

URBAN POLICE VIOLENCE IN BRAZIL: Torture and Police Killings in São Paulo and Rio de Janeiro after Five Years

PREFACE

This report is an update of the Americas Watch report of 1987, *Police Abuse in Brazil: Summary Executions and Torture in São Paulo and Rio de Janeiro*. Although the original report of five years ago was prepared by Americas Watch alone, the present report is published jointly by Americas Watch and the Center for the Study of Violence at the University of São Paulo. This report concerns the present situation with respect to torture and extra-judicial killings by police in the São Paulo and Rio de Janeiro states; in addition, it examines the present status of some specific cases that were reported in 1987. This report is based on research by Paul Chevigny, in August 1991, and August and September 1992, in São Paulo, working with the support of the Center for the Study of Violence, and in Rio de Janeiro in September 1992, assisted by Ben Penglase. It is based also on research by Joanna Weschler in 1989 and in October 1992.

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São Paulo and to innumerable sources in São Paulo who gave their time for the study, including the lawyers and staff of the Ordem dos Advogados do Brasil (OAB/SP). Many of the others have asked not to be named specifically. In Rio de Janeiro thanks are due especially to Vice-Governor Nilo Batista, and the many members of his staff who assisted in the research, and to Col. Carlo Magno Nazareth Cerqueira and his staff and to Paige Wilhite. This report was written by Paul Chevigny and edited by Paulo Sérgio Pinheiro and Cynthia Arnson.

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SUMMARY OF REPORT

The joint investigation has found that some authorities both in São Paulo and Rio de Janeiro have tried to come to grips with the problem of the mistreatment of suspects and torture in the police precincts. The action has occurred in São Paulo chiefly through the judiciary, and in Rio de Janeiro chiefly through the executive governor and his staff. The success of these efforts has been difficult to

gauge, but it is clear at least that the problem of torture has decreased in the last five years. We recommend that the authorities in both states continue their efforts, and in particular that São Paulo act

more vigorously through the office of the executive, and Rio de Janeiro act more vigorously through the judiciary.

The problem of extra-judicial killings by informal vigilante groups, called *grupos de extermínio* or *justiceiros*, continues in both states. Official investigations have revealed that off-duty policemen frequently participate in these groups, which often kill minors. The authorities have sought to prosecute officers who act in these groups, even though the difficulties of investigation and proof are enormous.

Killings on duty by the military police in São Paulo are a continuing human rights problem. The number of killings has greatly increased over the past five years, and it is apparent that the military police have taken it upon themselves to eliminate persons considered undesirable. Although the military police claim that all the deaths are the results of armed confrontations, all the evidence indicates that this cannot be the case. The authorities either of the state or the federal government must act to control these abuses. The authorities now claim that the number of deaths has dropped greatly after the massacre of prisoners by the PM at the São Paulo House of Detention in October, 1992.

In Rio de Janeiro, the current government has sought to control the abuses of the military police and to form stronger bonds with the citizens. These efforts have clearly improved the situation, and should be encouraged.

Other findings and recommendations are described in the body and conclusion of the report.

INTRODUCTION

The Americas Watch 1987 report concluded that "...torture of ordinary suspects, not only by beatings, but by relatively sophisticated methods, is endemic in the [police] precincts of São Paulo and Rio de Janeiro." The report found that police had been involved in killings-for-hire off duty, as well as extra-judicial executions while on duty. Efforts by officials in both states to reduce the number of killings, on and off duty, the report found, "...while admirable, have not been completely successful." In the summary, Americas Watch urged "...local and national officials in Brazil to make every effort to sustain and encourage the growth of human rights, including the ratification of the United Nations covenant and a proposed constitutional provision condemning torture."¹

In the intervening five years, a great deal has changed in São Paulo and Rio de Janeiro, as well as in Brazil as a whole. In 1988, Brazil adopted a democratic constitution, pursuant to which Fernando Collor de Mello was elected president. The democratic institutions of the country have exhibited their vigor through the process of impeachment of the president upon charges of corruption and misallocation of funds. The Constitution provides that "no one shall be submitted to torture or to degrading or inhuman treatment," and makes torture a crime that is not subject to bail or to clemency.² Brazil has emphasized how seriously it regards the problem of torture by

¹ *Police Abuse in Brazil: Summary Executions and Torture in São Paulo and Rio de Janeiro* (Americas Watch, 1987), p. 9 (hereafter "AW Brazil 1987").

² Constitution of the Federated Republic of Brazil, 1988, Art. 5, Secs. III and XLIII.

ratifying the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. In October, 1992, Brazil ratified the Inter-American Convention on Human Rights, although without accepting the jurisdiction of the Inter-American Court of Human Rights.

New governors took office in 1991 in both states. In Rio, the administration of Leonel Brizola has brought in human rights activists, particularly Nilo Batista, who as Vice-Governor also administers the civil police, and Col. Carlos Magno Nazareth Cerqueira as chief of the military police. The administration of Luiz Antonio Fleury Filho in São Paulo is quite different. His government has been strongly supportive of actions by the police, particularly the military police, although it has been subjected to constant pressure from human rights activists, including representatives of the Roman Catholic Church. As a result of these pressures, human rights has been introduced into the state educational curriculum.

Brazilians have become more aware of human rights problems than they were five years ago, while the international community has become more aware of problems in Brazil, particularly the mistreatment and killing of minors by police and by private persons. In São Paulo, several path-breaking studies about the police have been published in the last three years. The 1991 article "Violência Fatal: conflitos policiais em São Paulo (81-89)" by Paulo Sérgio Pinheiro and others, collected much official data on police killings during the eighties. In the same year, Guaracy Mingardi, a sociologist who spent two years in the civil police, exposed problems of corruption and torture in his book *Tiras, Gansos e Trutas: cotidiano e reforma na polícia civil*. Finally, the problem of shootings by the military police was brought home to journalists and the public in the best-selling book *Rota 66: A história da polícia que mata*, by Caco Barcellos, a TV journalist with *O Globo*, who had studied assassinations by the military police for the past twenty years.³

At the same time, the idea of "human rights" has become an arena of conflict. While for some it represents an opening to democracy, to others it means no more than permissiveness for criminals. The depth of feeling is illustrated in a case reported to the Bar Association in São Paulo in July, 1992, in which teenagers who were ejected from a bus had brandished a gun at the conductor. Some of the boys were captured and taken to a police station, where the police beat them with a club to force them to tell where the gun was. Along the length of the club were written the words "Human Rights."⁴

A number of institutions remain unchanged in important ways under the Constitution of 1988. The day-to-day administration of almost all police work remains in the states; the federal police has limited jurisdiction and remains small, while the cities do not have their own police

³ P.S. Pinheiro, E. Izumino, C. Jakimiak, "Violência Fatal: conflitos policiais em São Paulo (81-89)" *Revista USP* 9 (March-May, 1991): 95-112; G. Mingardi, *Tiras, Gansos e Trutas: cotidiano e reforma na polícia civil* [Cops, Informers and Robbers: daily life and reform in the civil police] (S. Paulo: Scritta 1991); C. Barcellos, *Rota 66: A história da polícia que mata* [Rota 66: The History of the Police that Kill] (S. Paulo: Globo 1992).

⁴ Statement dated July 17, 1992 in file of human rights office of the OAB, "Depoimentos tomados e não autuados." Although the statement is not authenticated except by those who made it, the circumstances under which it was made suggest that it is accurate.

forces and are policed as part of the states. The forces continue to be divided into civil police, who are centered in station-houses (*delegacias*) and are primarily investigative, and the military police, who do most of the patrol work, pursuing those suspected of crimes.

Although the military police (PM) are no longer coordinated by the armed forces, as they were during the dictatorship, in other respects the PM continue to have the quasi-military values and organization that they took on during the dictatorship, including, in São Paulo, the heavily armed mobile unit, the Rota. The Constitution preserved a separate system of criminal justice, instituted under the dictatorship, for the discipline of military police, through a compromise that permits states that have more than twenty-four thousand military police personnel to have such separate tribunals.⁵ Rio de Janeiro has somewhat more than 30,000 such police, while São Paulo has 72,000; both states have special tribunals for the crimes of military police, although, as will be explained more fully below, they have used them in rather different ways.

MILITARY POLICE KILLINGS IN SÃO PAULO

The most urgent and extreme problem investigated by Americas Watch is the rise in killings by the PM in the state and city of São Paulo. Five years ago, Americas Watch noted the large number of killings with alarm; nevertheless the number has risen more than three times in the intervening period. The figures on deaths are astounding:

Civilian Deaths in Military Police Actions, State of São Paulo 1987-1991

| | |
|------|------|
| 1987 | 305 |
| 1988 | 294 |
| 1989 | 532 |
| 1990 | 585 |
| 1991 | 1074 |
| 1992 | 1470 |

Source: Official records of military police⁶

In October, 1992, the PM capped its performance of the past five years by invading the São Paulo Casa de Detenção (House of Detention) jail, killing at least 111 prisoners.⁷ According to the

⁵ Constitution of 1988, Art. 125.

⁶ The 1992 figure includes the 111 persons killed at the House of Detention in October 1992. Other sources give slightly different figures, see T. Caldeira, *City of Walls: Crime, Segregation and Citizenship in São Paulo* (Dissertation, Berkeley Ca. 1992) p.173. The trend, however, is not in dispute.

⁷ "Brazil: Prison Massacre in São Paulo," Americas Watch newsletter, October 21, 1992. The investigation of the massacre is summarized below in this report.

authorities, the public reaction to this massacre precipitated a change in the PM, resulting in a sudden decline in the number of killings.⁸ If this has occurred, it is not clear whether it is a long-term change in policy, or a momentary reaction. In any case, it is obvious that there has been a policy that encouraged these killings. The question is, what is that policy?

In interviews with us, the PM explained the violence by arguing that they have become more efficient in fighting crime, that the response time of the police is becoming shorter, and that criminals are being caught at or near the scene of their crimes, armed, whereupon they resist violently and are killed. In this connection, the police make two claims:

A) The elimination of criminals is the only index of efficiency the PM have. If persons are arrested for the commission of a crime, and not merely for identification, they have to be turned over to the civil police; it is not proper for the military police even to take them to the PM barracks. And the civil police, the PM claim, are completely inefficient. They take bribes from suspects and for other reasons fail to investigate cases adequately, so that prosecutions are often unsuccessful. The saying is: *A polícia prende, e a justiça solta*—the police arrest, and the justice system releases.

There is some truth to the charges against the civil police. The sociologist Guaracy Mingardi, who belonged to the civil police for two years, found a pattern of corruption and inefficiency in the delegacias.⁹ The civil police, in turn, claim that the PM bring them cases that have been mishandled and are difficult to substantiate. Whatever the truth of these recriminations, the point for our purposes is that the PM make a plausible case that the criminal justice system as a whole is inefficient. They themselves draw the conclusion, however, that they have no other way to keep the confidence of the public except to engage in shoot-outs with criminals and thereby gradually eliminate them.

B) The policy was claimed to be having concrete effects on crime. The level of violent crime has actually dropped in recent months, according to the PM, at least in metropolitan São Paulo, while the level of police deadly force has been rising. The metropolitan São Paulo division of the PM projected these results in September, 1992:

General Homicides and Police Killings, Metropolitan São Paulo

| | 1991 | 1992 |
|---|----------------|----------------|
| Homicides | 3358 (9.2/day) | 2774 (7.6/day) |
| Civilian deaths in confrontations with police | 876 (2.4/day) | 1350 (3.7/day) |

Source: Charts from military police. It appears that a projection is made for the entire year, based on the first six months of each of the two years.

⁸ L. Amaral, "Fleury diz que massacre fez PM mudar," *Folha de S. Paulo*, March 29, 1993, p. 1-9.

⁹ Guaracy Mingardi, *Tiras, Gansos, e Trutas: cotidiano e reforma na polícia civil* (S. Paulo: Scritta 1992). Although some aspects of civil police work have changed, as described below, these attributes appear to have continued.

The precise accuracy of these figures is not at issue; the point is, rather, that the PM itself confidently predicted that the level of police killings would rise to nearly four per day, almost half the number of general homicides, and justified this as an anti-crime measure.

The policy is encouraged by public statements of state officials. In August 1991, for example, when the press noted the extraordinary rise in police killings, Pedro Franco de Campos, then the Minister of Public Security, said, "The police does not go into the street to kill. We go to protect the population and we are received by the criminal elements with a bullet. In these cases, the police has to respond with force, and is not expected to give a rose-bud to the riff-raff (*marginal*)."¹⁰

On their face, such statements are the typical rhetoric of law and order; in the context of the history of the PM, however, they are a signal that a pattern of unlawful violence running back at least to the height of the dictatorship, if not before, is encouraged. The Rota, in particular, are mobile troops associated with unrestrained violence against dissidents during the dictatorship, and later with similar tactics against supposed criminal elements. The book *Rota 66: A história da polícia que mata*, by journalist Caco Barcellos, identifies five policemen, all associated with the Rota, who have each killed more than thirty people since the early seventies; three of them are still on the force.¹¹

Nevertheless the PM claim that all but a handful of the killings are legally justified—the result of armed confrontations with criminals. An enormous amount of diverse evidence indicates that this is not the case. The data from the PM themselves suggest that the some of the killings are not the result of shoot-outs with armed suspects. Detailed recent statistics, for the region of greater São Paulo, show:

Killings/Woundings of Civilians by Police and of Police by Civilians—Greater São Paulo

| | Civilians killed | wounded | Police killed | wounded |
|-------------------------|------------------|---------|---------------|---------|
| 1990 | 588 | 251 | 21 | 256 |
| Rota and similar action | 147 | 8 | 3 | 11 |
| 1991 | 898 | 225 | 19 | 165 |
| Rota and similar action | 163 | 11 | 0 | 9 |

¹⁰ "Nã da para dar botão de rosa para marginal'", *Folha de S. Paulo*, August 7, 1991 p.4.

¹¹ C. Barcellos, *Rota 66: A história da polícia que mata* (S. Paulo: Globo 1992); M.C. Carvalho, "Pesquisa diz que polícia mata inocentes," *Folha de S. Paulo*, September 4, 1992, p. 4-2

| | | | | |
|-------------------------|-----|----|---|----|
| 1992 (6 months) | 660 | 89 | 1 | 38 |
| Rota and similar action | 170 | 6 | 0 | 8 |

Source: Military Police, S. Paulo.¹²

The ratio between those killed and wounded, with a larger and larger proportion of civilians killed as time goes on, suggests that some of the killings are deliberate; a pattern of shootings in real confrontations ought to show a larger proportion of woundings among the civilians. The sudden decline in killings described by officials in recent reports suggests that many of the killings must have been a matter of policy rather than in reaction to confrontations. If the shootings were in self-defense, they could not be expected to decline so rapidly in response to a scandal over the level of violence.

Specific recent cases investigated by Americas Watch show that some of the killings are unquestionably deliberate.

1. Bela Vista Case. Early on the evening of May 21, 1991, on a main avenue in Bela Vista, a neighborhood near the center of São Paulo, two military policemen, off post and in a private automobile, approached three boys, Sérgio Peres Gonçalves, 14, Evaldo Oliveira de Araujo, 16 and Erick Moreira Ermelindo, 16. Evaldo was detained, but Sérgio and Erick started to run away at the approach of the car, and the police decided to stop them to find out why. They chased the boys; one policeman, armed with two guns, one with the identification number filed off, fired at the two boys and wounded Sérgio. The other, Erick, escaped completely. There were independent witnesses to the episode up to this point; one of them heard a policeman saying to Evaldo, who is black, "stand still and I won't kill you."

It proved to be an empty promise. The police took Evaldo and Sérgio, wounded, to a battalion headquarters to discuss the matter. Then, apparently having concluded that they were in trouble if the youths survived, the police took them to an open field, where they shot the two boys. Evaldo, however, was not killed, and made his way to a hospital, where he recovered. Evaldo and Eric as well as the independent witnesses testified, and the police confessed, although they later repudiated their confessions. They were found guilty in the military tribunal and sentenced to 19 years imprisonment (S. Paulo Military Tribunal Case # 44639/91).

2. Toy Gun Case I. On May 25, 1989, Marcio Moura da Silva, 17, who was black, was walking with his friends in the evening. According to his acquaintances, Marcio, who had found a plastic toy gun, was lagging behind the others and examining the toy. Military policemen, apparently seeing him with the gun, detained him; his friends, who were separate from him, simply saw him picked up.

The police took Marcio to a cemetery, where they put out a call that there was "an exchange of shots" at that location. A young PM lieutenant, who was not part of that command, but was nearby, upon hearing the call rushed to the scene thinking there was an emergency. Hearing four shots, he ran toward the direction where he heard them, and found a group of military

¹² It is difficult to tell what assaults on police are included in the category of "wounded."

police standing around a body, which proved to be that of Marcio. The police explained "that at the time they tried to approach the individual next to the wall of the cemetery, he drew a gun and ran into the cemetery, when the shootout occurred." They showed the lieutenant the plastic gun, however, whereupon he asked how a "shootout" could have occurred. He directed them to take the toy and explain the matter to their commander. He later learned that the culprits, thus warned, had presented a real 32 caliber pistol to their commander.

No residues of powder were found on Marcio, and the young lieutenant testified against the accused policemen in the military tribunal. Although they continued to claim that Marcio had been armed and had fired on them, they were found guilty and sentenced to twelve years (S. Paulo Military Tribunal Case #36587/89).

These cases are typical in some respects and exceptional in others. They are typical because the police in these cases acted in accord with common stereotypes. In the case involving Marcio Moura da Silva, the PM apparently justified the murder by the suspicion that a black youth would use a toy gun for robberies. The Bela Vista case is, in its inception at least, typical of the cases in which the police become suspicious of groups of youths, try to detain them, and shoot at them when they flee, frequently killing one or more young people. Personnel in the military police system described such cases as "very common;" Americas Watch reported on such cases five years ago. So common are they that the police do not always try to cover up the circumstances in their official accounts. Eloi Pieta, a member of the São Paulo Legislative Assembly for the Workers Party (PT), in a 1991 report of abuses by the PM in the poor suburb of Guarulhos, quoted allegations from the police bulletins; for example:

A witness pointed out two youths who were supposed to have robbed a pedestrian. On being approached, they ran away. One was taken prisoner, the other dead. The prisoner was released as the victim of the supposed robbery was not identified.¹³

The fact that officers of the PM shoot at persons merely because they run away is perhaps one reason why minors are frequently killed on the streets of São Paulo. The police have a tendency to single out youths to be stopped, and it may be that teenagers, terrified of the police, try to run away more than adults would do.

A large percentage of the "pursuit" cases involve car chases, in which the police, for one reason or another, suspect that the car is stolen. The "Rota 66" case, about which Caco Barcellos' book of the same name is centered, began in 1975 when the officers in the car bearing that number killed a group of upper-class teenagers, believing erroneously that they were driving a stolen car, and did not end until 1992, when the officers' acquittal was upheld on appeal. Americas Watch was told by the PM that more than half of the PM shootings result from car-chases.

The Toy Gun and Bela Vista cases are typical also because some of the victims are black. Unquestionably the police are more suspicious of people of color than of whites. Caco Barcellos found that in almost four thousand cases of police killings in the last twenty years, in which he could identify the race of the victim, 51 percent were black; similarly, Eloi Pieta, in his much

¹³ Eloi Pieta, "Notícias de Crimes na Polícia Militar," Aug. 29, 1991. Copy on file at the office of Human Rights, S. Paulo OAB.

smaller sample in Guarulhos in the first half of 1991, found that more than half were black.¹⁴

The Bela Vista and Toy Gun cases are exceptional chiefly because the officers were found guilty; in the vast majority of cases that fit the same pattern, the case is dismissed, the officers are found innocent, or the matter is so protracted that the case appears to be effectively buried in the military tribunal. These cases differ in that there were witnesses to the homicide who were found believable by the tribunal; in the second case, for example, one witness was a PM lieutenant. It may also be true that at the present moment, because of the international attention focusing on the deaths of minors, the military tribunal may be slightly more inclined to convict in cases involving very young victims; Amnesty International had singled out the Bela Vista case as an "exemplary case" of the killing of minors.¹⁵

Although the prosecutors are sometimes conscientious and dedicated, and they try to win when they can, military justice is administered in such a way as to make it nearly impossible for the prosecution to win more than a few cases involving acts of violence. The charges are investigated within the battalions, by other police officers; as one of the prosecutors said to us, the investigation almost always makes the case appear to be one of justifiable homicide regardless of the circumstances. Caco Barcellos' book sets forth the pattern. When a person is shot, either simply because he flees from the police, or when he is killed more deliberately, as in the two cases described above, he will often be shot repeatedly until he is dead. Even though dead, then, he will be taken to the hospital, thus suggesting that the police were making an effort to keep the victim alive and also making the forensic investigation of the scene of the shooting more difficult.

Eloi Pieta, in his report about the PM in Guarulhos, made findings similar to those of Caco Barcellos, independently and a year earlier. For the first half of 1991, Pieta found that 33 people had been killed and none wounded. All the civilians were supposed to have been killed during armed resistance, and all were taken to the emergency facilities of hospitals, even though they were dead.¹⁶

In the vast majority of cases there are no independent witnesses who can say definitively whether there was a shootout or not. And the police will often corroborate their claim that there was armed resistance by producing a weapon attributed to the victim. People who are knowledgeable about the military justice system say that it is common for the police to plant such weapons, which are called in slang "cabritos". It is clear in the toy gun case discussed above that the police tried in vain to plant a gun on Marcio; in the Bela Vista case, one of the officers was carrying, in addition to his authorized pistol, an unauthorized and unidentifiable weapon—just the sort that is commonly attributed to a victim.

¹⁴ Eloi Pieta, *op. cit.*; Barcellos, *Rota 66*, p. 259. According to Barcellos, approximately 74 percent of the residents of the city of São Paulo are white. *Ibid.*

¹⁵ "Justiça condena PMs a 19 anos por morte de menor," *Folha de S. Paulo*, October 23, 1991.

¹⁶ Barcellos, *Rota 66*; E. Pieta, *op. cit.* The data from the military police show that the police detachment at Guarulhos killed 109 civilians and wounded 12 in 1991, the fourth highest count (out of eleven) in greater São Paulo.

It is clear, moreover, that the patterns in these "non-political" or alleged law-enforcement cases have changed very little since the dictatorship. Americas Watch reported such cases five years ago, and Barcellos' study of the military police shows that the pattern runs back at least to the inception of the Rota twenty years ago. In the Rota 66 case itself, for example, the PM claimed that the victims had one .22 pistol that could be identified by number, as well as one that could not. A thorough investigation, undertaken because the case was so notorious, revealed that the Rota had taken the identifiable weapon from a suspect in a search.¹⁷ The difference in 1992 is that there is an enormously larger number of shootings than there has ever been in the past.

As the acts of violence have increased, and the PM has increased in size, the military justice system has become more choked. Although the number of new cases keeps increasing, the number of cases completed has actually dropped.¹⁸ As of the end of 1992, this year, the system had 14,000 cases pending, in four trial sections (*auditorias*) each with one prosecutor, or at least 3500 cases to each section; there is no plea-bargaining.

Under such strains, prosecutors press the few cases in which they have the clearest proof. In the very strongest cases, the prosecutor can ask for detention of the accused pending trial, which speeds the process enormously. In the Bela Vista and Toy Gun cases, justice was swift because the defendants were detained. Other cases tend to be protracted. A homicide case frequently lasts a decade, during which time the officers charged are usually on duty, unless the PM finds some independent reason to dismiss them. Charges less serious than homicide, such as assault or falsification of evidence, are frequently "prescribed" (barred because of delay).

The effects of the congestion in military justice appear in some cases we sought to investigate in 1992.

3. Eneas Silva case. In this case, it appears that teenagers tried to run away when they were stopped by the police in the periphery of São Paulo on October 14, 1989. One of them, a black youth named Eneas Silva, who had no criminal record, was shot and killed. The case, described as "typical" by prosecutors, had been routinely and inadequately investigated; the police claimed they found a pistol in the victim's left hand, when he was in fact right-handed. At the present time, some three years later, prosecutors are trying to locate and interview the witnesses (S. Paulo Military Tribunal Case # 39207/90).

4. Rota 91044 case. The newspaper *Estado de São Paulo* reported on January 20, 1991, that members of Rota in vehicle number 91044 had pursued two men in an allegedly stolen car, and had shot both of them in cold blood and after they had been taken prisoner. As of September 1992, homicide charges had been brought, although the case was still awaiting investigation (S. Paulo Military Tribunal Case # 44931/91).

It is likely that these cases will be delayed a great deal longer. Many of the serious cases described by Americas Watch five years ago are still pending. The course of one of them which has finally resulted in a conviction, nine years after the killing, illustrates the problem. Alexandre Camilo, ten years old, was killed in 1983 by police searching for car thieves when he, together

¹⁷ Barcellos, *Rota 66*, p. 88.

¹⁸ Records of the Tribunal Militar, state of S. Paulo; "Justiça Militar, Saturada," *Folha de S. Paulo*, April 20, 1992.

with other youths, tried to run from the police. When the police took the other boys into custody, they tried unsuccessfully to coerce them into saying they had been armed. The police produced a weapon they claimed Camilo had been carrying. The autopsy report on Camilo was inconclusive, showing only a slight wound on the front of his head. When the body was exhumed, it was found that Camilo had clearly been shot in the back of the head. The report had been falsified by medical personnel conniving with the police. Charges of homicide, physical injury by beating, and falsification were brought. The police were convicted of a reduced degree of homicide, because the court found that they did not intend to kill the boy. The charges of beating and falsifying the medical report have been prescribed because of delay (S. Paulo Military Tribunal Case # 21029/83).

The dire situation of military justice is not an accident, or even a case of unfortunate consequences due to underfunding; it is deliberate. Military justice is not designed to work well for acts of violence committed by the police. As two separate observers pointed out to us, it works much more efficiently for cases that present a threat to the organization, such as corruption and breaches of discipline, than for violence against citizens. Although the PM has the power to dismiss policemen independently of the military criminal justice process, it does so less frequently in cases of violence. In the Pixote case, investigated in the 1987 report,¹⁹ the officers who killed the victim (who eight years earlier had been the star of the film of the same name) were dismissed while the criminal case was pending. One of the ex-officers was probably correct when he told Caco Barcellos, "We were only dismissed because the guy was famous, on account of the film he made."²⁰ The records of the PM show that five policemen were administratively dismissed or expelled for homicide in 1990.

The reasons for the crisis in military justice were described to us by a prosecutor who had formerly worked in military justice and who found the work much more "frustrating" than other prosecution work. The scarcity of jail-space, he said, means that the police are encouraged to kill. He had very little success as a prosecutor in cases of alleged "confrontations," even when the victim was actually unarmed, if the victim was a marginal. Military justice tends to be "soft" when the victim is a thief. The ex-military prosecutor said "The PM believes he is allowed to kill when the person is poor, black and a thief."

We were told repeatedly by experienced and knowledgeable observers that such ideas are propagated by middle-level officers, many trained years ago during the dictatorship. An official of the PM informed us in confidence that many senior officers encourage killing, that the Rota and the tactical-mobile units within each battalion compete to see who kills more, and that senior officers sometimes have conflicts with policemen who object to the killing. Police who fail to go along with the orders to kill are sometimes disciplined. For example, a soldier from a tactical-mobile unit claimed that he was charged with attempted murder of a wounded suspect after he refused to kill the suspect, rather than take the injured man to a hospital. According to the soldier, his corporal said "Take out the guy. He is a vagabond," which the soldier refused to do.²¹

¹⁹ AW Brazil 1987, pp. 52-54.

²⁰ Barcellos, *Rota 66*, p. 243. The case is described in detail in AW Brazil 1987 pp. 52-54.

²¹ M. Godoy, "PM ordena: 'mate agora'," *Notícias Populares*, September 4, 1992 p. 5 (concerning an incident of April 3, 1990).

Very persuasive claims are made in an anonymous statement of eight pages delivered to the OAB/SP and the press in April 1992. The statement was written on stationery of the 25th Battalion of the PM in Itapeccerica da Serra by individuals purporting to be soldiers of the 25th Battalion. The statement claims that the commanding major formed a "uniformed extermination squad." The major demanded *tombos* (slang for killings), saying to police who were new in the battalion "see if you can give me at least one little knockover (*tombinho*) in your first day on the street to show you are one of us" and granting five days' leave for a killing. Persons in the state administration in a position to know say that they believe the document is genuine and is consistent with other behavior of the major.

Such shootings are not universal among the PM; if they were, the situation would be even worse than it is. Both Caco Barcellos and Eloi Pieta found in their investigations that relatively few police are responsible for most of the killings. The few hundred men of the Rota are responsible for a large proportion of the homicides. Thus, Major Gilson Lopes had participated in 44 killings as of September, 1992, and a lieutenant had been charged by the military justice system in 22 homicide cases since 1989.

Those relative few, however, are nurtured and rewarded. Gilson Lopes has risen to the rank of major through the course of his 44 killings, for which he has been extravagantly praised for his heroism. In the seventies he and others killed the son of a PM sergeant, under circumstances that suggested the victims were unarmed. In that case, Lopes' superiors wrote:

Gilson for a long time has been demonstrating extraordinary capacity during the execution of the services entrusted to him. His acts constitute a living example to the troops, being done with heroism and carried out with bravery.²²

Personnel above the rank of sergeant, moreover, are very nearly immune to military discipline, requiring a special tribunal for trial, and virtually never being disciplined for acts of violence.

Policemen of lower ranks who engage in acts of violence receive the same extravagant praise, cast in heroic terms. They come to share the views of their superiors. A sergeant of the Rota, even after he was condemned for homicide, still responded with the rhetoric in an interview:

A person is not in the Rota because he is obliged, but because he likes it. The people are volunteers. The police of the Rota are the most perfect. Other battalions try to do the same thing, but they don't succeed. Police from other states come to apprentice, to see how it is done.

It is a pain for ordinary police. Statistics show that, alone, the Rota is more productive than all the tactical-mobile battalions in São Paulo. It was a place for work . . . The Rota is not a beret, it is not an armband, the Rota is a state of the spirit . . . The distinction of the battalion provokes envy in the personnel of the PM.

Outside the PM, they fear a well-structured police force. It was the only force that could combat, not only marginais, but terrorism, if need be; as, in fact, already happened, and the Rota was created for that.²³

²² Barcellos, *Rota 66*, p. 181.

²³ Unnamed sergeant, condemned for homicide, interviewed by Heloisa Fernandez,

After such training, the ideology is accepted that killing a marginal is good police work, that it is the job of the police to kill criminals. Persons currently associated with the system of military justice still find, as did the former prosecutor quoted above, that it is extremely difficult to obtain a conviction in a case in which the victim has a criminal background. The Pixote case, for example, is said to be a difficult case because the victim had a criminal past, and was associated with other criminals.

It is clear that the killings are by no means limited to victims who have criminal records (even though in our view it would be no excuse if the killings were so limited). Barcellos found that of the more than four thousand victims in the city of São Paulo during the last twenty years whose records he could trace, more than half had no previous contact with the criminal law. The police are apparently killing people who are marginais, the term used so frequently—that is, people who fit the police stereotype of a criminal. They are typically poor, black and young. Barcellos found that 680 of the 4000-odd victims he studied were minors.²⁴ Even those who have a criminal record are petty criminals, typically involved in theft, especially car theft, or drugs; a few are robbers. Very few are involved in serious crimes of violence.

It is extremely unlikely, then, that the killings could have contributed to the reduction in violent crime that the police give as their excuse for the policy. In conversations with us, persons associated with the PM who were familiar with the details admitted as much. They know that the people being killed are not for the most part the violent criminals the public fears. But, they say, the criminal justice system is so inefficient that they cannot gain credibility with the public except by the number of people they can claim to have killed in armed confrontations.

It is difficult to see why state officials would have adhered to the policy if they actually knew that a great number of the victims are not armed and are not a threat to society. At some level, it would seem, all the officials must find acceptable the killing of a person who is merely a "marginal." Violence and toughness on the part of the police become an end in themselves; killing is represented as "heroic" even in cases where there is nothing heroic about it, as though violence were in itself heroic. The sociologist Heloisa Fernandez quotes a major formerly associated with the Rota:

So we are looking for something measurable to compare the battalions. For example, the Rota killed x number, the other battalions killed less than x. One battalion killed twenty and all the others killed ten.

And that is what I call the system. That feeds the thinking of the PM. The person has to risk death to be valued. He wants to enter the barracks bandaged. He wants to be noticed for what happened. He wants his wife, parents, neighbors to notice. He wants to be seen and praised.

That is to say, dangerous work does not simply exist; there is no state of danger. It is we who manufacture that state.²⁵

"A organização da Rota e a violência policial no Estado de São Paulo," (Conference paper, USP 1989).

²⁴ Barcellos, *Rota 66*, p. 249;131.

²⁵ H. Fernandez, op. cit.

People familiar with the military justice system remarked to us about how cool many police are when they are charged with homicide. Killing does not seem to be something that many of them think is very important. Attitudes that glorify violence have created a contempt for life, exhibited in a host of ways large and small. In one case in August, 1992, reported to the São Paulo Bar Association, relatives of a young man who had just been killed by the PM shouted at the police that they had killed an innocent person. One policeman drew out his pistol and showed that it had been fired until it was empty; he then kissed the weapon. Another, more serious case occurred in August as well.

5. Battalion execution case. On or about August 4, 1992, the military police arrested Zenil Paschoalino Soares, accusing him of having a gun that had been stolen from a PM when the officer was assaulted and wounded. The police took Zenil, together with his pregnant girlfriend Luciana dos Santos, to a battalion barracks for investigation. That in itself was improper, since investigations are supposed to be conducted by the civil police, a circumstance that suggests that the military police meant to coerce information from the two about the assault. Early in the morning of August 4, a PM shot Luciana dos Santos in the head, killing her.

The killer at first tried to claim that the gun had gone off accidentally when he dropped it. Medical evidence showed, however, that Luciana had been shot at point-blank range, straight into her forehead; other evidence showed that the gun could not have gone off by being dropped. The policeman eventually confessed that he had shot Luciana, saying that he had lost his temper when she insulted him, apparently thinking that would mitigate the crime. Other PMs who were present, however, did not corroborate the story of the insult. It appears that the policeman must have shot the woman either in a rage, or as part of an attempt to extort information.

The most mysterious part of the case, however, is that the man Zenil simply disappeared; he has never been seen since. It is claimed that he escaped in the confusion after the shooting, but there is speculation that the military police killed him as well (S. Paulo Military Tribunal Case # 50901/92).

There are numerous examples of the flouting of regulations and casual use of weapons. So great is the violence, that police not infrequently shoot one another. In 1991, PMs killed one of their own lieutenants.

6. Case of the defiant lieutenant. After work on February 22, 1991, and while wearing civilian clothes, Lt. Magino Ono of the PM had a few drinks with a friend. Driving away from the bar, he tried to pass a bus, which pulled away from the curb and forced the lieutenant toward the divider in the middle of the road. The lieutenant drove alongside the bus when it was later stopped, drew a gun and fired a shot up through the driver's window and through the roof of the bus. PM soldiers who were nearby saw the episode and pursued the lieutenant, not realizing that he was a member of the force. According to the forensic reconstruction of the case, the lieutenant fired at least four times at the other PMs, until he was finally trapped and was shot and killed.

The case against the PMs who shot Lt. Ono was dismissed on the ground that the accused officers had acted in self-defense. Interestingly, the investigative work on this case, unlike so many others, was excellent and thorough. The investigators traced every bullet-hole, to make sure that the lieutenant really had shot it out with others, and that this was not another case of a phony "shootout." It was apparently a genuine shootout, and the prosecutor recommended that

the case be dismissed (S. Paulo Military Tribunal case # 46170/92).

It is not rare for PM personnel to misuse their weapons in similar ways, although it is probably rare for the perpetrator to be killed by other policemen. We were actually present at an early stage of such a case. After we interviewed the chief of investigation of the civil police on August 27, 1992, an aide who was very excited came in to see him. The civil police had arrested a man on a motorcycle who had shot a truck-driver in the head. The perpetrator turned out to be an off-duty PM using a PM weapon, and the PM had sent its people to carry him off to military detention. The aide wanted to know if there was some way to keep civil police jurisdiction over the man, but the chief did not seem to think that there was; military justice has jurisdiction over PMs when they use the PM hardware to commit crimes in São Paulo.

The pattern of military police violence in São Paulo—near-impunity for the killing of suspects and a more generalized glorification of violence—has persisted for a long time. The cases described in this report do not differ in principle from those described in the report of five years ago, although there are now a lot more of them. We are driven to the conclusion that the PM has used standards that are not drawn from a model of police work with civilians, recognized as full citizens of the state of São Paulo, but rather from a distorted military model, developed under the dictatorship. In this model, in which the people are themselves the "enemy," war-like violence is viewed as inevitable, and a mystique of heroism surrounds it. Under such conditions, it is not difficult to see that the encouragement by state officials would lead, as it has, to a tidal wave of violence. The political dangers, that such violence will become uncontrollable, are already very great. Caco Barcellos, for example, the author of *Rota 66*, received threats, including gunshots fired outside the conference where his book was released. A month later, the threats became so serious that Barcellos left the country. The police not only engage in the violence and perpetuate myths about its justification; but they apparently try to suppress the truth by violence.

The deadly violence rose to a crescendo in killings in prisons, which, the authorities say, has finally led to a reaction and decline in the level of killing.

PRISON KILLINGS

When there are disorders in prisons or jails, the PM are called upon to subdue them. Since the PM in São Paulo have an underground ideology that justifies killing a marginal whether or not he is guilty of a specific crime, using the police in prisons is an invitation to deadly violence. After all, the people involved in prison rebellions are almost by definition marginais. Public opinion, furthermore, does not operate as an effective control on official abuse. A poll in 1990 showed that more than half of the sample in São Paulo believed that prisoners "live a better life than most Brazilians" and that the public should not have to pay to sustain prisoners.²⁶ The combination has been a recipe for death on several internationally notorious occasions.

7. Killings in the 42nd Police District. During carnival in February 1989, a large number of prisoners awaiting trial were jammed into the jail cells at the 42nd Police District, staffed like all

²⁶ IBOPE public opinion poll of 1990 concerning human rights. The acceptance of these propositions did not vary much with education and income.

police stations by the civil police. Many prisoners succeeded in breaking out of their cells and started a rebellion. When the military police were called, they stripped and beat the prisoners, forcing them to run a gauntlet. As reported in the 1989 Americas Watch report, *Prison Conditions in Brazil*, the PMs then, with the participation of the civil police, forced 51 prisoners into a small, sealed isolation cell as a form of punishment. Eighteen of them died of asphyxiation, their chests so crushed by the conditions that they were unable to breathe.

The peculiarly horrifying nature of this crime led to an international scandal, and charges have been brought against the police involved, both civil and military. The prosecutors have taken the view that these acts were murder—that the cell was so small that the police must have known that some of the prisoners would die. Three civil policemen have been charged with murder and are scheduled to go to trial before a jury. The military proceeding is predictably snarled. Many police have been charged. Many prisoners who were witnesses have now been scattered. The case is still at an early stage.

8. Massacre in the House of Detention.²⁷ São Paulo's House of Detention is the largest prison in Latin America. In October 1992 it was horribly overcrowded, as it was built for 3300 prisoners but actually held more than 7000. On the afternoon of October 2, a fight broke out and escalated into a riot, in which the prisoners took control of one wing of the prison. The guards left them alone, trying to lock them in. The PM was called, and responded with several hundred men, from various special units, including the Rota, the Special Operations Command, battalion shock troops and the GATE (*Grupo de Ações Táticas Especiais*). The GATE was commanded by Capt. Wanderley Mascarenhas, one of the champion killers in the PM identified by Caco Barcellos. He had been involved in 34 killings up to that time, and "specialized" in putting down prison rebellions. He was accused of having killed five in another uprising in the House of Detention in 1982, and eleven more in other prisons.²⁸ The police were heavily armed, not only with pistols, but with submachine guns and shotguns.

According to all accounts, no serious attempt to negotiate was made. It appeared that state officials wanted to get the matter over with because municipal elections were scheduled for the next day. The police went in and took the prison, firing their weapons in many cases at groups of prisoners cowering in cells. The police killed at least 111 prisoners while no policemen's lives were lost, making this the worst massacre in a bloody history of prison rebellions in Brazil.

A number of investigations were started almost immediately. The PM and the civil police began separate investigations. The special investigation (CPI) by the state legislature was an embarrassment; it concluded only that there were excesses by individual officers, without accusing the PM as an institution or naming any individuals as responsible. As this is written, the PM and civil police have reached similar inconclusive results.²⁹

²⁷ This account is based on "Brazil: Prison Massacre in São Paulo" Americas Watch newsletter, October 21, 1992; M. Abrucio and M. Bergamo, "O horror, o horror," *Veja*, October 14, 1992; Relatório da Comissão de Defesa dos Direitos da Pessoa Humana, Ministério Federal da Justiça.

²⁸ Barcellos, *Rota 66*, p. 258.

²⁹ P.S. Pinheiro, "'Excessos' ou a síndrome de Botta" *Folha de S. Paulo*, Dec. 4, 1992 p. 1-3; R. Lombardi, "Inquérito Policial Militar deixa de apontar culpados

More hopefully, state forensic experts, in their investigation of the medical evidence and the circumstances of the shooting, found no armed "confrontation" between the PM and the prisoners. Although official accounts had claimed at first that prisoners' guns supposedly had been found, no credible evidence was ever given that PM's had been shot or even shot at by prisoners. However, most of the prisoners who were shot were killed rather than wounded, some with several shots to the head or chest. Very significantly from a political point of view, a distinguished commission from the federal Council for the Defense of the Human Person found that the prisoners had been summarily executed.

In February 1993, prosecutors charged 120 members of the PM, including the commander of the operation, with homicide. Unfortunately, the number and rank of the accused will make the case so unwieldy that it will be all but impossible to resolve under the military justice system as it is at present.

Following the massacre, Secretary of Public Security Pedro Franco de Campos was dismissed, and replaced by Michel Temer, who showed that he was willing to discuss the excesses of the PM. According to current reports, the general level of police violence has dropped in São Paulo.

The 42nd District and House of Detention were not the first cases in which deadly violence was used unnecessarily against prisoners, although the massacre of October, 1992 was the worst to date. The pattern is bound to continue as long as the PM is used against prisoners, and as long as the PM is permitted to adhere to standards that excuse the killing of supposed "criminals." A complaint concerning the massacre has been filed with the Inter-American Commission on Human Rights of the OAS, by Americas Watch and the Center for Justice and International Law in Washington and the Teotônio Vilela Commission in São Paulo.

ACTIONS BY HIRED KILLERS

Like other big cities in Brazil, São Paulo has a continuing problem with off-duty police and retired police working as hired killers (called in São Paulo *justiceiros*). One of the difficulties in dismissing policemen for acts of violence, as police administrators point out, is that they often become full-time justiceiros. It is claimed, for example, that two policemen dismissed in the Pixote killing later worked as justiceiros.³⁰

Police participation in vigilante killings has developed out of several roots 1) inadequacy that the public perceives in the criminal justice system; 2) the public's support for police violence; and 3) traditions of violence, including those of the dictatorship. We were informed that when storekeepers see police, on or off duty, they sometimes ask them to "finish" with thieves in the neighborhood. The police make extra money by obliging, often killing people who are of the same background as themselves, sometimes in their home neighborhoods.

9. Daniel Viana justiceiro case. The victim, Jozuel Lopes, had a reputation in his neighborhood in the periphery of São Paulo as a petty criminal. According to the victim's family,

por massacre," *Estado de S. Paulo*, January 28, 1993, p.3; M. Godoy, "Promotoria deve acusar oficiais do massacre," *Folha de S. Paulo*, February 4, 1993, p. 3.

³⁰ Barcellos, *Rota 66*, p.243.

Daniel Alves Viana, a PM who lives in the neighborhood, had threatened to kill Lopes. Viana is said to be part of a group of justiceiros who act to rid the neighborhood of undesirables.

On April 20, 1991, a group of men in plainclothes seized Jozuel Lopes, in a public place and before witnesses, and took him away handcuffed. Twenty-five minutes later, he was dead, shot a number of times. Witnesses would not come forward to identify the killers. One witness who was scheduled to testify refused to do so, saying he had been threatened.

Projectiles found at the scene of the shooting matched Viana's police weapon. That evidence, together with the threats he had made, resulted in his being charged with murder and detained pending trial. The case is in the military tribunal because the PM weapon was used.

In his statement, Viana denied that he killed the victim, saying that he had known him since they were children. He claimed that the killing was attributed to him because he once had a shootout in the neighborhood with other persons, and his reputation as a person who would use a gun had spread (S. Paulo Military Tribunal case #49537/92).

10. Supermarket security case. In 1985, a PM, Jean Pereira de Castro, was working off duty with a police informer, Bras Alves da Silva, as a security team for a supermarket in the Jardim Colorado district. Bras, posing as a criminal, spoke to a boy in the neighborhood, Gerson de Oliveira Petrof, 17, apparently to convince the boy to commit thefts at the supermarket. It appears that the boy was convinced, or that Bras told the policeman that he was. Bras and the policeman took the victim away on April 7, 1985, beat him and subsequently shot and killed him.

Witnesses saw the two take the victim away, and identified them. They were both tried by civilian justice, because the PM did not use a military weapon in the killing. After a trial, the jury found the two guilty. They were condemned to 14 years imprisonment on September 14, 1992. The prosecutor commented that it is difficult to obtain a conviction in a case charging a justiceiro with homicide when the victim actually is a criminal. He believes that the jury was willing to convict in this case because the victim was so young (1^o Tribunal do Juri, São Paulo, Case # 610/85).

It is impossible to estimate how many cases there are involving officials acting as justiceiros. While police administrators and prosecutors say that they control the problem by prosecuting those cases they can prove, justiceiros who are not themselves police sometimes have impunity through the protection of officials. One of the most notorious cases is that of the man known as Esquerdinha, who worked in São Bernardo in the state of São Paulo. Americas Watch recounted part of the story in its report five years ago, in which a nun saw Esquerdinha and others, working out of a civil police car, drag a teenager out of his house and kill him.³¹

Although Esquerdinha was not a policeman, he had written authority from the mayor and the civil police to work in São Bernardo. The *juiz corregedor* (administrative judge) of the district deprived him of all connection to the civil police, but he continued to act openly through a "security firm" that he named the Rota. The nun continued to receive threats from the justiceiros in São Bernardo, while the church pressed the governor to take action against them. Nothing was done. When the activist priest Padre Agostinho asked a police official why there was no action, according to Gilberto Dimenstein, the official told him, "I would forget about it if I were

³¹ AW Brazil 1987, p.51.

you. When those people catch crooks, they are doing the police a favor." The nun finally left Brazil in fear for her life.³²

POLICE KILLINGS IN RIO DE JANEIRO

The policy of the government in Rio de Janeiro is at the opposite extreme from that in São Paulo. Vice-Governor Nilo Batista (who is in charge of the civil police), and Col. Nazareth Cerqueira (in charge of the military police) are identified as "human rights activists." With the support of the governor, they have established programs aimed at changing the relation between the police and society, through changing the attitudes and behavior both of the citizenry and the police.

Vice-Governor Batista has begun three major programs: 1) the Centros Comunitários de Defesa da Cidadania; 2) a system of university-based training for the police; and 3) the Central de Denúncias, particularly directed at crimes by "grupos de extermínio," as groups of hired killers are called in Rio, something explained more fully below in the section "Police as Hired Killers."

The *Centros Comunitários de Defesa da Cidadania* (Community Citizenship Centers) are supposed to improve police-community relations by locating both civil and military police in a center that will include also fire and disaster relief, legal advocacy, small claims and youth and drug programs. Three centers had been opened on a pilot basis by the fall of 1992.

A program of education in human rights and social problems at the university was being offered to all police in the fall of 1992. Col. Cerqueira is planning to change the military police primarily through training, education and community contact, both for police already on the force, and for new recruits. Col. Cerqueira's staff prepared a code of ethics for the police, including the United Nations Code of Conduct for Law Enforcement Officials. They are establishing "Councils of Ethics" in each police battalion to advise the police on problems of violence and corruption, as well as complaint committees that would include civilians and follow complaints against officers so that the public could participate and also understand the course of the investigation of complaints.

Officials told us that they were much less interested in disciplinary proceedings against police, which could result in dismissals, than they were in changing the attitude and practices of police and citizens that would lead to a future reduction in violence. According to their logic, violence has been so widespread, but at the same time is so difficult to prove against an individual officer, that the dismissal of police would be an enormous task. Furthermore, dismissed policemen tend to turn to crime, including the extermination groups, so that dismissals often do no more than transfer the violence to clandestine civilian actions.

Col. Cerqueira nevertheless does take direct action through administrative means to get rid of policemen in egregious cases. He takes the view that the PM has the power to dismiss people administratively, whether or not there has been a judgment from the tribunal of military justice.

³² G. Dimenstein, *Brazil: War on Children* (London: Latin American Bureau, 1991) p.77. This account is also based on H. Bicudo, *Do Esquadrão da Morte aos Justiceiros* (S. Paulo: Paulinas 1988) p. 113-18.

In 1991, according to official records, the PM dismissed 14 people on account of homicides.

The success of the reform policies, which in many cases had barely begun at the time of our visit, is not yet clear. Two cases illustrate the fluid state of the situation:

11. Assassination of the Major. On Sept. 18, 1991, Major Paulo Sérgio dos Santos, who was in charge of a program of public education about drugs, left the PM headquarters in the evening in plainclothes, and went to McDonalds for a snack. There he saw a transvestite who was also in the restaurant. A short while later he saw the transvestite outside, being roughly searched by a PM. The major, in accordance with the new policy of trying to improve relations between police and public, asked the PM why he was harassing the transvestite. The PM said, "I am performing my duty as a soldier. I can search him just as I can search you. Put your hands against the wall." The major drew out his identification and said, "I am a major." Seeing that the PM's face was contorted with anger, the major, "I know who you are, and we are going to talk tomorrow," and started to walk away. The PM swore at the major, and as the major turned to him, the PM shot him in the face and killed him. The PM then took the major's wallet, apparently trying to make the crime look like a mugging.

A person standing nearby who makes a living by watching cars, and who knew the major, fortunately came forward as a witness. The PM was arrested and is being tried by military justice.

12. Copacabana shoot-out. On January 24, 1992, in the Copacabana shopping district of Rio de Janeiro, three men tried to hold up a tourist agency, then fled on foot. One of them traded shots with his pursuers, and then threw his weapon away. He was captured by two PMs, who were holding him with his hands bound behind him. At the wall of a sidewalk newsstand, a man in civilian clothes started to punch the victim, who fell down against the newsstand. While he was on the ground, he was shot, apparently by one of the PMs.

The police claimed that the victim was killed in a shootout, but the medical examination showed that he had been shot at point-blank range. Col. Cerqueira was quoted saying that it would be difficult to identify the policeman responsible, because so many had responded to the call. *O Globo* reported that "Col. Cerqueira lamented that the execution had been encouraged by people who had seen the incident and said that in Brazil there is 'a culture favorable to the growth of extermination groups,' which, according to him, is incompatible with a democratic society."

The news stories also reveal something about the state of public opinion in Rio de Janeiro concerning police violence. In a poll taken by *O Globo* concerning the increase in violence, 73.79 percent of Rio residents said that they thought the police were wrong to have killed the holdup man summarily.³³

It is clear from these cases that there is a struggle going on within the military police, as well as within the consciousness of the public, about the control of police violence in Rio. For the reformers in the PM, Maj. Paulo Sérgio dos Santos is a martyr to the cause of human rights

³³ The quotation is from "Bandido foi morto com tiro à queima-roupa," *O Globo*, January 30, 1992, p. 17; the poll is from "Pesquisa: para cariocas, violência aumentou," *O Globo*, February 2, 1992. The story is also reported, N. Carvalho, "Testemunhas acusam PMS de execução," *O Globo*, January 29, 1992, p. 11.

because he was killed trying to reduce violence. On the other hand, the conflict between the command and the street-level officers is not restricted to the case of Major dos Santos; there are recent cases when many officers have failed to accept the reform policies of the command. And unquestionably many civilians in Rio favor a more repressive police.

It is not clear at the time of this writing how successful the reformers have been in struggling against the ingrained culture of violence. The programs have been in place for such a short time that it is not yet clear what their effects will be. The military police in Rio do not keep records of the use of deadly force against civilians as the police in São Paulo do. Nevertheless, at our request the office of the Vice-Governor collected figures of killings by the PM for the city of Rio de Janeiro for the months of July and August, 1992, which disclose six killings in July and three in August in "acts of resistance." This is to be contrasted with São Paulo, where during 1991 and the first six months of 1992, there never was a monthly total of killings smaller than 56 (October 1991), and most monthly totals were much larger. It is safe to estimate that there are ten times as many military police killings in São Paulo as there are in Rio de Janeiro. In our opinion, this disparity is to be explained by the fact that the command in Rio has changed the pattern of rewards; a policeman in Rio no longer stands to be promoted or receive any other reward for an act of violence against a civilian, as he does in São Paulo. Indeed, violence is directly discouraged.

POLICE AS HIRED KILLERS

Officials in Rio de Janeiro view killings by groups of killers for hire—the "grupos de extermínio"—as a major crime problem in the state. Policemen and former policemen are commonly members of the groups, which kill dozens, if not hundreds, of people every year. The state has identified more than 180 groups in the sprawling, poor suburb of Baixada Fluminense alone. An investigation by the state legislature found that there was constant official involvement in the extermination groups, and an anonymous poll of PMs taken by *O Globo* found that some 22 percent had been approached to join extermination groups.³⁴ As in other Brazilian cities, the killers are commonly hired by small businessmen to eliminate thieves. The groups thus kill many minors who, if they have no support from their families, sometimes steal to survive. Because the killings of children have caused an international scandal, officials in Rio have made a concerted attempt to learn the extent of the attacks on children. Vice-Governor Batista's office found that in 1991, there were 306 incidents in which children and adolescents were murdered in the state, although there are many more cases of the unexplained discovery of dead bodies. Critics of the administration claim that there are in fact many more killings, although it is extremely difficult to be sure because it appears that the Baixada Fluminense is a "dumping ground" for homicides from other states.

A chief problem in investigating the groups is that they intimidate and kill those who complain about them, a process known as "burning the records." Accordingly, Vice-Governor Nilo Batista has established a Central de Denúncias in his office, to which complaints can be

³⁴ Assembléia legislativa do Estado do Rio de Janeiro, *CPI para apuração de responsabilidade pelo extermínio de crianças e adolescentes no est. do Rio de Janeiro* (1991); A.A. Motta, "Pesquisa: exterminadores rondam PMs," *O Globo* June 29, 1992, p. 11.

made by telephone, in writing or personally. Complaints may be made anonymously, and are investigated by a group of police especially selected by the vice-governor.

We spent some hours at the Central de Denúncias, where complaints were being steadily received by telephone and through the mail. We were permitted to examine the summary of arrests, and to sample some case-files. In the seventeen months through August, 1992, according to the records of the Central, its investigations had resulted in the arrest of 89 members of extermination groups, of whom 37 were associated with the police. Typical of the cases of official involvement is this:

13. Nova Iguaçu extermination group. There were three anonymous denunciations in 1991, claiming that a Sgt. Alfredo of the PM was leading an extermination group in Nova Iguaçu, a town in the Baixada Fluminense, with another PM participating. In November, 1991, Sgt. Alfredo José de Castro was arrested, accused of a specific murder in Nova Iguaçu. He was found with a vast quantity of arms and ammunition. Arrested at the same time was PM Alberto Marcos de Castro Filho. The sergeant was facing disciplinary charges as well as the criminal charges of murder (Central de Denúncias, Case # 1432/91).

The state administration is responding to the problem of "grupos de extermínio," then, more vigorously than it has done in the past. The problem, however, is enormous and difficult to eliminate. It will take years of work to get control over the problem, and it appears that the national government must take a hand, as the problem clearly exists throughout the nation.

POLICE TORTURE IN SÃO PAULO AND RIO DE JANEIRO

Five years ago, torture appeared to be a rampant problem both in São Paulo and Rio de Janeiro. In São Paulo, the internal disciplinary officer (*corregedor*) of the civil police had dozens of cases, and the administrative judge (*juiz corregedor*) who has oversight of the judicial system, had many more. Guaracy Mingardi, who was in the civil police in São Paulo from 1985 to 1987, described a situation in which torture, especially using the "parrot's perch," was virtually routine, and was linked to police corruption: the police used the confession of the suspect to try to extract money from him.³⁵ The investigative prosecutor in charge of human rights in Rio described a similar situation during 1987.

During these five years, Brazil has adopted a new Constitution and has signed the UN Convention on Torture, both of which vigorously condemn torture. The Constitution also guarantees the right of a defendant to remain silent under interrogation.³⁶

The provisions of the penal code and the code of criminal procedure, which have not been overhauled, are in tension in some ways with the protections in the Constitution. The confession is still a proof of central importance in a vast number of criminal cases. A confession made to the police is admissible in a criminal proceeding, and the silence of the defendant—his refusal to

³⁵ G. Mingardi, *Tiras, Gansos e Trutas*, pp. 51-62. The parrot's perch is a simple device, in which a rod is placed in back of the knees, and the person is suspended over the rod by his knees, with his hands tied to his feet.

³⁶ Constitution of 1988, Art. 5, sec LXIII.

respond to questions—may be taken in evidence against him.³⁷ Although under the new Constitution unlawfully seized evidence is not admissible in a criminal proceeding, the accused still has the burden of showing that his confession should not be admitted in evidence. The Brazilian penal law against torture, moreover, is confusing; torture has been designated a "heinous crime" for which bail is not available, but the general penal code has not been amended to include torture.

It is clear that the use of physical coercion by the civil police to obtain evidence has declined dramatically in the last few years, especially in São Paulo. The corregedor of the civil police in the city of São Paulo now has few torture complaints. For him the principal problem at present is corruption. Everyone we interviewed, including those who complained most about the problem in 1987, agreed that torture has decreased, although they disagreed as to the extent of the decline.

Some of our sources in São Paulo attributed the decrease to a change in public consciousness that accompanied the change in the Constitution. There is some support for this interpretation. In a public opinion poll on human rights taken in 1990, a large majority of a sample in greater São Paulo thought that torture to obtain a confession was a serious or very serious violation of rights.³⁸ It is apparent, however, that oversight and control by the judiciary, supported by public opinion, has been essential to the process.

It has traditionally been, and still is the law in Brazil that, while detentions for identification are permitted, the police cannot make an arrest except for a crime *in flagrante* or upon a court order. Although torture no doubt did occur after arrests in flagrante it was widely believed that torture used to occur especially during illegal imprisonments, when the police were searching for evidence that would enable them to get the requisite court order. Accordingly, in the effort to prevent illegal imprisonments, present law provides for a temporary detention of five days under strict supervision when it is essential to an investigation. In the city of São Paulo, the administrative judge requires a medical examination at the beginning and end of the detention, and sometimes demands to see a prisoner at random and without warning. Prisoners arrested *in flagrante* have to be presented to the court within 24 hours.

Complaints of mistreatment amounting to torture are still received by the administrative judge, who now has a staff of prosecutors to investigate the claims and present charges if they can be authenticated. Although it is difficult to tell how many of the charges are genuine, the presence of the system of oversight itself creates a deterrent to torture.

All our sources, including those most critical of the present work of the civil police, agreed that the police have reduced the amount of torture because they are afraid of getting caught. Some defense attorneys said that torture is still used against those who are classically "torturable"—those who are accustomed to the criminal justice system and may consider mistreatment inevitable, and those who are too poor and naive to complain. Other sources suggested that torture is used in property crimes, when public pressure is on the police not only to find the culprit but to recover the property. The administrative judge in Osasco, within greater São Paulo, described a case that he had been able to authenticate. A pattern appeared in three

³⁷ Código de Processo Penal, Arts. 186-199.

³⁸ IBOPE, Public opinion poll on human rights, Grande S. Paulo (mimeo, 1990).

different cases involving property crimes from the same police station during 1992. The accused, relatively naive persons who were unlikely to be able to make up the story independently if it were untrue, recounted an interrogation in which they were suspended from the "parrot's perch," and then were further tortured by having electric shocks applied to them through wet cloths, which spreads the effect and makes it more difficult to detect after the fact. The events occurred late at night, after the station-house was supposed to be closed. When the judge questioned the station-chief (*delegada*), she attempted to defend the practice. The judge began a criminal proceeding against all those involved and they were suspended from duty.

While torture at the hands of the civil police for the purpose of obtaining evidence has diminished, complaints of torture by the PM appear to be rising. These incidents sometimes involve unlawful imprisonments, in which policemen fail to take prisoners to the civil police as they are supposed to do, and sometimes they amount to cruel summary punishments rather than efforts to obtain information. A representative case occurred during August, 1992:

14. Toy Gun Case II. On the evening of August 25, 1992, two teenaged boys, J.E.S., 17, who was about to enlist in the army, and J.C.A., 14, a hot-dog vendor, were together on a street in the *favela* (shanty-town) where they lived. J.E.S. had a toy pistol. Two PMs came by in a car and stopped. The police asked J.E.S. where the two boys were going to rob with the pistol. Although J.E.S. said that he was not a thief, the two boys were handcuffed and taken into custody. The street was crowded, and a great many neighbors saw the arrest.

The two PMs encountered other police, eventually amounting to eleven. Saying they were going to have a "party," they took the boys to a police parking lot, where they beat them with a shovel, and ducked their heads in a tank of water, holding them by the neck and putting a foot on their backs, while timing the duckings with a watch. They took them to another location, where one of the policeman jumped on the boys, claiming he was instructing the other PMs in karate. Eventually they took the two to a civil police station where they were released.

Medical examinations showed marks on the back, neck and arms of one the victims, and on the neck and arms of the other. The two boys were able to pick out photographs of some of the police, who were charged both administratively and criminally.³⁹

Cases such as this one seem to be similar to the brutal cases of deadly force by the PM. Through mistreatment, the police act to intimidate, instead of actually eliminating, youths whom they consider to be marginais.

In Rio de Janeiro, the control of torture by the reform administration of Vice-Governor Nilo Batista has taken a rather different course. It appears that the reformers have not made use of the judiciary to control the civil police, apparently because the local judges would not or did not undertake the task. Instead the state administration acts through the *corregedor* of civil police and even more through the Advisor for Human Rights and Collective Interests (*Assessoria de*

³⁹ G. Nascimento, "Meninos acusam policiais de tortura," *Folha de S. Paulo*, August 18, 1992, p. 3-1; G. Nascimento, "Mais 4 PMs são apontados em caso de tortura," *Folha de S. Paulo*, September 1, 1992, p. 3-4. G. Nascimento, "Travesti de 17 anos acusa policiais de agressão," *Folha de S. Paulo*, September 23, 1992, collects several cases charging summary punishments in the form of torture by the PM from June to September 1992.

direitos humanos e interesses colectivos) in the office of the attorney general (*Procurador Geral do Estado*), an institution which as yet has no counterpart in São Paulo. This office takes complaints from the public, investigates and sends them on to the office of the public prosecutor. We were unable to determine how many of the cases are prosecuted, but the lawyer in charge of complaints at the Assessoria told us that he receives as many as thirty complaints of police coercion in a month, many of which he thinks have merit. Nevertheless, officials in Rio believe that the incidence of torture has declined because of police fear of being caught (even though it has not disappeared). A classic case was reported by Hélio Luz, a reformist station-chief who was at that time chief of the civil police in the Baixada Fluminense:

15. Torture in the Baixada Fluminense. In August, 1991, two young men in their twenties, both of middle-class backgrounds, had met with a third person, known as "Tigre," for whom the police were searching. Civil police investigators in the Baixada took them into custody and beat them and administered electric shocks to try to force the two to give information about Tigre. In addition, the investigators took photos of the two with drugs and weapons, then summoned their families to the station to try to extract money in return for dropping charges related to the contraband. The families complained instead to Hélio Luz, who had the investigators removed from the location and brought charges against them.⁴⁰

At the end of 1991, Governor Brizola in Rio signed an executive order establishing a special police center to investigate torture and the abuse of authority. At the time of our research, in the summer of 1992, the center, which is intended to have oversight from civilian institutions including the bar and human rights groups, was not yet functioning. Nevertheless, it has the potential for major reform in the control of the coercion against suspects in Rio.

CONCLUSIONS

The contrasts between the two states of Rio de Janeiro and São Paulo, and between the decline of the use of torture and the rise of the use of deadly force by the PM in São Paulo, are revealing for the human rights situation in Brazil.

The success in controlling the problem of torture should not be exaggerated. One prosecutor in São Paulo, when the subject of judicial control of the police was raised, muttered, "the judges think they have a lot more control over them than they actually do." Nevertheless, everyone agrees that the program to control coercion in São Paulo has enjoyed some success. The reasons are clear: some *juizes corregedores* are serious about controlling the problem by constant oversight and the prosecutors are systematically investigating the cases. The success of the program in Rio is less clear, although the difference may be primarily that officials are more realistic about the effects of their work.

The results indicate that systematic oversight by the judiciary in cases where they have jurisdiction to control the work of the police is very important. More broadly, systematic oversight by any part of the polity, including the executive, can be effective if the participants are determined to solve the problem. São Paulo would do well to adopt the reforms instituted in Rio

⁴⁰ "Policiais procesados por torturar 2 jovens", *Jornal do Brasil*, August 27, 1991.

de Janeiro, and Rio to adopt the reforms used in São Paulo; then each would have the benefit of the full range of controls. The judiciary in Rio should undertake seriously their responsibility to control the actions of the police in pending criminal cases, as is done in São Paulo, but has not been done in Rio. By the same token, the executive in São Paulo should establish an investigative body to examine claims of torture and other official abuse, similar to the Advisor for Human Rights and Collective Interests in Rio. As this is written, the state of São Paulo is in the process of establishing a State Council on Human Rights, which might be turned to this purpose; it is a step in the right direction.

The control of torture could be made still more effective by changes in the penal law and the law of criminal procedure. The crime of torture should be codified, and procedures concerning the use of confessions in criminal cases should be clarified and changed. Consistent with the constitutional provision protecting the right of the accused to remain silent, the failure of the accused to give a statement should not be admissible as proof against him. In cases where a defendant claims that his confession has been coerced by the police, the confession made to the police should either be completely excluded, or else the government should have the burden of showing clearly that it was voluntary.

The decline in the use of torture makes the catastrophic rise in the killings by the military police in São Paulo even more striking than it would otherwise be. The increasing control over the problem of torture tells us that the use of violence is not "inevitable," that it is not "built into the culture." Rather, it is a social practice that can be changed. The rise in the killings by the military police is a matter of policy; it is deliberate, and it can and must be stopped. The three hundred annual killings by the military police at the time of the last Americas Watch report was a shocking figure; the 1992 level of more than fourteen hundred killings is a social catastrophe. The reported decline in killings by the PM following the massacre in the House of Detention suggests that the authorities can take control over the violence.

Police killings are the result of a glorification of violence, in which killing, even when not legally excusable, is viewed as "tough" and even "heroic." The killings are not primarily the result of armed conflicts with criminals. There are simply too many killings, too large a percentage of those shot are killed, too many of the victims are minors with no criminal background, for the stories about "shootouts" to be true. The truth, instead, is that a culture of official violence, fostered during the military dictatorship, has been carried over into a period of civilian government. The police are engaged in the control of a vague class of marginais through violence.

The civil authorities must take and keep control of the issue of police deadly force. The system of military justice, in which the police investigate and try the crimes of their members themselves, is a system that invites abuse. It ought to be changed. One of the few potential benefits of the peculiar system of having two police forces might be that each could be used as a check on the other. Thus, if the civil police investigated the military police, and vice versa, the system might become more honest and less violent. As it is, with the military police investigating and trying their own members, São Paulo has the worst of both worlds.

The remedy suggested above would require a change in the military penal code, which would be politically difficult. It is undoubtedly possible, however, for São Paulo to do better with the system it now has. Even if military policemen must be tried for crimes of violence by military tribunals, it is not necessary for them to be on duty while the case is pending. In cases

where superiors believe they are guilty of the charges, the policemen should be disciplined administratively. There is no reason to continue the present system of investigation by the local police themselves. The state administration is quite capable of setting up an independent system of investigators, subject to the prosecutors, who could search for the facts. Finally, there is no reason for the system of military justice to be so absurdly understaffed and plagued by delay. If the existing system is to be continued, it ought to be funded in such a way that it works effectively, and can deliver justice in a reasonable period of time. Most important, the administration, in the office of the governor as well as the minister of security, must emphasize that deadly violence is never to be used except in the defense of oneself or another, and that deviations from the standard will result in discipline.

These measures are by no means impossible. Some of them are being carried out in Rio de Janeiro, where there is a concerted effort to root out the culture of violence and, where necessary, to discipline military policemen administratively. Thus it is possible for the military police to discipline its officers outside the system of military criminal justice. The reforms in Rio emphasize that the extreme violence in São Paulo is indeed a matter of policy and can be changed as a matter of policy.

The situation of police violence as it exists has been dangerous to democracy. When the police have impunity, as the military police largely have had in São Paulo, then they can without fear of discipline threaten those who oppose them or tell the truth about them. This has already happened. Caco Barcellos, who wrote the most telling popular study of the violence of the military police, was threatened by the police with death and forced to flee the country. It seems to be common knowledge that the threat was made coolly, and at the command level in the PM, and yet nothing has been done about it.⁴¹ This suggests that the civil authorities have reached the point where their control of the police is weak, because the violence of the police can be directed at those who try to stop it.

São Paulo is at a crossroads of police violence. It is no longer possible to pretend that much of the killing is done in the legitimate defense of life. Revelations in the press and in *Rota 66*, together with the terrible massacre in the House of Detention, which occurred only a few weeks later, have come together to make it clear to all that police violence is out of control. The state government must take action to make the military police into a civilian institution.

If the state government cannot or will not take action, the national government should do so. Following the massacre at the House of Detention, the federal Commission for the Defense of the Rights of the Person wrote "everything indicates that police activity in São Paulo has attained disturbing levels of violence, ending in this dramatic episode that makes us ashamed as a civilized nation." These are strong words that call for strong action, such as the measures suggested above.

In summary, our conclusions and recommendations are the following:

⁴¹ "A PM, seus metodos e seus homens," *Veja de S. Paulo*, October 21, 1992 p. 16.

A. Control of Coerced Confessions and Police Abuses Generally:

1. If confessions made to police are to be admitted at criminal trials, the government should have the burden of demonstrating clearly that each confession is voluntary.
2. The provisions in the criminal code penalizing torture should be clarified and strengthened.
3. The judiciary should continue and strengthen the process begun in São Paulo of oversight and control of the detention of suspects.
4. Investigative agencies such as an Advisor for Human Rights and Collective Interests or a state Council on Human Rights, should take complaints of police abuse, investigate, press charges and issue periodic reports.

B. Control of Police Use of Deadly Force:

1. The military police must use deadly force only as a tactic of last resort. Deadly force must be used only for the protection of life and not for the control or elimination of persons supposed to be undesirables or criminals.

2. In Rio de Janeiro, United Nations standards for the use of deadly force have been adopted, and police officials are using them to reduce violence. While written regulations in São Paulo are consistent with international standards, they are not being followed. The authorities in São Paulo must make it clear that international standards must be followed.

3. The military police must stop promoting and otherwise rewarding policemen who are guilty of the unlawful use of deadly force. Officers guilty of unlawful violence should be disciplined and dismissed administratively if they cannot otherwise be controlled.

4. The military police must be accountable to society for violations of human rights. The system of military justice for crimes committed by police should be replaced by a civilian system of justice.

5. Regardless whether the system of military justice is replaced or not, charges against military police should be investigated by persons who are independent of the military police, and sufficient resources should be allocated to prepare and try criminal charges against any police personnel.

6. In the event that the abuse of deadly force in São Paulo cannot be substantially reduced by action within the state government, the federal government of Brazil should investigate and take action to insure that international standards are not violated.

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