May 2013 and attracted approximately 120 participants from the following states: Acre, Alagoas, Amapá, Bahia, Ceará, Espírito Santo, Goiás, Maranhão,

[6] Acre, Pará, Maranhão, Piauí, Ceará, Rio Grande do Norte, Paraíba, Pernambuco, Alagoas, Sergipe, Bahia, Espírito Santo, Rio de Janeiro, Paraná, Rio Grande do Sul, Goiás, Distrito Federal (Federal District) and Mato Grosso.

[7] It needs to be made clear that the idea of setting up committees predates the Torture Prevention Plan. As stated in paragraph 5 of this report, the first committees for receiving complaints and raising awareness were organized by civil society. The committees' work has over time come to include evaluation and programme proposals, and the drafting, development and monitoring of relevant public policy. They have also taken on administrative and legal tasks, as well as making proposals for legislation. There are currently committees in: Acre, Pará, Maranhão, Piauí, Ceará, Rio Grande do Norte, Paraíba, Pernambuco, Alagoas, Bahia, Espírito Santo, Rio de Janeiro, Paraná, Rio Grande do Sul, Santa Catarina and Goiás. The establishment of committees has been actively encouraged since 2001, when the first initiatives to combat torture were carried out, and has been boosted under the Plan. In some cases therefore, such as in Rio Grande do Sul, the committee was set up before the state signed up to the Plan. Santa Catarina, for example, has not signed up even though it has a state committee.

[8] Alagoas, Paraíba, Rio de Janeiro, Pernambuco and Espírito Santo.

Mato Grosso, Pará, Paraná, Paraíba, Pernambuco, Piauí, Río de Janeiro, Río Grande do Norte, Río Grande do Sul, Rondônia, Santa Catarina, São Paulo and Tocantins. The event, which brought together institutions, officials and local and national political figures, not only enabled participants to share their experiences but, most importantly, led to the establishment of policy guidelines on (i) community-based initiatives; (ii) transparency and public accountability; (iii) the monitoring of complaints; and (iv) visits to places of deprivation of liberty. The following themes were also discussed: (i) preventing and combating torture in Brazil; (ii) the National System for the Prevention of Torture; (iii) reporting and the importance of data collection; (iv) places of deprivation of liberty: characteristics and strategies; and lastly, (v) complaints procedure: claims, forms, referrals and monitoring;[9]

(d) A seminar on protecting Brazilians against torture, run by the Human Rights Secretariat of the Office of the President in Porto Velho with the Rondônia State Court of Justice and Public Prosecution Service was held at the Court on 11–12 April 2013 and attracted 107 participants to its five presentations and two workshops. The same event was staged in Porto Alegre, with the support of the Río Grande do Sul State Public Prosecution Service, on 1–2 July 2013. Around 40 legal professionals and civil society representatives took part.

37. The Human Rights Secretariat of the Office of the President also uses posters to promote the prohibition of torture as part of its Torture: a Crime against Humanity Yesterday, Today, Always campaign of August 2013. As part of the campaign, the Human Rights Secretariat of the Office of the President sent out posters to state human rights secretariats for distribution in places of detention.[10] Posters were also sent out to the human rights commissions in state branches of the Brazilian Bar Association, centres for children and adolescents in the states, and state anti-torture committees, mechanisms and human rights councils.

38. With regard to complaints mechanisms, it is worth noting in particular the Dial Human Rights, Dial 100 hotline run by the Human Rights Ombudsman's Office of the Human Rights Secretariat of the Office of the President, as reported in Brazil's first report to the Subcommittee.[11] On 1 March 2013, the Office launched a new Dial 100 function that has proved to be quite an effective mechanism for receiving reports of human rights violations for subsequent referral to the competent authorities, including complaints of torture in situations and places of detention. Dial 100 telephone calls are free of charge, the switchboard operates 24 hours a day and callers need not identify themselves. Between 1 March and 31 December 2013, 1,525 complaints of cases of torture or cruel, inhuman or

[9] At this event, the Human Rights Secretariat of the Office of the President provided audiovisual material, including audio presentations, thematic studies and official documents of interest to the state committees and mechanisms. The latter included the Subcommittee's first report and Brazil's replies. This initiative went part of the way to implementing a recommendation made by the Subcommittee in its second report: "... whether Ombudsmen, judges, local NGOs and other relevant entities such as the regional preventive mechanisms were also notified and sent copies of the Report, and if so, to whom and how was this information sent or disseminated" (CAT/OP/BRA/2, para. 19 (d)).

[10] In accordance with article 3, paragraph II, of Act No. 12847/2013, places of deprivation of liberty are defined as public or private premises, which inmates cannot leave independently or freely, and include long-term internment facilities, detention centres, prisons, psychiatric hospitals, short-term detention centres, socio-educational institutions for adolescents in conflict with the law and military disciplinary detention centres, such as facilities run by the bodies listed under article 61 of Act No. 7210, of 11 July 1984.

[11] See CAT/OP/BRA/1/Add.1, paras. 170–174.

degrading treatment were lodged with the Office through the new service, as illustrated in the following table:

Complaints of torture and cruel, inhuman or degrading treatment, 1 March to 31 December 2013

State	***Total***	*Percentage*
AC	**6**	0.39%
AL	**9**	0.59%
AM	**35**	2.3%
AP	**5**	0.33%
BA	**66**	4.33%
CE	**66**	4.33%
DF	**55**	3.61%
ES	**67**	4.39%
GO	**64**	4.2%
MA	**22**	1.44%
MG	**177**	11.61%
MS	**26**	1.7%
MT	**47**	3.08%
NA	**2**	0.13%
PA	**41**	2.69%
PB	**32**	2.1%
PE	**57**	3.74%
PI	**18**	1.18%
PR	**89**	5.84%
RJ	**149**	9.77%
RN	**51**	3.34%
RO	**13**	0.85%
RS	**65**	4.26%
SC	**38**	2.49%
SE	**6**	0.39%
SP	**305**	20%
TO	**14**	0.92%
Total	**1 525**	**100%**

39. These complaints are referred to various government bodies, chiefly the Department of Prosecution, state public security agencies and prison services, and the judiciary, for statistical purposes and action. A total of 2,686 complaints through Dial 100 were referred during the period in question to the official bodies responsible for the prevention and punishment of torture in places of deprivation of liberty.

Human rights institutions	*Referrals*
Department of Prosecution	1 001
Secretariat for Public Security/Secretariat for Prison Administration	731
Judiciary	478
Prosecutors	338
Public Defenders Office	61
State and municipal secretariats	34
Law enforcement agencies	14
Other	11
Federal government bodies	9
Human Rights Secretariat of the Office of the President	3
Youth counselling services	2
Human rights organizations	2
Social services	2
Total	**2 686**

40. Another of the Subcommittee's recommendations concerned the creation of a central register of torture allegations in order to keep track of trials and convictions for torture. The collection of reliable data on criminal cases is one of Brazil's top priorities.

41. Accordingly, Act No. 12681 of 4 July 2012 was passed to set up the Ministry of Justice National System for Information on Public Security (SINESP), which is designed to generate and keep track of the latest statistics on the true security situation. It is an essential tool for State intelligence and planning agencies in pinpointing where efforts have to be made to combat crime, allocating resources strategically and working to ensure that human resources and funding are directed to those regions, areas and sectors where they are known to be most needed.

42. The system makes it possible to collate data on crimes reported by anyone who is a victim of any kind of offence and refer them to the Disque-Denúncia complaints hotline, and local ombudsman's offices and justice departments. All states and the Federal District have joined the system, making it possible to collate and analyse crime data from around the country.

43. The system's work and membership is regulated by a recently published presidential decree. All that is left for it to become fully operative is to finalize the election of members and its rules of procedure.

44. With regard to the punishment of the perpetrators of crimes of torture, Brazil recognizes that there is a tendency to charge them with lesser criminal offences. It notes, however, that 218 individuals (164 men and 54 women) are in prison for crimes under Act No. 9455/1997, according to figures for June 2012 provided by the Penitentiary Information System (INFOPEN).[12]

45. Protecting victims and witnesses under threat is the responsibility of the Human Rights Secretariat of the Office of the President, as established by Act No. 9807/1999 on

[12] The figures refer to the total number of people, not just public officials, serving prison terms for offences under Act No. 9455/1997.

the institution of the Federal Protection Programme for Victims and Witnesses under Threat.

46. The admission of applicants to the programme is overseen by a board made up of members of the judiciary, the Department of Prosecution, public and private agencies in the area of public security and human rights organizations.

47. The assistance provided depends on the seriousness of the situation. Options include:

(a) Security in the home, including the monitoring of telecommunications;

(b) Security escort for movements outside the home, including for work reasons or to give evidence;

(c) Transfer from the home or temporary accommodation to a safe location;

(d) Protection of personal identity, image and information;

(e) Monthly financial assistance to cover the necessary subsistence expenses for an individual or their family, where the protected person is unable to carry out regular employment or there is no other source of income;

(f) Temporary suspension from duty without loss of salary or benefits, for civil servants or military personnel;

(g) Social welfare, health care and counselling;

(h) Confidentiality regarding all protection activities and assistance from programme organizers in meeting civil and administrative obligations requiring attendance in person;

(i) In exceptional cases and taking into account the nature and seriousness of the threat or degree of duress, a judge may authorize a name change for the threatened person and their spouse, parents, children and any dependents normally living with them.

48. According to figures for 2012, more than 700 people were registered with the programme.

III. Prison system

49. This section contains information on measures taken to improve Brazil's prison system in the light of observations made by the Subcommittee in its report. Starting with moves to address prison overcrowding, we reaffirm that dealing with the shortfall in capacity in prisons is a matter of priority for the State.

50. Information in the following sections is organized to correspond with the questions posed by the Subcommittee concerning:

(a) Implementation of the Prison System Master Plan;

(b) Physical conditions and building guidelines for prison facilities;

(c) Complaints investigation system;

(d) History and operation of community councils;

(e) Maximum security facilities and combating organized crime;

(f) Prison health care;

(g) Training, capacity-building and remuneration for public officials.

51. Lastly, information is presented on important issues that, although addressed in the Subcommittee's last report, were also touched upon in recommendations in its first report, including (a) alternative non-custodial measures; (b) access to justice and a public defender; (c) criminal forensics; and (d) computerized data systems and indicators.

A. Plans to improve the prison system

52. The Federal Government acknowledges that the shortfall in prison capacity constitutes one of the biggest obstacles to the implementation of policies on social reintegration and safeguarding the rights of persons deprived of their liberty. In order to improve conditions in prisons around the country, the Federal Government, through the Ministry of Justice, launched its National Prison System Support Programme, which is regulated by Order No. 522 of 22 November 2011 (annex IV). A budget of 1,100 million reais (R$) was allocated to complete it by the end of 2014.

53. The programme aims specifically to eliminate the shortfall in capacity in women's prisons and to reduce the number of people held in police custody by transferring them to units that are properly equipped to execute the relevant court order. More space is being created by expanding existing male remand facilities, reducing the number of pretrial detention units for women and also cutting back on custodial sentences for female offenders.

54. On the basis of Resolution No. 9/2011 of the National Council on Criminal and Penitentiary Policy, and in line with the Support Programme, the National Prisons Department of the Ministry of Justice has drafted outline projects for the building of six prison facilities, three each for women and men, with a view to bringing the federal entities into line with the new Basic Guidelines for Prison Construction, bearing in mind climate variations in Brazil.

55. In the framework of Order No. 522/2011, 96 contracts for payment transfers have been signed with 25 federal entities for the construction of 96 prisons, 21 for women and 75 for men, compliant with the new prison construction guidelines. Some 44,700 more places (7,870 for women and 36,830 for men) will be created in the Brazilian prison system by the end of 2014.

56. The Ministry of Justice is also encouraging every federal entity to draw up periodic plans for the construction of more prison space, in order above all to reduce the shortfall in capacity, a key objective of the Prison System Master Plan, details of which appear in section 3.3 below.

B. Agreement on Measures to Improve the Prison System and Reduce the Shortfall in Capacity

57. As a direct result of the Subcommittee's visit to the country in November 2011, the Human Rights Secretariat of the Office of the President, together with the Ministry of Justice, the Office of the President, the Senate, the Chamber of Deputies, the National Council of Justice, the National Council of the Department of Prosecution and the National Council of Public Defenders, formed a working group to discuss such issues as the enforcement of criminal sentences, access to justice and prison administration. The

outcome of the talks was the signing of the Agreement on Measures to Improve the Prison System and Reduce the Shortfall in Capacity on 23 October 2013 (annex V).[13]

58. As its title suggests, the Agreement is not limited merely to building more prisons, but also contains measures aimed at improving the provision of health care and education in prisons, and social reintegration. It maps out action on three fronts: (a) modernizing the justice system and making it more accessible; (b) modernizing and professionalizing prison administration; and (c) improving social reintegration programmes for prison inmates and former inmates. Especially noteworthy proposals contained in the Agreement include a preliminary bill on body searches and another on dealing with serious breaches of prison discipline, and a proposal to standardize visit reports, all of which reflect the Subcommittee's approach to preventing and combating torture.

59. With regard to body searches, the authorities have reached the conclusion that manual searches should be a last resort, when a visitor's health or physical condition (e.g. pregnancy or a pacemaker) mean certain types of mechanical or electronic detection equipment cannot be used or where there are grounds for believing the person may be carrying prohibited items or substances. In the latter case, the existing mechanical and electronic equipment is not capable of detecting certain prohibited or illegal items because it will only detect objects that can be used as weapons or as a means of communicating. Where the visitor is unwilling to submit to a body search, the visit may take place in an interview room or similar location, thereby safeguarding the prisoner's right to visits. Visits may also take place in an interview room or similar where suspicion lingers even after a manual body search.[14]

60. Moreover, even when body searches are necessary for prison security, they must always be conducted with respect for human dignity. Strip searches must be prohibited because they are degrading, invasive and an affront to human dignity.[15] This consideration led to the drafting of Senate bill 480/2013, which is currently before the Senate Constitutional, Justice and Civic Affairs Committee and provides for the amendment of the Sentence Enforcement Act so as to put an end to such degrading searches in all prisons. The bill states that body searches in prisons must be conducted with respect for human dignity, without any form of stripping, or inhuman or degrading treatment. It also sets forth exceptional circumstances in which manual body searches may be carried out.

61. It was also proposed to draft a bill to regulate the approach to serious breaches of prison discipline. Under current legislation, disciplinary procedures are governed by regulations that vary by federal entity. The bill contains an amendment to article 59 of the Sentence Enforcement Act (Act No. 7210/84) to guarantee a prisoner's right to a hearing and a proper defence when facing disciplinary charges.

[13] The Ministry of Justice was represented by the National Penitentiary Department, the Secretariat for Judicial Reform and the Secretariat for Legislative Affairs.

[14] In line with the basic construction guidelines for prisons and as stated by the National Council on Criminal and Penitentiary Policy in Resolution No. 9, of 18 November 2011, "self-contained areas must be set aside for family and intimate visits, separate from other parts of the prison and with access arranged so as to prevent visitors coming into contact with other inmates. They must include independent quarters for intimate visits, enclosed or open courtyards, bathrooms, and facilities for search and monitoring by officials".

[15] In its first report, the Subcommittee recommended that the State party ensure that "searches shall comply with criteria of necessity, reasonableness and proportionality. If conducted, bodily searches shall be carried out under adequate sanitary conditions, by qualified personnel of the same sex, and shall be compatible with human dignity and respect for fundamental rights. Intrusive vaginal or anal searches shall be forbidden by law [reference omitted]." (CAT/OP/BRA/R.1, para. 119).

62. Lastly, a few words should be said about the proposal to standardize reports by the executive branch and the judiciary. Several bodies are responsible for conducting regular visits to places of deprivation of liberty. Thus, in order to simplify the process of information exchange between institutions and to help consolidate their information, it was proposed to establish a standard report model. This measure is also a key to implementing the National System for the Prevention of Torture, which will benefit from the exchange of information and creation of a database.[16]

63. The agreement represented an important achievement for the inter-agency working group that, in December 2012, finalized the Compendium of Measures to Implement the Prison System Master Plan with the following goals:

(a) To broaden access to justice for prison inmates, with a view to guaranteeing them decent conditions in detention and effectively upholding their rights;

(b) To provide for the exchange of information and the consolidation of databases on the prison system held by different authorities and bodies, thereby facilitating tighter monitoring of prison conditions and prison terms;

(c) To step up efforts to alleviate the shortfall in prison capacity, including by encouraging the use of alternative measures;

(d) To modernize and professionalize prison administration and sentence enforcement, including through the use of new technology and innovative solutions;

(e) To improve the operation of the courts to ensure effectiveness and trials of reasonable length;

(f) To expand and improve social reintegration programmes and projects for prison inmates and former inmates, and policies to promote greater prisoner access to education and health care, and enjoyment of other fundamental rights.

C. Prison System Master Plan

64. The Subcommittee has asked the Brazilian Government to provide a detailed report on the implementation of the Prison System Master Plan. This planning tool, which links the Federal Government and state prison administrations through the Ministry of Justice, was introduced in 2007 and has been adopted by all federal entities.

65. The first step in implementing the Master Plan was the publication of Resolution No. 1/2008 by the National Council on Criminal and Penitentiary Policy, defining the criteria for releasing resources from the National Prison Fund (annex VI). The Resolution stipulates that the release of financial resources by the Federal Government shall be contingent on the drafting of master plans by the federal entities and subsequent compliance with the time frame established in each state plan.

66. Based on the Master Plan, each federal state, in conjunction with the Federal Government, set specific time frames and objectives, with quantifiable goals and provision for monitoring, as follows:

[16] The National System for Information on Public Security, Prisons and Drugs was set up under Act No. 12681 of 4 July 2012, for the storage, processing and compilation of data and information in order to help form, implement, carry out, monitor and evaluate policies on public security, the prison system, the enforcement of prison sentences and efforts to combat trafficking in crack and other illicit drugs.

Goal	*Objective*
Goal 1	Establish *patronatos* and other post-prison support organizations.
Goal 2	Encourage the creation and establishment of community councils.
Goal 3	Establish an independent Ombudsman's Office with its own mandate.
Goal 4	Establish prosecution services attached to prison administration bodies.
Goal 5	Establish disciplinary boards in prisons.
Goal 6	Establish technical committees on classification at every prison.
Goal 7	Draft a prison statute and internal rules.
Goal 8	Establish or expand legal support services at every prison.
Goal 9	Encourage the expansion of public defender services in order to provide full legal support to prisoners.
Goal 10	Encourage the expansion of alternative penalties and measures.
Goal 11	Create career structures for prison staff and develop career paths.
Goal 12	Increase the number of prison staff.
Goal 13	Create a school of prison administration.
Goal 14	Join projects or agreements to provide full health care to inmates.
Goal 15	Join school, literacy and vocational training programmes.
Goal 16	Create reading rooms and libraries.
Goal 17	Introduce work programmes in prisons.
Goal 18	Join or develop projects to support prisoners' families.
Goal 19	Maintenance of data in the Penitentiary Information System (INFOPEN).
Goal 20	Build, extend or remodel in order to increase prison capacity.
Goal 21	Invest in equipping or re-equipping prisons.
Goal 22	Join projects to support female prisoners and ex-prisoners.

67. The Prison System Master Plan, which was revised in 2012,[17] is a tool that seeks to guide the actions of the federal entities. With respect to the prison system, it is a planning instrument in the remit of the Prison Policy Directorate of the National Penitentiary Department. The Plan is subdivided into strategic areas: the justice system, modernization of management, and social reintegration.

68. The Prison Policy Directorate of the Ministry of Justice set up a Master Plan Committee drawn from the following areas of the National Penitentiary Department:

[17] Document available at: http://portal.mj.gov.br/depen/main.asp?ViewID=%7B71FD341F-0531-4BAB-A567-72586745CB18%7D&params=itemId=%7B2AC5EC2A-C783-4C72-9B14-65BE75D88371%7D;&UIPartUID=%7b2868BA3C-1C72-4347-BE11-A26F70F4CB26%7D.

ombudsmen's offices, health care, educational support, engineering, legal support, ex-prisoner support, alternative penalties, prison administration school, the Penitentiary Information System (INFOPEN), delivery of equipment, and female prisoners and ex-prisoners. Among the tasks of the technical team of the National Penitentiary Department of the Ministry of Justice are the encouragement, monitoring, following up and evaluation of actions within the Brazilian prison system to be developed or planned by state prison administrations.

69. As one of its main objectives is the reform of Brazil's current prison model to make it safer, more humane, and more consistent not just with the law but with basic standards for treatment of prisoners, the Prison System Master Plan provides for a quantitative and qualitative survey to identify the basic needs of each region of Brazil. Based on this survey, the National Penitentiary Department can decide what action to take to solve or reduce the problems encountered by the federal entities[18] and optimize the use and transfer of federal resources.

70. The following are strategic objectives of the Master Plan:

Strategic objective	*Related actions*
1 – Legal support	Improve legal support for prisoners awaiting trial and convicted prisoners.
2 – Alternative penalties	Encourage the use of alternative penalties and measures, which will help alleviate overcrowding in prisons, reduce recidivism, and prevent petty offenders from entering the prison system; encourage the establishment of alternative penalty centres and facilities.
3 – Classification committee	Establish classification committees at every prison.
4 – Community councils	Strengthen community councils in all parts of states and in all judicial districts of the Federal District with a prison in their jurisdiction.
5 – Reduce the shortfall in prison capacity	Increase prison capacity in order to reduce the shortfall.
6 – Equipment	Acquire equipment and vehicles for the prison system.
7 – Ombudsmen	Establish independent ombudsmen with their own mandates, to provide a channel of communication between society and prison administrations.
8 – Prison administration school	Monitor the school's work with prison staff training and in-service training.

[18] The master plans of all the federal entities are also available on the link mentioned above.

Strategic objective	*Related actions*
9 – Penitentiary Information System (INFOPEN)	Integrate local prison systems with the national database; provide statistical data to the National Penitentiary Department.
10 – Prison staff	Create and introduce career structures for prison staff; encourage the use of public selection procedures.
11 – Post-prison support organizations	Set up *patronatos* and other post-prison support organizations and monitor their work.
12 – Prisoner health	Expand health-care provision for prisoners and detainees in accordance with the national prison health policy.
13 – Education in prisons	Increase literacy rates and expand schooling for prisoners; create reading rooms and libraries.
14 – Employment support and job training	Increase labour supply on and off site and expand job training courses for prisoners.
15 – Support for prisoners' families	Provide social support to the families of prisoners and detainees.
16 – Female prisoners and ex-prisoners	Draft and implement a state policy guaranteeing the rights of female prisoners and ex-prisoners.

D. Prison architecture

71. In its communication to the Brazilian State, the Subcommittee mentions its concern over the material conditions of prisons and requests a copy of the Basic Guidelines for Prison Construction.

72. It should be made clear from the outset that the Federal Government has two strategies for collaboration with the federal entities: supplying standardized projects and establishing guidelines for their own projects.

73. With a view to establishing parameters for high-quality prison architecture and improving conditions in correctional facilities, the National Council on Criminal and Penitentiary Policy adopted Resolution No. 9 of 18 November 2011, setting out the basic guidelines for prison architecture, that emerged from cooperation between the Federal Government and the federal entities on initiatives to build, expand or refurbish penal institutions (annex VII).

74. The new guidelines reflect the review of earlier resolutions, from 1994 and 2005, and their objective is to improve standards, with the introduction of a new view of sizing, new criteria for proportionality, and such new concepts as accessibility, flooring permeability, comfort of the environment and environmental impact. The drafting of the new guidelines was a democratic undertaking that incorporated suggestions and

recommendations from various government agencies, as well as from civil society, which was able to express itself through a public survey.

75. The Resolution should be used as a benchmark for all prison-related construction in the country. The Basic Guidelines for Prison Construction steer implementation of the National Prison System Support Programme, with the construction of new facilities or the refurbishment of older ones using federal resources subject to the adoption of an appropriate framework for security and for respect of the human person.[19]

76. The preparation and proposal of such standard projects implies a significant qualitative leap in the administration of domestic prison policy. Several federal entities have transferred responsibility for the formulation of projects to the private sector, especially when, as experience shows, there are shortages of technical teams. Since, in most cases, the companies do not have the appropriate expertise for such projects, the facilities were not always conceived in a manner consistent with the ideal aims and circumstances of incarceration.

77. On 26 December 2013, Provisional Decree No. 630 was published, proposing an amendment to Act No. 12462/2011 with regard to the differentiated regime for public procurement in Brazil. Provisional Decree No. 630 makes it possible, through the differentiated public procurement regime to award engineering contracts for the construction, expansion and refurbishment of correctional facilities and socio-educational establishments for minors in conflict with the law. This regime provides for swifter and simpler procedures for awarding construction contracts. The Decree requires the approval of Congress and is currently being reviewed by a joint committee of deputies and senators.

E. Oversight bodies

78. The Brazilian State shares the Subcommittee's view that the existence and success of ombudsmen specific to the prison system are vital to the struggle against torture and corruption. Thus the Federal Government, through the Office of the National Prison Ombudsman, encourages the creation of state-level ombudsmen with operational autonomy.

79. The Federal Government recommends that states should create specific ombudsmen to oversee policies affecting persons deprived of their liberty. The country currently has 15 state prison ombudsmen's offices.

State	*Office of the Ombudsman*
Acre	Office of the Ombudsman, Institute for Prison Administration
Alagoas	Office of the Ombudsman for Prisons, Executive Secretariat for Social Rehabilitation
Amazonas	Office of the Ombudsman for Prisons
Bahia	Office of the Ombudsman, Prison Administration
Goiás	Office of the Ombudsman, Goiás State Agency for the Prison System

[19] The National Prison System Support Programme is further detailed in section 5 of the present document.

State	*Office of the Ombudsman*
Mato Grosso	Office of the Ombudsman for Prisons
Minas Gerais	Office of the Ombudsman for Prisons of Minas Gerais
Paraíba	Office of the Ombudsman for Prisons
Paraná	Office of the Ombudsman for Prisons
Pernambuco	Office of the Ombudsman for Prisons, Executive Secretariat for Social Rehabilitation
Piauí	Office of the Ombudsman for Prisons
Rio de Janeiro	Office of the Ombudsman, State Secretariat for Prison Administration
Rio Grande do Norte	Office of the Ombudsman and Ombudsman for Prisons
Rondônia	Office of the Ombudsman for Prisons
São Paulo	Office of the Ombudsman, Secretariat for Prison Administration

80. In addition to encouraging the creation of state ombudsmen, the Federal Government provides financial resources to fit them out. In this context, R$ 280,000 (approximately US$ 120,000) was transferred for the purchase of equipment for ombudsman's offices in 11 states.[20]

81. The ombudsman's offices collect, receive, analyse, refer and monitor complaints, while responsibility for investigating them lies with the police, the Department of Prosecution and the state prosecutors. The ombudsmen are privileged channels for the reception of complaints from persons deprived of their liberty and for the oversight of decisions made by the competent authorities in this regard.

82. In addition, the state internal affairs units of the prison system and police internal affairs units can receive complaints and institute disciplinary administrative proceedings to investigate and punish those responsible for human rights violations.

83. Likewise, important work is done by the Department of Monitoring and Oversight of Prisons and Socio-educational Measures of the National Council of Justice, created in 2009 by Act No. 12106. Its purpose is to monitor and oversee compliance with the recommendations and resolutions of the National Council of Justice in connection with pretrial detention and final sentences, and measures for the security and confinement of adolescents, and to provide guidance and offer solutions for irregularities identified in the prison system and in the system for applying socio-educational measures.

84. With respect to strengthening the mechanisms for oversight of the system of law and order, another of the recommendations made by the Subcommittee, the third National Human Rights Plan gives particular consideration to the establishment of oversight and complaint procedures and mechanisms to prevent abuse of authority and institutional

[20] Alagoas, Bahia, Ceará, Goiás, Minas Gerais, Paraná, Pernambuco, Rio de Janeiro, Rio Grande do Norte, São Paulo and Paraíba.

violence. In this respect, the need to create independent ombudsman's offices and police internal affairs units was reasserted.

85. In order to achieve the objectives of the Plan, the Federal Government began to promote the establishment of ombudsman's offices and police internal affairs units, resulting in the creation of the ombudsman's offices and 21 police ombudsmen around the country, which operate with full autonomy, in accordance with the Plan's guidelines. The National Forum of Ombudsmen for the Police, which is devoted to formulating joint strategies in this area, was created in 2006.

86. Lastly, the hope of the Federal Government is that, once the National Mechanism to Prevent and Combat Torture is in place, monitoring of information will be improved and integrated, bringing together in coordinated fashion the reception of complaints and the initiatives of the various supervisory bodies. Since the evaluation of prisons requires uniform parameters and indicators, one of the specific goals of the Agreement on Measures to Improve the Prison System and Reduce the Shortfall in Capacity is the production of data.

"Geopresídios" prisons atlas initiative of the National Council of Justice

87. Under the provisions of National Council of Justice Resolution No. 47 of 18 December 2007, sentence enforcement judges must inspect the correctional facilities in their jurisdictions once a month. By the fifth day of the following month, they must also submit a report on the inspection through the Council's own electronic system.

88. The results of these inspections can be consulted online through the Geopresídios prisons atlas system, which provides an overview of the main correctional institutions – penitentiaries, prisons for pretrial detention, police holding cells, psychiatric institutions and so on. On the Council's website,[21] anyone may view the number of beds, the number of convicts and pretrial detainees, the sentence enforcement judge's assessment of the conditions at the institution, and figures for deaths and escapes for any prison in Brazil.

89. In addition, through the monitoring and oversight group of the state prisons system, the National Council of Justice distributes a handbook for persons in prison and another for women in prison. These handbooks further clarify the rights, obligations and guarantees pertaining to convicted and pretrial prisoners.

F. Community councils

90. In its comments on the report of Brazil, the Subcommittee requested further information about the community councils.

91. The Brazilian State recognizes that society's involvement is fundamental to the serving of sentences and to dealing with human rights violations. For this reason, the Sentence Enforcement Act provides for a body to be created in each judicial district where there are persons deprived of their liberty, to represent the community in a process that starts with the beginning of a sentence and ends with the return to society. This body is the community council, provided for in articles 80 and 81 of Act No. 7210 of 11 July 1984, the Sentence Enforcement Act.

92. The community councils are required to comprise members of the Bar Association of Brazil, municipal chambers of commerce, the Social Services Council and the Public Defender's Office. Persons from the community interested in the subject may participate as

[21] http://www.cnj.jus.br/programas-de-a-a-z/sistema-carcerario-e-execucao-penal/geopresidios-page.

well. A Ministry of Justice survey in 2008 found that community councils tend also to include representatives of religious bodies, municipal secretariats, service associations, city councils, trade unions, universities, NGOs, the Department of Prosecution, the judiciary and others.[22]

93. The community councils are set up by ordinance by the courts responsible for sentence enforcement, and cover one judicial district (which may include several municipalities). After its first meeting, members draw up rules of procedure on matters such as officers, frequency of meetings and rules of debate.

94. Community council members are independent and in practice have a wide scope of action, as they help to oversee prison policy. The councils have been involved in the following areas: representing and mediating in the community; seeking resources from public and private sources; making presentations on prison policy to collegiate bodies and local and regional organizations; and formulating and recommending comprehensive policies for attending to prisoners and former prisoners.

95. The community council is the body closest to prison routine and to the community. Its potential to combine local and global strengths and to propose measures for monitoring prison conditions is high. In dealing with state prison administration agencies, its main functions are:

(a) Assistance: outreach to families, convicts and ex-convicts in emergencies;

(b) Material aid for prisons: equipment acquisition; participation in renovation work;

(c) Oversight: respect for rights; use of appropriations; performance of public institutions involved in the application of criminal penalties;

(d) Community representation/mediation: requests for resources from public and private sources, presentations on prison policy to collegiate bodies and local and regional organizations, formulating and recommending integrated policies for attending to prisoners and former prisoners;

(e) Educating the community about prison affairs; media communications, participation in forums and local and regional seminars, participation in training for people working with inmates;

(f) Advisory: formulating opinions on use of appropriations and making proposals for public policy.

96. As sentence oversight bodies, community councils have privileged access to prisons and inmates, to officials and to the information necessary for independent oversight. When irregularities are observed, they are reported to the competent bodies or, where possible, the council members help seek solutions to the problems.

97. A 2010 survey by the Federal Government and the National Council of Justice identified a total of 1,046 community councils, a figure that covers roughly one third of the

[22] By law (Sentence Enforcement Act (No. 7210), art. 81), community councils are required to:

I. Visit the correctional facilities located in the judicial district at least once a month;

II. Interview inmates;

III. Submit monthly reports to the sentencing judge and the Penitentiary Council;

IV. Make efforts to secure material and human resources for the best care of prisoners and detainees, in agreement with the administration of the institution.

country's judicial districts. There are community councils in every state, but in the southern states the number of councils per judicial district is higher.

State	*Community councils*
Acre	15
Alagoas	1
Amazonas	2
Amapá	1
Bahia	40
Ceará	89
Distrito Federal	5
Espírito Santo	3
Goiás	73
Maranhão	7
Minas Gerais	166
Mato Grosso do Sul	56
Mato Grosso	63
Pará	6
Paraíba	1
Paraná	82
Pernambuco	27
Piauí	7
Rio de Janeiro	1
Rio Grande do Norte	6
Rio Grande do Sul	81
Rondônia	19
Roraima	2
Santa Catarina	52
Sergipe	1
São Paulo	224
Tocantins	16
Total	**1 046**

98. Based on the principle that there should be a community council in each judicial district, the Federal Government, together with the judicial oversight boards and the Department of Prosecution, pursues a policy of creating and strengthening councils, and these receive guidance and educational materials, as well as training on a special course developed by the Government.

99. The representatives of the community councils visit the prisons in their judicial districts at least once a month, interview inmates and officials, may request documents for their inquiries, deal with the administration and produce reports that are sent to various bodies, as needed. In addition to the provisions of the Sentence Enforcement Act, there are resolutions of the National Council on Criminal and Penitentiary Policy regulating

community councils' access to correctional facilities, individuals and offices, and the use of audiovisual equipment and other matters.

100. Community councils perform a legitimate and important function, bringing prison and society closer and countering the social invisibility incarceration helps create. They provide a means of better understanding social relations and embody a hope that it will be possible to move on from the problematic model for the resolution of social conflicts that prison has become.

G. Maximum security regime and organized crime

101. The Subcommittee considered that maximum security prisons should not be the norm and that they should be avoided especially in the case of pretrial detainees. In keeping with the Subcommittee's recommendations, the Federal Government is not encouraging the creation of maximum security state prisons. The situation in the State of Espírito Santo, which has a maximum security state prison, is the exception, not the rule.

102. The federal maximum security prisons are provided for by law and are suitable for special cases, their objective being to promote public safety and protect the inmates. The model chosen for the federal maximum security prisons is justified by the profile of the inmates transferred to these prisons – i.e. those who are most dangerous.

103. The Federal Penitentiary System was conceived as a contribution to national public safety, isolating the country's most dangerous prisoners with a view to combating violence and organized crime through differentiated criminal sentence enforcement. The purpose of the federal correctional institutions is to facilitate the administrative implementation of measures restricting the freedom of prisoners — whether awaiting trial or convicted — whose internment is justified in the interests of public safety or their own safety, or of those subject to the differentiated disciplinary regime under the Federal Penitentiary Regulations, approved by Decree No. 6049 of 27 February 2007.

104. It should be noted that the federal system is an exception to the rules on prison terms for the accused: an accused person may not remain incarcerated for more than 360 days, a term renewable once if incarceration is still necessary.

105. In this context, the federal maximum security prisons were built to accommodate highly dangerous inmates who may jeopardize order and public safety in their states of origin. It should be emphasized that the same penal and human rights legislation applies and is observed in maximum security facilities as well.

Impact of federal prisons' action on organized crime

106. Decree No. 6049/2007, which approved the Federal Penitentiary Regulations, states that as a preventive measure to stop the formation of criminal gangs in federal prisons, "convicted prisoners shall not have contact with those awaiting trial and shall be housed in separate blocks". A further such preventive measure is the placing of inmates in individual cells, each federal prison having a maximum capacity of 208 inmates.

107. The Federal Penitentiary System also has a Prison Information and Intelligence Office, which controls and protects information obtained by the various agencies of the Federal Penitentiary System. It also liaises between the Federal Penitentiary System and the federal and state intelligence agencies, handling and passing on information about criminal organizations, gang members and the implications of their activities in the prison system.

108. The Office is likewise the body responsible for advising the Directorate of the Federal Penitentiary System when critical situations arise in federal prisons. It is the body

responsible for implementation of the Federal Prison Crisis Response System, with a view to finding peaceful, negotiated conclusions to revolts, riots and uprisings.

109. The Federal Government thus considers that the creation of the Federal Penitentiary System brought about a significant reduction in the number of rebellions and riots in all the Brazilian states, which had been infiltrated by organized crime. It also works to prevent the formation of crime networks and to break up gangs anywhere in the country by isolating the gang leaders.

110. Brazil now has four federal prisons: in Mossoró, Rio Grande do Norte (102 inmates); Campo Grande, Mato Grosso do Sul (138 inmates); Catanduvas, Paraná (110 inmates); and Rondônia (129 inmates). There are also plans for a prison in the Federal District.

H. Health in the prison system

111. With a view to guaranteeing the constitutional right to health — equal, full and universal access — and organizing health services and actions in correctional facilities, the Ministries of Health and Justice launched the National Health Plan for the Prison System, established by Interministerial Ordinance No. 1777 of 9 September 2003.

112. The Prison Health Plan provides for the installation of basic health units in correctional facilities, with a multidisciplinary staff made up of at least five senior professionals — a doctor, a nurse, a psychologist, a social worker and a dental surgeon — and one mid-level professional, a nurse technician.

113. This team is involved in prevention, promotion or treatment in respect of dental health problems, women's health, mental illness, screening for tuberculosis, hypertension, diabetes, leprosy, vaccination, sample gathering for laboratory tests and basic pharmaceutical care, giving priority to comprehensive care.

114. Access to the other services of an average or high degree of complexity provided for in the Plan is granted and defined at state level, in keeping with the Master Plans for Regionalization and with the approval of the Bipartite Interagency Committee and the State Health Council (CES).

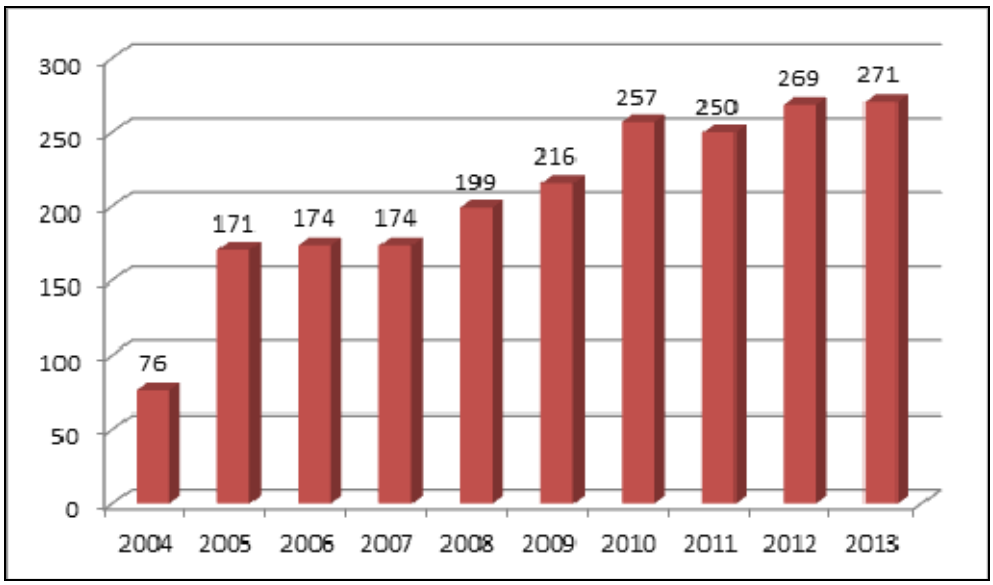
115. The outlays for heath care in the prison system adhere to the following guidelines: (a) approval, by the State, by decree; and (b) transfer of 70 per cent of the financial stimulus to pay for the actions and services of the prison system health-care teams, from the Ministry of Health, and of 30 per cent of the stimulus for capital outlays, from the Ministry of Justice, which is responsible for upgrading, renewing and acquiring permanent equipment for the health units. There are two sets of payments (latest figures from Interministerial Ordinance No. 3343/2006):

- In correctional facilities of up to 100 inmates, the stimulus amounts to R$ 32,400 a year. The heath-care team, in this case, works at least four hours a week;
- In correctional facilities of more than 100 inmates, the stimulus amounts to R$ 64,800 a year per health-care team. One health-care team works with up to 500 inmates and has a weekly workload of at least 20 hours.

116. In addition to funds transfers, states and municipalities (and the Federal District), that are members of the Plan receive a set of medications for primary care. Kits are distributed in proportion to the prison population – one medical kit for every 250 persons, and the contents vary depending on sex (Ministerial Ordinance No. 3270 of 26 October 2010).

117. Every state in the federation has now joined the Prison Health Plan, making for a total of 271 health-care teams spread over 239 correctional facilities and attending to a significant share of the prison population (around 150,000 persons), as the figure below shows. The Plan accounts for health coverage of 30.69 per cent of the prison population, offering preventive action, promotion or treatment for problems such as dental health, women's health, sexually transmitted diseases, HIV/AIDS and hepatitis, mental health, screening for tuberculosis, hypertension and diabetes, leprosy vaccination and taking samples for laboratory tests; coverage also involves basic pharmaceutical care, the objective being to give priority to comprehensive care. The Brazilian State recognizes the need to expand the programme, since all citizens have the right to health.

Figure I
Prison system health-care teams: year-on-year increase



Source: CNES/DATASUS/MS.

118. To supplement the Prison Health Plan, a new policy, the National Policy on Comprehensive Health Care for Persons Deprived of their Liberty in the Prison System, was established under the Unified Health System (SUS), by Interministerial Ordinance No. 1/2014 of 2 January 2014 (annex VIII).

119. The objective of the new prison health policy is to guarantee persons deprived of liberty access to the comprehensive care offered by Brazil's unified public health-care system (SUS). The policy objectives are:

(a) Promotion of citizenship and inclusion of persons deprived of their liberty by working with the different sectors of social development, such as education, work and security;

(b) Effective, ongoing and quality comprehensive responses to the health needs of the prison population, with an emphasis on preventive care but without prejudice to curative services;

(c) Containment or reduction of the medical conditions most commonly found among the prison population;

(d) Respect for racial and ethnic diversity, special mental and physical limitations and needs, socioeconomic conditions, cultural and religious practices and concepts, gender, sexual orientation and gender identity;

(e) Intersectoral action for integrated and rational administration and to guarantee the right to health.

120. Under this new framework, each prison will be a centre for care in the health-care network. The prison population will be covered by local health policies, and thus by national health-care provision. It is hoped that the Ordinance will contribute to an organized, effective and structured increase in the prison population's access to health services and actions, from 30 per cent to 50 per cent in 2014, with the expectation of reaching 100 per cent in 2019, in keeping with the SUS model.

1. Medical examinations on admission and release

121. The Subcommittee recommended that inmates be examined by a health professional as soon as possible after admission. This procedure is provided for in the Basic Guidelines on Health Care in Prison Systems, published in National Council on Criminal and Penitentiary Policy Resolution No. 7 of 14 April 2003.

122. The application of minimum "entry" and "exit" obligations complies with international standards for the treatment of convicted prisoners, which guarantee an examination of the individual by a health professional, noting of symptoms, diagnosis, notification of diseases to epidemiological mechanisms, completion of forms, initiation or continuation of treatment plans, use of reference networks, distribution of pharmaceutical products, and guidance. The confidentiality of medical assistance is compulsory for all doctors, without discrimination, as established by the Code of Medical Ethics.

2. Medical assistance; suspected torture, ill-treatment or reprisals

123. Having noted that inmates were subject to punishment for requesting medical assistance, the Subcommittee recommended that clear instructions should be imparted prohibiting this practice.

124. The health-care teams' protocols give guidance on this matter and, as part of the process of affirmative education in prison contexts, teams try to promote respect for the human rights of persons deprived of their liberty by other teams (chiefly members of the administrative and security staff).

125. In keeping with the recommendation, the Ministry of Health defined "*agravo*" in Order No. 104 of 25 January 2011 as any damage to the physical, mental or social integrity of the individual as a result of such noxious circumstances as accidents, poisoning, drug abuse or injury self-inflicted or inflicted by others. Domestic, sexual and other forms of violence are classified under "notifiable conditions" and must therefore be reported and recorded in the Notifiable Conditions Information System, in accordance with the norms and conventions established by the Health Monitoring Secretariat of the Ministry of Health.

3. Health care for pregnant women

126. According to the most recent survey taken by the National Penitentiary Department, from December 2012, there are 35,039 women in prison, corresponding to approximately 6 per cent of the country's prison population.

127. In keeping with the Subcommittee's recommendation to improve health services for women prisoners, Brazil has sought to equip correctional facilities with mother and child health units, ensuring 100 per cent coverage in all federal entities. With a view to realizing this strategy, the Federal Government will guarantee financial support for the acquisition of

such permanent equipment as first-aid items for treatment of women and children, supplies for dental treatment, first-aid and emergency kits, articles for sample collection, basic tests and gynaecological tests, and the fittings to create the environment necessary for reception, family integration and the care of children and mothers.

128. For women who become pregnant, the Sentence Enforcement Act states that the woman shall be admitted to an appropriate separate facility, that she will be guaranteed pre- and postnatal medical care and care for the newborn, and that women prisoners and newborns will be ensured the minimum conditions to remain together during the breastfeeding period. Act No. 11634 of 27 December 2007 and Act No. 11108 of 7 April 2008 are also to be applied, guaranteeing pregnant women the right to be informed about and attached to a maternity clinic and the right to a birth companion.

129. In addition to the Sentence Enforcement Act, the Family Planning Act (Act No. 9263 of 12 January 1996) should be considered. Women have the right of access to contraceptive methods – not to be confused with sterilization or with population-control policies.

130. The National Council on Criminal and Penitentiary Policy adopted two resolutions on this subject. The first, Resolution No. 14 of 11 November 1994, which established minimum rules for the treatment of prisoners in Brazil, states that women shall serve their terms in separate facilities and that conditions shall be such as to ensure that the female inmate will be able to remain with her children during the breastfeeding period.

131. The second, Resolution No. 4 of 15 July 2009, regulates the stay, residence and subsequent transfer of women prisoners' children. The resolution states that the permanence of the maternal bond must be considered primordial in all situations and that children must have the right to stay with their mothers until they are at least 18 months of age, after which a gradual process of separation should begin. The Resolution likewise states that the choice of home for the child shall be made by the mother and father, with the help of professionals from the prison social and psychological services or the courts, and looking at options in the following order: extended family, foster family, institutions.

132. To guarantee these rights, the Federal Government ordered that all correctional facilities housing women should provide prenatal care for low and high risks and guarantee access by all pregnant women in prison to care in the event of complications and for childbirth. The units now equipped have 260 registered teams and can attend to women in prison and instruct mothers in first aid, connecting them with primary care networks.

133. In 2011 the Federal Government invested R$ 2 million from the National Penitentiary Fund to equip basic health units and mother and child health centres. In the area of health expenditures, R$ 13.2 million was allotted to pay for the work of the health-care teams in the prison system. Detailed information on the equipping of these health units can be found below:

State	*Financial year*	*Beneficiary women inmates*	*Mother and child health centres*
Alagoas	2011	143	1
	2012	160	1
Amazonas	2011	514	6
Amapá	2011	112	1
	2013	130	1
Bahia	2007	204	1

State	*Financial year*	*Beneficiary women inmates*	*Mother and child health centres*
Ceará	2008	374	1
	2012	751	3
Distrito Federal	2012	703	1
Espírito Santo	2007	382	1
	2012	688	2
Goiás	2012	200	2
Maranhão	2012	150	1
Minas Gerais	2006	6	0
	2007	0	1
Mato Grosso do Sul	2009	394	1
	2012	861	6
Mato Grosso	2006	5	0
	2007	1	0
	2012	676	5
Pará	2011	604	2
Paraíba	2012	605	1
Pernambuco	2006	5	0
	2012	1 636	3
Piauí	2012	139	2
Paraná	2011	546	2
Rio de Janeiro	2006	16	0
	2008	300	1
	2013	1 785	1
Rio Grande do Norte	2012	127	1
Rondônia	2006	0	2
	2012	250	1
Roraima	2013	118	1
Rio Grande do Sul	2011	839	1
Sergipe	2008	84	1
Santa Catarina	2011	130	1
São Paulo	2006	0	10
Total		**13 644**	**65**

I. Training and remuneration of public officials

134. With respect to professional training, the Brazilian Government shares the belief that the first step to combating torture in the penal system must be proper training for staff. Penitentiary officers receive training on the Standard Minimum Rules for the Treatment of Prisoners and this should yield results over the years.

135. Although it is the federal entities that are responsible for training those involved in the penal system, the Federal Government acts as coordinator of overall policy in prison

services training. It was therefore decided to encourage and finance the establishment and empowerment of state penitentiary schools as centres of excellence for training in penitentiary services in the federal entities.

136. In 2012, agreements were signed with a view to establishing the last four penitentiary schools, in the states of Alagoas, Maranhão, Mato Grosso and Roraima, which means that all the federal entities now have such centres of excellence. Another significant achievement in this area has been the development of a network of penitentiary schools, which has been holding national meetings for such schools since 2011.

137. Moreover, pursuant to Ministry of Justice Ordinance No. 3123 of 3 December 2012, the National Prison Service School, which is part of the federal public administration, was created with the overall aim of encouraging and implementing strategies for basic and in-service training, research, policy development, advanced professional training in prison services, production, and to share information on prison policies.

138. During the first few years of its existence, the National Prison Service School offered 500 places on its specialized course on health care in prisons, which was conducted in collaboration with the Oswaldo Cruz Foundation. More than 10,000 places are being offered on another four in-service training courses, in collaboration with the Federal University of Minas Gerais.

139. Brazil is developing a strategy to introduce distance learning in order to provide prison officers throughout the country with training and information in several areas, such as combating corruption in detention facilities. As a result, over the past few years, the Federal Government has provided a total of R$ 720,000 in funding for prison staff training, which has been invested in the states of Goiás, Río de Janeiro, São Paulo and Espírito Santo.

140. With respect to public safety, the Federal Government has introduced a policy of differentiated use of force, as part of the training of federal and state police, in accordance with General Assembly resolution 34/169. The legal basis for this policy is Ordinance No. 4226 of 2010, which was drafted in a participatory and democratic manner.

141. The Federal Government is constantly developing ways of training and raising awareness in police forces regarding the prohibition of torture. Examples are:

(a) Staff workshops on human rights. These workshops were held in 2010 in order to motivate and encourage public safety officials to respect human rights and a culture of peace. Each workshop covers the topics “How violence is produced”, “Civic policing: caring for citizens” and “The historical memory of Brazilian public security”. Thirty-five workshops were held, providing training to a total of 2,688 individuals;

(b) Workshops on human rights, focusing on the study of and research into civics and public safety (training for trainers). The purpose of this project, which was carried out in 2010 and 2011, was to foster the development of a national culture of human rights, active solidarity and social peace. Workshop topics included “Public safety in contemporary societies”, “Public safety in practice” and “Public safety without public policy/public safety policy”. In 2010 and 2011, 21 workshops were held for a total of 959 individuals;

(c) Training course for protectors of human rights defenders. This course, offered in 2010, was aimed at showing public safety officials how to protect natural or legal persons, groups, institutions, organizations or social movements that promote, protect or defend human rights and are linked to the human rights defenders protection programme of the Office of the President of the Republic. This course offered training to 29 military policemen;

(d) Human rights courses for postgraduates in the broad sense. According to the National Prison Service School, between 2006 and 2011, courses were offered in the framework of the National Network for Advanced Studies in Public Safety, training 800 individuals at 10 different higher education institutions, both public and private, in the five regions of Brazil.

142. Thus a substantial effort has been made in recent years to provide training for public servants, especially those working in the area of public safety, on human rights and combating torture.

1. Remuneration in the prison services

143. As the Subcommittee noted, the remuneration of public servants working in places of deprivation of liberty plays a decisive role in the quality of service provided to that population. It should therefore be noted that the Federal Government is responsible for the federal prison system and prison staff are paid around 10 times the minimum wage.

144. Although wages are regulated locally in the states of the federation, the Federal Government set up a working group in 2013 to address the role of prison officers in Brazil, reach a common definition of the profession, and standardize their training across the country. The group was created in the context of two meetings that were held in 2013 with representatives of the National Federation of Prison Official Trade Unions, the Brazilian Federation of Prison Officials and federal prison officers trade unions.

145. It should be noted that the states of Espírito Santo, Goiás, Río de Janeiro and São Paulo, which were visited by the Subcommittee, already offer special training and career paths for prison officers and periodically hold public competitive examinations to select them.

2. Measures to reduce the rate of incarceration and incentives for the adoption of alternative measures

146. While it is known that overcrowding in prisons undermines the guarantee of other fundamental rights of persons deprived of their liberty, the Brazilian Government recognizes the challenge posed by rising incarceration rates in the country. A study conducted by the Centre for the Study of Violence, University of São Paulo, which was published in 2011, found that close to 88 per cent of prisoners were deprived of their liberty for the entire duration of legal proceedings. According to data from INFOPEN, there were 184,284 pretrial detainees in 2012, reflecting the complexity of the problem facing Brazil with respect to prolonged police custody.[23]

147. In terms of legislation, Federal Act No. 9099/95, which established special criminal courts at the state level, prohibited imprisonment for petty criminal offences, and required alternative penalties for offences for which the combined penalty was less than or equal to 1 year's imprisonment. Moreover, under Act No. 10259/2001, which established special criminal courts at the federal level, petty offences were defined as ones for which the penalty was less than or equal to 2 years' imprisonment. Thus Act No. 10259/2001 increased the number of cases in which alternative penalties were required.

148. With a view to further reducing prolonged police custody, Act No. 12403/11 on imprisonment and precautionary measures during criminal proceedings was adopted, which

[23] Maria Gorete Marques de Jesus et al., *Prisión Provisoria y Ley de Drogas: un estudio sobre los flagrantes del trafico de drogas en la ciudad de São Paulo*. [Electronic resource]/Centre for the Study of Violence, São Paulo, SP, Brasil, 2011.

not only restricts the application of pretrial detention, but also establishes new precautionary measures, such as electronic monitoring and house arrest at night.

149. In order to support this paradigm shift and to make it possible for the judiciary to use precautionary measures in practice, the Federal Government has been developing public policies to guarantee the material resources needed to implement Act No. 12403/2011.

150. In 2011, roughly 92 per cent of the federal entities had centres for alternative penalties and measures in place, while 67 per cent had specialized courts applying alternative penalties and measures, giving a total of more than 20 special courts and around 400 centres.

151. Moreover, in December 2011, the National Alternative Sentencing Strategy was devised to promote this policy and encourage the creation of mechanisms to monitor the application of alternative penalties in the states and municipalities. Finally, in 2012, the Federal Government made approximately R$ 4.2 million available to the states and the judiciary to set up alternative measure monitoring centres and centres for the defence of pretrial detainees.

152. Furthermore, Act No. 12714 of 14 September 2012 on the system for monitoring the enforcement of sentences, pretrial detention and security measures should help to improve the monitoring of custodial sentences and prevent unlawful detentions. The Act requires all federal entities to record and maintain data and information on sentence enforcement, pretrial detention and security measures on the computerized monitoring system. The system should be capable of giving the deadlines for concluding investigations, submitting complaints, completing each stage of the sentence and granting conditional release, as well as other time frames related to the proper execution of the sentence. Based on these time frames, the system should be programmed to automatically send out electronic reminders in good time to the relevant judge, the Department of Prosecution and defence counsel. The Federal Executive will set up a national system to link the databases and information from the computerized systems in the states and the Federal District.

153. In November 2013, the Federal Government also announced that the Federal District and five states would receive funding to strengthen and apply alternative penalties. The federal entities will receive R$ 8.5 million to set up and support electronic monitoring centres and integrated centres for alternative penalties. Part of this investment is going towards the use of electronic ankle tags for people on probation or awaiting a court ruling.

154. Alternative penalties are a component of the Prison System Master Plan, the purpose of which is to encourage the use of alternative penalties and measures in order to alleviate overcrowding in prisons, reduce criminal recidivism, and prevent petty offenders from entering the prison system.

3. Access to justice and public defender services

155. As stated in the Brazilian State's last report, according to article 5 (LXXIV) of the Federal Constitution, all persons, whether Brazilian or foreign, have the fundamental right of access to justice, even if they lack the means to pay a lawyer. In such cases, the State must provide the citizen with legal aid through the Brazilian Public Defender Service, which was created specifically for this purpose. Moreover, the Code of Criminal Procedure stipulates that if a prisoner does not provide the name of a lawyer, they will be directed to the Public Defender Service (Code of Criminal Procedure, art. 289-A (4)).

156. The Brazilian Public Defender Service was established under article 134 of the Federal Constitution in order to ensure access to justice through the provision, free of charge, of comprehensive legal, judicial and extrajudicial aid, by public defenders, to all those who demonstrate a lack of sufficient funds. The institutional functions of the Public

Defender Service include provision of legal guidance; defence of the needy, at every level; and intervening in police, prison, and juvenile correctional facilities, with a view to ensuring that everyone, under the circumstances, can fully exercise their fundamental rights and freedoms.

157. In light of the Brazilian federative structure, it is important to distinguish the various components of the Public Defender Service. Under Complementary Act No. 80 of 1994, which sets forth general rules for the institution, the Brazilian Public Defender Service is divided into the Federal Public Defender Service, the Public Defender Service for the Federal District and Territories and the state public defender services. These services are independent of each other, each with its own sphere of activity, and the state level is not subordinate to the federal level.

158. While the Federal Public Defender Service provides legal aid at the federal level, the state public defender services and the Public Defender Service for the Federal District provide legal aid at the state level and work with the state justice system. A state public defender service is required, for example, to work with the prison system and the socio-educational system.

159. With respect to the list of recommendations by the Subcommittee on Prevention of Torture,[24] it should be noted that state public defender services now exist in every state of Brazil. In most federal entities, such services were already well established and the states that previously did not offer such services are in the final stages of introducing them.[25]

160. The Brazilian Public Defender Service, defined in the Brazilian Federal Constitution as an institution essential to guaranteeing access to justice for those most in need, is now

[24] "The SPT recommends that public defenders offices be granted autonomy and that they be provided with enough financial and material resources so as to enable them to offer adequate legal defence to all persons deprived of their liberty. The SPT further recommends that the State party expedites the creation and effective implementation of a public defence system in those states that do not yet have one." (CAT/OP/BRA/1, para. 26).

[25] Goiás: The Goiás State Public Defender Service was established under State Complementary Act No. 51 of 19 April 2005, which initially created 130 posts of state public defender. It was not set up, however, until June 2011 when the State Governor appointed the first Chief Public Defender. Under this Act, the Public Defender Service replaced the Legal Aid Office, which was part of the State Counsel-General's Office and had always been responsible for legal aid for those in need. The Public Defender Service now employs 135 people and provides assistance through lawyers working in the areas of civil and criminal law, sentence enforcement, human rights, and the rights of women, children, young people and consumers. The first public examination for 40 public defender positions is now being finalized.

Paraná: State Complementary Act No. 136 of 19 March 2011 establishes the Organic Act on the Public Defender Service in the State of Paraná, which created 582 state public defender positions. A public examination for 197 positions was held in 2012, with 87 candidates passing and places being filled in Curitiba, Londrina, Maringá, Ponta Grossa, Castro, Foz do Iguaçu, Cascavel, Guarapuava, Irati, Santo Antônio da Platina, Umuarama, Pato Branco and Campo Mourão. Public examinations for the 110 spots that were not filled during the first round of examinations are scheduled for this year.

Santa Catarina: State Complementary Act No. 575 of 2012 provided for the creation of the Public Defender Service in the State of Santa Catarina. In 2012, the first public examinations, for 60 public defender positions, and 90 staff positions, were held. Fifty-six public defenders have already taken up their posts and are now working in 15 cities.

São Paulo: In São Paulo, State Complementary Act No. 988 of 9 January 2006 created the state Public Defender Service and introduced a legal framework for the profession of state public defender. Public examinations have since been held and there are now 610 public defenders in the state of São Paulo, working in 41 different cities.

required to defend, in principle, the 73 per cent of the Brazilian population that, according to data from the Brazilian Institute of Geography and Statistics, cannot afford a lawyer. Consequently, measures to ensure the autonomy of these services, and provide for human, budgetary and physical resources, are crucial to guaranteeing the fulfilment of their important mission.

161. One of the important measures taken to strengthen the Brazilian Public Defender Service was Constitutional Amendment No. 45 of 2004, also known as the Judicial Reform, which guaranteed the functional and administrative autonomy of state defender services. Similarly, proposed Constitutional Amendment No. 358/05, which ensures the autonomy of the Public Defender Service at the federal level, is before National Congress. The proposal has already been approved by the Senate, but still needs to be adopted in the Chamber of Deputies.

162. Another major accomplishment was the adoption of Complementary Act No. 132, also known as the new Organic Act on the Public Defender Service, on 7 October 2009. The law was intended to organize, expand and modernize the role of the service, regulating it and giving it the possibility of working through special decentralized mechanisms, including in prisons. New functions of the Defender Service include encouraging out-of-court settlement of disputes through mediation and conciliation.

163. As to preventing and combating torture, the Defender Service was mandated under the Complementary Act to take action in police, prison and juvenile facilities to ensure that fundamental rights and freedoms can be fully exercised under any circumstances, and to take action to protect and restore the rights of victims of torture, sexual abuse, discrimination or any other form of oppression or violence and to promote follow-up and multidisciplinary support for victims.

164. An important step forward in this area was the promulgation of Act No. 12313 of 19 August 2010, amending Act No. 7210 of 11 July 1984 to include the Public Defender Service as part of the penal system, even providing for the establishment of special offices of the Public Defender Service to provide comprehensive legal aid, free of charge, to prisoners, convicted prisoners on parole and former prisoners, and members of their families, who lack the financial resources to hire a lawyer. The new law granted public defenders the right to freely enter police, prison and correctional facilities unannounced. This right undoubtedly acts as a deterrent to police and prison staff from engaging in torture, given that detainees could file a complaint with the help of a public defender at any time.

165. Between 2008 and 2011, the Federal Government invested over R$ 15 million in setting up 21 special legal aid centres for prisoners and members of their families[26] as part of the state public defender services and in restructuring 17 legal aid offices for prisoners and members of their families within the Federal Public Defender Service,[27] covering in all 19 states and the Federal District, and including Espírito Santo, Río de Janeiro and São Paulo. Investments in this area have benefited 390,000 individuals.

[26] Nineteen special centres in the states of Acre, Alagoas, Bahia, Ceará, Federal District, Espírito Santo, Maranhão, Minas Gerais, Mato Grosso do Sul, Pará, Pernambuco, Piauí, Rio de Janeiro, Rondônia, Rio Grande do Norte, Rio Grande do Sul, São Paulo, Sergipe and Tocantins, and two centres within the Federal Public Defender Service, for federal prisons: Catanduvas in Paraná and Mossoró in Rio Grande do Norte.

[27] Seventeen offices in Acre, Alagoas, Bahia, Ceará, Espírito Santo, Goiás, Minas Gerais, Pará, Pernambuco, Piauí, Paraná, Rio de Janeiro, Rio Grande do Norte, Rio Grande do Sul, São Paulo, Tocantins and the Federal District.

166. It is estimated that free legal aid is now permanently provided at 1,387 prisons out of a total of 1,598.[28]

167. Lastly, a register has been drawn up of all the public defenders in the country specializing in the penal system. The defenders listed on the register form part of the National Public Defender Force for the Penal System and as a gesture of solidarity provide, on a voluntary and exceptional basis, comprehensive legal aid free of charge to prisoners who are serving a sentence or awaiting trial. There are now 366 public defenders on the list. The Public Defender Force has already been active in Minas Gerais, Pernambuco and Santa Catarina, on behalf of 5,066 individuals.

4. Expert services

168. Brazil recognizes that the political, administrative and financial autonomy of expert and criminalistic services, and joint action by the federal entities, the Federal Government and external oversight bodies are important in preventing and combating crimes of torture and ill-treatment in Brazil.

169. On 17 September 2009, therefore, Act No. 12030, establishing general rules governing the work of official forensic experts, entered into force. This law ensures technical, scientific and functional autonomy for duly qualified individuals carrying out the function of official expert. It should be noted that the functional autonomy of experts and the modernization of official expert services to strengthen their structure and ensure independent, competent production of material evidence, are goals of the third National Human Rights Plan.

170. Currently, 10 federal entities have expert services that are directly attached to the Civil Police, while in 16 states, expert services are administratively subordinate to the departments of public safety, social welfare, etc. In states such as Santa Catarina and Río Grande do Sul, general expert institutes have now been established, where expert is a profession in itself and not limited to Civil Police. In the state of Paraná, there is a specific career structure for experts with the Scientific Police.

171. Attention is drawn to the initiative of the Human Rights Secretariat of the Office of the President to establish a working group on torture and forensic expertise in 2003. This group drafted the Brazilian Protocol on Forensic Expertise in the Crime of Torture, containing guidelines and rules to be followed by expert services, experts and forensic experts.

172. The Brazilian Protocol[29] is consistent with the Istanbul Protocol, but tailored to Brazil's situation as regards procedures for identifying and producing forensic evidence in cases of torture. It is also guided by the principles and recommendations found in the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and by the Subcommittee's guidelines.

173. The way in which medical examinations are conducted in cases of alleged torture vary from state to state, given that official expertise is regulated primarily by state legislation. Some states are already strictly applying the Protocol to their operations. Such is the case in the state of Ceará and the Antonio Persivo Cunha Institute of Legal Medicine in the state of Pernambuco.

---

[28] See National Council of the Department of Prosecution, *A visão do Ministério Público brasileiro sobre o sistema penitenciario brasileiro* (The Department of Prosecution view of the Brazilian prison system), 2013, available in Portuguese at: http://s.conjur.com.br/dl/sistema-prisional.pdf. PNDH-3 page 106.

[29] Available at: http://www.dhnet.org.br/denunciar/tortura/a_pdf/protocolo_br_tortura.pdf.

174. Between 2006 and 2011, the Human Rights Secretariat of the Office of the President organized workshops on forensic expertise, with an emphasis on offences of torture, in 11 cities, with a view to encouraging Brazilian official experts to incorporate procedures from the Istanbul Protocol in their practices.[30] In total, around 800 people attended, including judges, promoters of justice, attorneys of the Republic, chiefs of police, public defenders, medical experts, crime experts, committees against torture and representatives from human rights bodies.

5. Prison system registers and indicators

175. The Subcommittee recommended that the Brazilian State set up a standard computerized information system in every state in order to record admissions and other information.

176. In 2007, Brazil adopted the Computerized Penitentiary Information System (INFOPEN), a standard computerized system for all prisons. The system is run by the National Penitentiary Department of the Ministry of Justice and contains information from every prison in the federal entities. It has two modules: a statistical module that states are required to use under penalty of loss of funding from the National Penitentiary Fund, and an optional administrative module. The statistical module provides statistical reports in graph form, cross-referenced with all the information in the system using a flexible table of indicators. It also provides a cross-search function, which allows users to choose between several filters reflecting the data entered by the states. The reports are published twice a year on the Ministry of Justice website.[31] This system provides data on, inter alia, the numbers of prisoners and pretrial detainees and their sex, the number of prisons in each state, their capacity and number of officials, and prisoner profiles by nationality, level of education and offences.

177. The administrative module comprises the database of detailed individual records for the prison population and on prison administration procedures, as determined by each state. The states may use the INFOPEN platform or adopt their own. The INFOPEN database provided by the Federal Government includes information on prisoner biometrics, lists of lawyers, lists of officials, sentence monitoring, health care and occupational follow-up for prisoners.

178. In order to help the federal entities develop a complete and up-to-date database, as recommended, the installation of computer terminals in every prison was listed as goal 19 of the Prison System Master Plan so as to keep the data in the Penitentiary Information System always up-to-date.

179. Furthermore, Act No. 12714 of 14 September 2012 on the system for monitoring the enforcement of sentences, pretrial detention and security measures in custodial sentences should help to improve monitoring of custodial sentence enforcement.

[30] Vitória – ES (2006), São Luiz – MA (2007), Natal – RN (2007 and 2010), Porto Velho – RO (2008), Maceió – AL (2008), Aracaju – SE (2008), Recife – PE (2009 and 2011), Salvador – BA (2011), Fortaleza – CE (2010), Teresina – PI (2009 and 2010) and Porto Alegre (2010).

[31] Available at: http://portal.mj.gov.br/main.asp?View=%7BD574E9CE-3C7D-437A-A5B6-22166AD2E896%*7D*&Team=&params=itemID=%7BC37B2AE9-4C68-4006-8B16-24D28407509C%7D.

IV. Socio-educational system

180. The Subcommittee's report contains three paragraphs on the National System for Socio-Educational Support (SINASE). In light of the wealth of information that has already been provided by the Brazilian Government on the development of this system and the way in which it works, this reply focuses on specific aspects of the problem of torture and addressing it in the socio-educational system.

181. The Brazilian State believes that bringing SINASE in line with legal guidelines requires a concerted effort by the states and a theoretical educational framework.

182. Addressing violence against adolescents deprived of their liberty and conditions in socio-educational facilities are priorities for the Federal Government. The Human Rights Secretariat of the Office of the President, which set up the system, regularly schedules visits to these facilities to inspect the premises and to speak with adolescents and staff. The Federal Government is constantly investing in replacing overcrowded, inadequate facilities and constructing centres for integrated support. In 2013 alone, the Federal Government provided R$ 55 million in funding.

183. There are many challenges to achieving a policy on the use of socio-educational measures, depending on the way they are administered and regional differences. In order to break long-standing patterns of correction and punishment applied by those working with socio-educational measures, SINASE is investing in educational training. Training for professionals in all socio-educational establishments is being developed nationwide through the establishment of the National School of Socio-Education by the Human Rights Secretariat of the Office of the President. The National School of Socio-Education will open its doors in 2014 and combine good practices from the country's units, with a view to exchange of experiences and further training for socio-education professionals through distance learning. The pedagogical framework and training courses (whether distance or partial or full attendance on-site) offer a special approach to training mediators, with an emphasis on restorative practices. This initiative also allows monitoring and quantitative evaluation, so as to collect national data on socio-education professionals and their expectations.

184. As to monitoring of the administration of the socio-educational system, the Ten-Year Plan for Socio-Educational Support, drawn up under Federal Act No. 12594/12, is now in publication. Under the Plan, the states and municipalities that do not have federal competence to implement socio-educational measures will have a year to develop and present ten-year plans that are consistent with the guidelines set by the Federal Government. Various actors from civil society and public authorities were involved in the drafting of the Ten-Year Plan starting in March 2013, namely: the Intersectoral Monitoring Committee of SINASE, the National Council on the Rights of Children and Adolescents, the National Council of Justice, the National Forum of Closed Centre Programme Managers of SINASE, the National Forum of Government Leaders of Agencies Implementing the Policy on the Promotion and Protection of the Rights of Children and Adolescents, the National Forum on Juvenile Justice, the Ministry of Education, the Ministry of Health and the Ministry of Social Development. In addition, public consultations were held between May and June 2013.

185. One of the objectives of "socio-educational training" is tackling institutional violence through the following:

(a) Encouraging advocates of socio-educational policy to join state committees and mechanisms and district councils on preventing and combating torture (the National Committee on Preventing and Combating Torture/the National Mechanism to Prevent and Combat Torture), in accordance with Federal Act No. 12847/2013;

(b) Introducing mandatory notification in health services for socio-educational centres. Violence is a "notifiable condition" under Order No. 104 of 25 November 2011 and Presidential Decree No. 7958 of 13 March 2013, which addresses the treatment of victims of sexual violence by health and safety officials.

186. The rules and mechanisms governing SINASE are consistent with Brazilian and international regulations. Improvements to the police force include the implementation of chapter V of Federal Act No. 12594/12 on evaluating and monitoring the administration of socio-educational services. Implementation should take no more than three years, the aim being to ensure that targets have been met, and to make recommendations for system managers and staff. Evaluation should involve representatives of the judiciary, the Department of Prosecution, the Public Defender Service and guardianship councils.

187. Investing in information management in the socio-educational system through the Information System on Children and Adolescents (SIPIA-SINASE) is yet another measure aimed at regulating the National System for Evaluating and Monitoring Socio-Educational Services, to be launched in 2014.

188. The introduction of the socio-educational evaluating and monitoring system will not only make it possible to develop a network of socio-educational services, but will also help to ensure accurate information on socio-educational services and their impact and improve their quality, and to provide information on socio-educational services. According to article 26 of Federal Act No. 12594/12, the findings of the evaluation will be used to: (a) plan targets and determine priorities for SINASE and for funding; (b) restructure and/or expand the network of socio-educational services, according to identified needs; (c) adjust the objectives and nature of socio-educational services provided in the evaluated facilities; (d) showcase instruments of cooperation that will help solve the problems identified in the evaluation; (e) boost funding to strengthen the network of socio-educational services; and (f) improve and expand training for people providing socio-educational services. The information provided by the National System for Information on Socio-Educational Services will be used to support the evaluation, monitoring, administration and funding of the national, district, state and municipal socio-educational service systems. It will also be used to guide public, integrated and intersectoral policies in order to address shortcomings and make SINASE more effective.

189. The Brazilian State would like to point out that the Insituto Padre Severino, which was visited by the Subcommittee, was closed in October 2012 and has been replaced by the Cense Dom Bosco, which has 233 places for youngsters in socio-education. According to information from the State of Río de Janeiro, accommodation facilities that were deemed inadequate were demolished when the Instituto closed down. All the old accommodation retained was renovated and tailored to the services for adolescents detained at the Cense Dom Bosco. The new unit was built according to the architectural design put forward by SINASE.

V. Conclusion

190. The Brazilian Government hopes that through the information provided, it has shown its commitment to combating torture and ill-treatment in its prisons. Through this reply to the Subcommittee, the State reaffirms its commitment to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol.

191. Brazil recognizes the historical and structural challenges to be overcome in this area. In this regard, the Subcommittee's visit and recommendations offered the Brazilian State a

valuable opportunity to evaluate and record the efforts it has made in recent years to implement effective regulatory and administrative frameworks for combating torture.

192. However, a number of achievements have been made recently that have paved the way for a paradigm shift towards the adoption of a zero-tolerance position on torture in Brazil. The Brazilian State is not passive and is committed to protecting and promoting human rights, as can be seen from the recent creation of the National Mechanism to Prevent and Combat Torture, the new prison health policy, and the Agreement on Measures to Improve the Prison System and Reduce the Shortfall in Prison Capacity.

193. Brazilian democracy has successfully implemented a legal and institutional platform that strictly prohibits torture. There are State structures that are always ready to receive and process complaints, to inspect institutions, and to foster a social conscience that rejects torture. In addition to these guarantees and in spite of the remaining challenges, the Brazilian State has mobilized resources with a view to reducing shortfalls in prison capacity, improving prison infrastructure, ensuring access to justice and training human resources from all areas of the justice system, along with other initiatives described in this reply.

194. The Brazilian State remains open to dialogue and cooperation with the Subcommittee on Prevention of Torture, especially with respect to the periodic monitoring of the implementation of the recommendations arising from the Subcommittee's visit to Brazil in 2011.