

HUMAN RIGHTS WATCH

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Washington, D.C., July 28, 2014

His Excellency Geraldo Alckmin
Governor of the State of Sao Paulo

Dear Governor Geraldo Alckmin,

We are writing to share with you our concerns regarding torture and other mistreatment of detainees by police and prison authorities in São Paulo state. Over the past year, Human Rights Watch has conducted research in the state, interviewing more than 40 criminal justice officials and examining forensic and police records from scores of torture investigations.

Our research and other evidence shows that, despite important efforts to curb abuses over the past two decades, torture and cruel, inhuman, or degrading treatment remain a serious problem in São Paulo. 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.

As detailed below, we urge that you take additional steps to ensure that evidence of abuse is collected more systematically and in a timely fashion, and that those responsible for torture and ill-treatment are held accountable.

Existing Measures to Curb Torture and Cruel, Inhuman, or Degrading Treatment

Since the end of Brazil's military regime in 1985, successive administrations have implemented measures to curb abuses by security forces and bring the perpetrators to justice. Brazil's Constitution of 1988 explicitly guarantees the right not to be subject to torture or cruel, inhuman, or degrading treatment, determines that those charged with the offence of torture may not be granted bail, grace or amnesty.¹ In 1997, Brazil also introduced a Law on the Crime of Torture, which defines the offense of torture and imposes a penalty of up to eight years in prison on anyone who, "using violence or a serious threat, inflicts physical or mental suffering on another person for the purpose of obtaining information or a confession... or

¹ Constitution of the Federative Republic of Brazil, art. 5, item 3, XLIII, October 5, 1988.



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as a form of punishment.”² The Human Rights Ministry subsequently issued a protocol to be used by forensic specialists investigating torture in Brazil, largely based on the guidelines of the 1999 Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, known as the “Istanbul Protocol”.³

More recently, two policies were adopted during President Dilma Rousseff’s presidency that could significantly strengthen investigations in cases of alleged torture or ill-treatment.

First, 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”).⁴ 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-treatment.⁵ 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 political support from all levels of government.

Second, the National Council of Justice issued a recommendation on April 1, 2014 calling on courts in Brazil to follow the guidelines of the “Istanbul Protocol”.⁶ 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.

São Paulo state has also taken important steps in recent years aimed at preventing and punishing abuses by police, including creating internal affairs units for the civil and military police forces in 1983 and 1990, respectively; an autonomous police ombudsman’s office in 1997; and a separate forensic police office in 1998.⁷ The internal affairs unit and ombudsman office have provided São Paulo citizens with

² Federal Law 9.455, art. 1, April 7, 1997.

³ Brazilian Protocol on Forensic Analysis in the Crime of Torture, 2003.

⁴ Law 12.847, August 2, 2013.

⁵ Decree 8.154, December 16, 2013.

⁶ Recommendation No. 49, April 1, 2014.

⁷ São Paulo State Decree 20.872, March 15, 1983; São Paulo State Decree 31.318, March 23, 1990; São Paulo State Complementary Law 826, June 20, 1997; São Paulo State Decree 42.847, February 9, 1998.

alternative avenues for lodging complaints and requesting information about police conduct, and prompted investigations into alleged abuses on multiple occasions.

Torture and Other Ill-Treatment of Detainees in São Paulo

Despite the efforts summarized above, Human Rights Watch found compelling evidence in 26 cases that police officers and guards engaged in cruel, inhuman, or degrading treatment since 2010. In 12 of the cases, police records and witness testimony suggest that the abuses constituted torture. We also received credible reports of another 11 incidents where security forces allegedly committed torture or cruel, inhuman, or degrading treatment.

In the cases we investigated, we reviewed video footage, witness statements, photographs, and/or official police, forensic, or judicial records, in addition to NGO reports and media accounts. The abuses took place in multiple settings, including in the streets at the moment of arrest, inside private homes and police vehicles, and inside police stations and detention centers. At least 52 military police and 16 civil police officers and guards were involved in these cases. The apparent aim of the perpetrators was to extract information or confessions from the victims, or to punish them. The torture and 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.

For example, seven officers from the ROTA military police battalion detained 17-year-old Z.Z. at his home during the first six months of 2013 and took him to a civil police station for questioning.⁸ 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 thirty minutes at his home, asking repeatedly if he was a suspected criminal known as “Zabo.” The officers also allegedly threatened that they would “find and burn him” if he reported the abuse. 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 a more widely publicized incident, E.F. and G.H., both 17 years old, were arrested in August 2013 for alleged drug trafficking in the Caieiras municipality. A video leaked to the press in October shows various officers beating E.F. and G.H., asking them, “Where is your boss?” and threatening, “Don’t cry, you’re a man. Men don’t cry.” E.F. said that the officers also suffocated him with a plastic bag and threatened to kill him if he refused to name criminal gang leaders in Caieiras, according to

⁸ For security reasons, names of victims, witnesses and other details were omitted.

human rights defender Ariel de Castro Alves, who interviewed both of the 17-year-olds shortly after they were detained.

That same month, security camera footage from the Vila Maria juvenile detention unit was leaked to the press showing guards beating six detainees after an attempted escape in May 2013. Two guards can be seen kicking and punching the boys with their fists and elbows, while the boys stand against a wall in their underwear and their hands behind their backs. The unit director and three other employees allegedly involved in the incident were subsequently removed from their posts.

In another case that we documented, civil police officers arrested R.F. in June 2012 and took him to the 11th civil police station in São Paulo city for questioning. Two police investigators then dragged R.F. into a secluded room where one of them slapped, kicked and applied electric shocks to his shoulders and legs to force him to confess to larceny, according to R.F.'s formal testimony to the civil police internal affairs unit. His account of his injuries was corroborated by a forensic medical exam carried out that night and a witness interviewed by Human Rights Watch.

A Broader Problem

It is difficult to determine the precise scale of torture and cruel, inhuman, or degrading treatment in São Paulo state. However, available evidence provides grounds for concern that the cases we have documented are part of a much broader problem.

As of August 2013, the civil police internal affairs unit in São Paulo had opened 496 formal investigations (*inquéritos policiais*) into incidents of torture, bodily injury, or ill-treatment committed between January 2011 and June 30, 2013, and that involved 554 civil police officers.⁹ By September 2013, the military police internal affairs unit had opened 184 investigative proceedings into incidents of torture, bodily injury, or ill-treatment that occurred between January 2011 and August 31, 2013.¹⁰ While only 9 percent of these civil and military police cases were officially classified as investigations into torture, several criminal justice officials told Human Rights Watch that incidents of torture or cruel, inhuman, or degrading treatment are often classified by police and judicial authorities as less serious offenses.

In addition, as of September 2013, military prosecutors had reviewed at least 4,000 investigations into cases of “bodily injury” by military police officers that occurred

⁹ Letters from the São Paulo Civil Police Internal Affairs Unit to Human Rights Watch, August 20, 2013 and October 2, 2013, in response to information requests sent on August 19, 2013. On file with Human Rights Watch.

¹⁰ Letters from the São Paulo Military Police Internal Affairs Unit to Human Rights Watch, September 12, 19, 20, 2013, in response to information requests sent on August 19 and September 12, 2013. On file with Human Rights Watch.

from January 2011 and July 1, 2013.¹¹ Although torture, as such, is not codified in the military police code, conduct that is officially classified by military justice authorities as bodily injury often rises to the level of torture or cruel, inhumane, or degrading treatment, according to criminal justice officials interviewed by Human Rights Watch.¹²

Impunity

One reason the practice of torture and inhumane treatment persists in São Paulo appears to be a failure of the state to bring to justice those who engage in it. The UN Subcommittee on Prevention of Torture and other Cruel, Inhuman, or Degrading Treatment found in 2012 that “impunity for acts of torture [i]s pervasive” in Brazil.¹³ State Prosecutor Alfonso Presti told Human Rights Watch that he believes, based on his two decades of practice in São Paulo city, that impunity in such cases is the rule.¹⁴ Similarly, the former São Paulo police ombudsman, Luis Gonzaga Dantas, affirmed that impunity in torture cases is a “chronic problem.”¹⁵

In some of the cases documented by Human Rights Watch, misconduct by the security forces generated extensive media attention and the officers allegedly involved were subsequently preventively detained or criminally charged. Unfortunately, however, criminal justice officials with whom we spoke stated that investigations into abuses by police and guards often suffer from serious shortcomings that make it difficult for prosecutors to determine criminal liability. Official data that we obtained from police authorities also supports the view that impunity in cases of abuse involving police and guards is the norm.

As of October 2013, the São Paulo police ombudsman’s office had received 122 complaints of incidents of torture, bodily injury and ill-treatment that occurred between January 1, 2011 and July 1, 2013—none of which resulted in sanctions against the police officers involved.¹⁶ Similarly, the military police internal affairs unit in São Paulo state says it received 184 complaints of torture, bodily injury, and ill-treatment during this two-and-a-half year period, and that, while four police officers

¹¹ Letter from the São Paulo Military Tribunal to Human Rights Watch, September 18, 2013, in response to information requests sent on August 21 and October 1, 2013. On file with Human Rights Watch.

¹² This is contrary to the jurisprudence of the Federal Supreme Court determining that cases of torture must be transferred from military prosecutors to the civilian justice system. HC 70389 / SP, *Habeas Corpus*, Relator(a), Judge Sydney Sanches, June 23, 1994; RE 407721 / DF, *Extraordinary Appeal*, Judge Gilmar Mendes, November 16, 2004; RHC 104751 / AC, *Ordinary Habeas Corpus Appeal*, Judge Luiz Fux, October 18, 2011; AI 769637 AgR / MG, *Appeal*, Judge Joaquim Barbosa, March 20, 2012.

¹³ Report by the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, July 5, 2012.

¹⁴ Human Rights Watch interview with Alfonso Presti, São Paulo city, August 13, 2013.

¹⁵ Human Rights Watch interview with Luis Gonzaga Dantas, São Paulo city, August 14, 2013.

¹⁶ Letter from the São Paulo Police Ombudsman’s Office to Human Rights Watch, October 10, 2013, in response to information requests sent on August 21, 2013. On file with Human Rights Watch.

were fired and another nine were administratively sanctioned for bodily injury as a result, there was no information regarding officers who were sanctioned for torture.¹⁷

As detailed below, our research suggests two primary reasons that such impunity persists despite the reform efforts of national and state authorities. First, systematic flaws in the medical examinations of detainees lead to the loss of important evidence of abuse. Second, detainees face significant barriers in reporting abuse: they typically do not appear before a judge for three months after their arrest and, in the intervening period, do not use existing reporting mechanisms because they do not trust them to be independent or effective.

Persistent Flaws in Medical Examinations

A major obstacle to ending impunity for torture and cruel, inhuman, or degrading treatment is the state's failure to collect appropriate forensic evidence in a timely manner. In many of the 26 cases we documented, the exams were perfunctory, too late, or conducted in the presence of police officers, making it less likely the person being examined would speak openly. These exams also failed to include critical information, most notably photographs of injuries and detainees' fingerprints.

A first problem is that forensic medical exams of detainees in São Paulo appear to be often brief and superficial. Human Rights Watch interviewed 35 detainees at the Pinheiros Provisional Detention Center in São Paulo city who were detained in September and October 2013. Of the 13 detainees who stated that they had been beaten, strangled, and/or subjected to electric shocks upon arrest, 10 said that their forensic medical exams were conducted in a perfunctory manner. One detainee said that eight military police officers had thrown him to the ground and taken turns punching and kicking him, but the forensic medical doctor who saw him the day after the arrest did not ask about his black eye and other physical marks of the abuses.¹⁸ According to two senior forensic medical doctors at the Forensic Medical Institute (IML) in São Paulo city, forensic medical experts examine as many as 250 detainees per day, which makes it impossible for every detainee to be comprehensively examined.¹⁹

Second, forensic medical exams are sometimes carried out days or weeks after the alleged police abuse, at which point physical evidence of the violence is likely to have faded. For example, when 17-year-old O.P. met with a judge three days after his arrest in September 2012, he testified that police officers had beaten him with the butts of their guns to force him to reveal the location of stolen goods. Photographs of

¹⁷ Letters from the São Paulo Military Police Internal Affairs Unit to Human Rights Watch, September 12, 19, 20, 2013, and February 19, 2014, in response to information requests sent on August 19, September 19 and November 12, 2013. On file with Human Rights Watch.

¹⁸ Human Rights Watch interview with B.C., São Paulo city, September 11, 2013.

¹⁹ Human Rights Watch interview with IML forensic medical experts, São Paulo city, August 14, 2013.

O.P. taken shortly after his arrest reviewed by Human Rights Watch show large bruises on both sides of his jaw. While the judge immediately ordered a forensic medical exam to assess the “nature of the lesions on his face,” the exam was only carried out a week later, at which point the forensic specialist concluded that O.P. had “no bodily lesions.”

Third, even when victims report abuses and medical exams are ordered and promptly carried out, the exams often do not meet international standards for the investigation of torture and cruel, inhuman, or degrading treatment. According to criminal justice officials in São Paulo and our review of forensic medical exam reports, such exams typically lack a psychological assessment of the detainees and photographs of their injuries. In one case we investigated, a man told civil police authorities that, following his arrest for alleged possession of drugs, he was beaten and sexually assaulted at his home for an hour by ROTA police officers seeking to prompt him to reveal additional information, an account that was corroborated by a neighbor who had heard his screams and by photographs of bruises on his neck obtained by Human Rights Watch. His exam report, however, includes no photographs and consists solely of four sentences in which the forensic doctor describes injuries on his neck, notes that he would not be incapacitated for more than 30 days, and concludes that there is insufficient information to assess whether he was a victim of torture or other cruel, inhumane, or degrading treatment.

Fourth, contrary to international guidelines, forensic medical exams of detainees in São Paulo sometimes occur in the presence of law enforcement officers. Eight of the detainees at the Provisional Detention Center of Pinheiros, whom we interviewed separately, told us that police officers remained in the examination room or within hearing range during their forensic medical exams. One detainee alleged that the civil police officer who took him to be examined threatened to “beat him more” if he told the forensic doctor what had happened, and then proceeded to observe the entire examination from the doorway.²⁰

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. In São Paulo state, however, most detainees are not brought before a judge for three months, according to the criminal justice officials we interviewed. 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

²⁰ Human Rights Watch interview with D.D., São Paulo city, September 11, 2013.

be lost or compromised. It is also wholly incompatible with international human rights legal standards binding on Brazil.

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, and other countries in Latin America have incorporated it into their domestic law, including Argentina, Chile, and Colombia, as Human Rights Watch and other legal experts pointed out in a publication sent to Brazil's Congress in February 2013.²¹

In contrast, Brazil's criminal procedure code provides that when an adult is arrested in *flagrante* (i.e., while committing a crime or immediately afterwards) and held in police custody, only the police *files* of the case, not the detainees themselves, need to be presented to a judge within 24 hours.²² Judges evaluate the legality of the arrest and make the decision about whether to order continued detention or other precautionary measures based solely on the written documents provided by the police. And the majority of detainees in São Paulo are arrested in *flagrante*.²³

Brazil's Constitution does recognize a right to *habeas corpus* in cases of unlawful deprivation of liberty.²⁴ Articles 647 and 648 of the federal Criminal Procedure Code also provide 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.²⁵ 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.

In one case that we documented, for example, two military police officers arrested A.B. in *flagrante* for drug trafficking in May 2010. The officers reported that they searched him during a routine patrol, found 80 packets of marijuana in his pocket,

²¹ Criminal Justice Network Bulletin, 5th edition, 2013, <http://redejusticacriminal.files.wordpress.com/2013/07/rjc-boletimo5-aud-custodia-2013.pdf> (accessed May 1, 2014).

²² Criminal Procedure Code, art. 306. § 1^o, October 3, 1941. The Brazilian Criminal Procedure Code also does not require crime suspects arrested with a warrant to be given a judicial hearing immediately 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 (Art. 287).

²³ Of 161,731 people arrested in the state of São Paulo in 2012, for example, 71 percent were arrested in *flagrante*. "Trimester Statistics," São Paulo State Public Security Secretariat, <http://www.ssp.sp.gov.br/estatistica/trimestrais.aspx> (accessed July 7, 2014).

²⁴ Constitution of the Federative Republic of Brazil, art. 5 (LXVIII), October 5, 1988.

²⁵ Criminal Procedure Code, arts. 647 and 648, October 3, 1941.

and claimed that he “tripped” on the way to the police station, injuring his eyes and neck. A.B. exercised his right to remain silent at the police station and a judge permitted his detention based on the accounts of the police who arrested him. When he finally appeared before a judge three months later, however, he testified that the officers had beaten him to force him to reveal the name of a local drug trafficker, and two neighbors testified that they saw the police punching him for 30 minutes in the stairwell of his apartment building when he was initially arrested. He was ultimately acquitted due to inconsistencies in the police testimony, but an investigation into his beating was closed in August 2013 for lack of sufficient evidence.

Even though most detainees in São Paulo state do not appear before judges for many weeks, several oversight and complaint mechanisms are at least theoretically available to them during this period, including the police and prison system ombudsman’s offices and the internal affairs units of the civil and military police forces, as noted above. These mechanisms, however, are largely ineffective for this purpose, in part because they are either based within the same institutions allegedly responsible for the abuse or fall within the Public Security Secretariat chain of command, and detainees thus do not trust them to be objective or effective.

The public defenders and prosecutors we spoke with all told us that detainees do not perceive existing oversight and complaint bodies as independent and impartial. Our interviews with detainees confirm this conclusion. Several detainees we spoke with at the Provisional Detention Center in Pinheiros in October 2013 said they did not file official complaints of abuses for fear of reprisals or because they were skeptical that reporting abuses would lead to punishment of the officers involved. One detainee with a large scar on his scalp and visible stitches told Human Rights Watch that a military police officer struck him repeatedly on the head with the barrel of a gun during his arrest, and said afterwards, “Go ahead and tell the investigator that I beat you. I’ll sign another piece of paper and that will be it.”²⁶ Another detainee stated that he did not report being beaten upon arrest. “What is the point of reporting abuses by police to the police?” he said.²⁷

At present, there is no independent official body in São Paulo tasked with conducting regular visits to locations where people are deprived of their liberty and systematically documenting complaints of torture and ill-treatment. State criminal justice officials periodically visit detainees but their aim is typically to prepare cases, ensure that inmates are not held beyond their sentences, and assess detention conditions, rather than investigate cases and patterns of abuse. The members of the federal National Council of Justice (CNJ) and the Justice Ministry’s National Council on Criminal and Penitentiary Policy (CNPCCP) also visit prisons throughout the country,

²⁶ Human Rights Watch interview with C.C., São Paulo city, September 11, 2013.

²⁷ Human Rights Watch interview with F.O., São Paulo city, October 11, 2013.

including São Paulo state, but do not track and investigate individual complaints in a timely and consistent manner.

The National Mechanism to Prevent and Combat Torture that President Rousseff signed into law in August 2013 should help fill this gap when it begins its work, though it is not yet operational. Even when it is up and running, however, its resources will be stretched thin. With 11 experts responsible for visiting places of detention throughout the entire country—Brazil currently houses more than half a million detainees in its 27 states—much more monitoring will be needed.²⁸ Since São Paulo alone runs 159 detention centers with nearly 200,000 inmates, the creation of a new state-level body dedicated to receiving and tracking torture complaints and identifying patterns of abuses, as recommended below, will almost certainly be necessary to make the National Mechanism’s work more effective.²⁹

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. In addition, although not a legally binding instrument in and of itself, the Istanbul Protocol sets forth internationally recognized minimum standards for the investigation and documentation of torture. The standards, cited by the National Council of Justice in its recent recommendation, were the result of three years of analysis undertaken by more than 75 experts in law, health, and human rights, representing 40 institutions from 15 countries.

The Brazilian government’s obligation under this body of law 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 and that their complaints are taken seriously regardless of whether the abuses resulted in permanent injuries or visible wounds.

²⁸ “Prison System Statistics,” Ministry of Justice, <http://portal.mj.gov.br/services/DocumentManagement/FileDownload.EZTSvc.asp?DocumentID={FA62FB05-C771-4A7B-9D8B-8C1E57161044}&ServiceInstUID={4AB01622-7C49-420B-9F76-15A4137F1CCD}> (accessed July 7, 2014).

²⁹ “159 Prison Units”, São Paulo Prison System Secretariat, <http://www.sap.sp.gov.br/uni-prisionais/pen.html> (accessed July 7, 2014); “Prison System Statistics,” Ministry of Justice, <http://portal.mj.gov.br/services/DocumentManagement/FileDownload.EZTSvc.asp?DocumentID={FA62FB05-C771-4A7B-9D8B-8C1E57161044}&ServiceInstUID={4AB01622-7C49-420B-9F76-15A4137F1CCD}> (accessed July 7, 2014).

Recommendations

Curbing torture and cruel, inhuman, or degrading treatment requires a concerted and comprehensive effort to ensure full accountability for abuses, including prompt and thorough investigations into all credible allegations of unlawful police conduct. To this end, there are several steps we would urge São Paulo authorities to pursue.

Require Timely “Custody” Hearings in all Cases

First, we urge you to work with the judiciary, public prosecutor’s office and the public defenders’ office to ensure that every detainee is physically presented to a judge and a public defender or other legal representative within 24 hours of arrest.³⁰ Whenever judges have reasonable grounds to believe that the detainee presented to them was subjected to torture or ill-treatment, they should, as the National Council of Justice recommended, take all necessary steps to fully investigate the abuses, including ordering detailed forensic medical examinations of the detainees and state agents implicated in the abuses and obtaining the forensic analysis of the detainee’s clothing and location where the abuses allegedly took place.

Judicial hearings at this early stage would not only provide detainees with an opportunity to report abuses when criminal justice officials can still open timely investigations, but also help to prevent confessions and other evidence obtained through torture from being used in court. Although the international prohibition on the admissibility of coerced testimony into evidence has long been part of Brazilian law, public defenders in São Paulo unanimously stated that this critical protection is routinely disregarded.³¹ Custody hearings would allow torture victims to describe the abuses they suffered to judges when their memory of events is still clear and physical injuries are visible, which would help judges to determine whether evidence may have been obtained through coercion and should be excluded.

Brazilian legislators are currently debating a draft law (PLS 554 of 2011) that would reform the federal criminal procedure code to establish mandatory custody hearings.³² We urged them to approve this bill in a [letter](#) sent to several members of

³⁰ For example, in an encouraging initiative in Bahia state, the Bahia Court of Justice, Justice and Human Rights Secretariat, Public Security Secretariat, Public Prosecutors’ Office, Public Defenders’ Office and Bahia Bar Association signed a joint memorandum creating a Nucleus of Flagrant Arrests in August 2011. The goal is to ensure that all individuals arrested in *flagrante* have immediate access to a judge.

³¹ Criminal Procedure Code, art. 157, October 3, 1941.

³² Senate Draft Law (PLS) No. 554, September 6, 2011, proposed by Senator Antonio Carlos Valadares. One very important aspect of the bill is that it prohibits criminal justice officials and lawyers from using detainee testimony given at custody hearings as evidence against the detainees in subsequent criminal proceedings. This would ensure that detainees do not have to choose between exercising the right to silence and the right to be protected from torture.

congress today. While passage of this law is ultimately their responsibility, we believe that it is crucially important that you, as the governor of São Paulo state, use your position of leadership and authority to promote and actively support this effort.

Improve Forensic Medical Examinations

The São Paulo Public Security Secretariat should issue a clear policy requiring prompt and impartial forensic medical exams whenever there are reasonable grounds to believe that a detainee was subjected to torture or ill-treatment. The examinations should comply with the guidelines of the Istanbul Protocol and the recommendations of the National Council of Justice, particularly the following:

- Physical and psychological examinations should be conducted in private, outside the presence of security agents. If there is compelling evidence that a detainee poses a serious safety risk to health personnel requiring a security agent to be present in the examination room, this should be noted in writing.
- Forensic medical experts should ask detainees if they have been physically or psychologically abused, record all of their findings, and take detainees' fingerprints and color photographs of their injuries.
- Examination reports should be shared immediately with the prosecutor and legal representative of the detainee.

To ensure that the Istanbul Protocol's guidelines are fully understood and applied, the Public Security Secretariat and its Forensic Police Department should also carry out mandatory trainings for forensic medical doctors and make clear that those who fail to abide by the guidelines will be held accountable.

Create a State-Level Torture Prevention Body

Finally, to ensure that victims are able to report torture or ill-treatment and to better track abuses, we join several other observers in recommending that São Paulo authorities should create a state-level body of experts tasked with monitoring conditions at all places of detention, including established facilities as well as places suspected of housing detainees, and documenting cases of abuse.³³

Although it cannot be a substitute for effective investigations by police and prosecutors, this new state-level body should have the authority to carry out

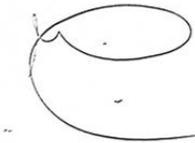
³³ See, for example, a letter sent to the São Paulo State Secretary of Justice and Defense of Citizenship on September 19, 2013 by the Catholic Action for the Abolition of Torture (ACAT), Conectas Human Rights, Regional Psychology Council, Praxis Human Rights Institute, and the National Prison Commission, <http://www.conectas.org/arquivos/editor/files/oficio%20saida%20GT%20secretaria%20justica.pdf> (accessed June 27, 2014).

unannounced visits, conduct private interviews with detainees, and order official investigations into credible allegations of torture or ill-treatment. It should also be tasked with gathering data to help identify patterns of violations across places of detention, including civil and military police stations, and periodically overseeing the application of the Istanbul Protocol to detainees held at detention locations with high numbers of complaints.

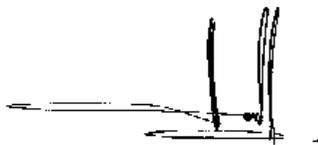
The new state-level body should complement the efforts of the National Mechanism being created by the Dilma administration. As noted above, given its nationwide mandate, the National Mechanism will not have the same capacity as a state-level mechanism to monitor detention centers and track individual torture complaints. To that end, and to prevent duplication of work, the state and federal bodies should cooperate fully, including by developing a schedule and protocols for regularly sharing findings and evidence.

Thank you for your attention to these important matters.

Sincerely,



Maria Laura Canineu
Human Rights Watch Brazil Director



José Miguel Vivanco
Human Rights Watch Americas Director

CC: Aurélio Veiga Rios, Federal Human Rights Prosecutor

CC: Eloísa de Sousa Arruda, São Paulo State Justice Secretary

CC: Fernando Grella Vieira, São Paulo State Public Security Secretary

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

CC: José Renato Nalini, São Paulo Court of Justice President

CC: Julio Cesar Fernandes Neves, São Paulo State Police Ombudsman

CC: Lourival Gomes, São Paulo State Prison System Secretary

CC: Luiz Maurício Souza Blazek, São Paulo State Civil Police Chief

CC: Márcio Fernando Elias Rosa, São Paulo State Attorney General

CC: Marisa Fernandes, São Paulo State Prison System Ombudswoman

CC: Nestor Sampaio Penteado Filho, São Paulo State Civil Police Internal Affairs Director

CC: Norma Sueli Bonaccorso, São Paulo State Forensic Police Superintendent

CC: Ricardo Kirche Cristofi, São Paulo State Forensic Medical Institute (IML) Director

CC: Ricardo Lewandowski, Vice-President of the Supreme Court

CC: Roberto Meira, São Paulo State Military Police Commander

CC: Rodrigo Janot Monteiro de Barros, Federal Attorney General

CC: Rui Conegundes de Souza, São Paulo Military Police Internal Affairs Director