



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

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

**Report on the visit of the Subcommittee on Prevention of
Torture and Other Cruel, Inhuman or Degrading Treatment
or Punishment to Brazil* ****

* In accordance with the decision of the Subcommittee at its fifth session regarding the processing of its visit reports, the present document was not edited before being sent to the United Nations translation services.

* In accordance with article 16, paragraph 1, of the Optional Protocol, the present report was transmitted confidentially to the State party on 8 February 2012. On 20 June 2012, the State party communicated its decision to make the report public.

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I. Introduction

1. In accordance with articles 1 and 11 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), the Subcommittee on Prevention of Torture (SPT) conducted a visit to Brazil from 19 to 30 September 2011.¹
2. The SPT was represented by the following members: Wilder Tayler (Head of Delegation), Mario Coriolano, Marija Definis-Gojanovic, Suzanne Jabbour, Goran Klemencic, Petros Michaelides, Christian Pross, and Felipe Villavicencio.
3. The SPT was assisted by four Human Rights Officers from the Office of the United Nations High Commissioner for Human Rights (OHCHR). In addition, the SPT was assisted by United Nations security officers and interpreters.
4. During its visit to Brazil, the SPT observed the treatment of persons deprived of their liberty in four different states.² In São Paulo, the SPT focused its work on juvenile detention centres, while in the other states visited it covered a wide range of institutions.
5. Whilst not all places visited are mentioned in this report, the SPT reserves the right to comment on any place visited in its future dialogue with the State party. The absence of any comment in this report relating to a particular institution visited by the SPT does not imply either a positive or negative finding in relation to it.
6. In addition to visiting places of detention, the SPT held meetings with government authorities, with the United Nations system in the country, and with members of civil society.³ The SPT wishes to thank them for the valuable information provided.
7. At the conclusion of the visit, the SPT presented its confidential preliminary observations orally to the Brazilian authorities.⁴ The Government of Brazil submitted comments to those preliminary observations on 28 November 2011. In the present report, the SPT presents its findings and recommendations concerning the prevention of torture and ill-treatment of persons deprived of their liberty in Brazil. This report uses the generic term “ill-treatment” to refer to any form of cruel, inhuman or degrading treatment or punishment.⁵
8. The SPT recalls that many of the recommendations made in the present report are not being presented to the Government of Brazil for the first time, considering previous visits by United Nations human rights mechanisms. Unfortunately, the SPT noted many of the same problems identified by those preceding visits,⁶ despite progress in some specific areas. It is concerned that recurrent and consistent recommendations made over several

¹ For more information about the SPT, please consult the webpage:

<http://www2.ohchr.org/english/bodies/cat/opcat/index.htm>.

² Please see Annex II.

³ Please see Annex I.

⁴ The preliminary observations were subsequently transmitted to the State party in writing on 14 October 2011.

⁵ In accordance with article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).

⁶ Report of Special Rapporteur on Torture, Sir Nigel Rodley, on his visit to Brazil, E/CN.4/2001/66/Add.2; Report on Brazil produced by the Committee against Torture (CAT) under article 20 of the Convention and reply from the Government of Brazil, CAT/C/39/2; Reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/HRC/14/24/Add.4 and A/HRC/11/2/Add.2.

years by different United Nations mechanisms have not been fully implemented. The SPT is hopeful that its visit and the resulting recommendations will be heeded and that they will provide a strong impulse for the current Government of Brazil to take resolute action to eradicate torture and ill-treatment for all persons deprived of their liberty.

9. The SPT requests the Brazilian authorities to provide it with a follow-up reply within six months from the date of transmission of this report, giving a full account of the State party's actions taken to implement the recommendations.

10. The present report will remain confidential until such time as the Brazilian authorities decide to make it public, as stipulated in article 16(2) of OPCAT. The publication of this report will undoubtedly serve as an additional means for preventing torture and ill-treatment in Brazil, as the SPT considers that the widespread dissemination of the recommendations would contribute to a transparent and fruitful national dialogue on the issues the report covers.

11. The SPT wishes to draw the State party's attention to the Special Fund established in accordance with article 26 of OPCAT. Recommendations contained in public SPT visit reports can form the basis of an application by the State party for funding of specific projects through the Special Fund.⁷

12. The SPT recommends that Brazil requests the publication of the present report in accordance with article 16(2) of OPCAT.

13. The SPT wishes to express its gratitude to the Brazilian authorities and, in particular, to the Governmental focal points in the Human Rights Secretariat for their positive cooperation and facilitation of the visit.

14. Further details about the SPT's concerns regarding access and cooperation are contained in the confidential preliminary observations.

II. National Preventive Mechanism

15. Brazil should have established or designated a National Preventive Mechanism (NPM) at the latest one year after ratification of OPCAT.⁸ At the time of the visit, however, the Brazilian NPM had still not been established. During the last day of the SPT visit to the country, the Government of Brazil presented the SPT with a draft NPM law, which was submitted to Congress shortly thereafter as bill 2442/2011. The SPT is pleased about this development and hopes that discussion of the draft law in Congress will proceed swiftly.

16. Further to its mandate under article 11 (b)(i) of OPCAT, the SPT would like to express its views on the draft NPM law. While the SPT considers that many elements of the proposed NPM are positive and reflect OPCAT provisions, it remains concerned about the method for selecting NPM members. The current draft proposes a system whereby the President of Brazil selects NPM members from a list of candidates prepared by the National Committee for the Prevention and Combat of Torture, whose members, in turn, are selected and appointed by the President. In this connection, the SPT recalls its Guidelines on NPMs,⁹ which call for an open, transparent and inclusive process for the selection and appointment of members of the NPM. Such process should involve a wide range of stakeholders, including civil society, and should be in accordance with published criteria. Furthermore, the draft law makes no reference to the need to strive for gender balance and

⁷ Please see <http://www2.ohchr.org/english/bodies/cat/opcat/SpecialFund.htm>

⁸ In accordance with article 17 of OPCAT.

⁹ The SPT guidelines on national preventive mechanisms, CAT/OP/12/5.

the adequate representation of ethnic and minority groups in the composition of the NPM, as required by article 18 of OPCAT and the Paris Principles.¹⁰

17. 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. In line with the principle of cooperation and constructive dialogue with State parties and in conformity with article 11(b)(iv), the SPT expresses its willingness to further assist the State party in the establishment of its NPM.

18. Due to the federal structure of the country, Brazilian States have started creating local mechanisms for the prevention of torture at state level. At the time of the visit, three states (Alagoas, Paraíba, and Rio de Janeiro) had legislation establishing local mechanisms. Of these three, only the latter had a functioning mechanism. The SPT is pleased by these developments and is of the view that the creation of state mechanisms should be encouraged by federal and state authorities.

19. The delegation met with the preventive mechanism for Rio de Janeiro. The Rio de Janeiro mechanism meets OPCAT requirements and has the potential for becoming a key actor for the prevention of torture. Its effectiveness, however, is being hampered by lack of material resources.

20. The SPT recommends that relevant federal and state authorities provide the Rio de Janeiro mechanism, as well as other mechanisms to be created, with functional independence and sufficient resources so as to allow these bodies to discharge their functions effectively in accordance with the provisions of OPCAT.

III. Overarching issues

21. In addition to examining the specific situation of persons deprived of their liberty, the SPT examined a number of overarching systemic issues relating to the treatment of persons deprived of liberty. These issues are addressed in the following sections A-F.

A. Legal framework

22. The SPT concurs with other United Nations mechanisms which have stated that the Brazilian legal framework in the field of torture prevention is to a large extent adequate.¹¹ The definition of torture in the internal legislation, as well as the existing legal safeguards against torture and ill-treatment and the rights of persons deprived of their liberty generally comply with international standards. The SPT is concerned, however, by the gap between the legal framework and its application in practice, as most of the rights and guarantees provided for in the national legislation were widely ignored. As noted by the Special

¹⁰ The Principles relating to the status of national institutions for the promotion and protection of human rights (the "Paris Principles"), annexed to General Assembly resolution 48/134.

¹¹ Concluding observations of the Committee against Torture on Brazil, A/56/44, paras. 115-120; Report on Brazil produced by the CAT under article 20 of the Convention and reply from the Government of Brazil, CAT/C/39/2, para. 37; Concluding observations of the Committee on the Rights of the Child on Brazil, CRC/C/15/Add.241, para. 5 and 7, Report of Special Rapporteur on Torture, Sir Nigel Rodley, on his visit to Brazil, E/CN.4/2001/66/Add.2, para. 161.

Rapporteur on Torture following his visit in 2001, many of the recommendations would merely require the authorities to abide by existing Brazilian law.¹²

B. Institutional framework

23. The prevention of torture in places of deprivation of liberty is the shared responsibility of several institutions working in the field of administration of justice. The SPT is concerned that the current institutional framework in Brazil does not provide for sufficient protection against torture and ill-treatment.

1. Public defence system

24. Free legal aid for those that cannot afford a private lawyer is guaranteed in the Constitution of Brazil. However, through interviews with persons deprived of their liberty, the SPT found that free legal assistance was not available to all those who needed it.

25. During its visit, the SPT held meetings with public defenders, at federal and state levels, in order to learn about the challenges they faced. In general, the SPT was informed that lack of institutional autonomy and lack of financial and human resources, in particular when compared to the office of the prosecutor, curtailed the public defenders' work.¹³ In addition, the SPT noted that in the state of Goiás, there was no public defence system.

26. 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.

27. The SPT recommends that public defenders' offices keep a central register of allegations of torture and ill-treatment, including information provided in confidence to them. The SPT also recommends that public defenders cooperate and coordinate with the national and/or local preventive mechanisms, in particular to avoid reprisals following monitoring visits.

2. Judiciary

28. According to information gathered, judges rarely asked questions about detainees' treatment during investigation. Judges should be vigilant for signs of torture and ill-treatment, and take steps to terminate and remedy such situations.

29. The SPT recommends that judges be obliged by law to ask every detainee about his/her treatment during investigation, to record in writing any allegations of torture or ill-treatment, and to order an immediate forensic medical examination whenever there are grounds to believe that a detainee could have been subjected to torture or ill-treatment.

30. Under Brazilian law, confessions are allowed as evidence in court unless they were obtained in violation of constitutional or other legal provisions.¹⁴ Despite the legal

¹² Report of the Special Rapporteur, E/CN.4/2011/66/Add.2, para. 168.

¹³ According to information provided by the federal government in reply to the SPT's preliminary observations, over the past four years the Government of Brazil provided approximately US\$8 million for public defenders in 18 states to provide legal assistance to prisoners.

¹⁴ Brazilian Constitution, article 32 ; Brazilian Code of Criminal Procedure, article 157.

prohibition against unlawfully-obtained evidence, confessions, including confessions obtained by torture, are reportedly used in judicial proceedings.

31. The SPT strongly recommends that judges refuse to accept confessions when there are reasonable grounds to believe that these have been obtained by means of torture or ill-treatment. In such cases, judges shall immediately notify the prosecution so an investigation can be initiated.

3. Oversight and complaint mechanisms

32. The SPT took note of the existence of oversight and complaint mechanisms in several of the places it visited. These mechanisms included police ombudspersons (*ouvidorias*), internal affairs units (*corregedorias*), and surveillance judges. However, the SPT received several allegations from detainees interviewed about being punished for submitting complaints and about not receiving an answer to them. Interviewees also alleged that judges rarely visited them. The SPT wishes to emphasize that the mere existence of complaints mechanisms is not enough; they must be, and must be seen to be, independent and impartial, and should offer guarantees of effectiveness, promptness and expeditiousness.

33. In this regard, the SPT recommends that all persons deprived of their liberty be informed about their right to submit direct and confidential complaints to the authority responsible for the administration of the place of detention, to higher authorities and to authorities with remedial powers. Information about this right should be provided in a language they can understand and in writing at the time of arrival at the place of detention, and should be made generally known throughout all the places of detention, through signs or posters posted visibly in places of detention. The right to submit complaints should be guaranteed in practice and complaints should be received uncensored as to substance and be considered and replied to without undue delay. No reprisals or other forms of prejudice should be suffered by those making a complaint. Relevant authorities should keep a record of all complaints received, including their nature, the institution where it originated, date of receipt, date of decisions, the nature of decision and any action taken as a result. Such registers shall be made available to external monitoring bodies.

4. Institute for Forensic Medicine

34. Most institutes for forensic medicine in Brazil are subordinated to the States' Secretariats for Public Security, which control the police. The SPT is concerned that this may impact negatively on the independence of forensic doctors and their capacity to perform medical examinations without undue interference.

35. The SPT recommends that forensic institutes be made fully independent from public security secretariats. The SPT also recommends that the State party establish a system of independent examinations in accordance with the Istanbul Protocol,¹⁵ under which qualified forensic doctors and psychologists shall carry out exhaustive investigations when the doctor who has checked the detainee has grounds for supposing that the person has been subject to torture and/or ill-treatment.

¹⁵ The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Istanbul Protocol"), adopted in 1999, HR/P/PT8/Rev.1.

C. Healthcare

36. The SPT considers that the situation of healthcare in most facilities it visited was extremely worrying. Overall concerns included the lack of financial, material and human resources and the subordination of health services to the security services.

37. In police stations there was no access to doctors. A physical examination (“*corpo de delito*”) was performed on detainees shortly upon their arrest and normally before their admission to the police station. All detainees interviewed by the SPT stated that this examination was superficial and conducted in a perfunctory manner.

38. Medical examinations and the proper recording of injuries incurred by persons deprived of their liberty constitute important safeguards for the prevention of torture and ill-treatment, and in combating impunity.¹⁶ They can also protect police and prison personnel against false allegations. States must carry out a prompt and impartial investigation wherever there is a reasonable ground to believe that an act of torture or ill-treatment has been committed.¹⁷ Such examinations should be carried out in private by a health professional trained in the description and reporting of injuries, include an independent and thorough medical and psychological examination, and the results be kept confidential from police or prison staff, and shared only with the detainee and/or the detainee’s lawyer, in accordance with the Istanbul Protocol.

39. The SPT recommends that all detainees be offered a medical examination as soon as possible after their initial detention. Such examination must be independent, free of charge and conducted in accordance with the Istanbul Protocol. The SPT also recommends the establishment of a system that guarantees prompt, free of charge access to medical care and treatment for those under police custody whenever necessary.

40. In prisons, medical assistance was irregular and in most cases access to medical staff was granted only after long delays. In addition, there was no medical staff at night or during weekends. Medical staff was insufficient and unqualified inmates were involved in the provision of healthcare. For example, in one prison the SPT was told that there was only one doctor present once a week to attend to more than 3,000 inmates.

41. The SPT recommends that medical assistance in prisons be made available 24 hours/day, and seven days a week. Working conditions, including salaries, of medical staff should be adequate, so as to attract qualified personnel. Inmates should not be involved in the provision of medical services.

42. According to information received, inmates were not given a medical examination on entry to prison. Inmates further indicated that access to medical care was often at the discretion of prison guards or of “*faxinas*” (other inmates working for the institution).

43. The SPT recommends that the State party ensure that a health professional examine every inmate as soon as possible after his or her admission and thereafter as necessary, in accordance with international standards.¹⁸ Inmates should be able to seek professional medical assistance in confidence and without their request being obstructed or filtered by guards or other inmates.

¹⁶ Committee against Torture, General Comment No. 2, CAT/C/GC/2, para. 13.

¹⁷ UNCAT, art. 12.

¹⁸ Standard Minimum Rules for the Treatment of Prisoners (SMRTP), rule 24; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (“Body of Principles”), principle 24.

44. The SPT met with cases of serious neglect, including inmates with grave chronic conditions, broken limbs or other wounds that were not treated. Inmates expressed their apprehension for requesting medical assistance, based on their experience of punishment by prison guards or ill-treatment while being transported to hospital.

45. The SPT recommends that clear instructions be imparted to prison authorities that no inmate shall be punished for requesting medical assistance. The SPT recommends that security policies for transfers of persons to external healthcare facilities be reviewed.

46. Material conditions in most medical units were appalling and medical equipment and medication was lacking.

47. The SPT recommends that material conditions of prisons' medical units be immediately improved, and that adequate equipment and necessary pharmaceuticals be provided.

48. From pregnant inmates and mothers with babies in prison, the SPT received allegations of lack of obstetrics care and delay in applying the necessary vaccines to infants, in contradiction with Brazilian laws.¹⁹

49. The SPT recommends that pregnant women be given regular advice on their health by a qualified health practitioner. The SPT recommends that children living with their mothers in prison be provided with on-going healthcare services and that their development be monitored by specialists.²⁰

50. During its visit to institutions for children and adolescents, the SPT observed bruises and other types of untreated injuries. Injuries were allegedly dismissed and frequently covered up by medical staff as accidents. The SPT considers this to be in contradiction with ethical principles subscribed to by the medical profession.²¹ Medical staff interviewed acknowledged the presence of guards in medical consultations with children or adolescents.

51. The SPT recommends that the State party impart clear instructions to physicians working in places of deprivation of liberty that no suspected acts of torture or ill-treatment shall be concealed or ignored and that they must be reported to relevant authorities. Medical examinations should be carried out in strict confidentiality. As a rule, guards should be out of sight and hearing, otherwise their presence should be entered into the medical record. Medical files shall be kept confidential.

D. Impunity

52. Impunity for acts of torture was pervasive and was evidenced by a generalized failure to bring perpetrators to justice, as well as by the persistence of a culture that accepts abuses by public officials. In many of its meetings the SPT requested, but was not provided

¹⁹ Brazilian Law 7210/1984, art. 14.3; *Regras Mínimas para o Tratamento do Preso no Brasil (Regras Mínimas)*, CNPCP resolution no. 14, of 11 November 1994, art. 16.

²⁰ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the "Bangkok Rules"), adopted by General Assembly resolution 65/229, rules 48 and 51.

²¹ Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by United Nations General Assembly resolution 37/194 of 18 December 1982; Declaration of Tokyo, adopted by the 29th World Medical Assembly, Tokyo, October 1975.

with, the number of individuals sentenced under the crime of torture.²² Individuals interviewed by the SPT did not expect that justice would be done or that their situation would be considered by state institutions.

53. The SPT recommends that all allegations of torture and ill-treatment be thoroughly investigated as a matter of routine and that perpetrators be held accountable for their actions. The State party should issue a strong condemnation, at the highest level of authority, declaring that torture will not be tolerated under any circumstances. This message of “zero tolerance” of torture and ill-treatment should be delivered at regular intervals to all security forces and custodial staff, including through professional training.

54. The SPT learned that police ombudpersons (“*Ouvidorias*”) and internal affairs units (“*Corregedorias*”) did not have their own investigative capacity and relied on inquiries conducted by the police, including in cases of alleged torture. This institutional arrangement may prevent impartial inquiries and contribute to impunity.

55. The SPT recommends that the integrity of the work of ombudpersons and internal affairs units be guaranteed by strengthening their independence and providing them with an effective investigative capacity.

E. Corruption

56. The SPT was seriously concerned about the numerous and consistent allegations of corruption received. Examples included detainees bribing policemen 10,000 Brazilian *reais* to be freed; police officers stealing evidence; detainees paying bribes in order to satisfy basic needs, such as a sunbath; relatives having to pay in order to be able to visit detainees; payments for protection, etc. The SPT received allegations that some people were being held in a police facility pending their payment of a bribe in order to be transferred to a pre-trial detention facility.

57. In addition, corruption was evidenced by the almost complete control of certain places of detention by organised criminal groups. Inadequate police salaries have been cited as one of the root causes of corruption.²³

58. The SPT recommends:

(a) **The adoption and implementation by the highest police and prison authorities of a firm and transparent “zero tolerance” policy towards corruption.**

(b) **The training of police and prison officers and the review of wages to police and prison personnel.**

(c) **The adoption of measures to improve public scrutiny by civil society as a means of increasing accountability.**

(d) **The execution of campaigns to sensitize staff and the general public to the need to combat corruption in places of detention and to make them aware of the adverse consequences of corruption.**

²² Pursuant to information provided by the State party after the visit, in April 2011 there were 160 persons charged with the crime of torture out of a prison population of 512,000.

²³ A/HRC/14/24/Add.4, paras. 35-39.

(e) The investigation of allegations of corruption and, in cases where it is suspected that a crime has been committed, the channelling of relevant information to the Office of the Public Prosecutor.

(f) The adoption of a plan action, which should include objectives, measures and deadlines, to implement the above recommendations.

F. Reprisals

59. The grave concerns of the SPT regarding reprisals against persons interviewed, as well as the lack of appropriate control and safeguards against reprisals, were stated in the preliminary observations. The SPT welcomes the commitment of the National Human Rights Ombudsman (*Ouidor Nacional dos Direitos Humanos*) to monitor the places of detention visited by the SPT, to investigate whether there were reprisals.²⁴

60. According to information provided to the SPT immediately following the visit, reprisals did take place in at least one of the places of detention visited, namely the Nelson Hungria female prison. This violates Brazil's specific obligations under OPCAT.

61. The SPT expresses its strong condemnation of these and any other acts of reprisals and requests the State party to launch an immediate investigation into the matter and hold accountable those found responsible. The SPT reiterates its recommendations made in the preliminary observations and emphasizes that those providing information to international or national monitoring bodies or institutions should not suffer any punishment or otherwise negative consequences for having provided such information.

62. The SPT requests to be kept informed of the State party's activities to prevent and investigate reprisals, and requests to be provided with a report of the National Human Rights Ombudsman on its visits for these specific purposes, including on measures taken in relation to the reprisals at Nelson Hungria prison.

IV. Situation of persons deprived of their liberty

A. Police detention

1. General issues

(a) *Information on the rights of detainees*

63. Many persons interviewed indicated that they had not been properly informed of their rights at the time of arrest.²⁵ Providing persons deprived of their liberty with information on their rights constitutes a fundamental safeguard against arbitrary detention, torture and ill-treatment.

64. The SPT recommends that the State party ensure that instructions be given to detaining officers to safeguard the effective and systematic implementation of the right of each person deprived of liberty to be informed orally and in writing of his/her rights during detention, in a language that they can understand, at the outset of detention, and that this be recorded.

²⁴ Reply of the State party to the confidential preliminary observations, dated 28 November 2011.

²⁵ Body of Principles, principle 13.

(b) *Right to inform a third party of detention*

65. The right of persons deprived of their liberty to inform a person of their choice about their detention represents a basic safeguard against torture and ill-treatment.²⁶ The SPT found several cases in which persons deprived of their liberty had not been able to inform a third person of their choice about their detention for prolonged periods of time.

66. The SPT recommends that persons deprived of their liberty be allowed to notify or to require the competent authority to notify a person of their choice of their detention and of the place in which they are being held. Such notification shall take place promptly after their initial detention or arrest and also after any transfer from one place of detention to another. Ideally, this notification shall be given by means of a phone call, and the date and time of this phone call, as well as the identity of the person notified, shall be registered.

(c) *Right to legal assistance*

67. A detainee must have the right to legal assistance of his/her own choosing,²⁷ and from the outset of detention.²⁸ An independent legal representative should be entitled to be present and assist the detainee during all police interviews and during appearances before a judge, as a fundamental safeguard against torture and ill-treatment. If a detainee has been subjected to torture or ill-treatment, this access to defence will facilitate the right to complaint, in addition to performing a preventive function.

68. The SPT recommends that the authorities ensure that persons deprived of liberty are consistently informed of their right to have access to a lawyer of their choice, that they can be provided with free legal aid services, and that they be able to freely exercise this right from the outset of their deprivation of liberty, and throughout the entire criminal procedure.²⁹

(d) *Categories of detainees*

69. The SPT encountered situations where detainees were being kept in police facilities together with persons who had already been sentenced and should have been placed in a closed or semi-open regime for sentenced prisoners. The SPT recalls that the separation of accused persons from convicted persons is an important obligation under international law.³⁰

70. The SPT recommends that the State party ensure the effective separation of detainees and sentenced prisoners, and that police detention be reduced to a minimum, including for remand detainees. Convicted persons should not be held together with the accused, and should be transferred as appropriate.

(e) *Duration of police detention*

71. The SPT found persons being held in police facilities for very long periods of time, sometimes more than one year. In some cases, lengthy detention coincided with the fact

²⁶ CAT/C/GC/2, para. 13; Body of Principles, principle 16 (1).

²⁷ International Covenant on Civil and Political Rights (ICCPR), art. 14, para. 3(d).

²⁸ CAT/C/GC/2, para. 13.

²⁹ Basic Principles on the Role of Lawyers (Basic Principles on the Role of Lawyers), Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 1990, principle 7.

³⁰ ICCPR, art. 10, para. 2.

that the person was sentenced, as described above. In other cases, the person was still awaiting trial.

72. The use of police facilities to hold persons for prolonged periods of time is completely inappropriate. The SPT recommends that the appropriate authorities take urgent steps to transfer persons being held for prolonged periods of time in police facilities to the place of detention appropriate to their situation.

(f) *Staffing*

73. The SPT is concerned by the general problems of insufficient staffing and related corruption in the police. As a concrete example, the SPT could observe that the “*concentradora*” police facility Polinter Grajaú was under the control of a “militia”. The SPT was deeply concerned by the tense atmosphere in that facility and by the way in which it was managed, and refers to section III.E.

74. The SPT recommends that the State party allocate an appropriate budget that is sufficient to ensure that the police force is comprised of well-motivated, appropriately salaried staff, sufficiently trained in modern forensic investigation techniques, and with a proper awareness of human rights approaches. Internal monitoring mechanisms should be put in place to ensure officers’ compliance with international human rights standards.³¹ The appropriate authorities should implement stringent internal policies with suitable investigation and punishment mechanisms, aimed at eradicating the practice of allocating any form of authority over police facilities to criminal gangs or other groups.

2. Conditions of detention

(a) *Overcrowding*

75. The SPT received consistent allegations about the general overcrowding of police facilities, and could itself observe situations of overcrowding. Notably, in Polinter Grajaú, the SPT found cases of severe overcrowding in certain cells. In addition, the SPT received credible allegations that one of the cells in this particular police facility (cell 14, measuring approximately 7 m²) was consistently used to hold an extreme quantity of persons pending their transfer to the pre-trial prison Ary Franco. The SPT considers that subjecting detainees to extreme overcrowding constitutes a severe form of ill-treatment.

76. The State party should immediately take steps to prevent the extreme levels of overcrowding described.³² A minimum amount of floor space per detainee should be stringently respected, in accordance with international standards, in all police facilities in the country.

(b) *Material conditions*

77. The SPT noted that efforts had been made to refurbish some police facilities, such as police station 76 in Niterói. However, in the “*concentradoras*”, the SPT found cause for concern as regards the material conditions of the holding facilities. With regard to other states, the SPT received consistent allegations that police facilities were often in very poor conditions. Persons detained in police facilities were often held in dilapidated, filthy and

³¹ Including the United Nations Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169.

³² The Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (“Inter-American Principles”) OEA/Ser/L/V/II.131 doc. 26), principle XVII.

stuffy cells, with inadequate or no sanitation, and inadequate or no bedding provided. The SPT furthermore received consistent allegations of deprivation of food, water, as well as the lack of access to fresh air and exercise in the case of prolonged police detention.

78. The SPT recommends that the State party conduct a nation-wide audit into the material state of police facilities, and establish a plan of action for the cleaning, renovation and refurbishment of facilities. The State party should take the necessary steps to ensure that conditions of detention in the country's police facilities are urgently brought in line with international standards, and that the basic needs of persons deprived of their liberty are met with regard to sanitation, bedding, food, water and possibility for exercise. Those in police detention for more than 24 hours should be granted a minimum of one hour of outdoor exercise daily.

3. Torture and ill-treatment

79. The SPT received from interviewees repeated and consistent accounts of torture and ill-treatment committed by, in particular, the military and civil police. Allegations included threats, kicks and punches to the head and body, and blows with truncheons. Such beatings took place in police custody, but also on the street, inside private homes, or in secluded outdoor areas, at the moment of arrest. The torture and ill-treatment was described as gratuitous violence, as a form of punishment, to extract confessions, and as a means of extortion.

80. The SPT also received numerous and consistent allegations from children and adolescents of torture and ill-treatment suffered upon arrest and during police custody. Children and adolescents alleged that the torture and ill-treatment committed by the military police took place upon arrest and the methods included slaps, kicking and boxing on all parts of the body. A female prisoner reported that she had been raped by two police officers while in police custody.

81. As for the treatment in police custody, one inmate stated that the methods of torture used during his interrogation included suffocation by placing his head in a plastic bag, electroshocks, psychological threats and cold showers for six days. The SPT also received allegations of ill-treatment during police custody such as the obligation to sleep on the floor in a filthy cell without proper access to sanitation, water and food, and the denial of health care, including for children and adolescents allegedly wounded by the police.

82. The SPT furthermore received allegations of beatings and ill-treatment as a form of punishment. For example, one detainee stated that during his custody by the civil police for a period of two days he was held in a dirty cell of approximately 8 m² holding 20 men, and deprived of food and water. When the detainees complained and requested food and water, they were beaten. Detainees also reported being kept in stress positions (for instance, assuming a posture in which the body was supported by bended knees) for prolonged periods of time during police custody.

83. With regard to transportation, the SPT received consistent allegations of torture and ill-treatment taking place in police vehicles, including through extreme overcrowding of vehicles, prolonged detainment in vehicles, and beatings during transfers.

84. In Polinter Grajaú some detainees feared for their lives. Here, the SPT received consistent allegations that torture and ill-treatment was commonplace. These practices were linked with the general tense atmosphere, the poor material conditions, and the corrupt management of the facility.

85. The SPT also observed the discriminatory treatment of persons deprived of their liberty needing special protection (so-called "*seguro*"). In one facility visited, the SPT found that the persons being held by the police in the "*seguro*" section were held in

conditions far inferior to the rest of the detainees, and were allegedly subject to frequent beatings.

86. The SPT considers the above allegations to be cases of physical and mental torture or ill-treatment. The SPT condemns all acts of torture and ill-treatment and recalls that torture cannot be justified under any circumstance. The SPT reiterates its call for the Brazilian authorities to condemn any act of torture firmly and publicly and to take all the necessary steps to prevent torture and ill-treatment. Preventive steps include inter alia the conduct of prompt, impartial and independent investigations, the establishment of an efficient complaints system, and the prosecution and punishment of alleged perpetrators.

B. Penitentiary institutions

1. General issues

(a) Registers

87. In all prisons visited, the SPT checked the registers, reviewed personal files and held talks with prison staff responsible for keeping and updating registers. While prison records were kept electronically in the penitentiary systems in Rio de Janeiro and Espírito Santo, registers of the facilities visited in Goiás were not computerized and much of the record keeping was done by hand.

88. The SPT recommends the establishment of a uniform computerized system in all the states, for registering admissions and keeping other records.

89. An examination of the prison records in the Ary Franco pre-trial facility revealed that seven inmates had died in that detention centre since the beginning of the year 2011. In most cases, the cause of death was unclear and/or the circumstances that led to the death were not available. The SPT took note that during the same period there had been a total of 91 deaths in prison custody only in the state of Rio de Janeiro.

90. The SPT requests the State party to provide detailed information, including death certificates and autopsy reports, on the cause and circumstance of all deaths that have occurred in places of detention, as well as information in respect of independent investigations conducted in this connection.

(b) Separation of categories of inmates

91. The SPT was pleased to note that the separation of male and female detainees in prisons was strictly observed, and that female prisoners were generally guarded by female prison personnel. It noted, however, as mentioned above in relation to police stations, that the lack of adequate facilities led to situations where convicted prisoners were held together with pre-trial detainees.

92. In almost all the prisons visited, the SPT noticed the presence of organised criminal groups. Inmates were kept in separate facilities or cellblocks on the basis of the criminal faction to which they alleged to be affiliated. In this regard, the SPT observed that the inmates' personal files in Ary Franco included a statement signed by the inmate providing that he had agreed to be assigned to a particular cellblock under the control of a particular faction, assuming responsibility for his own safety in that regard.

93. The State party should ensure the effective separation of remand detainees and convicted prisoners in accordance with its obligations under international human rights law.³³ The SPT reiterates the concern and recommendation expressed by the Special Rapporteur on extrajudicial, summary or arbitrary executions that “prisons must be run by the wardens, not by inmates. The practice (...) of forcing new prisoners who have never belonged to any gang to choose one upon entry into the system is cruel and causes the size of gangs to swell”.³⁴ Allocation to a cell or block should be based on objective criteria.

(c) *Maximum security prisons*

94. In response to a situation of severe prison overcrowding, the State of Espírito Santo adopted a plan to construct 26 new prison establishments, some of which follow a “supermax” model. Some of these new facilities were visited by the SPT. Admittedly, these were clean and overcrowding did not constitute a problem. However, an extremely harsh and repressive regime was observed. At Viana II pre-trial male prison, the SPT observed that prisoners’ movements within the unit itself were the subject of strict control through the application of group discipline. The SPT is concerned about the psychological sequelae of the regime applied in these prisons and the possibility of the model used in Espírito Santo being followed in other Brazilian states.

95. The SPT considers that these types of facilities should not be the norm, and should be avoided especially in the case of pre-trial detainees. The SPT further considers that the possible replication of this model of incarceration by federal authorities in other states should be a matter of further study.

2. Conditions of detention

(a) *Overcrowding*

96. In almost all facilities visited the number of inmates exceeded the facility’s maximum capacity. The SPT found alarming levels of overcrowding at Coronel Odenir Guimarães - Casa de Prisão Provisória (Goiás), and in Ary Franco prison. As a result, inmates had to take turns to sleep on the floor on thin foam mattresses in extremely poor condition. The SPT was also informed that judges seem to avoid imposing alternative sentences, even for first offenders, as well as of recent legislation that restricts this possibility, thus contributing to prison overcrowding.

97. The SPT calls on the State party to re-evaluate its public security policies, and to take the appropriate short- and long-term steps in order to reduce overcrowding in prisons.³⁵ Inmates should be provided with accommodation that respects international standards, due regard being paid to cubic content of air and minimum floor space, inter alia.³⁶ Every prisoner shall be provided with a separate bed and clean bedding.³⁷

98. The SPT recommends that the State party promote the application of non-custodial measures by the judiciary, in accordance with international standards.³⁸

³³ ICCPR, article 10.

³⁴ A/HRC/8/3/Add.4, para. 21 (h).

³⁵ Inter-American Principles, principle XVII.

³⁶ SMRTP, rule 10.

³⁷ SMRTP, rule 19.

³⁸ United Nations Standard Minimum Rules for Non-custodial Measures (the “Tokyo Rules”).

(b) *Material conditions*

99. Among the penitentiary institutions visited by the SPT, the material conditions of detention varied considerably from one establishment to another. At Coronel Odenir Guimarães-CPP, the conditions also differed between facilities or cellblocks. For example, cellular accommodation in the *Módulo de Respeito* (Block 2A) provided good living conditions. However, the quarantine cell for newly-arrived detainees accommodated at the time of the visit nine inmates, with no bedding and completely inadequate sanitary facilities. The worst conditions were observed in Block 4B, where recidivists convicted of violent crimes were held.

100. The SPT recommends that inmates be treated on an equal basis and in a non-discriminatory manner. Living conditions should be harmonized so as to guarantee non-discrimination and eliminate possible sources of pressure and/or means of extortion of inmates. Allocation of an inmate to a particular cell or block within a prison should take place in accordance with formal objective criteria, and should be recorded in a transparent manner in the inmate's personal file.

101. The Brazilian authorities are requested to provide information on actions taken to review the use of quarantine cells for newly-arrived detainees, so that they comply with international standards.

102. At Nelson Hungria, prisoners were accommodated in large-capacity dormitories (50 beds), where meals were also served. Toilet and bath facilities offered little privacy. Inmates at Petrolino de Oliveira female prison complained that there was no hot water for washing.

103. The SPT recommends that the authorities draw up a plan to progressively replace large dormitories with smaller living units. The SPT further recommends that deficiencies in the sanitation infrastructures in penitentiary institutions be remedied, with due consideration to international standards.³⁹

104. The material conditions in Ary Franco prison reflected a pronounced disregard for the dignity of inmates. The most dilapidated cells were seen on the underground floor of the main building, especially in the areas for inmates needing protection from other inmates (“*seguro*”). Corridor A, a dedicated unit for protected inmates, had an official capacity of 296 but was accommodating 457 inmates at the time of the visit. The bulk of the unit's accommodation consisted of 21 multi-occupancy cells (30m²), each containing two sets of bunk beds with a non-partitioned latrine and sink or shower. Each cell held up to 30 prisoners, with approximately half of them having to sleep on the floor without adequate bedding.

105. Cells in Ary Franco were generally dark, filthy, stuffy and infested with cockroaches and other insects. The heavy overcrowding and poor maintenance of the cells resulted in conditions that created serious health problems for the inmates, such as mycosis and other skin and stomach diseases. In some cells, the SPT could see that the sewage system from cells on the above floors was seeping through the ceiling and walls.

106. In addition to the deplorable state of accommodation facilities, there was a general lack in the provision of hygiene items, clothing, mattresses and other essential items. The SPT received information from inmates that the cost of soap was eight *reais* and that toilet paper cost 50 cents, which many inmates could not afford.

³⁹ SMRTP, rules 12-13.

107. The SPT concluded that the material conditions of this institution generally did not comply with national regulations,⁴⁰ nor with relevant international standards, and that detention in such conditions amounted to inhuman and degrading treatment.

108. The SPT reiterates the call made in its preliminary observations to the State party for the immediate closure of Ary Franco prison. Subsequently, this facility should either be closed down definitively or completely restructured and refurbished.

109. The SPT urges the State party to take the necessary steps to ensure that conditions of detention in the country's prisons are brought in line with the Standard Minimum Rules for the Treatment of Prisoners. A plan of action on prisons should be drawn up and disseminated, aimed at ensuring that the basic needs of all persons deprived of their liberty are met. As a matter of priority, the State party should conduct a nation-wide audit into the material conditions of Brazilian penitentiary facilities, with a view to establishing and implementing cleaning, renovation and refurbishment programmes.

110. Pre-trial detainees interviewed in Viana II complained about the high temperatures in their cells during warm weather and that a number of inmates had developed breathing problems due to poor ventilation. Furthermore, the toilet facilities inside the quadruple occupancy cells (approximately 8 m²) were of a design that offered little privacy.

111. Appropriate steps should be taken to remedy the deficiencies concerning the temperature, insufficient ventilation and sanitary facilities in the cells.

(c) *Sunbath and activities*

112. The SPT received allegations of insufficient access to the minimum of one hour daily exercise as provided for in international standards.⁴¹ The appalling material conditions of the Ary Franco facility were exacerbated by the fact that inmates were locked up in their overcrowded cells, without proper ventilation or natural light, continuously for up to two or three weeks (only ten prisoners from each cell had access on a rotating basis to one hour sunbath per week). In the Viana II maximum security penitentiary, the regime was limited for the majority of pre-trial prisoners to one hour of outdoor exercise per day, and only a reduced number of inmates had access to work and education programmes. Inmates explained that they had no access to books of their choice.

113. The SPT noted that there were few opportunities available to inmates to participate in meaningful activities, although some facilities provided some opportunities. At Nelson Hungria, the SPT noted that 330 inmates were attending classes in the school, which included primary, secondary and university-level education. The range of activities offered to inmates in Coronel Odenir Guimarães-CPP's *Módulo de Respeito* was good. However, other units within the same facility were found to be lacking any meaningful opportunities for education, work and recreation.

114. The SPT recommends that all inmates without exception be given access to a minimum of one hour daily exercise in the open air. The SPT recommends that the relevant authorities increase their efforts to provide all inmates with purposeful activities and improve the programme of activities offered in penitentiary establishments nation-wide.

⁴⁰ *Regras Mínimas*.

⁴¹ SMRTP, rule 21.

(d) Contact with the outside world

115. In several prisons, the SPT was informed by inmates that they had very limited access to communication by telephone or letter. The SPT also received allegations regarding the non-transmission of correspondence.

116. At Viana II, pre-trial inmates placed under the special high security regime had a visit entitlement of two hours per week and intimate visits once a fortnight. The establishment's visiting facilities were adequate but the geographical location of the new centres built in Espírito Santo was problematic as inmates were often held far from their families. Maximum-security inmates were not allowed to make telephone calls, receive parcels or keep personal belongings.

117. The SPT recommends that all inmates be allowed under necessary supervision to communicate regularly, by letter, telephone and visits with their families and other persons.

118. The SPT received many complaints relating to the intrusive and humiliating search procedures in place for visitors, including elderly women and children, who were requested to undergo strip searches and intimate searches. Another recurrent complaint was the significant delays in issuing visitor cards.

119. The SPT recommends that the State party ensure that strip searches and intimate searches shall and 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.⁴² Issuing of visitors' passes should be sped up.

120. The SPT was concerned by allegations received that mothers with children in prison were deprived of their right to keep custody of their child after the age of two, who in some cases had been put up for adoption.

121. The SPT recommend that decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children, and be based on careful individual assessment.⁴³ The SPT further requests the State party to provide clarification on the practice of placing children for adoption, and on the application of child custody legislation in these situations.

(e) Food and drinking water

122. Numerous inmates complained that prison food was of poor quality. Inmates at Coronel Odenir Guimarães-CPP reported restrictions in the water supply.

123. The SPT recommends that Brazilian authorities increase the number of food-quality checks to ensure that all meals are prepared in a hygienic manner, in sufficient quantity, and with the nutrition quality and variety for the maintenance of inmates' health.

⁴² UNCAT, article 16; the Bangkok Rules, rules 19 to 21; and the Inter-American Principles, principle XXI.

⁴³ Bangkok Rules, rules 49 and 52.

3. Discipline and sanction

124. The SPT took note that Brazilian law⁴⁴ contains provisions concerning disciplinary sanctions applicable to persons deprived of their liberty. During its visits, the SPT came across a number of prisoners that were held in disciplinary isolation cells. From interviews with these prisoners it transpired that punishment was often applied in reaction to their complaints and that collective punishment was a regular occurrence. It was also evident that inmates had no trust in any complaints mechanism available to them. According to concordant allegations by prisoners in Nelson Hungria prison, inmates in disciplinary segregation were confined 24 hours a day behind a double metal door. The seven punishment cells in this facility were often flooded with rainwater.

125. The SPT reiterates its recommendation that the authorities ensure that no form of punishment is applied as a response to complaints. The SPT further recommends that no collective punishments are used, and that they shall be prohibited by law.⁴⁵

4. Torture and ill-treatment

126. Several inmates complained of ill-treatment and abuses involving insults, arbitrary sanctions and humiliation by prison guards. At Ary Franco, the SPT observed that the general atmosphere was highly repressive and characterized by the continuous degrading treatment of inmates. The SPT received consistent allegations of ill-treatment, including destruction of personal property by staff or by “*faxinas*”. Inmates were forced to adopt humiliating positions during transfers or inspections. Finally, the SPT received allegations of beatings.

127. The SPT was also concerned by allegations of severe ill-treatment and inhumane conditions of transportation in vehicles of the Special Operations Services (*Serviços de Operações Especiais*, SOE). The alleged methods used by SOE personnel included: locking-up a high number of detainees in uncomfortable positions, handcuffed, and with no ventilation, opening the vehicle and spraying pepper spray on them and then locking up the vehicle. Beatings, insults and threats were also alleged.

128. At Viana II, the SPT also heard allegations of ill-treatment and excessive use of force by prison guards, especially the alleged use of teargas in confined spaces, including cells. The SPT has serious reservations about the use of irritant gases in confined spaces, as it may entail health risks and cause unnecessary suffering.

129. As a matter of urgency, the SPT calls upon the State party to:

(a) **Ensure that a prompt and impartial investigation is made into all complaints of torture and ill-treatment, in accordance with articles 12 and 13 of the Convention against Torture.**

(b) **Unambiguously reaffirm the absolute prohibition of torture and publicly condemn such practise of torture, accompanied by a clear warning that anyone committing such acts or otherwise complicit or participating in torture will be held personally responsible before the law for such acts and will be subject to criminal prosecution and appropriate penalties.**

(c) **Ensure that in cases of torture and ill-treatment, suspects are suspended from duty immediately for the duration of the investigation, and dismissed from the service if found guilty.**

⁴⁴ *Lei de Execução Penal*, Decree Law No. 7,210 of 11 July 1984.

⁴⁵ Inter-American Principles, principle XXII.4.

(d) **Establish clear rules about the use of irritant gases, so as to ensure that they are used in strict conformity with the principles of proportionality and necessity. A register of the use of any type of force, including less-than-lethal, should be kept.**

C. Institutions for children and adolescents

1. General issues

(a) Legislation on children and adolescents

130. During its visit, the SPT was concerned that deprivation of liberty for children and adolescents was not always used as a last resort, contrary to the spirit of the 1990 Law of the Child and the Adolescent (*Estatuto da Criança e do Adolescente*, ECA). Moreover, the institutions in which children and adolescents were held were frequently no different than ordinary prisons for adults with a very rigid disciplinary system. The authorities met in São Paulo acknowledged the important increase in the number of children and adolescents deprived of liberty, which, in their opinion, revealed a failure in prevention policies especially in the area of drug trafficking and drug addiction.

131. The SPT was concerned at the lack of emphasis on the socio-educational dimension of the juvenile system. In practice, little analysis and support was carried out to enable the reintegration of the child or adolescent into society. The SPT was left with the impression that specialised training for technical staff was lacking.

132. In order to ensure the full implementation of the ECA in accordance with international standards,⁴⁶ and bearing in mind the best interests of the child, the SPT recommends that:

(a) **Children and adolescents only be deprived of their liberty as a measure of last resort, for the shortest possible period of time, subject to regular review.**

(b) **A change in approach be made from punitive to preventive,⁴⁷ in order to avoid further stigmatization and criminalization of children. The existing infrastructure and human resources should be improved and training of staff be enhance.**

(c) **The State party expands the available vocational training provided to children and adolescents held in centres so as to enable their reintegration in their community and the society as a whole.**

(d) **The State party maintain and further encourage the participation of parents during the entire period of implementation of socio-educational measures to enable the child or adolescent's constant contact with his family.**

(b) Legal safeguards in police custody, pre-trial detention facilities and centres for children and adolescents

133. On the basis of numerous interviews, the SPT found that children and adolescents were not given the special protection they needed from the moment of arrest. Those

⁴⁶ Convention on the Rights of the Child, arts. 37(b), 39 and 40; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") adopted by General Assembly resolution 40/33; and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by General Assembly resolution 45/113.

⁴⁷ In accordance with the United Nations Guidelines for the Prevention of Juvenile Delinquency (the "Riyadh Guidelines"), adopted by General Assembly resolution 45/112.

interviewed reported consistent practices of physical abuse, some amounting to torture, as well as a lack of legal safeguards.

134. The SPT welcomed the overall involvement of the public defender in centres for children and adolescents. The SPT was, however, concerned by the lack of transparent information provided to children who were not properly informed about the judicial process and the system in place for evaluating their progress and ability to reintegrate into society. The SPT was also concerned at the absence of visits carried out by public prosecutors and judges in centres for children and adolescents.

135. The SPT recommends that:

(a) All legal safeguards provided by the ECA be applied to the child or adolescent from the moment of arrest.

(b) Priority be given to reducing the number of children detained prior to a determination by a judge, and to reducing the duration of deprivation of liberty when there are compelling reasons for the child to be deprived of liberty.⁴⁸

(c) Children receive proper legal defence at all stages of legal proceedings, including during police interviews⁴⁹ and regular inspections of those centres be carried out by judges and public prosecutors.

2. Conditions of detention

136. Despite good material conditions noticed in the internment units for girls (Educandário Santos Dumont in Rio de Janeiro and Mooça in São Paulo) as well as in CENSE Gelso de Carvalho Amaral in Rio de Janeiro and CASA Nogueira in São Paulo, the SPT was concerned with the overall conditions in which persons aged 12 to 21 years old were held. The situation was considered even worse in facilities where children and adolescents in conflict with the law were recidivists.

137. In most institutions visited in the State of São Paulo and in Instituto Padre Severino in Rio de Janeiro, the SPT was concerned with the poor material conditions of detention. The delegation found overcrowding in the cells, inadequate bedding, inadequate access to hygiene materials and poor clothing. The SPT was shown samples of food distributed to the children, some appearing to be rotten.

138. The SPT recommends that the State party provide, in accordance with international standards, adequate food and accommodation facilities, as well as minimum required items for persons to live in detention in dignity with regard to hygiene.

139. The SPT further recommends that:

a) The new centre which was being built in the Padre Severino complex be completed so as to enable the closure of crumbling dormitories in the main centre and reduce the acute overcrowding in that centre;

b) The State party accelerates the decentralization process to enable children and adolescents to remain in centres closer to their families.

⁴⁸ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, rule 17.

⁴⁹ Beijing Rules, para. 7.1.

3. Discipline and sanction

140. The SPT was concerned by the very strict and militaristic regime observed in facilities for children and adolescents. With regard to the use of security troops to maintain discipline, the SPT refers to section IV.C.4. In Viana II, children and adolescents were detained in a maximum prison facility, with very rigorous internal procedures. In that facility, the SPT was very concerned by the health and psychological situation of the children, some of whom were heavily medicated.

141. The SPT noted the existence of a complaints mechanism (“*ouvidoria*”) for children and adolescents. In practice however, those interviewed and who alleged ill-treatment or other forms of abuses, were unable to report those abuses to independent and impartial third parties. The SPT was very concerned at the fears of reprisals expressed by most children and adolescents.

142. The SPT recommends that the State party take practical steps to guarantee the right of children and adolescents to submit petitions or appeals regarding their treatment, including disciplinary measures, without fear of reprisals, to an independent authority with appropriate remedial powers.

4. Torture and ill-treatment

(a) *Pre-trial detention facilities*

143. The SPT received consistent and numerous allegations of ill-treatment at Forum Bras and the adjacent building of Rio Nilo, both being pre-trial detention facilities adjacent to the Bras court in São Paulo. Children and adolescents reported a military atmosphere with strict discipline. The SPT observed that inmates kept their heads facing the floor and their hands behind their back, and were not allowed to talk. The SPT noticed bruises (black eyes) on the face of some of the inmates.

(b) *Institutions for children and adolescents*

144. Although the authorities insisted on the pedagogic nature of the work in the centres and the absence of armed staff inside the centres for children and adolescents, the SPT was very concerned, especially in centres for recidivists, at the palpable tension existing between inmates and staff.

145. Through interviews conducted with a number of children and adolescents, the SPT received credible and reiterated allegations of torture and ill-treatment. These included beatings by staff on the back of the head and other parts of the body with open hands, wood or metal batons, stripping of children and adolescents, forcing them to stand in uncomfortable positions, insults and threats. As an overall observation, the SPT noted that humiliating practices were resorted to as a tool to maintain discipline. In the Internment Unit of Jatobá in São Paulo the SPT collected evidence of dismissal and cover-up of injuries by medical staff. In the facility for children and adolescents in Espírito Santo, which was run as a maximum security prison, there were five suicide attempts and one suicide in the past seven months.

146. An extremely worrying element was the involvement of external security troops (“*tropa de choque*”) to maintain discipline and quell riots. Ordinarily, these troops would remain outside the centres and intervene only when requested to do so by the administration in the case of riots. However, the SPT received a number of credible allegations that external troops would frequently, if not systematically, be requested to enter and apply excessive use of force and humiliating practices following a search of a centre or when a riot or even a disagreement arose between a child or adolescent and the staff. In one centre, these interventions had allegedly happened three times in one week. The children showed

the SPT recent wounds from these beatings. This type of treatment was sometimes imposed with the participation of other staff, or even institution directors. The SPT received frequent allegations that acts of torture and other inhumane treatment were inflicted on children and adolescents in rooms or spaces hidden from existing video cameras.

147. Regarding centres for girls, the SPT was concerned that in one centre, a silent mode system was imposed on newcomers during the first 24 hours in the centre, and as a form of punishment.

148. The SPT considers the above allegations to be examples of physical or mental torture and ill-treatment, which are even more preoccupying given the young age of the victims. In light of the consistency of the allegations received, the SPT considers that torture, ill-treatment and other forms of abuse were practiced in most of the centres for children and adolescents visited.

149. The SPT reiterates its categorical condemnation of all acts of torture and ill-treatment. The SPT recalls that children deprived of their liberty shall be treated in a manner consistent with the promotion of the child's sense of dignity and worth, reinforcing the child's respect for the human rights of others and taking into account the child's age and desirability of their reintegration in society.⁵⁰ The SPT requests to be provided with information on any plan of action devised to eradicate torture and ill-treatment in institutions for children and adolescents.

150. The use of “*tropa de choque*” shall be limited to exceptional cases and authorized by the highest state authority concerned, according to established and clear criteria. Reporting on each operation and periodic external oversight shall be mandatory.

D. Other institutions

1. Roberto Medeiros Centre for Treatment of Drug Addiction, Rio de Janeiro

151. This facility offered no particular psychiatric or psychological treatment for drug addiction, except for high doses of psychotropic medication given to 95 per cent of the patients. Individuals held under security measures (“*medidas de segurança*”) ordered by a judge were kept for indefinite periods with no prospect of treatment or project of rehabilitation or reintegration into society.

152. The SPT recommends that security measures for persons admitted to this type of institution be periodically reviewed by judicial authorities, who should regularly assess the need for involuntary admission based on expert medical advice. Outpatient alternatives to involuntary admission should always be explored and ordered, if appropriate.⁵¹

153. The infrastructure and treatment received by the patients was that of a prison rather than a hospital, as evidenced by the architecture of this facility and by the fact that patients had to keep their heads down and their hands behind their backs when walking through the facility and when talking to staff. The mental health team was understaffed, poorly paid, demotivated and subject to the authority of prison guards. Staff had no specific expertise on treatment of drug addicts and a real detoxification therapy was not taking place. In the view of the SPT, the aim of this institution was punitive rather than therapeutic.

⁵⁰ Convention on the Rights of the Child, arts. 37 and 40.

⁵¹ Principles for the protection of persons with mental illness and the improvement of mental health care, adopted by General Assembly resolution 46/119, and Inter-American Principles, principle III.3.

154. The SPT recommends that the State party improve the infrastructure of this facility, in accordance with its therapeutic objective. The SPT recommends the improvement of the working conditions of staff, in particular the mental health team, and the provision of regular training opportunities, including on drug-addiction-related topics. Drug addicts should be transferred from places of detention to specialized centres in order to benefit from special care services and treatments.

2. Experimental Health Unit, São Paulo

155. This facility held six young adults (20 to 22 years old), who had been sentenced for serious crimes committed when they were underage. The SPT was positively impressed by the material conditions of this unit, as well as by the inmate/staff ratio and by the professionalism of the technical team in charge.

156. This unit was created under the aegis of the predecessor of Fundação CASA and was later transferred under the São Paulo health secretariat by virtue of an executive decree. The experimental health unit was not a unit for socio-educational measures nor was it foreseen in the ECA. It was also not a prison or remand centre, nor a hospital for custody and treatment. Those confined in this unit had already served their maximum 3-year sentences as juveniles. Nevertheless, they remained in detention for an unlimited period of time due to their alleged dangerousness. The SPT is gravely concerned about the legal situation of those held in this centre, and about the mental suffering that an indefinite detention may cause.

157. The SPT recommends that the experimental health unit be deactivated. The SPT also recommends strict respect of the provisions of the ECA, pursuant to which the maximum period of internment for children and adolescents should not exceed three years and release shall be compulsory at the age of twenty-one.⁵²

⁵² *Estatuto da Criança e do Adolescente*, art. 121, paras. 3 and 5.

Annexes

Annex I

List of persons with whom the SPT met

I. Authorities

A. Brasilia

- Gleisi Hoffmann, Minister, “Casa Civil”
- Antonio de Aguiar Patriota, Minister of Foreign Affairs
- Maria do Rosário Nunes, Minister, Human Rights Secretariat
- José Eduardo Cardozo, Minister of Justice
- Afonso Carlos Roberto Prado, Acting Federal General Public Defender
- Luciano Losekan, Judge, Coordinator of the Department of Monitoring and Control of the Penitentiary System
- Francástro das Neves Coelho, Department of Monitoring and Control of the Penitentiary System
- Márcio André Kepler Fraga, Judge, National Justice Council
- Gilda Pereira de Carvalho, Deputy General Prosecutor and Prosecutor for the Rights of the Citizens
- Ramais de Castro Oliveira, Vice-Minister, Human Rights Secretariat
- Maria Ivonete Barbosa Tamboril, Secretary for the Defence of Human Rights
- Fábio Balestro Floriano, Director, Department of International Relations, Human Rights Secretariat
- Michelle Morais de Sá e Silva, General Coordinator for International Cooperation, Human Rights Secretariat
- Aldo Zaiden Benvindo, General Coordinator, General Coordination for Mental Health and Combat of Torture
- Mateus do Prado Utzig, Adviser, General Coordination for Mental Health and Combat of Torture
- Regina Maria Filomena de Luca Miki, National Secretary for Public Safety
- Augusto Eduardo de Souza Rossini, Director-General, National Penitentiary Department
- Jayme Jemil Asfora Filho, President of National Human Rights Commission, Brazilian Bar Association
- Arcelino Vieira Damasceno, Director, Federal Penitentiary System
- Members of the National Committee for the Prevention and Control of Torture
- Christiana Freitas, General Coordinator, Council for the Defence of Human Rights

- Percílio de Sousa Lima Neto, Vice-President, Council for the Defence of Human Rights
- Eugênio José Guilherme Aragão, Criminal Law Professor, Council for the Defence of Human Rights
- Carlos Eduardo da Cunha Oliveira, Ministry of Foreign Affairs
- Ivana Farina Navarrete Pena, Public Prosecutor, State of Goiás
- Domingos Sávio Dresch da Silveira, National Human Rights Ombudsman (*Ouvidor*)
- Manuela D'Ávila, Federal Deputy, President of the Human Rights and Minorities Commission
- Paulo Paim, Senator

B. São Paulo

- Berenice Maria Giannella, President, Fundação CASA
- Antônio Ferreira Pinto, State Secretary, Secretariat for Public Safety
- Arnaldo Hossepian S.L. Júnior, Deputy Secretary, Secretariat for Public Safety
- Lourival Gomes, State Secretary, Secretariat for Penitentiary Administration
- Eloísa de Sousa Arruda, State Secretary for Justice and the Defence of Citizens
- Daniela Solberger Cembrenelli, Public Defender
- Adriano Diogo, State Deputy, President of Human Rights Commission, State Legislative Assembly
- Sérgio Turra Sobrane, Deputy Prosecutor
- Eduardo Ferreira Valeiro, Human Rights Prosecutor

C. Rio de Janeiro

- Members of the Rio de Janeiro Mechanism for the Prevention and Combat of Torture
- Marcelo Freixo, State Deputy, President of Human Rights Commission, State Legislative Assembly
- Roberto Cesário Sá, Deputy Secretary for Planning and Operational Integration; Secretariat for Security
- Sauler Sacalem, Deputy State Secretary for Penitentiary Administration
- Jorge Perrote, Security Coordinator, Secretariat for Penitentiary Administration
- Martha Mesquita da Rocha, Chief of Civil Police
- Antônio Carlos Biscaia, Subsecretary for Human Rights Promotion and Protection
- Andréa Sepúlveda Brito Carotti, Subsecretariat for Human Rights Promotion and Protection
- Nilson Bruno Filho, Public Defender General

D. Espírito Santo

- Ângelo Rocalli de Ramos Barros, State Secretary of Justice

- Silvana Gallina, Director of IASES (*Instituto de Atendimento Sócio-Educativo do Espírito Santo*)
- André Luiz Moreira, President, State Council for the Rights of the Child and the Adolescent
- Gilmar Ferreira de Oliveira, President, State Council for Human Rights
- André Carlos de Amorim Pimentel Filho, Regional Prosecutor for Human Rights

E. United Nations

- Jorge Chediek, United Nations Resident Coordinator

F. Civil Society

- ACAT Brazil
- CEJIL
- Center for Studies on Security and Citizenship, Candido Mendes University
- *Centro Apoio aos Direitos Humanos*, Espírito Santo
- *Centro de Defesa dos Direitos Humanos*, Espírito Santo
- Conectas
- *Grupo Tortura Nunca Mas*
- *Justiça Global*
- Brazilian Bar Association (*Ordem dos Advogados do Brasil*, OAB)
- *Pastoral Carcerária Nacional*

Annex II

Places of deprivation of liberty visited

I. Penitentiary Institutions

- Aparecida de Goiânia Prison Complex [Coronel Odenir Guimarães male prison, pre-trial detention facility, and high security facility (“Núcleo de custódia”)], Goiás
- Ary Franco male prison, Rio de Janeiro
- Vicente Piragibe male prison, Gericinó complex (Bangú), Rio de Janeiro
- Nelson Hungria female prison (Bangú VII), Gericinó complex (Bangú), Rio de Janeiro
- Petrolino de Oliveira female prison (Bangú VIII), Gericinó complex (Bangú), Rio de Janeiro
- Pre-trial male detention facility Viana II, Viana Complex, Espírito Santo
- Pre-trial Detention Unit for females (CDP-FVV), Complexo Penitenciário Regional Vila Velha, Espírito Santo

II. Police institutions

- Polinter Neves, Rio de Janeiro
- 76° Police Station, Niterói, Rio de Janeiro
- Polinter Grajaú, Rio de Janeiro
- 59° Police Station, Duque de Caxias, Rio de Janeiro

III. Facilities for Children and Adolescents

- Internment Unit Belém, São Paulo
- Franco da Rocha complex (Internment Units Jacarandá and Tapajós), São Paulo
- Internment Unit Franco da Rocha complex (Internato Franco da Rocha), São Paulo
- Court provisional detention facility in Brás, São Paulo
- Villa Maria complex (Internment Unit Jatobá and Nogueira), São Paulo
- Internment units for female juveniles in Mooca, São Paulo
- Instituto Padre Severino, Rio de Janeiro
- Educandário Santos Dumont (female juveniles), Rio de Janeiro
- CENSE Gelso de Carvalho Amaral, Rio de Janeiro
- *Unidade de Internação Socieducativa*, Regional Penitentiary Complex in Vila Velha, Espírito Santo

IV. Other facilities

- Experimental Health Unit (*Unidade Experimental de Saúde*), São Paulo
 - Center for Treatment of Drug Addiction (*Centro de Tratamento em Dependência Química Roberto Medeiros*), Gericinó complex (Bangú), Rio de Janeiro
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