

HUMAN RIGHTS WATCH

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Washington, D.C., July 28, 2014

Renan Calheiros
Senator, President of the Federal Senate of Brazil

Vital do Rêgo
Senator, President of the Senate Commission on the Constitution,
Justice and Citizenship

Humberto Costa
Senator, Rapporteur on Draft Law 554 of 2011 of the Senate
Commission on the Constitution, Justice and Citizenship

Henrique Eduardo Alves
Federal Deputy, President of the Chamber of Deputies

Vicente Cândido da Silva
Federal Deputy, President of the Chamber of Deputies Commission
on the Constitution, Justice and Citizenship

Dear Renan Calheiros, Vital do Rêgo, Humberto Costa, Eduardo Alves,
and Vicente Cândido da Silva,

We are writing to share our concerns regarding the ongoing use of
torture and the ill-treatment of detainees by police and prison
authorities in Brazil, and to urge you to support legislation that
would help safeguard against these abuses.

Human Rights Watch is an international nongovernmental
organization dedicated to protecting the human rights of people
around the world. We have staff based in 59 different locations
around the world and work with governments and civil society
leaders to uphold political freedom, protect people from torture and
inhumane prison conditions, and end abusive practices by security
forces, among other rights violations.

Over the past year, we conducted an extensive investigation into
alleged cases of torture and cruel, inhuman or degrading treatment
in São Paulo state, interviewing scores of criminal justice officials
and examining forensic and police records from more than 100

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alleged abuse cases. Our research found that, despite important efforts to curb abuses over the past years, the use of torture and cruel, inhuman, or degrading treatment by security forces and prison authorities remains a serious problem in the state.

In addition to our research in São Paulo, we also examined cases of alleged abuse in Rio de Janeiro, Bahia, Paraná, and Espírito Santo states, and conducted interviews with several federal government officials, including senior representatives of the Ministry of Justice and the Ministry of Human Rights. This additional research revealed that the use of torture and cruel, inhuman, or degrading treatment is not unique to São Paulo, but rather, is part of a broader problem in Brazil.

In addition to violating the rights of detainees, these abusive practices make it more difficult for the police to establish the kind of public trust that is often crucial for effective investigations and crime control.

We wanted to bring our findings to your attention because we understand that the Senate is currently considering a bill that we believe could make a major contribution to efforts to address this very serious human rights problem. The bill, Draft Law No. 554, proposed by Senator Antonio Carlos Valadares in September 2011, would require officials to bring people arrested in “flagrante” (while committing a crime or immediately afterwards) before a judge for a “custody hearing” within 24 hours.¹ This requirement would ensure that detainees have an opportunity to report abuses suffered during or immediately after their arrest to judicial authorities, who could then order a prompt investigation of the circumstances of the detention and treatment of the victim, while physical injuries are still visible and other evidence is still available.

Recent Measures to Curb Torture

Brazil has adopted several measures in recent years to curb the practice of torture. In August 2013, President Rousseff signed into law a bill creating a National System to Prevent and Combat Torture, including a body that will consist of 11 experts with powers to visit civilian or military locations where people are deprived of their liberty (“National Mechanism”).² Under the new law, an official entity will for the first time have access to all locations where people are deprived of their liberty and be dedicated exclusively to tracking cases of torture and ill-treatment. The National Mechanism, moreover, will have unrestricted access to information about the identity and location of all detainees in Brazil and will have power to request the opening of official investigations in cases where there is evidence of torture or ill-

¹ Senate Draft Law (PLS) No. 554, September 6, 2011, proposed by Senator Antonio Carlos Valadares.

² Law 12.847, August 2, 2013.

treatment.³ As Human Rights Watch noted in August 2013, the National Mechanism has the potential to play a vital role in exposing incidents of torture and ill-treatment and preventing future violations if it is given sufficient resources, is staffed by independent and able investigators, and receives active support and cooperation from all levels of government.

In a related step, the National Council of Justice issued a recommendation in April 2014 calling on courts in Brazil to follow the guidelines of the Brazilian Protocol on Forensic Analysis of Torture Crimes of 2003 and the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, known as the “Istanbul Protocol,” of 1999.⁴ The recommendation sets out basic steps that courts should take after receiving credible allegations of these abuses, including ordering thorough forensic medical examinations of the victims, interviewing witnesses and alleged perpetrators in person, and seeking video and photographic evidence.

These policies reflect a recognition on the part of Brazilian officials that abuses by security forces and prison authorities remain an urgent problem. If properly implemented, they could help to curb the practice of torture and the ill-treatment of detainees. However, further measures are needed to ensure that the victims can report abuses in a timely fashion and perpetrators are held accountable.

Torture and Ill-Treatment of Crime Suspects and Detainees

Human Rights Watch found compelling evidence in 64 cases that security forces or prison authorities engaged in cruel, inhuman, or degrading treatment against people in their custody. These cases occurred in São Paulo and four other states—Bahia, Espírito Santo, Paraná, and Rio de Janeiro—between 2010 and early 2014. The evidence included not only witness statements but also corroborating evidence such as video footage, photographs, and official police, forensic, and judicial records. (We also reviewed credible victim or eyewitness testimony of alleged torture or ill-treatment in an additional 65 cases; the testimony in these latter cases was consistent, both internally and with patterns and practices documented in other cases.)

The ill-treatment ranged from severe beatings and threats of physical and sexual violence, to electric shocks, asphyxiation with plastic bags, and rape. In many cases these methods were used in combination with each other. Several victims stated that police explicitly threatened them not to report the abuses. In 40 cases of the 64 cases, police records and witness testimony support the conclusion that the abuses rose to the level of torture.

³ Decree 8.154, December 16, 2013.

⁴ Recommendation No. 49, April 1, 2014; Brazilian Protocol on Forensic Analysis in the Crime of Torture, 2003.

The abuses took place in multiple settings, including in the streets, inside private homes and police vehicles, and inside police stations and detention centers. In many cases in which people were detained on private property, police apparently entered without search orders. The evidence implicates at least 103 military police officers, 24 civil police officers, 17 prison authorities and 10 unidentified state agents in abuses.

It is particularly noteworthy—in light of the proposed legislation—that most of the abuses that we documented in São Paulo, as well as all the cases in Paraná and Bahia, occurred during the first 24 hours of police custody. The apparent aim was to extract information or confessions from the victims, or to punish them for suspected criminal behavior.

For example, in one case in São Paulo state, seven officers from the ROTA military police battalion detained 17-year-old Z.Z. at his home during the first semester of 2013 and took him to a civil police station for questioning.⁵ After a civil police investigator released him for lack of evidence of criminal conduct, Z.Z. gave a formal statement to police authorities stating that the ROTA police had beaten him and applied electric shocks to his stomach for more than 30 minutes at his home, asking repeatedly if he was a drug trafficker nicknamed “Zabo.” The officers also allegedly threatened that they would “find and burn him” if he reported the abuses. Z.Z.’s next-door neighbor testified to police authorities that he had heard him screaming and begging for mercy, after which he saw police dragging Z.Z. to a police vehicle, his face and stomach swollen and red.

In another case, several military police in Salvador, Bahia, arrested I.J., K.L., and M.N. in May 2012 and took them to the 58th military police battalion. The detainees testified that the police severely beat and strangled them in an effort to force them to confess to owning drugs and illegal firearms, accounts that were corroborated by forensic medical reports showing multiple wounds on their faces, knees, elbows, and chests on the day of their arrest.

In a more widely publicized incident, four men, ages 22 to 25, were arrested in June 2013 in the city of Curitiba, Paraná state, after allegedly confessing to the rape and murder of a 14-year-old girl. The suspects told members of the Brazilian Bar Association (Paraná Section), however, that police officers had detained and taken them to several police stations, where they were beaten, suffocated and given electric shocks in an effort to induce them to confess to the crime. A week later, forensic experts concluded that DNA evidence collected from the girl’s body did not match that of any of the four accused men. On August 1, following extensive national

⁵ For security reasons, names of victims have been abbreviated and certain details have been omitted to protect their identities.

media coverage of the case, the Special Task Force on Organized Crime of the Paraná Public Prosecutors' Office filed torture charges against 19 police officers and others allegedly responsible for abusing the men.

The following month, construction worker Amarildo Dias de Souza (“Amarildo”) disappeared in the state of Rio de Janeiro after military police detained him for questioning in the Rocinha neighborhood. Although officers later claimed that they had released Amarildo and that he had left the police unit on foot, security camera footage from the premises only revealed the exit of police vehicles, according to a subsequent civil police investigation. In October 2013, prosecutors criminally charged 25 police officers for torturing Amarildo with electric shocks, asphyxiation, and water boarding in an effort to force him to reveal where local drug traffickers hid firearms and drugs.

We also obtained evidence suggesting that the police officers involved in the Amarildo case tortured or severely mistreated several other Rocinha residents in 2013. In one instance, the day before Amarildo’s arrest, military police officers took 16-year-old X.Z. to the local Command and Control Center and threatened him with sexual assault, shoved his head into a toilet full of feces, and forced him to eat liquid candle wax to get him to reveal the names of drug traffickers, his parents told Human Rights Watch and Rio de Janeiro state prosecutors. Prosecutors also charged a Rocinha police officer with the torture of 15-year-old C.D., who was apparently taken to the Command and Control Center in May 2013, suffocated with a plastic bag and threatened with rape and death if he did not reveal where drug traffickers hid firearms and drugs.

The Scope of the Problem

It is difficult to determine the full scope of torture and ill-treatment of criminal suspects and detainees in Brazil. Yet the fact that the cases we documented involved police and prison authorities across five states (including in controlled environments such as police stations, juvenile detention centers and prisons), suggests that these were not isolated incidents, but rather part of a broader practice in Brazil.

The limited official statistics that are available support this conclusion. Between January 2012 and June 2014, the national Human Rights Ombudsman’s Office received 5,431 complaints of torture and cruel, inhuman, or degrading treatment (about 181 complaints per month) from all over the country through a telephone

hotline service.⁶ Of these, 84 percent referred to incidents at police stations, jails, prisons, and juvenile detention centers.⁷

Likewise, the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman, or Degrading Treatment revealed in 2012 that it had received “repeated and consistent” accounts of torture and ill-treatment in São Paulo, Rio de Janeiro, Espírito Santo, and Goiás states, “committed by, in particular, the military and civil police.”⁸ The torture and ill-treatment had allegedly occurred in police custody or at the moment of arrest, on the street, inside private homes, or in hidden outdoor areas, and were described as “gratuitous violence, as a form of punishment, to extract confessions, and as a means of extortion.”⁹

Obstacles to Reporting Abuses

One of the fundamental guarantees of due process is that anyone detained on criminal grounds should be brought promptly before a judge or independent judicial officer. A critical function of this guarantee is that it enables detainees to report any police abuse when they appear before the judge or judicial officer, typically their first meeting with an official independent of the police since the time of their arrest.

Yet in Brazil, detainees are often not brought before a judge for three months or more, according to the criminal justice officials we interviewed. A very large portion of arrests in Brazil every year involve criminal suspects allegedly caught in *flagrante*. (In São Paulo alone, 161,731 people were arrested in flagrante in 2012, 71 percent of the total arrestees in the state.)¹⁰ In these cases, the federal criminal procedure code provides that only the police files of the arrests, not the detainees themselves, need to be presented to a judge within 24 hours.¹¹ Judges evaluate the legality of arrests and decide whether to order continued detention or other precautionary measures based solely on written documents provided by the police.¹²

Brazil’s Constitution does recognize a right to *habeas corpus* in cases of unlawful deprivation of liberty.¹³ Read together with article 648 of the federal Criminal

⁶ E-mail from Brazil’s Hotline Complaints Coordinator at the Human Rights Ministry to Human Rights Watch, July 24, 2014. On file with Human Rights Watch.

⁷ Ibid.

⁸ Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Brazil, July 5, 2012.

⁹ Ibid.

¹⁰ “Trimester Statistics,” São Paulo State Public Security Secretariat, <http://www.ssp.sp.gov.br/estatistica/trimestrais.aspx> (accessed July 7, 2014).

¹¹ Criminal Procedure Code, art. 306. § 1º, October 3, 1941.

¹² The Brazilian criminal procedure code also does not require crime suspects arrested with a warrant to be given a judicial hearing upon arrest. Only people suspected of committing a crime that is not subject to bail and in which the arresting officer did not show an arrest warrant must be brought before a judge immediately.

¹³ Constitution of the Federative Republic of Brazil, art. 5 (LXVIII), October 5, 1988.

Procedure Code, it provides that a detention may be unlawful in various circumstances, such as when the detention is effected without good cause or exceeds the length of time provided for in the law, when those who ordered the detention lacked the authority to do so, or when the detainee was wrongfully denied bail.¹⁴ However, even when detainees file petitions for *habeas corpus*, there is no requirement that they be granted hearings in person before a judge. In practice, the only opportunity that defendants have to present evidence to a judge with respect to torture or ill-treatment in custody may be when—and if—they testify at trial after months in detention.

This delay makes detainees more vulnerable to torture and other serious forms of mistreatment by abusive police officers, and makes it more likely that critical evidence of abuse will be lost or compromised. When detainees do report to authorities that they were abused by police or prison guards, investigations into the allegations often suffer from serious shortcomings—such as lack of evidence—that make it difficult to corroborate the allegations and determine criminal liability. According to criminal justice officials we interviewed, this is an important factor that contributes to impunity for torture and ill-treatment.

In Rio, for example, the Police Ombudsman’s Office recorded nearly 9,000 complaints of abuses by police officers in 2011, 2012 and 2013, including more than 7,900 complaints of alleged acts of violence, including rape, beatings, torture, murder, bodily injury, and other forms of physical aggression.¹⁵ These complaints only generated sanctions against 18 officers.¹⁶ In São Paulo, military justice officials reviewed at least 4,000 investigations into alleged incidents of bodily injury by police officers between January 2011 and July 2013.¹⁷ However, only 53 police officers were convicted for bodily injury committed during this period.¹⁸

Brazil’s Obligations under International Law

Torture and cruel, inhuman, or degrading treatment is prohibited under international law and cannot be justified under any circumstances. Brazil is party to the American Convention on Human Rights, the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and its Optional Protocol, and the Inter-American Convention to Prevent and Punish Torture, as well other international treaties that establish protections against torture, such as the Convention on the Rights of the Child.

¹⁴ Criminal Procedure Code, arts. 647 and 648, October 3, 1941.

¹⁵ Rio de Janeiro Police Ombudsman’s Office Annual reports, 2011, 2012, 2013.

¹⁶ *Ibid.*

¹⁷ Letter from the São Paulo Military Justice Tribunal, September 18, 2013. On file with Human Rights Watch.

¹⁸ *Ibid.*

The Brazilian government’s obligation under this body of law and norms is not only to prevent torture and cruel, inhuman, or degrading treatment but also to thoroughly investigate and prosecute such acts when they occur—including by making certain that detainees are brought before judicial authorities without unnecessary delay.

The right to be brought before a judge without unnecessary delay is enshrined in treaties long ago ratified by Brazil, including the International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights. The United Nations Human Rights Committee, which is responsible for interpreting the ICCPR, has determined that the delay between the arrest of an accused and the time before he is brought before a judicial authority “should not exceed a few days,” even during states of emergency.¹⁹ The Inter-American Court of Human Rights, in the *Castillo-Páez* case, ruled in 1997 that the American Convention and the Constitution of Peru had been violated when a detainee in Peru was not brought before a competent court within 24 hours, as the Peruvian Constitution required.²⁰

Other countries in Latin America have incorporated this right into their domestic law. For instance, in Argentina, the federal Criminal Procedure Code requires that in cases of arrest without a judicial order, the detainee must be brought before a competent judicial authority within six hours.²¹ Likewise, in Chile, the Criminal Procedure Code requires that in cases of *flagrancia*—in which a person is arrested in the course of committing a criminal act, the detainee must be presented within 12 hours to a prosecutor, who must either release him or bring him before a judge within 24 hours of the arrest.²²

Draft Law 554 of 2011

Senate Draft Law 554 of 2011 is currently awaiting approval by the Senate Commission on the Constitution, Justice and Citizenship. We strongly support passage of this bill. Providing custody hearings within 24 hours for people arrested in *flagrante* would allow victims of torture or ill-treatment to report abuses at the outset of the legal process, when corroborating evidence is still available.²³

If, for example, the ROTA police officers who detained Z.Z. in São Paulo in 2013 had known that he would be immediately brought before a judge and given an opportunity to describe in detail how police beat and electrocuted him (including showing the physical marks of the abuses), they would very likely have been less

¹⁹ Communication No. 521/1992, *V. Kulomin v. Hungary* (Views adopted on 22 March 1996), in UN doc. GAOR, A/51/40 (vol. II), p. 80, para. 11.2.

²⁰ Inter-American Court of Human Rights, *Castillo-Páez v. Peru*, Judgment of November 3, 1997 (Merits).

²¹ Criminal Procedure Code of the Nation of Argentina, art. 286, August 21, 1991.

²² New Chilean Criminal Procedure Code, art. 130, October 12, 2000.

²³ Unfortunately the reform would leave the situation unchanged for the smaller number of people arrested under a judicial order. This gap should also be addressed by lawmakers.

inclined to engage in criminal conduct. Likewise, Rio's military police might have thought twice before torturing Rocinha residents to obtain leads had they known that the victims would speak to criminal justice authorities within 24 hours.

In addition, custody hearings would help to prevent confessions and other evidence obtained through torture from being used in court. Although the international prohibition on the use of coerced evidence has long been part of Brazilian law, public defenders in São Paulo and Rio de Janeiro unanimously stated that this critical protection is routinely disregarded.

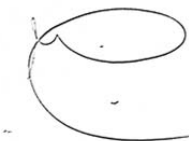
It is also important to note that the bill requires detainees' legal representatives to be present at custody hearings and bars the use of statements that detainees make during custody hearings from being used as evidence against them in subsequent criminal proceedings. Without these crucial due process guarantees, detainees could effectively be forced to choose between exercising the right to silence or the right to be protected from torture.

Finally, the reform could also help to deter torture and ill-treatment in detention facilities by sending a strong and unequivocal signal that Brazil is committed to ensuring that victims can report abuses and that perpetrators are brought to justice. Undoubtedly, it will also be necessary to pursue policies aimed at curbing the use of torture within the prison system against detainees whose custody hearings have already taken place. Designing and implementing such policies should be a priority of both the National Mechanism and Brazilian lawmakers going forward.

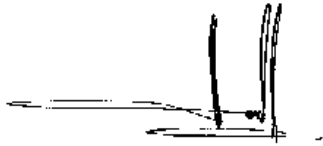
In sum, Brazil has taken important steps in recent years to curb the use of torture and cruel, inhuman or degrading treatment. However, more action is needed to ensure that victims of abuse in police custody have an opportunity to report these violations directly to judicial authorities soon after they occur. Draft Law 554 of 2011 will guarantee that they do. We respectfully urge you, therefore, to do all that you can to secure the bill's passage into law.

Thank you for your attention to this very important matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'M. Canineu', written in a cursive style.

Maria Laura Canineu
Human Rights Watch Brazil Director



José Miguel Vivanco
Human Rights Watch Americas Director

CC:

Dilma Rousseff, President of Brazil

Assis do Couto, President of the Commission on Human Rights and Minorities of the
Chamber of Deputies

Aurélio Veiga Rios, Federal Human Rights Prosecutor

Guilherme Calmon, Conselheiro do Conselho Nacional de Justiça

Ideli Salvatti, Human Rights Minister

Joaquim Barbosa, President of the Supreme Court and the National Council of Justice

José Eduardo Cardoso, Minister of Justice

Ricardo Berzoini, Minister of Institutional Relations

Rodrigo Janot Monteiro de Barros, Federal Attorney General

Ricardo Lewandowski, Vice-President of the Supreme Court