



大会

Distr.
GENERAL

A/HRC/11/2/Add.2
23 March 2009

CHINESE
Original: ENGLISH

人权理事会
第十一届会议
议程项目 3

增进和保护所有人权、公民、政治、经济、
社会和文化权利，包括发展权

法外处决、即审即决或任意处决问题特别报告员
菲利普·奥尔斯顿的报告

增 编

对巴西的访问 *

* 本报告的内容提要以所有正式语文分发。报告本身载于内容提要之后的附件，仅以原文分发。

内容提要

巴西的谋杀率在世界名列前茅，每年有超过 48,000 人死于非命。匪帮、囚犯、警察、行刑队和雇佣杀手进行的谋杀经常成为巴西和世界的头条新闻。相当一部分民众支持法外处决和私下执法，因为民众对高犯罪率心怀恐惧，认为刑事司法系统行动迟缓，无力有效起诉罪犯。许多政治家，急于迎合提心吊胆的选民，不能为遏制警方的处决显示必要的政治意愿。

这种情况必须改变。国家有义务预防和惩治刑事暴力，以保护其公民。但这一义务与国家有义务确保尊重所有公民，包括犯罪嫌疑人的生命权相辅相成。所有巴西人享有安全和不遭受刑事暴力的权利和不被警方任意处决的权利之间没有冲突。谋杀不是一个可以接受或有效的犯罪控制手段。

在本报告中，法外处决、即审即决或任意处决问题特别报告员提出了新的方针，建议针对民警、宪兵、警察内务、法医、监察员、公诉人、司法和狱政进行改革。要求进行改革的范围令人震惊，但改革既是可能的也是必须的。

巴西人民 20 年来激烈反抗专制，通过恢复了尊重人权的联邦《宪法》，不是为了使警官可以安全的名义自由杀人，而且逍遥法外。

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON EXTRAJUDICIAL,
SUMMARY OR ARBITRARY EXECUTIONS, PHILIP ALSTON,
ON HIS MISSION TO BRAZIL (4-14 NOVEMBER 2007)**

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION	1 - 2	5
II. BACKGROUND AND INTERNATIONAL LEGAL FRAMEWORK	3 - 4	5
III. EXTRAJUDICIAL EXECUTIONS BY POLICE	5 - 40	6
A. Overview	5 - 6	6
B. Background: high crime and homicide rates	7 - 8	7
C. Extrajudicial executions by on-duty police	9 - 29	8
D. Extrajudicial executions by off-duty police: death squads, extermination groups and militias	30 - 40	17
IV. PRISONS AND EXTRAJUDICIAL EXECUTIONS IN DETENTION	41 - 48	23
A. Introduction	41	23
B. Analysis of the factors facilitating prison violence	42 - 46	23
C. Prison oversight	47 - 48	26
V. COMBATING IMPUNITY: THE CRIMINAL JUSTICE SYSTEM	49 - 67	26
A. Overview	49 - 50	26
B. Criminal investigations by the civil police	51 - 53	27
C. Forensic evidence and State institutes of forensic medicine	54 - 56	27
D. Public Prosecutor's Office	57 - 60	28
E. Witness protection	61 - 63	29
F. The judiciary and court processes	64 - 67	30

CONTENTS (continued)

	<i>Paragraphs</i>	<i>Page</i>
VI. POLICE ACCOUNTABILITY: INTERNAL AND EXTERNAL OVERSIGHT MECHANISMS	68 - 75	31
A. Police internal affairs	69 - 72	32
B. Ombudsman offices	73 - 75	32
VII. RECOMMENDATIONS	76 - 100	34
A. Policing strategies	77 - 81	34
B. Police involvement in organized crime	82 - 83	34
C. Police accountability	84 - 90	34
D. Forensic evidence	91 - 93	36
E. Witness protection	94	36
F. Public prosecutors	95	36
G. Judiciary and legal framework	96 - 98	36
H. Prisons	99 - 100	37
Appendix		
Programme of the visit		38

I. INTRODUCTION

1. Extrajudicial executions are rampant in certain parts of Brazil. The problems include executions by on-duty police, executions by off-duty police operating in death squads, militias or as hired killers, and killings of inmates in prisons. This report analyses the forms, causes and dynamics of those executions and reviews the role of the criminal justice system and police oversight mechanisms in permitting impunity for executions. The report proposes concrete and specific measures to reduce the incidence of executions, and to promote accountability when executions do take place.

2. I visited Brazil from 4 to 14 November 2007, and traveled to São Paulo, Rio de Janeiro, Pernambuco, and Brasilia. I met with a very wide range of actors - witnesses to human rights violations, families of victims, civil society representatives, and many federal and state Government officials.¹ The success of my mission owes much to the full cooperation extended to me by the Government, especially the Federal authorities.

II. BACKGROUND AND INTERNATIONAL LEGAL FRAMEWORK

3. From 1965 to 1985 Brazil was under a military dictatorship. Basic rights were suspended and real or perceived opponents of the regime were subjected to arbitrary detention, torture, disappearance, or extrajudicial execution.² In 1988, a new federal constitution established democratic rule, and entrenched the rights to life, liberty, equality and security.³ Soon after, Brazil became a party to most of the international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR).⁴ The ICCPR and other applicable treaties require the State to both “respect and ensure” the right of each person not to be “arbitrarily deprived” of life.⁵

¹ For complete information on the Special Rapporteur’s mission, see appendix to the present report.

² See Secretaria Especial dos Direitos Humanos da Presidência da República, *Direito à Memória e à Verdade - Comissão Especial sobre Mortos e Desaparecidos Políticos* (2007).

³ Constitution of Brazil, Art. 5.

⁴ After transition, Brazil became a party to the Covenant on Economic, Social and Cultural Rights (CESCR), the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), and the Convention on the Rights of the Child (CRC). Since January 2007, Brazil has been a party to the Optional Protocol to the CAT. Brazil is not yet a party to the Optional Protocol to the ICCPR, and should begin the process of acceding to the Protocol so that the UN Human Rights Committee may receive and consider communications from individual Brazilians with respect to violations of the rights protected by the ICCPR.

⁵ ICCPR, Arts. 2(1), 6(1); see also American Convention on Human Rights, Arts. 1(1), 4(1). In other words, human rights law both *prohibits* governments from committing extrajudicial

4. All Brazilians are concerned with the threats to human security brought by criminality, but a clear understanding of the legal framework illustrates that human security is a part of, and not in competition with, human rights. In the Brazilian context in particular, my findings show that the issues of ending human rights abuses by the police and ensuring effective crime prevention by the police are tightly linked. A key reason for the ineffectiveness of the police in protecting citizens from these gangs is that they too often engage in excessive and counter-productive violence while on-duty and participate in what amounts to organized crime while off-duty.

III. EXTRAJUDICIAL EXECUTIONS BY POLICE

A. Overview

5. Members of the police forces too often contribute to the problem of extrajudicial executions rather than to its solution. In part, there is a significant problem with on-duty police using excessive force and committing extrajudicial executions in illegal and counterproductive efforts to combat crime. But there is also a problem with off-duty police themselves forming criminal organizations which also engage in killings.

6. Policing responsibilities are divided between the federal and state Governments.⁶ While the Federal Police are responsible for preventing and investigating crimes against indigenous peoples and, in some instances, crimes constituting human rights violations, state police forces are the key actors in issues arising under my mandate. In each state, the Governor commands two police forces. The Military Police are responsible for patrolling the streets, and arresting those caught committing a crime. The Civil Police are responsible for conducting criminal investigations. Governors typically exercise their command powers through a Public Security Secretariat which coordinates the efforts of the two forces.

executions and *requires* them to protect their people from killers. On the one hand, human rights law is violated when agents of the State - such as police officers or soldiers - arbitrarily deprive individuals of their lives. Police officers may shoot to kill only when it is clear that an individual is about to kill someone (making lethal force proportionate) and there is no other available means of detaining him or her (making lethal force necessary). (A/61/311, paras. 33-45; see also Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 9; Code of Conduct for Law Enforcement Officials, Art. 3.) On the other hand, murders by private persons will, in most situations, constitute simple crimes and not give rise to any State responsibility. Nevertheless, the State is obligated to exercise due diligence in preventing such crimes. (E/CN.4/2005/7, paras. 65-76.) To meet that obligation, the State must effectively investigate, prosecute, and punish perpetrators. When such efforts prove ineffective, the State must take whatever measures are necessary to make them effective.

⁶ Constitution of Brazil, Art. 144.

B. Background: high crime and homicide rates

7. Policing in Brazil takes place within a context of significant organized crime, gang control of entire communities, drug and weapons trafficking, and high levels of violent street crime.⁷ Gangs and traffickers have become so powerful that in large cities such as Rio de Janeiro, São Paulo and Recife, they exercise control over favelas, threatening and extorting residents and businesses, imposing their own “laws”, and requiring residents to protect them from police. Gangs engage in lethal violence against enemy factions, making everyday security for favela residents volatile. In some areas of Rio de Janeiro, gang control is so absolute, and legitimate state presence so absent, that police can only enter under threat of armed confrontation with traffickers. In São Paulo, one gang, First Command of the Capital (*Primeiro Comando da Capital*, PCC) was able to bring the state to a standstill in May 2006, organizing prison riots, attacks and murders across the state. The May 2006 violence caused widespread fear across Brazil, and drew international attention to the country’s need for more effective crime control.

8. Brazil has notoriously high homicide rates. Homicide is the leading cause of death for persons aged 15 to 44 years, and the victims are overwhelmingly young, male, black, and poor. Between 1980 and 2002, the homicide rate (per 100,000 residents) nearly tripled - to a peak in 2002 of 30.4. The figures dropped slightly the following years, to 28.3 in 2004, 27 in 2005, and 25 in 2006, but remain well above the world average.⁸ Nationwide, nearly 70% of murders involve firearms. In response, Brazil passed stricter gun control laws in 2003,⁹ which have been credited with reducing firearm deaths in the subsequent years.¹⁰

⁷ For example, rates of robberies per 100,000 have also been rising steadily in Rio de Janeiro since 1991, (under 600 per 100,000 in 1991, to over 1,200 per 100,000 in 2006).

⁸ The World Health Organisation estimated that in 2000 the world homicide rate was 8.8 per 100,000: World Health Organization, *World Report on Violence and Health* (2002), p. 10. (This rate excluded war-related deaths).

⁹ Disarmament Statute, Law No 10, 826/03. The law made it an offence to carry a gun without a permit, raised the age to 25 at which a permit could be obtained, and required all guns to be registered.

¹⁰ The homicide rates for Rio de Janeiro, 40.7 in 2006, and Pernambuco, 53 in 2005, are markedly higher than the national average. (It is important to note that official homicide statistics do not include all deaths. In Rio de Janeiro, for example, on-duty killings by on-duty police officers are not included in the state “homicide” rates. If they were, the homicide rates in Rio de Janeiro and Pernambuco (where such killings are included) would be on par with each other: Governo do Estado de Pernambuco, Secretaria de Defesa Social, Gerência de Análise Criminal e Estatística, Relatório No 366/2007/GACE/SDS-PE, “Informações Sobre Violência Envolvendo Policiais em Pernambuco”, Recife, 30 de novembro de 2007, p. 4. The number of persons who have “disappeared” is also not included in the homicide statistics. In Rio de Janeiro, 4,562 persons were recorded to have disappeared in 2006. While some of these people are doubtless alive, a significant proportion were presumably killed and their bodies disposed of.) In contrast, the homicide rate in São Paulo has fallen over the last 6 years by over 50%. (The

C. Extrajudicial executions by on-duty police

9. On-duty police are responsible for a significant proportion of all killings in Brazil.¹¹ While São Paulo's official homicide rate has reduced in recent years, the number of killings by police has actually increased over the last three years, with on-duty police in 2007 killing one person a

reported homicides in São Paulo are as follows: 2000 (12,638); 2001 (12,475); 2002 (11,854); 2003 (10,953); 2004 (8,753); 2005 (7,076); 2006 (6,057.) See Government of São Paulo, "Resposta à ONU - Homicídio doloso", p. 2.) Senior Government officials and civil society have attributed this reduction to a number of factors. One of these is increased investment in police intelligence and resulting increased arrests. (To September 2007, for example, there were 77,000 arrests, 10,000 more than the same period in the prior year. The state invested in a communications network to link Military and Civil Police information, a geographic information system so that crimes could be tracked by area, criminal photographs database, computer software linking police report information with bank records, telephone records, and residence.) Another factor is new gun control legislation. (In São Paulo, confiscations of illegal weapons rose from 6,539 in the first quarter of 1996 to 11,670 in 1999. From 2003-2004, firearm deaths dropped by 19% in São Paulo.) Other factors include Government and civil society investment in social programs and services to communities; reduction of bar opening hours; retraining for police; and increased use of alternative justice measures. While the trend is promising, São Paulo's homicide rate still remains well above early 1990s levels.

High crime and homicide rates affect the entire populace, but they disproportionately affect the poorer classes, particularly those in favelas. There is a strong negative correlation between average income and the homicide rate in an area. In some cities the homicide rate in poor areas is 4.5 times that of wealthy areas. (In the city of Rio de Janeiro, for example, the poor areas of Zona Norte 2 and Baixada had homicide rates per 100,000 between 2000-2005 of 56.8 and 55.2 respectively, while the wealthy area of Zona Sul had a rate of 12.6 per 100,000. See Instituto de Segurança Pública (ISP-RJ).) While the middle and upper classes can seek to protect themselves through gated communities and private security guards, favela residents live in areas largely devoid of state power, and face daily violence. Favela residents are then further disadvantaged socially and when seeking employment. They are tainted with the crime associated with their area of residence. This "criminalization of poverty" is so pervasive that even Rio de Janeiro's Secretary for Public Security publicly expressed the view that "a gunshot in Copacabana [a wealthy neighborhood] is one thing" but "a gunshot in Coréia, in the Complexo do Alemão [favelas] is another". (Italo Nogueira, "Para secretário, tiro em Copacabana 'é uma coisa' e, no Alemão, 'é outra'", *Folha de São Paulo* (24 October 2007).) This attitude permeates the state response to criminal violence, which has often been to adopt aggressive military style policing of poor neighborhoods, or to fail to take serious action against police who kill suspected criminals and other citizens. In many areas, as detailed below, police are themselves a major cause of insecurity for residents, and are responsible for many killings.

¹¹ In fact, the real homicide rate for many states in Brazil, including Rio de Janeiro and São Paulo, is significantly higher than official statistics suggest because on-duty killings by police are excluded from the homicide statistics.

day.¹² In Rio de Janeiro, on-duty police are responsible for nearly 18% of the total killings,¹³ and kill three people every day. Extrajudicial executions are committed by police who murder rather than arrest criminal suspects, and also during large-scale confrontational “war” style policing, in which excessive use of force results in the deaths of suspected criminals and bystanders.

1. May 2006 violence in São Paulo

10. The 12-20 May 2006 violence began when the PCC gang organized simultaneous prison riots across São Paulo.¹⁴ The gang held inmates’ families hostage at the prisons, and extended the violence beyond the prison system and across the state, spreading fear throughout São Paulo. The PCC attacked public buildings, burned buses, and murdered over 40 law enforcement officials and prison guards. Police responded by killing 124 suspected gang members and criminals.

¹² In 2005, there were 278 cases of “resistance followed by death”. In 2006, there were 495 (the increase is largely accounted for by the large numbers of resistance cases recorded in May). In 2007, up to October, 311 cases were recorded. See: Government of São Paulo, “Resposta à ONU - resistência seguida de morta”, p. 1.

¹³ According to official statistics, there were 6,133 murders (not including killings by police) in Rio de Janeiro in 2007. There were 1,330 citizens killed by police. The total number of killings was 7,463. In 2006, the percentage of killings by police was 14% (there were 6,323 murders, and 1,063 citizens killed by police (7,386 total)). See: Rio de Janeiro, Public Security Institute (Instituto de Segurança Pública), 19 March 2008.

¹⁴ The PCC was formed in 1993, originally presenting itself as a prisoners’ rights group, in response to poor prison conditions and particularly the killing of 111 prisoners by São Paulo Military Police on 2 October 1992 in what has become known as the “Carandiru Massacre”. Over time, the gang became increasingly violent, engaging in armed confrontation with rival gangs (particularly the Third Capital Command), drug and weapons trafficking, and organized prison rebellions. At the time of the May 2006 violence, it was widely reported in the press that the PCC violence was organised to protest the planned transfer of key PCC members to solitary confinement in the Presidente Venceslau prison, although the reasons for the violence have never been clearly determined.

Government officials acknowledged that the use of mobile phones by prisoners continues to be widespread due to corruption and the failure to adequately search visitors. Mobile phone use by inmates allows state-wide riots to be coordinated, and for incarcerated organized crime leaders to continue their activities. State authorities have acknowledged the importance of curbing mobile phone use, have introduced metal detectors, and have made it a criminal offence for a public official to smuggle a phone into prison. However, given the continuing availability of mobile phones in prisons, additional measures should be considered. Notably, the government should continue to increase the numbers of detectors available, and consider purchasing technology that would block mobile phone signals within prisons.

11. The 124 killings were not registered and investigated as homicides, but each was instead registered by the police as a “resistance followed by death” (*resistência seguida de morte*).¹⁵ The practice of recording killings by police in this way was increasingly adopted by police during the 1990s and, although not mandated by law, is now standard practice across Brazil. The resistance classification is intended to indicate that the person was killed while committing the crime of resisting arrest or resisting other lawful orders of police.¹⁶ As explained to me by police and Government representatives, it is intended to indicate that police had to use necessary and proportionate lethal force in response to an attack or threat from the person killed.

12. However, the classification of whether a killing is lawful or not is generally determined by the police officer who submits a form declaring the case to be one of resistance. A detective at the appropriate Civil Police station makes the first formal classification, relying primarily on the report of the involved policeman. In the May 2006 cases, a number of resistance deaths were reported to the wrong precinct, suggesting collusion in impunity between specific Military Police battalions and Civil Police stations.¹⁷ I received many credible allegations that police often failed to secure the scene of the incident adequately, making the gathering and assessment of reliable evidence very difficult. This was strongly denied by the police.¹⁸ However, I received extensive evidence that crime scenes were routinely tampered with. This evidence included detailed accounts of police taking corpses to hospital, ostensibly for the purposes of “first aid”, but in circumstances in which the victim was clearly already deceased.

13. The killing is supposed to be investigated by the Civil Police, but limited resources, and a strong *esprit-de-corps* mean that such investigations are rarely carried out properly or at all. The policeman involved in the killing is often the only witness from whom a statement is taken. Reconstruction of the crime scene by detectives rarely takes place. Poor evidence gathering by police then makes it nearly impossible for public prosecutors to obtain sufficient information to challenge the resistance classification. In practice, use of the resistance category makes the

¹⁵ “Resistance followed by death” (*resistência seguida de morte*) is the term used in São Paulo. The same concept is employed throughout Brazil, though sometimes it is expressed in slightly different words. In Rio de Janeiro, the authorities refer to “acts of resistance” (*autos de resistência*) cases.

¹⁶ The crime of “resistance” (*resistência*) is to “oppose the execution of a legal act, through violence or threats against an official competent to execute [the legal act] or one assisting [such an official]” (Penal Code, Art. 329). It is normally punishable with between 2 months and 2 years of imprisonment. If the resistance effectively prevents the execution of the legal act, then it is punishable with 1-3 years imprisonment.

¹⁷ I was told of a number of killings that were registered in Police District 1, although the incidents occurred outside of that district.

¹⁸ São Paulo police representatives told me that of 3,600 homicides (which exclude resistance killings) from January to September 2007, there were no registered crime scene disturbances at all.

deceased's criminal history a key issue and effectively reverses the burden of proof. A serious murder investigation is unlikely unless the family can demonstrate that the deceased had "legitimate employment" and can attract media attention to the case.

14. An independent commission of inquiry report on the 124 "resistance" deaths estimates that 60-70% were in fact executions.¹⁹

15. This report will discuss a number of reforms that are needed to reduce the level of killing by the police. However, the starting point for serious reform must be to abolish the police practice of registering killings as "acts of resistance". Any killing by the police should be registered in the same way as any other killing, and thoroughly investigated. The present system constitutes a *carte blanche* for police killings.

2. "War" on crime and large-scale police operations in Rio de Janeiro

16. Senior state Government officials and law enforcement authorities in Rio de Janeiro discuss policing as a "war" against gangs and drug traffickers. During 2007 and early 2008, police mounted a number of large-scale operations involving hundreds of men supported by armoured vehicles and attack helicopters, to "invade" and take back favelas controlled by gangs.²⁰ One of these operations, the police invasion of the Complexo do Alemão area of Rio de Janeiro on 27 June 2007, illustrates why such an approach might be tempting in theory but in practice is murderous and self-defeating.

17. The absence of the state in favelas like the Complexo²¹ has allowed gangs to take over neighborhoods, acting as what some refer to as a "parallel state power" - controlling or providing

¹⁹ The report documents multiple shots fired from a close distance, a high proportion of shots to the head and vital organs, and entry wounds on a downward trajectory, indicating that the victim was kneeling or lying when shot. Additionally, no police were killed during any of the resistance deaths, further suggesting that violent confrontations with criminals did not occur. Ricardo Molina de Figueiredo, "Relatório Preliminar" (13 Julho 2006).

²⁰ The state of Rio de Janeiro reported to me that 4 large-scale operations were mounted in 2007 (numbers of police involved in each operation were: 120; 230; 460; 1,280). In total, 6 police were wounded in the 4 operations, and 2 killed. A total of 36 residents were killed, 78 wounded, and 36 traffickers arrested.

²¹ Like many favelas, the Complexo has largely been left without state services, a fact frankly acknowledged to me by representatives from the state Government. For a population of 180,000, the Complexo has only three city schools, 60 teachers, and three health centres. Just 13 public officials work there. There are no government-run cultural institutions, no police stations and no community policing programs. The absence of the state is brought into sharp relief when one compares these numbers with those of other Rio de Janeiro areas. In the municipality of Japeri for example, although it has just 96,200 residents, there are 10 health centres, 27 city schools, 1,918 public officials, and 1,092 teachers. (Governo do Rio de Janeiro, "Programa de Urbanização de Favelas" (November, 2007).)

basic services such as transport, gas and cable, hosting festivals and parties, taxing residents, and punishing rule-breakers. Gang violence is often motivated by economic interests. If a monopoly on criminal activity and a near monopoly on violence can be established within a particular area, an organization can: (a) effectively demand protection fees from businesses and “taxes” from residents; (b) prevent residents from informing the police of their activities, and thereby safely hide themselves, drugs, and ammunition; and (c) impose on the residents any other rules that will facilitate their criminal activities. The Red Command (*Comando Vermelho*) gang has controlled the Complexo for many years, and is an unusually extreme case of the substitution of gang control for legitimate government authority. The rules set by the gang are repressive, and their enforcement brutal - punishment for residents can involve being incinerated in what is known as the “microwave”.

18. In an attempt to take back the Complexo from gang control, on 27 June 2007, the state Government mounted a large-scale invasion of the area, involving 1,280 Civil and Military Police and 170 National Public Security Force (FNSP)²² members. The invasion began in the morning, led by members of the Special Police Operations Battalion²³ in armoured vehicles. Other Civil and Military Police followed, while police attempted to remove barriers - concrete pipes, abandoned cars, etc. - that had been placed at key entrances to the neighbourhood. The area is composed of 17 favelas spread across steep hills, and police attempted to take the higher ground, eventually occupying approximately 60% of the area. But police moved slowly through the area over the course of the day - the Secretary for Public Security told me that in the first four hours they were only able to move forward 400 metres due to barriers and confrontation. Residents with whom I spoke described hearing gun shots and observing the gradual approach of police to their own streets. Many told me that they were unable to leave their homes all day for fear of being caught in the shooting. Meanwhile, the FNSP forces had assumed positions on the edges of the favela to act as a “suffocation” force, responsible for preventing gang members from escaping the favela and for preventing gangs from neighboring areas entering and joining the fight. At the time of my visit, the FNSP continued to maintain checkpoints on the perimeter, but the only law enforcement presence within the community consisted of a few small outposts of members of the Military Police.

19. I questioned the Rio de Janeiro Secretary of Public Security and senior members of the Civil and Military Police as to the purpose of this huge confrontation. I was informed that the Complexo was one of 19 centres of criminality in Rio de Janeiro, a place from which drugs

²² The *Força Nacional de Segurança Pública* (FNSP) was created by presidential decree 5.289 on 29 November 2004. The National Secretariat for Public Security, which is part of the federal Ministry of Justice, is responsible for coordinating the force, which is composed of police from around the country, and which can only be deployed in a state at the express request of that state’s governor.

²³ The *Batalhão de Operações Policiais Especiais* (BOPE) are an elite battalion of the Military Police.

and guns were distributed to gang members operating in other neighborhoods. The primary motivation was said to be to seize those arms and drugs, and to arrest key gang members. A secondary motivation was to open the way for the establishment of government services to the community. Other sources suggested that a possible motivation may have been to capture key gang members who were reportedly meeting in the Complexo that morning; or that the operation was designed to ensure safety ahead of the Pan-American Games, which opened two weeks later. I asked numerous state Government officials and police why the neighborhood was invaded at that particular time, but I was simply told that “intelligence” dictated the timing and manner of the operation.

20. In evaluating the operation in Complexo do Alemão, two questions stand out. First, what were the crime prevention benefits of the operation - did the operation in fact seize weapons and drugs, arrest gang leaders, and open the community to state services? Second, did the operation harm the community’s residents? These questions are especially important because most state Government officials with whom I spoke in Rio de Janeiro considered the operation a success, and a model for future police action.²⁴

21. In fact, from a crime control perspective, the operation was a failure. Police confiscated 2 machine guns, 6 handguns, 3 rifles, 1 sub-machine gun, 2,000 cartridges, 300 kilograms of drugs, and unspecified amount of explosives. Thus there were more people killed than guns confiscated. And the day after the operation, there was only a *de minimis* police presence inside the favela. The gang was still there and still in control. It is not surprising that a one-day long, large, slow sweep through a neighborhood long neglected by the state failed to result in significant arrests or seizures, much less in the end of gang control. Large operations over large areas are difficult to keep secret in advance and are immediately exposed as they enter a community. This gives criminals great opportunity to escape, along with their weapons and

²⁴ In fact, after my visit, I was informed of a number of other large-scale police operations involving deaths. On 30 January 2008, an operation was mounted in Jacarezinho and Mangueira neighborhoods, and involved approximately 200 police, two helicopters and two armoured cars. Six people were killed, six arrested, and a small amount of drugs and weapons were seized. On April 3 2008, an operation took place in the Coréia and Vila Aliança favelas. Two hundred police were used, supported by armored vehicles and one helicopter. Eleven civilians were killed, including three killed from shots fired from the helicopter. Seven suspected criminals were arrested. Another large scale operation took place on 15 April 2008, by 180 police in the Vila Cruzeiro and other favelas in the Complexo da Penha area. Nine civilians were killed, and 7 bystanders wounded by stray bullets. Fourteen men were arrested. After this operation, military police commander Colonel Marcus Jardim was reported in the press as comparing the dead men to insects: “The [police are] the best remedy against dengue. Not a single fly resists ... it’s the best social bug spray” (“Ação do Bope deixa 9 mortos e 7 feridos”, *O Estado do S. Paulo*, 16 April 2008). Security Secretary of Rio de Janeiro, Mr José Beltrame was reported as stating that the two April operations were a success (“Operação na Vila Cruzeiro termina com nove mortos, seis feridos e 14 presos”, *O Globo*, 15 April 2008).

drugs. The combined effects of poor intelligence - which was inevitable given the absence of a police presence in the area - and enormous advance warning to the members of criminal organizations are obvious in the paucity of arrests and the failure to seize large quantities of firearms or drugs.²⁵

22. Nineteen were killed and at least 9 wounded during the 8 hour operation. All 19 deaths were recorded as “resistance” deaths.²⁶ But there is compelling evidence that at least some of those killed were extrajudicially executed. I received credible accounts from residents and family members of victims that victims were shot in the back whilst walking away from police, or dragged out of homes unarmed and executed, or disarmed and then shot in the head. Residents and families also testified that police invaded their homes, threatened them, damaged and stole property, and were physically abusive. Some of those subsequently independently investigating allegations of police abuse - including members of the Brazilian Bar Association²⁷ as well as victims’ families - reported receiving death threats and warnings to cease their investigations.²⁸

23. Two independent studies strongly support the witness and victims’ families accounts of executions. One was by the Human Rights Commission of the Brazilian Bar Association

²⁵ The state of Rio de Janeiro reported that the total drug and weapons confiscated for all 4 large-scale operations in 2007 were: 107 weapons (including anti-aircraft machine guns, pistols); 43 explosive devices; 20,016 ammunition cartridges; 2,730 kg of cannabis; 441 kg of cocaine. And more broadly, despite the aggressive state-wide policies and a dramatic rise in the numbers of people killed in 2007 by police in Rio de Janeiro (25.1% more than in 2006), there was a 5.7% reduction in drug seizures, a 16.9% reduction in arms confiscations by police, and a 13.2% reduction in arrests from 2006 to 2007. (Rio de Janeiro, Public Security Institute (Instituto de Segurança Pública), 19 March 2008. The numbers reported by the State of Rio de Janeiro are: drug seizures (10,793 in 2006; 10,176 in 2007); arms confiscations (13,312 in 2006; 11,062 in 2007); arrests (16,543 in 2006; 14,355 in 2007).)

²⁶ The numbers of killings by police registered as “*autos de resistência*” in Rio de Janeiro has risen sharply since 1997: 1997 (300), 1998 (397), 1999 (289), 2000 (427), 2001 (592), 2002 (900), 2003 (1195), 2004 (983), 2005 (1098), 2006 (1063), 2007 (1,330).

²⁷ See Ordem dos Advogados do Brasil, Seção do Rio de Janeiro, Comissão de Direitos Humanos e Acesso à Justiça, *Notitia Criminis*, Exmo. Sr. Dr. Sub-Procurador Geral de Direitos Humanos do Ministério Público do Estado do Rio de Janeiro.

²⁸ Since my visit, I have also learned that prominent human rights activist and lawyer João Tancredo (who has been working on behalf of some of the families of Complexo do Alemão victims) survived an assassination attempt on 19 January 2008. The bullet-proof car he was traveling in was shot at four times when he returning home from a meeting with the parents of victims of alleged police violence in the Furquim Mendes favela.

(Rio de Janeiro division)²⁹ and the other by experts appointed by the Human Rights Special Secretary of the Federal Government.³⁰ Both found that the original autopsy reports contained serious deficiencies and had not been carried out in accordance with international standards.³¹

24. The expert reports found strong evidence of extrajudicial executions. Of 19 killed, 14 showed signs of 25 gunshot entry wounds in the back of their bodies. Six victims showed signs of 8 entry wounds in the head and face. Five victims showed signs of point-blank shots.³² This information, together with the high number of shots per victim (over 3), the fact that different guns were used to shoot the same victim, and analysis of the sequence and trajectory of shots, led the experts to infer that a number of the victims had been executed. But, given the many deficiencies in the original forensic analysis, both reports stated that it was impossible to conclude definitively whether the victims were executed.

25. I asked Rio de Janeiro officials to respond to these findings. They attacked the experts' credentials, and told me that the experts lacked the constitutional authority to carry out such investigations. I requested, but did not receive, a scientifically based state response to the experts' report. I also asked the responsible Civil Police what investigations had been carried out to ascertain whether each killing was in fact the result of justifiable and necessary use of force. But they were unable to provide me with any evidence that they had conducted serious investigations into any of the killings. In fact, I was told that they assume that Military Police officers registering a resistance case are telling the truth. The principal response I was given was that each of the 19 deceased had criminal records. It is difficult to understand how this could have been known by the police when they killed the individuals. Moreover, the claims were

²⁹ See Ordem dos Advogados do Brasil, Seção do Rio de Janeiro, Comissão de Direitos Humanos e Acesso à Justiça, *Notitia Criminis*, Exmo. Sr. Dr. Sub-Procurador Geral de Direitos Humanos do Ministério Público do Estado do Rio de Janeiro; and "Expert Report on the Complexo do Alemão Affair: Expert Opinion on the Reports of Corpse Examinations issued by the Legal Medicine Institute (IML), as a result of the 19 deaths at the "Complexo do Alemão" on June 27, 2007" (10 July 2007).

³⁰ Presidência da República, Secretaria Especial dos Direitos Humanos, Comissão Permanente de Combate à Tortura e à Violência Institucional, "Encaminha relatório sobre mortes violentas no Morro do Alemão" (14 November de 2007) and "Relatório Técnico Visita de Cooperação Técnica - Rio de Janeiro (RJ) Julho de 2007".

³¹ Especially the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989). The original reports were poorly prepared, and failed to describe injuries adequately. The victims had arrived at the forensics institute naked. Thus their clothing could not be examined nor gun powder analysis carried out. X-rays had not been taken to locate the bullets still in victims' bodies, and the crime scenes were not preserved.

³² A "tattooing" or "stippling" effect on the skin around a bullet entry wound is caused by gunpowder residue on the skin, and can be used to analyse the muzzle to target distance.

firmly denied by families of several victims, including that of a 14 year old boy, David Souza de Lima, who was shot 4 times in the back. The assertion by police of victims' criminality is an extremely telling and worrying "justification" for killings. A victim's criminal record says absolutely nothing about whether they were killed in self-defence, or whether the police used justifiable force. The appropriate response to a criminal act is arrest, not execution.

26. The degree to which the killing of "criminals" is tolerated and even publicly encouraged by high level Government officials goes a long way to explaining why the numbers of killings by police are so high, and why they are so inadequately investigated. Current Secretary for Public Security José Mariano Beltrame commented that, while police did their best to avoid casualties, one could not "make an omelet without breaking some eggs".³³ Such public statements, and the military-style methods used in mega-operations, have led favela residents to become increasingly cynical about the police. The view that police operations are planned for the very purpose of killing poor, black, young men is surprisingly mainstream. The official rhetoric of "war", the acquisition of military hardware, and violent police symbols only make these views more broadly acceptable.³⁴

³³ Bia Barbosa, "OEA recebe denúncia contra megaoperação no Complexo do Alemão", Carta Mayor, 25 July 2007. These views have considerable public support, because many people have little faith in the normal work of the police and other components of the criminal justice system. Fifty percent of Brazilians state that they do not even report crimes to the police because it would be a "waste of time". (See William C Prillaman, "Crime, Democracy, and Development in Latin America", Centre for Strategic and International Studies, Policy Papers on the Americas, Volume XIV, Study 6 (June 2003), p. 9. A Brazilian Judges' Association surveys show that citizens lack faith in the judiciary and consider it corrupt, slow, and mysterious. (AMB, Pesquisa qualitativa "Imagem do Poder Judiciário", Brasília, 2004, p. 61.) In a context of soaring crime rates, widespread citizen fear and insecurity, lack of faith in the police, and lack of trust in the judicial system, it is perhaps not surprising that many Brazilians support "tough" law and order approaches and the extrajudicial execution of suspected criminals: a 2002 Rio de Janeiro survey found that 47% supported the killing of murderers and thieves by police. See William C. Prillaman, "Crime, Democracy, and Development in Latin America", Centre for Strategic and International Studies, Policy Papers on the Americas, Volume XIV, Study 6 (June 2003), p. 14.

³⁴ In 2002, police acquired a military-style armoured vehicle, known colloquially as the *caveirão*, or "big skull", so named because the BOPE's emblem - a skull impaled on a sword, backed by two pistols - is displayed on the side of the vehicle. It can carry 12 armed officers, and has a modified turret and rows of firing positions along each side of the vehicle. By 2006, Rio had 10 of the vehicles. The vehicle is equipped with loudspeakers, and I received testimony from favela residents and civil society that police used the loudspeakers to threaten residents. The *caveirão* causes significant fear in the community. Given the intensity of criminal violence in Rio de Janeiro, armoured vehicles may be useful policing tools in the short-term since police should not be required to work at undue risk to their own lives. Armoured vehicles - when used properly - can improve police safety. However, their use should be restricted to circumstances in which it is indispensable in order to protect the lives of police. To reduce abuse their use should be monitored, and each deployment carefully recorded with audio and visual equipment installed on the inside and outside of the vehicle.

3. Policing gang controlled areas: lessons learned from the Complexo do Alemão operation

27. The large operations of 2007 were ineffective in most respects. They endangered the residents of the communities in which the operations took place, failed to contribute to dismantling criminal organizations, and had a very limited effect on the quantity of drugs, weapons, and other contraband in the city or state at large. Given the striking failure of the “war” approach, the primary motivation for such policies seems to be the state Government’s wish to appear “tough on crime”. Some senior police officers, parliamentarians, and civil society advocates are highly critical of this “war” approach to policing. But they have largely been silenced by apparently strong middle class approval of confrontation tactics. Fortunately, more effective and less militaristic policing in Rio de Janeiro is possible.

28. An acceptable policing strategy cannot ignore or discount the need to protect individuals living within the communities controlled by criminal organizations. A clear lesson from the Complexo operation is that police operations to remove a criminal organization from a particular area must be followed by a sustained police presence. If the police withdraw, many of the very same gang members will return, as operations are unlikely to arrest the entirety of the local criminal organization. Even if the operation did arrest all or most of the gang members within that community, failure to maintain a police presence will permit members of the gang from other areas, or members of other gangs, to move in. If control returns to the gangs, the operation is likely to have left residents in great danger. One of the key reasons that people are killed by criminal organizations is that they are believed to be collaborating with the police or rival gangs. In many communities in Brazil, being labeled a “snitch” is tantamount to being sentenced to death. When one gang controls a community over time, its residents at least know the rules and how to act to survive. But when control changes hands, the residents face an impossible challenge: they must conduct themselves in a manner that will not be perceived as resistant to the current group’s control (which will likely result in death today), but they must also conduct themselves in a manner that will not be perceived as collaborating with that group when control subsequently swings to another group (which would likely result in death tomorrow). The police should not gratuitously inflict this further punishment on the residents already so unfortunate as to have their communities be controlled by criminal organizations.

29. By attempting to re-establish government control over a large area almost instantaneously, large-scale operations are not only too ambitious but contain the seeds of their own failure. Police dashing through a community are unable to develop a sufficient understanding of the local criminal structures as to be able to reliably identify and arrest the organization’s members. This is certainly the case when the level of government presence and thus of reliable intelligence was previously very low, as in the Complexo. This ignorance engenders fear and frustration and is likely to lead some policemen and units to commit acts of indiscriminate violence.

D. Extrajudicial executions by off-duty police: death squads, extermination groups and militias

30. In addition to killings by on-duty police, there are a significant number of groups throughout Brazil, composed largely of off-duty government agents who engage in a range

of criminal activities, including extrajudicial executions. Some of these groups (militias or para-policing operations) are similar to gangs in that they seek to control entire favelas through extortion and the use of force. Others (death squads, extermination groups) act as vigilantes, using executions as an off-duty “crime control” technique, or act as hired killers to supplement their low salaries.

1. Second jobs and corruption: a pathway to organized crime

31. Participation in organized criminal groups should be seen as the most extreme end of a continuum of illegal police actions that begins with corruption and the holding of second jobs. It is openly acknowledged by senior Government officials, police, and police commanders that the prohibited practice of police working second jobs³⁵ - primarily as security guards - is widespread.

32. While efforts are being made in Pernambuco, in São Paulo and Rio de Janeiro, it was clear to me that nothing at all was being done to address this problem.³⁶ In fact, the head of a military battalion in Rio de Janeiro frankly admitted to me that he not only knew that his officers were taking illegal second jobs, but that he encouraged them to do so.³⁷ The motivation for working second jobs is straightforward: police are very poorly paid.³⁸ Working a second job is also facilitated by the policing shift structure in which police may work for 12 to 24 hours, and then take 24 hours to several days off. Unregulated private security jobs, especially in the context of high rates of organized crime and violence, means that working as a security guard can easily involve police using force in their second job, or being hired to “collect” money for an employer, or to protect an illegal gambling or trafficking racket. A telling statistic is that, in Rio de Janeiro

³⁵ The relevant regulations are state-specific. In Rio de Janeiro, it is a disciplinary infraction for a member of the Military Police to have other paid employment. *Regulamento Disciplinar da Polícia Militar do Estado do Rio De Janeiro*, Decreto No. 6.579 (5 March 1983), Art. 14(1); Annex I, para. 120.

³⁶ In Pernambuco, the Governor told me that when he took office in January 2007, he discovered that the police were overly entangled with private interests and that there were even written contracts between police and shopping centers and stores to provide security. His Government was taking steps to break these contracts.

³⁷ In Rio de Janeiro, the numbers of police disciplined for holding second jobs is virtually nil: 2005 - 1 corporal arrested; 2006 - 3 corporals, 4 privates, and 1 sergeant reprimanded; 2007 - 1 inspector of police suspended.

³⁸ Rio de Janeiro Military Police have the lowest rate of police pay in the country. In 2006, entry-level Military Police in Rio de Janeiro received just \$ 718 Reais per month (approximately \$ 450 USD). The Federal Government has in part attempted to address low remuneration by offering training scholarships (Bolsa Formação) to qualifying police earning under \$ 1,400 Reais per month.

in 2007, nearly four times as many police were killed while off-duty as while on-duty.³⁹ The evidence I saw pointed not to the explanation proffered by some security officials to the effect that police are targeted because of their on-duty activities, but rather to the conclusion that they are killed because of the dangerous and often illegal nature of their second jobs.

33. Many police are also engaged in corruption and extortion to varying degrees.⁴⁰ Corruption and second jobs cause harm in themselves, but high-level tolerance of them also contributes to a culture of impunity in which police know they can operate outside the law. Importantly, it also creates a context in which police can choose to collaborate or compete with organized crime groups, thereby increasing the likelihood that police will become involved in militia and death squad activity.

2. Militias and para-policing

34. As reported to me by police investigators, public prosecutors, civil society, and residents of militia-controlled areas, militias are groups composed of police, ex-police, firefighters, prison guards, and private citizens, who attempt to “take over” geographical areas, and engage in extra-state “policing”. Like gangs, their motivations for such control are often economic - militias extort shop owners, and control the supply of gas, cable and transport services. Militias also seek to justify their control by contending that they are “protecting” residents from violent gangs and traffickers. However, for residents, rule under a militia is often just as violent and insecure as rule under a gang. Militias extrajudicially execute suspected traffickers while forcing them out of the area, execute other suspected criminals, intimidate residents, and threaten and kill those who speak out against the militia or are perceived to have allegiances to other groups vying for control.

35. Militias operate throughout Brazil but have become a particular problem in Rio de Janeiro over the last 3 years, where it is estimated that approximately 92 of the 500 Rio de Janeiro city favelas are now controlled by such groups. In particular, I received detailed information on the

³⁹ According to official statistics, in the state of Rio de Janeiro, in 2007, 119 members of the police were killed while off-duty while 32 were killed while on-duty. (In 2006, the numbers were 93 off-duty and 29 on-duty.) See: Rio de Janeiro, Public Security Institute (Instituto de Segurança Pública), 19 March 2008.

⁴⁰ In Pernambuco, I was given detailed information about the relationship between police and gangs in a number of communities. In one favela, every weekend police would come to the community to collect money from the traffickers. The leader of each gang generally has a number of “directors” in charge of the different types of trafficked drugs. The police would come to negotiate with “directors” (who in turn negotiate with their leader) on payments. Refusals to pay the police are met with death threats and murder. The weapons and drugs confiscated by police are regularly fed back into the trafficking system. Police “arrest” traffickers for the purposes of making money - demanding a bribe in return for the criminal’s freedom. When the gangs do not have sufficient funds to pay for one of their members, the gangs collect small sums from each resident to pay the police fee.

militia activities in the Kelson's community, a neighborhood of 6,000. My sources included long-term residents, local NGOs, Civil Police responsible for investigating the Kelson's militia, and the head of the Military Police battalion from which 4 police militia members had been arrested. For many years prior to 2006, the area was dominated by the drug traffickers from the Red Command gang (*Comando Vermelho*). In November 2006, a militia involving men from the 14th, 16th and 22nd Military Police battalions invaded Kelson's using police vehicles and equipment, and expelled the gang. The militia "policed" the area 24 hours a day, and extorted local businesses, restricted the ability of independent local shops to sell gasoline (only militia-run shops could do so), and required bus owners to pay the militia 600 Reais per week.

36. Jorge da Silva Siqueira Neto, who residents and police informed me had been installed as President of the Kelson's Residents' Association with militia cooperation, subsequently fell out with the militia and was expelled from the area. He then made public denunciations against the militia, which were covered by the press on 29 August 2007. The next day, police arrested certain police who Jorge had accused of belonging to the militia. They were released from administrative detention within several days. On 1 September 2007, with the militia's control undermined, the gang attempted to retake control of the area, but was kept out by police after heavy fighting. Jorge was kidnapped and murdered on 7 September 2007. Civil Police investigating the militia informed me that 6 members of the Military Police had been arrested for militia involvement, and a further 13 arrest warrants had been issued for non-police militia members. They stated that their investigations were ongoing but near completion. The head of the Military Police battalion told me that they were re-establishing control of the area, that police corruption and militia involvement by police in his battalion had already been investigated, and that the guilty officers had been arrested. However, I received credible accounts from residents and NGOs working in Kelson's that on 8 October 2007, some members of the Military Police received payments from the Red Command gang, allowing them to re-enter the community and that, at the time of my mission, the gang continued to operate in Kelson's.

37. Each time the control of the community changes hands, residents' lives are endangered. Those residents aligned with the group that was previously in control live in fear of retaliation from the new group, or are forced to leave.⁴¹ The constant shifting of control makes it nearly impossible for residents to act in a way that will keep them safe in the present as well as when control changes hands in the future.

3. Death squads and extermination groups

38. Death squads, extermination groups, and vigilante groups are groups formed by police and others whose purpose is to kill, primarily for profit.⁴² Such groups sometimes also justify their actions as an extralegal "crime-fighting" tool. In circumstances where the groups are hired for

⁴¹ I was informed that since the militia first took control, approximately 35 families (200-250 people) have been forced to abandon their homes and leave the area.

⁴² In Pernambuco, hired killers earn \$ 1,000 to \$ 5,000 Reais per killing.

profit, those who hire them are sometimes members of other criminal organizations, traffickers, or corrupt politicians, seeking to control a perceived threat, gain an advantage over a rival group, or exact revenge. Killers are also hired by those who believe that the police and the criminal justice system are unable to effectively combat crime, and so “vigilante justice” is necessary when they, or a family member, have been the victim of a crime.

39. The public prosecution service in Pernambuco estimated that approximately 70% of the homicides in Pernambuco are committed by death squads. A federal parliamentary commission of inquiry found that extermination groups are mostly composed of Government agents (police and prison guards), and that 80% of the crimes caused by extermination groups involve police or ex-police.⁴³ The Governor of Pernambuco also told me that his Government is aware that members of the Military Police are involved in most death squads. As the commission of inquiry report notes, it is police who have the power, information, resources, weapons, and training to most effectively run such groups.⁴⁴ The Pernambuco Government, which took office in 2007, appears committed to ending this phenomenon and has undertaken a number of promising initiatives.⁴⁵

⁴³ *Relatório Final da Comissão Parlamentar de Inquérito do Extermínio no Nordeste*. Criada por meio do Requerimento nº 019/2003 - destinada a “Investigar a ação criminosa das milícias privadas e dos grupos de extermínio em toda a região nordeste” - (CPI - extermínio no nordeste), p. 25.

⁴⁴ As the commission of inquiry’s report explains: “The extermination groups are composed mostly of government agents - civil and military police, penitentiary agents, in short, by personnel that are very powerful and possess the information, arms and circumstances to act. However, their composition varies: ex-police expelled from the corps owing to their participation in illegal activities; police on active-duty who use these groups as a means to augment their salaries; individuals contracted as private security; groups that participate in criminal organizations linked to drug-trafficking and other illegal activities; and groups that do not maintain specific relationships with organized crime but that exercise control over particular areas with the excuse of guaranteeing the ‘security’ of its residents - this type is very common in the outlying neighborhoods in the big cities. There are also organizations that contract with cowboys.” *Relatório Final da Comissão Parlamentar de Inquérito do Extermínio no Nordeste*. Criada por meio do Requerimento nº 019/2003 - destinada a “Investigar a ação criminosa das milícias privadas e dos grupos de extermínio em toda a região nordeste” - (CPI - extermínio no nordeste), pp. 25-26.

⁴⁵ Working with Federal Police and drawing on information gathered by a new integrated intelligence unit within the Public Security Secretariat, police arrested 197 people for death squad involvement during 2007. (During my visit, 34 people (police, lawyers, businessmen) were arrested and charged with participating in death squads, killing 35 people during the previous 5 month period, and suspected of killing several hundred victims over the years. One of the death squad groups was led by a former member of the Military Police. In April 2007, members of another death squad were arrested in Pernambuco, and charged with killing 200 people.) In addition, many police were suspended from duties during 2007, and charges were also laid against senior members of the Civil Police. (In 2007, 600 Military Police were

40. Extermination groups are also responsible for the murders of landless workers and indigenous persons in rural areas, generally in the context of disputes over land. While the numbers of landless workers or indigenous persons executed each year does not form a large proportion of Brazil's total homicides, the killings that take place serve to reinforce a broader system of repression by demonstrating the lethal consequences of defying powerful actors. The Pastoral Land Commission reports on average approximately 40 murders per year of landless workers.⁴⁶ In the state of Pará alone, over 770 landless workers and other human rights defenders have been killed since 1971.⁴⁷ These killings generally occur in retribution for the activism of landless workers or during violent evictions from land settled by landless workers.⁴⁸ The *Conselho Indigenista Missionário* (CIMI) informed me that they estimate that about 10 summary executions of indigenous persons occur each year.⁴⁹ While individual killings are a result of structural land conflict issues, complex and long-term land use and ownership issues should not

expelled, and 16 Civil Police expelled.) Police now receive a bonus for every weapon they confiscate, and over 6,000 were confiscated in 2007. Pay rates, and health and education services for police have also been increased, and training for intelligence techniques has been provided. These efforts in Pernambuco need to continue, and other states should pursue similar initiatives.

⁴⁶ See Comissão Pastoral da Terra, "Assassinatos" at www.cptnac.com.br. In 2007, the most recent year for which there are homicide statistics, the number of homicides (28) was lower than the previous years' averages. (However, in 2007, the number of states in which murders took place increased from 8 to 14).

⁴⁷ Comissão Pastoral da Terra, Justiça Global, Terra de Direitos, "Violação dos direitos Humanos na Amazônia: Conflito e Violência na Fronteira Paraense" (November 2005), p. 33.

⁴⁸ For example, I received reports that on 21 October 2007, a few weeks prior to my visit, an armed militia group shot and killed Valmir Mota de Oliveira (42 years old), a leader of the *Movimento dos Trabalhadores Rurais Sem Terra* (MST), at the Via Campesina encampment at the GMO field of Syngenta Seeds, Santa Tereza do Oeste, Paraná. Five other farmers were also shot and seriously wounded. The MST leaders had been threatened for the previous 6 months by the militia, who were believed to have been employed by Syngenta.

⁴⁹ These killings either occur in the context of disputes over land that has already been demarcated to indigenous groups pursuant to the requirements of Article 231 of the 1988 Constitution, but on which others trespass for the purposes of resource exploitation, or the killings occur over land which is not yet demarcated but which an indigenous group chooses to begin to reclaim. The National Foundation for Indians (*Fundação Nacional do Índio*, FUNAI) has responsibility for indigenous policies, and policing of indigenous areas is largely the responsibility of the Federal Police. I was told by NGOs and indigenous representatives that Federal Police presence was often non-existent or minimal. In indigenous areas known to have serious land conflicts, Federal Police presence should be increased, and police who work in and near indigenous areas should receive specialist training to sensitize them to the land issues and indigenous culture.

be used as an excuse for failing to take immediate action to prevent, prosecute and punish extrajudicial executions in this context. Land conflicts form the context in which these murders take place. But it is not the case that executions inevitably follow from conflicts over land. Executions occur because those who order and carry out the murders know that they will get away with it. Brazil must ensure that reported death threats are investigated and the perpetrators punished.

IV. PRISONS AND EXTRAJUDICIAL EXECUTIONS IN DETENTION

A. Introduction

41. Killings in state detention facilities in Brazil occur primarily in the context of prison riots and gang-related inmate violence, during which the perpetrators are inmates, prison guards, or police sent in to quell the disturbance or rebellion.⁵⁰ While the precise trigger for each killing is unique,⁵¹ there are a number of general factors which facilitate excessive violence throughout the prison system. Significantly, these factors not only lead to inmate unrest but have encouraged the growth of a parallel gang power in prisons. The failure of the state to meet basic inmate needs and security encourages the growth of gangs by creating a power vacuum in which gangs are able to present themselves as securing benefits for inmates. This not only results in excessive prison violence, but as the events of May 2006 in São Paulo clearly demonstrate, has effects far beyond the prison walls. Broader crime control efforts must take into account the key role played by prisons in gang growth, and the failure of the prison system to curb the activities of organized crime.

B. Analysis of the factors facilitating prison violence

42. Brazil's poor prison conditions and severe overcrowding are well-documented.⁵² The national prison population has risen sharply over the last decade, and the incarceration rate has

⁵⁰ Major prison riots include: In October 1992, 111 prisoners were killed when Military Police attempted to regain control of the Carandiru prison in São Paulo following a riot; one person was convicted in relation to these deaths, but his conviction was overturned in February 2006. In 2001, there were riots in 29 separate facilities simultaneously in São Paulo. In 2002, 10 died and 60 escaped from the Embu das Artes jail in São Paulo. In 2003, 84 prisoners escaped from the Silvio Porto prison in Paraíba. In 2004, 14 inmates were killed and some were mutilated during an uprising at the Urso Branco prison in Rondônia. In 2004, 34 inmates died during a riot at Benfica prison in Rio de Janeiro. In 2007, 25 inmates were burned to death by other inmates at the Ponte Nova prison in Minas Gerais.

⁵¹ For the genesis of the May 2006 riots in São Paulo, see Part III(C)(1). For another example, the August 2007 violence in Minas Gerais was reportedly a result of conflict between gangs.

⁵² See, for example: Report of the Special Rapporteur on Human Rights on the question of torture (20/8 - 12/9/2000), report E/CN.4/2001/66/Add.2.

more than doubled.⁵³ The dramatic rise - caused by the slowness of the judicial system, poor monitoring of inmate status and release entitlement, increased crime rates, high recidivism rates, and the popularity of tougher law and order approaches favouring longer prison terms over alternative sentences - has resulted in severely overcrowded prisons. The prison system was designed to hold only 60% of the inmates actually detained nationwide,⁵⁴ and many individual prisons are two or three times over capacity.⁵⁵

43. Senior Government officials responsible for prison administration affirmed that there are problems with physical abuse and corruption by prison guards. While I was informed by officials at one prison I visited that there were no mistreatment issues and thus no guards had been punished, this picture contrasts with that presented by those with legal authority to monitor the prison, by civil society groups, and by inmates whom I interviewed. The Judge of Penal Execution, for example, has been involved in various legal actions relating to beatings by groups

⁵³ In 1995, the inmate population was 148,760, or 93 per 100,000. By 2006, it had jumped to 401,236, or 213.8 per 100,000: See Ministério da Justiça; Centro de Estudos de Segurança e Cidadania.

⁵⁴ (2006). Ministério da Justiça; Centro de Estudos de Segurança e Cidadania.

⁵⁵ The problem in the state of São Paulo is especially acute. São Paulo contains 20% of the nation's population but 40% of its prison population. As of 30 October 2007 there were 140,680 inmates in 143 penitentiaries (currently beyond capacity by 44,807 inmates), and a further 11,073 in police lock-ups. (See Secretaria da Administração Penitenciária Gabinete do Secretário.) A prison I visited in São Paulo which is a provisional detention centre for those awaiting trial or conviction is currently at three times its capacity. At 9 August 2007, it held 1,438 inmates, with a capacity for 512. (See "Relatório referente à visita realizada prisional Centro de Detenção Provisória II de Pinheiros em 9 de agosto de 2007 pelo Conselho da Comunidade da Comarca de São Paulo".) On the day I visited, 6 November 2007, it was holding 1,520 inmates. Cells equipped for eight regularly hold up to 25 inmates, who take turns sleeping on beds or the floor. Although the law provides for access to work and education, nationally, as of December 2004, only about 18% of the total number of those in prison were involved in any form of education. (UNESCO Office (Brazil), *Education for Freedom: Trajectory, Debates and Proposals of a Project for Education in Brazilian Prisons*, (March 2007), p. 34; Constitution of Brazil, Art. 208; Law no 9.394/96 (Bases and Directives for Education - Art 37 § 1), CEB Technical Opinion no 11/2000, Law no 10.172/2001 (National Education Plan), Law no 7.21-/84 (Law of Penal Execution), and CNPCP Resolution no 14/94 (Basic Regulations for the Treatment of Prisoners).) Rates in São Paulo in 2007 remained low: 17.21% of inmates had access to education; 42.34% to work; and 40.45% were involved in no activity whatsoever. (See Secretaria da Administração Penitenciária Gabinete do Secretário.) Given that the inmate population is largely young (over 50% are under 30), poor (95%), and uneducated (over 65% have less than an eighth grade education, 12% are illiterate), the lack of education and work fails to provide inmates with alternatives to crime upon release, and helps to ensure that prisons are a training ground for future criminal activity.

of prison officials against inmates at this facility.⁵⁶ Inmates with whom I spoke had witnessed and received beatings. It is telling that the threat of retaliation for making a complaint against a prison official is so serious that prison monitors consider any such complaints likely to be true. The inmates who I interviewed were afraid to even have it known that they had spoken with me, fearing reprisals from other inmates and prison officials.

44. Delays in processing transfers, together with warden violence and poor general conditions encourage the growth of gangs in prisons, which can justify their existence to the prison population at large by purporting to act on behalf of prisoners to obtain benefits and prevent violence. Poor prison administration and conditions thus facilitate not only riots, but directly contributes to the growth of criminal gangs.⁵⁷

45. In most prisons, the state fails to exert sufficient control over inmates, and lets gangs (or other prisoners in “neutral prisons”) sort out amongst themselves matters of internal prison security. Selected inmates are often given more power over other prisoners’ daily lives than guards. They assume control of (sometimes brutal) internal discipline and the distribution of food, medicine, and hygiene kits.⁵⁸ This practice often results in allowing gang-leaders to run prisons.

46. Many prisons throughout Brazil require inmates to designate which gang they belong to when they enter the prison system for the first time. Prison administrations adopted this practice as a way to better control prison populations and to reduce inter-gang conflict in prisons - one

⁵⁶ Poder Judiciário São Paulo - 1ª Vara das Execuções Criminais da Comarca de São Paulo, Juiz de Direito Titular da 1ª Vara das Execuções Criminais da Comarca de São Paulo e Corregedor dos Presídios (18 October 2007).

⁵⁷ The movement of inmates through the prison system - from police lock-ups, to provisional detention centres awaiting trial or conviction, to closed prisons, to open prisons, and eventual release - is largely not recorded electronically. (Brazil’s National Penitentiary Department (*Departamento Penitenciário Nacional*) has created software called “Infopen Management”, through which inmates’ details can be electronically stored. At present, approximately 28,000 inmates (about 7% of the total prison population) have been registered in this way.) Together with inadequate monitoring of each inmate’s status, this means that inmates are frequently held in the incorrect facility. For example, inmates can be held in closed detention when the inmate is already entitled to be held in open detention and thus able to work in the community during the day. Prison monitors with whom I spoke noted that it was not uncommon for inmates to be held one year beyond the time they should have been moved or released. One inmate whom I interviewed had been detained over a year, and had already been tried, but knew nothing about his proceedings, or why he was still in provisional detention. Another inmate, arrested in late 2005, had had various hearings but was unaware of the status of the proceedings.

⁵⁸ These prisoners are known by various euphemisms, including “*faxinas*” (janitors) and “*chaveiros*” (key-holders).

particular prison or prison wing will, for example, only hold members of the Red Command gang, while another will only hold members of the Friends of Friends gang. In Rio de Janeiro, even when a new inmate has no gang affiliation whatsoever, he may be required by prison administrators to pick a gang with which to be affiliated. A prisoner who refuses is simply assigned to a gang by the prison administration. The state practice of requiring gang identification essentially amounts to the state recruiting prisoners into gangs. Ultimately, this contributes to the growth of gangs outside prison and elevates crime rates more generally. Given the power that gangs have now established in the prison system, rival gangs must clearly remain separated to avoid prison riots and deaths. But it is important to take all available steps to avoid turning common criminals into committed gang members. While in theory some states have “neutral” prisons in which prisoners without any gang affiliation may be placed, there need to be more of these, and their neutrality needs to be better preserved in practice.

C. Prison oversight

47. There are many bodies with the legal authority to investigate prison conditions, but they have not provided adequate oversight in practice. This lack of external oversight has permitted poor prison conditions and abuses of power to continue. The law provides for a number of organs to inspect and monitor prisons.⁵⁹

48. However, inmates I interviewed had rarely seen or even heard of a visit by an external prison monitor. They were aware of rare visits by prison internal affairs, but no inmate with whom I spoke knew of a visit by a judge, prison council, or other prison oversight body. It is essential for the effectiveness of complaint mechanisms that monitoring is not only done regularly, but also that it is visible to inmates. The mere existence of an internal oversight office is grossly inadequate in a context where prisoners are too afraid to make any complaint.

V. COMBATING IMPUNITY: THE CRIMINAL JUSTICE SYSTEM

A. Overview

49. The Civil Police have primary responsibility for homicide investigations. This is true whether the suspected perpetrator is a private citizen or a member of either police force. The Civil Police then refer the case to the Public Prosecutor’s Office, which may initiate criminal proceedings. In homicide cases, it is a jury that pronounces the verdict and the judge who decides on the sentence. Two other institutions help to ensure the quality of the investigation and

⁵⁹ Lei de Execução Penal, Lei No. 7.210 (adopted 11 July 1984). In practice, the key actors are the Judges of Penal Execution and the Community Councils. Judges of Penal Execution are required to inspect prisons monthly and have the power to “interdict, in all or in part, any penal establishment that is functioning under inadequate conditions or infringing the provisions of [the law]”. The number of such judges is, however, insufficient to meet their extensive responsibilities. In São Paulo, for example, there is just one Judge of Penal Execution for the capital, who is responsible for monitoring 10,000 inmates in nine prisons. This makes it impossible for the Judge to adequately monitor inmate status and prison conditions.

the integrity of the subsequent process. A state Institute of Forensic Medicine may support the investigation by conducting an autopsy. And witness protection programs may be used to prevent suspects from intimidating witnesses.

50. While each of these institutions performs well some of the time, obtaining a conviction requires them all to work well at the same time, and this happens infrequently. For example, in Rio de Janeiro and São Paulo, only about 10% of homicides end up being tried in the courts; in Pernambuco the rate is about 3%. Of the 10% tried in São Paulo, it is estimated that about half are actually convicted. These rates are even lower for cases implicating police.

B. Criminal investigations by the civil police

51. I received many allegations that Civil Police investigations, particularly of killings by police, are often grossly inadequate. I was informed by prosecutors that police investigations are often not recorded properly, and sometimes the only evidence would be a crime scene description and a police statement. The use of DNA and ballistics evidence is rare and technical and human resources are lacking.

52. These problems are exacerbated when the case is one in which members of the Military Police report the killing as a “resistance” death. As detailed above in Part III (C) a strong *esprit-de-corps* results in Civil Police poorly investigating such cases.⁶⁰ I was repeatedly told by Civil Police that when a resistance case occurs, they assume that the Military Police were dealing with criminals, and acting in self-defence.

53. I was also given examples of police negligently or intentionally allowing cases to sit in police precincts, without passing them to prosecutors. For example, in Pernambuco, prosecutors found 2,000 cases where files had been left in police precincts and not passed on to the prosecution service. The files had been left for over 20 years - well past the period of prescription - so prosecutions are now impossible.

C. Forensic evidence and State institutes of forensic medicine

54. The state Institutes of Forensic Medicine in Brazil suffer from a lack of basic resources and are not sufficiently independent from police.⁶¹ For example, in Rio de Janeiro, the independent expert reports on the deaths during the Complexo do Alemão operation found, upon reviewing the relevant autopsy reports prepared by the state institutes, that they were grossly deficient: basic x-ray, blood, and gun powder analysis had simply not been carried out.

⁶⁰ Although the Civil Police and Military Police are independent institutions, members of the respective forces in a given area will routinely cooperate on ordinary cases. The relationships that develop can impede effective investigations implicating the Military Police. This problem is ameliorated when a specialized Civil Police unit with broader geographical coverage, such as the Department of Homicides and Protection of the Person (Departamento de Homicídios e Proteção à Pessoa (DHPP)) in São Paulo, takes over a case involving a killing by police.

⁶¹ Positively, Brazil invested \$ 12,000,000 Reais in 2007 in equipment. However, there remains a serious lack of basic resources in many state institutes.

55. The use of forensic evidence is critical in some cases, especially when there are no witnesses or when those that exist are afraid to testify. For these reasons, forensic evidence is especially important in killings alleged by the police to have been proportionate responses to “resistance”. The only testimony available may be that of the police officer responsible for the shooting, but where reliable physical evidence is available, it may nevertheless be possible to determine that a particular shooting was an extrajudicial execution.

56. Presently, in most states, the Institute of Forensic Medicine is responsible to the state Public Security Secretariat. Given that Institutes of Forensic Medicine are intended to provide expert advice rather than to carry out government policy, their institutional autonomy and independence and the tenure of their staff should be guaranteed. Doing so would, moreover, ensure that their reports on police killings would be - and appear to be - impartial, expert determinations.

D. Public Prosecutor’s Office

57. The Public Prosecutor’s Office (*Ministério Público*) is a widely-respected institution in Brazil, and I was told of many examples of prosecutors who had taken action to hold to account offending police officers. The independence of the Public Prosecutor’s Office from both the executive and the judiciary is provided by the Constitution, and the employment guarantees provided to individual prosecutors ensure that they have a high-level of independence in practice.⁶²

58. In areas in which progress has been made against police impunity, prosecutors have generally played a key role both in pursuing criminal proceedings and ensuring evidence gathering. In some instances, prosecutors have cooperated closely with Civil Police investigations; in others, prosecutors have re-interviewed witnesses and gathered evidence on their own initiative.

59. In practice, the prosecutors’ investigative role has often been discouraged by Civil Police and impeded by legal controversy over prosecutorial powers. First, Civil Police show little awareness of the value of consulting with prosecutors to make sure that the evidence they are gathering will suffice to sustain criminal charges. For this reason, they seldom inform prosecutors until they reach a stage at which the law requires them to do so. This will typically not be until 30 days after the crime took place, by when the crime scene will almost certainly be destroyed, bodies are likely to have been buried, and witnesses may have fled. Second, some have challenged the legal power of prosecutors to gather evidence, arguing that only the Civil Police have the right to conduct investigations. While this argument appears to be motivated more by institutional jealousies than constitutional analysis, the courts have not provided a definitive answer, meaning that prosecutors who gather evidence cannot be certain that it will prove admissible at trial.

⁶² It is also worth noting that the Public Prosecutor’s Office has a broad range of other, non-prosecutorial powers and responsibilities with respect to protecting individual rights and exercising external control over police activities: Constitution of Brazil, Arts. 127-129.

60. From the perspective of combating impunity for violations of the right to life, it would be a significant step forward if Civil Police routinely consulted with prosecutors from the beginning of homicide investigations. Moreover - while it goes without saying that the Civil Police will and should remain the main institution carrying out criminal investigations - in cases in which the police are implicated, prosecutors should routinely conduct their own independent inquiries to ensure the appearance and reality of justice. The practice of the Public Prosecutor's Office in São Paulo of having all "resistance" cases handled by a specialist prosecutor is notable in this regard.

E. Witness protection

61. The high number of homicides in Brazil, together with significant levels of organized crime and police corruption and violence, means that an effective and comprehensive witness protection program is essential in order to protect particularly vulnerable witnesses and to ensure that impunity does not result from widespread witness intimidation. I interviewed many victims' relatives who told me they had spoken with witnesses to the victim's death. But in many cases the witnesses feared police reprisals and refused to come forward publicly. I also spoke to a number of family members taking action to investigate the circumstances of the victim's death who had received death threats.

62. Brazil has recognized the importance of witness protection and has taken positive steps over the past decade to improve its programs. The most important of its witness protection programs, the *Programa de Assistência a Vítimas e a Testemunhas Ameaçadas*⁶³ (PROVITA), currently operates in 16 states and the federal district.⁶⁴ Between 1998 and 2006, it protected a total of 2265 people (870 witnesses and 1395 family members).⁶⁵ Between 2003 and 2007, 355 people were protected in relation to executions. PROVITA's structure is defined by federal legislation, it receives a combination of federal and state funding, and is administered at the state level. In each state, a committee that includes judges, prosecutors, and others, provides policy

⁶³ Law No. 9.807, of the 13th of July, 1999. PROVITA was started in 1996 in Pernambuco by the NGO *Gabinete de Assessoria Jurídica às Organizações Populares* (GAJOP).

⁶⁴ Acre, Amazonas, Bahia, Ceará, Espírito Santo, Goiás, Maranhão, Mato Grosso do Sul, Minas Gerais, Pará, Paraná, Pernambuco, Rio de Janeiro, Rio Grande do Sul, São Paulo, and Santa Catarina. See Presidência da República, Secretaria Especial dos Direitos Humanos, Subsecretaria de Promoção e Defesa dos Direitos Humanos.

In addition to PROVITA, the National Special Secretariat for Human Rights developed the National Programme for the Protection of Human Rights Defenders. However, it currently only operates in a few states, and does not protect many human rights defenders. According to SDDH, the National Program for the Protection of Human Rights Defenders has a list of 90 human rights defenders in Pará threatened with execution, but only 10% of these are under protection.

⁶⁵ See Presidência da República, Secretaria Especial dos Direitos Humanos, Subsecretaria de Promoção e Defesa dos Direitos Humanos, Coordenação-Geral de Proteção a Testemunhas, "Programa de Assistência a Vítimas e a Testemunhas Ameaçadas" (2007).

direction and makes final decisions on the admission and expulsion of witnesses.⁶⁶ Day-to-day operations are conducted by the state's secretariat for justice in tandem with an NGO. The NGO receives government funds to relocate witnesses and help them integrate into a new community. This innovative structure, in which government officials are not actually informed of the witness's location, has provided witnesses to crimes committed by Government agents a much higher level of protection than most systems that rely solely on the Government to provide protection. However, some of the NGOs providing protection services to witnesses reported dissatisfaction with the structure of the program and questioned the long-term viability of a program that relies so extensively on NGO implementing partners.

63. In practice, some State Governments have not fulfilled their PROVITA obligations. At the time of my visit, the program in Rio de Janeiro had been operating for over a year without state funding,⁶⁷ and the program in Pernambuco had been doing so for 5 months. Another problem identified by officials and NGO representatives responsible for PROVITA was that they face problems when there is a need to escort witnesses to court (the most dangerous time for a witness under protection), and when there is a need for emergency transportation. These services are to be provided by state police forces, but this provides an opportunity for obstruction and intimidation.

F. The judiciary and court processes

64. All intentional homicides are tried by juries in regular, civilian courts.⁶⁸ But few convictions against police are achieved. I received many complaints from victims, families, police, prosecutors, and Government officials that the judicial system in Brazil is overburdened and slow.

⁶⁶ Law No. 9.807 of the 13th of July, 1999, Art. 4; Decree No 3.518, of the 20th of June, 2000, s. 1.

⁶⁷ See PROVITA Rio: Centro de Defesa dos Direitos Humanos de Petrópolis (9 November 2007). This has had obvious effects on the numbers of people that can be protected by the program. In Rio de Janeiro, at November 2007, 41 people were being protected, while numbers in prior years were notably higher (2000 (70), 2001 (76), 2002 (66), 2003 (78), 2004 (68), 2005 (58), 2006 (75)).

⁶⁸ This represents significant progress: Prior to a 1996 statute, homicide cases against members of the Military Police were tried by special military courts. Now, jury trials are used, but only in cases involving intentional crimes against life. Law 9.299 (adopted 7 August 1996) amended Art. 9 of the Código Penal Militar and Art. 82 of the Código de Processo Penal Militar so as to remove "intentional crimes against life committed against a civilian" from the military justice system. The system used for jury selection is not designed to produce a "jury of one's peers" as in common law systems. Instead, each year, a judge selects several hundred individuals to compose the jury pool based on his "personal knowledge or reliable information" with the assistance of lists provided by local authorities and professional guilds. The jury for a particular trial is chosen at random from this list. (Código de Processo Penal, Arts. 74, 427, 439.)

65. The period of prescription for intentional homicide is, depending on whether there are aggravating factors, either 12 or 20 years.⁶⁹ The period of prescription continues to run until all appeals have been completed. (Appeals may be made to higher state courts, to the federal *Superior Tribunal de Justiça* and, if there is a constitutional issue, ultimately to the *Supremo Tribunal Federal*.) In the context of a very slow justice system, this creates impunity for serious crimes. This problem is exacerbated by the tendency of some judges to put off dealing with cases implicating the police and other powerful actors, and to manage their dockets so as to prioritize civil cases over criminal cases.

66. Recent reforms have allowed crimes implicating the State's international human rights obligations to be investigated by the Federal Police and, at the request of the Prosecutor-General, transferred from the state to the federal courts.⁷⁰ While these reforms hold promise,⁷¹ the criteria for jurisdiction to be transferred have been narrowly construed by the courts, and, up to the time of my visit, only one case has actually been transferred.

67. The National Council of Justice was recently established to provide external oversight of the judiciary, and it has the power to propose reforms, monitor judicial activity, and to remove a judge or impose other sanctions. The Council should consider how its rulemaking powers could be used to improve the judiciary's response to impunity. Useful measures would include designating judges who would handle solely cases involving killings by on- or off-duty police and promulgating a protocol for prison inspections by Judges of Penal Execution.

VI. POLICE ACCOUNTABILITY: INTERNAL AND EXTERNAL OVERSIGHT MECHANISMS

68. An effective system of police accountability requires both internal and external oversight mechanisms. In Brazil, both sets of mechanisms should be improved so that they might better play their complementary roles.

⁶⁹ Código Penal, Art. 109.

⁷⁰ Pursuant to a constitutional amendment made in 2004, Art. 109 of the Constitution provides for the involvement of the Prosecutor-General of the Republic and the jurisdiction of the federal courts “[i]n the case of grave violations of human rights . . . with the purpose of ensuring compliance with obligations under international human rights treaties to which Brazil is party”. Similarly, the law permits the Federal Police to investigate “criminal offences . . . related to the violation of human rights, that the Federative Republic of Brazil is obligated to repress as a result of international treaties to which it is a party” (Law 10.446 (adopted 8 May 2002), Art. 1; see also Constitution of Brazil, Art. 144(1)).

⁷¹ Following her visit in 2003, my predecessor observed that the anticipated amendment would be a “welcome step forward to combat impunity”. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, E/CN.4/2004/7/Add.3.

A. Police internal affairs

69. In each state, the Military Police and the Civil Police each have an Internal Affairs Department (*Corregedoria*) responsible for conducting administrative proceedings and recommending disciplinary sanctions. (In some states, the two police forces share a single Internal Affairs Department.) In the case of a crime, such as homicide, this internal affairs process will run in parallel to the criminal investigation. However, few police are sanctioned or disciplined, even for serious crimes. And many police accused of serious crimes not only remain free from detention during the course of an investigation but remain on active duty. This permits police to intimidate witnesses and increases community perceptions that impunity exists for police murderers, in turn decreasing the willingness of witnesses to report crimes.

70. According to prosecutors and other informed interlocutors, the quality of work done by Internal Affairs Departments varies widely. Some conduct careful investigations and recommend appropriate sanctions. Others uncritically accept the accounts given by implicated police or simply stall the process. When the new government took office in Pernambuco they found over 300 proceedings against police stalled in Internal Affairs - waiting for the head of department to authorize the continuance of proceedings.

71. One factor contributing to poor performance is that Internal Affairs Departments are not independent of the police chain of command. Thus their effectiveness largely depends on the individual head of department. Reforms are, however, complicated. After all, the principal role of an internal affairs service is to ensure the accountability of police to their chain of command. Nevertheless, such departments should conduct investigations and recommend sanctions in an autonomous and professional manner. Various interlocutors proposed a separate career path for those working in internal affairs. Presently, officers can work in internal affairs investigating allegations of police misconduct and then return to work alongside the officers whom they had previously investigated. Clear procedures and time limits for investigations should also be followed. Another key step would be for the disciplinary sanctions recommended by internal affairs services, including recommendations of expulsion which require the governor's consent to take effect, be fully accessible to Ombudsman Offices and made public by them.

72. In addition, those police implicated in crimes constituting extrajudicial executions must be removed from active duty for the entire period of all internal affairs and criminal investigations.⁷²

B. Ombudsman offices

73. Police Ombudsman Offices (*Ouvidorias*) are a relatively new institution in Brazil - the first was set up in 1995 in São Paulo.⁷³ Their precise role and powers differ slightly between the

⁷² Principle 15, Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

⁷³ Decree n° 39,900, of 1 January 1995; Complementary Law n° 826, of 20 June 1997. There are now ombudsmen in 14 states, including Rio de Janeiro and Pernambuco.

states, but in general they are empowered to receive complaints about police from the public, and may forward complaints to police Internal Affairs Departments or the Public Prosecutor's Office. They can also monitor ongoing police investigations and provide information to the public on the progress of investigations.⁷⁴

74. The existence of Ombudsman Offices has made it possible for many people to make complaints about police behavior who otherwise would not have done so for fear of having to report such complaints directly to police.⁷⁵ However, the effectiveness of these offices is hampered by their lack of independence, resources, and investigative powers. Ombudsman Offices are unable to conduct their own investigations and thus rely almost entirely on information provided by the internal affairs services of the police. Both factors undermine the ability of Ombudsman Offices to provide genuinely *external* oversight.

75. Efforts to strengthen the institution of the Ombudsman should keep in mind its place within the overall system of police accountability. It does not need more teeth: The Public Prosecutor's Office already has the power to prosecute police and, more broadly, to "exercise external control over police conduct".⁷⁶ But to provide *external* accountability, it should report directly to the governor rather than to the state secretary of public security.⁷⁷ In addition, it needs to be better equipped to gather its own information on individual cases and on broad trends and patterns of police abuse. And to provide external *accountability* it does need to better communicate the information it gathers to the general public.

⁷⁴ For example, the Ombudsman in São Paulo has been tracking 54 (at least 11 with suspected police involvement) cases involving 89 victims of crimes from May 2006 in which the perpetrator was unknown, and making public the progress of police investigations into each killing.

⁷⁵ In São Paulo, the Ombudsman received 3668 complaints in 2006. Of these, 476 concerned murders, of which 20% implicated the Civil Police and 68% implicated the Military Police (with the residual implicating either or both). A number of states have also created telephone hotlines (*disque-denúncia*), which have made it easier for anonymous complaints to be made. In São Paulo, for instance, 34% of complaints received in 2006 were made by telephone, with another 15% made by email. The existence of the hotline has also played an important role in information gathering on death squads in Pernambuco.

⁷⁶ Constitution of Brazil, Art. 129(VII).

⁷⁷ Additional measures for further ensuring the independence of Ombudsman Offices recommended by the parliamentary commission of inquiry into extermination groups in the Northeast should also be given careful consideration. *See Relatório Final da Comissão Parlamentar de Inquérito do Extermínio no Nordeste*. Criada por meio do Requerimento nº 019/2003 - destinada a "Investigar a ação criminosa das milícias privadas e dos grupos de extermínio em toda a região nordeste" - (CPI - extermínio no nordeste), pp. 565-566.

VII. RECOMMENDATIONS

76. The Brazilian Government has, in the past, been very responsive to the recommendations offered by special rapporteurs. It is to be hoped that the following recommendations are seen as constructive and feasible.

A. Policing strategies

77. State Governors, Secretaries for Public Security, and Police Chiefs and Commanders should take the lead to make publicly clear that there will be zero tolerance for the use of excessive force and the execution of suspected criminals by police.

78. The State Government of Rio de Janeiro should eschew large-scale, or “mega”, operations in favor of systematic and planned progress in reasserting a sustained police presence and government authority in gang-controlled areas. Present policies are killing large numbers of people, alienating those whose support is needed for potential success, wasting precious resources, and failing to achieve the stated objectives. Designing policing strategies solely with electoral objectives in mind does a disservice to the police, the communities affected, and society at large.

79. The use of armoured vehicles should be monitored by equipping them with audio and visual recording equipment. The results should be regularly monitored in cooperation with community groups.

80. In the longer term the Government should work towards abolishing the separate system of military police.

81. The federal Government should implement more effective measures to tie state funding to compliance with measures aimed at reducing the incidence of extrajudicial executions by police.

B. Police involvement in organized crime

82. In each State, the State Secretariat for Public Security should establish a reliable specialized unit to investigate and prosecute police involvement in militias and extermination groups.

83. Off-duty police should under no circumstances be permitted to work for private security firms. To facilitate such changes:

(a) Police should be paid significantly higher salaries;

(b) The shift structure of police work should be reformed so that police cannot regularly work for large blocks of time and then receive multiple days off.

C. Police accountability

84. Systems for tracking the use of firearms should be established in all states, and where some procedures already exist, they must be improved, and the Government must ensure

they are followed. The weapon and the quantity of ammunition provided to each policeman should be recorded, and every bullet should regularly be accounted for. Every instance in which a policeman fires his or her weapon should be investigated by internal affairs and recorded in a database. This database should be accessible by police Ombudsman Offices and used by police chiefs and commanders to identify police in need of closer supervision.

85. The current practice of classifying police killings as “acts of resistance” or “resistance followed by death” provides a *carte blanche* for police killing and must be abolished. Without prejudicing the outcome of criminal trials, such killings should be included in each state’s homicide statistics.

86. The federal Secretariat for Human Rights should keep a detailed database of human rights violations by police.

87. The integrity of work by the internal affairs services of the police should be ensured by:

(a) Establishing a separate career path for those working in internal affairs;

(b) Establishing clear procedures and time limits for investigations;

(c) Making all information regarding investigations and recommended disciplinary sanctions freely accessible to Ombudsman Offices.

88. In cases involving police killings and other allegations of serious abuse, internal affairs services should publicly provide information on the status of individual cases, including the measures recommended to police chiefs and commanders.

89. Police under investigation for crimes constituting extrajudicial executions should be removed from active duty.

90. Offices of police Ombudsman, as they exist in most states, should be reformed so as to be better able to provide external oversight:

(a) They should report directly to the state governor rather than to the state secretary of public security;

(b) They should be provided with the resources and legal powers necessary to reduce dependence on information from the internal affairs services of the police forces;

(c) They should issue regular public reports providing accessible information on patterns of police abuse and on the effectiveness of disciplinary and criminal proceedings. This information should be compiled so as to enable meaningful comparisons across time and geographical areas;

(d) In order for them to provide more reliable information on the strengths and weaknesses of existing policing strategies in terms of both respecting and protecting rights, they should be provided resources to conduct or commission surveys on citizen experiences with crime and the police.

D. Forensic evidence

91. **The routine failure of police to preserve crime scenes must end; should problems persist, the Public Prosecutor's Office should use its authority to exercise external control of the police so as to ensure the integrity of its prosecutions.**
92. **Hospitals should be required to report to police precincts and police internal affairs all cases where the police bring a deceased criminal suspect to hospital.**
93. **State Institutes of Forensic Medicine should be made fully independent from public security secretariats, and expert staff should receive employment guarantees that ensure the impartiality of their investigations. Additional resources and technical training should also be provided.**

E. Witness protection

94. **In many respects, the existing witness protection programs constitute a model, but reforms are also needed:**
 - (a) **State governments should provide adequate, timely, and reliable funding;**
 - (b) **State governments should ensure that police cooperate in escorting witnesses to court appearances in a safe and non-threatening manner;**
 - (c) **The federal government should conduct a study on whether there are ways to protect witnesses who are unwilling to comply with the current programs' strict requirements, and on whether the use of NGOs as implementing partners should be phased out or restructured.**

F. Public prosecutors

95. **The involvement of the Public Prosecutor's Office in building criminal cases must be strengthened:**
 - (a) **State governments should ensure that Civil Police notify public prosecutors at the onset of their investigations so that prosecutors can provide timely guidance on what evidence must be gathered in order to obtain a conviction;**
 - (b) **The legal authority of public prosecutors to independently gather evidence admissible in court should be unequivocally affirmed;**
 - (c) **Public prosecutors should routinely conduct their own investigations into the lawfulness of killings by the police.**

G. Judiciary and legal framework

96. **The period of prescription (statutory period of limitation) for intentional crimes against life should be abolished.**

97. Recognizing that permitting persons convicted of murder by a trial court to remain free while their appeal is ongoing facilitates the intimidation of witnesses and fosters a sense of impunity, judges should give careful consideration to alternative interpretations of the norm guaranteeing the “presumption of innocence” found in foreign and international jurisprudence.

98. The National Council of Justice and other appropriate bodies should take measures to ensure that:

(a) In making docket management decisions, judges do not put off dealing with cases involving killings by powerful actors, including the police, or prioritize civil above criminal cases;

(b) Judges of penal execution conduct prison inspections pursuant to a written protocol which requires private interviews with prisoners randomly selected by the judge.

H. Prisons

99. While avoiding steps that would further endanger inmates, the government should take steps to end gang-control of prisons, including:

(a) All practices that encourage or require new prison inmates to choose a gang affiliation should be discontinued. Inmates should be able to identify as “neutral” and be placed in truly neutral prisons;

(b) Mobile phones should be eliminated from prisons through the more rigorous use of metal detectors and through the installation of technology that blocks mobile phone signals;

(c) Prison authorities should reassert day-to-day control of internal prison administration so that prison guards, not inmates, are responsible for internal discipline;

(d) All inmates’ benefits and location in the prison system should be recorded electronically, and prisoners moved from one type of detention to another when they are so entitled. Inmates and judges of penal execution should be able to access the digital record of prisoner entitlements;

(e) Overcrowding should be reduced through more use of alternative sentences, open prison regimes, and the construction of new prisons.

100. The Government should ensure that this report is disseminated widely to officials at all levels. The federal Secretariat for Human Rights should take responsibility for monitoring the progress of the implementation of these recommendations.

Appendix

PROGRAMME OF THE VISIT

During my 4-14 November 2007 mission to Brazil, I traveled to São Paulo, Rio de Janeiro, Pernambuco and Brasilia. I visited a landless workers' settlement in Pernambuco, a prison in São Paulo (Centro de Detenção Provisória II de Pinheiros), a favela in Rio de Janeiro, and a Military Police battalion and Civil Police precinct in Rio de Janeiro.

At the federal government level, I met with the Minister for Foreign Affairs, the Director of the Human Rights Department of the Ministry of Foreign Affairs, the Special Secretary of the National Human Rights Secretariat and many staff from the Secretariat, the Commander of the Força Nacional de Segurança (FNS), Federal Police, the Prosecutor-General of the Republic and federal public prosecutors, the Ministry of Justice, and the Commission of Human Rights and Minorities of the Federal House of Representatives. I also met with Judges from the Supremo Tribunal Federal and the Superior Tribunal de Justiça, representatives from the National Council of Justice, and I participated in a working meeting of the Council for the Defence of Human Rights.

In each of the states, I met with the State Secretaries for Public Security, Prisons, and Justice, the heads of the Civil and Military Police and heads of specialist police departments, the head of the Technical-Scientific Police, the head of the Institute of Forensic Medicine, the head of Police Internal Affairs, and the police and prisons Ombudsmen. I also met with state Appeal Court Judges, Penitentiary Councils, Judges of Penal Execution, Community Councils, Public Prosecutors, Public Defenders, and coordinators of the witness protection programs. In Pernambuco, I also met with the state Governor, and in Rio de Janeiro I met with the Human Rights Commission of the State Legislative Assembly.

I met with the UN county team, and representatives of 29 civil society organizations. I received personal testimony from 46 witnesses, including inmates, indigenous Brazilians, landless workers, victims of death threats and gang or police extortion or violence, and families of people killed during large-scale police operations, or by death squads, militias, police or gangs. These witnesses spoke with me about personal and traumatic incidents in their lives, sometimes at great risk to their own security, and to them I am deeply grateful.

-- -- -- -- --