

HUMAN RIGHTS IN BRAZIL 2003
Global Justice Annual Report

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HUMAN RIGHTS SITUATION IN BRAZIL 2003

Introduction

Human Rights in Brazil, 2003 presents twelve chapters depicting Brazil at the margins—hostage to the profound inequality, lack of options, and stark social differences and contrasts. It provides a range of narrative portraits, joined primarily by the similar circumstances of the misery of the victims. These portraits relay the stories of Brazilians subjected to a police force, public policies and a legal system that combine to maintain order through control and repression of urban ghettos, the marginalization and exclusion of a prison population often before imprisonment, the criminalization of poverty, social movements and the widespread implementation of the unofficial death penalty. The conditions that have fomented legitimate demands for social justice and the elimination of endemic rights abuse by social movements have dragged on for years — unanswered — and have remained virtually unchanged in the administration of a president and of a party whose origins lie in these very social movements.

Addressing the high expectations for social change in the midst of pervasive misery and social injustice made 2003, and is making 2004, a difficult year. Violence has increased in a range of contexts. For over a decade, since 1991, the Pastoral Land Commission (Comissão Pastoral da Terra, CPT) has not registered as many homicides

in rural conflicts as in 2003. The figures maintained by the Indigenist Missionary Council (Conselho Indigenista Missionário, CIMI), of Indians killed has not been as high since 1997. In urban Brazil, the country's most violent police force, that of Rio de Janeiro, killed 3.2 people *per day* in 2003. The São Paulo police killed 2.37 per day last year. Over the two decades from 1980 to 2000, the overall homicide rate according to the Brazilian Institute of Geography and Statistics (Instituto Brasileiro de Geografia e Estatística, IBGE) soared from 11.7 per 100,000 inhabitants per year, to 27 per 100,000.

The twelve chapters contained in this annual report of the Centro de Justiça Global (Global Justice Center) are situated in a country of striking inequalities. Brazil's six largest cities register unemployment rates of 12.8%; the nation's wealthiest 10% control 51.3% of total income while the poorest 40% divide just 7%, according to World Bank figures. Between 1996 and 2002, according to the IBGE, the real income of Brazilians fell 14%.

The report reflects the areas in which the Global Justice engaged in 2003, thus contextualizing the human rights situation in the country in concrete research, investigation and cases. Each chapter includes analysis of a particular problem or set of problems, followed by a series of recommen-

dations. The objective is to ensure not only that violations are documented and recognized but also to pressure governmental authorities to adopt public policies that respect, protect and promote human rights. The report also seeks to contribute to the development of a mainstream culture that understands and values respect for the human rights of all, even, and particularly those at the margins of society.

To research and write this report, the Global Justice Center undertook investigative missions to the states of Paraná, São Paulo, Rio de Janeiro, Espírito Santo, Bahia, Rio Grande do Norte, Pará, Paraíba, Pernambuco, Rondônia, Sergipe, Alagoas and Amazonas.

RURAL CONFLICTS

The poor and destitute continued to be the victims of violence perpetrated by landowners and their hired thugs in land disputes. Private security firms—poorly veiled paramilitary organizations—played a prominent role in the increased rural violence that marred 2003. The Pastoral Land Commission (Comissão Pastoral da Terra, CPT) registered 73 killings of rural laborers in conflicts, an increase of 69.8% over 2002 and the highest figure since 1990, when 79 rural laborers were killed.

Impunity in these crimes continued to be the rule, particularly when the victim was poor. In August 2003, the CPT released a report on crimes in land disputes, demonstrating that of 1,280 rural laborers killed between 1985 and 2000, in only 121 were trials held. Of those who ordered the killings, only 14 faced trial; courts convicted just seven. Of the 96 gunmen tried, courts convicted just 58.

FORCED OR SLAVE LABOR

In early 2004, three employees from the Ministry of Labor were murdered during and inspection of a property in the northwest of Minas Gerais State. Nelson José da Silva, Erastótenes de Almeida, João Batista Soares Lage and the driver Aílton Pereira de Oliveira were killed in an ambush. The police continue to investigate the crime.

Those responsible for maintaining conditions akin to slavery on rural estates have included powerful landowners, as well as politicians. On November 6, 2003, Labor Judge Manoel Lopes Veloso Sobrinho, of Barra da Corda, Maranhão state, found Federal Congressman Inocêncio de Oliveira of Pernambuco state liable for damages of 530,000,00 Reais (nearly 200,000 US dollars) resulting from the abysmal conditions for laborers on his Fazenda Caraíbas estate in rural Maranhão state.

Inocêncio de Oliveira was not the only public figure involved in the hyper-exploitation of rural laborers in 2003. On August 21, 2003, the Federal Public Ministry filed suit against Jorge Picciani, President of the State Legislative Assembly of Rio de Janeiro, in the Regional Federal Tribunal, after determining that the vast majority of laborers at his Fazenda Agrovias estate in São Félix do Araguaia, were held in conditions of debt bondage.

THE INDIGENOUS ISSUE

In 2003, CIMI, a leading indigenous rights group, documented the killing of 27 Indians, the highest number since 29 were killed in 1997. The group attributed the increase to the intensification of clashes between large landowners, on one side, and

social movements tied to the cause of indigenous people.

On a number of occasions, state and federal authorities contributed to the increase in violence against both rural laborers and indigenous peoples. The Raposa/ Serra do Sol indigenous area has been engaged in a long standing conflict over the “homologation” (*homologação*), or final step in the demarcation, of nearly 1.7 million hectares inhabited by some 15,000 Indians and roughly 700 non-Indians. The demarcation process—underway since 1988—was about to be finalized and titled “Indigenous Land” (*Terra Indígena*, TI). However, pressured by non-indigenous interests and the armed forces who seek reconfiguration of the indigenous area including a non-indigenous border area and the strategic city of Uiramutã (home of the Army’s Sixth Border Platoon and rice plantations), authorities have failed to sign the decree homologating the area.

The possibility of violent retaliation against those on the area led the Indigenous Council of Roraima (Conselho Indígena de Roraima, CIR) to petition to the Inter-American Commission on Human Rights of the Organization of American States (OAS) in Washington to request that the Brazilian State homologate immediately the Raposa-Serra do Sol in a contiguous block, as the demarcation process required.

HUMAN RIGHTS DEFENDERS

Special attention is due those who defend human rights both in rural and urban contexts. In Brazil, human rights defenders suffer a range of abuses including torture, summary execution, forced disappearance and groundless judicial proceedings, among other forms of intimidation. On occasion,

family members and friends have been targeted to reach rights activists. The better part of these abuses, as the Global Justice Center has reported in a series of prior publications, are committed by police, hired gunmen and death squad members. Unfortunately, the response of state authorities to the threats and intimidation directed at rights activists has been woefully inadequate. On March 25 2003, Alexandre Martins Filho, a courageous judge who had been investigating organized crime and human rights abuse in Espírito Santo state, was murdered. Judge Martins Filho had informed authorities of threats that he was facing in connection with his work.

POLICE VIOLENCE

Human Rights in Brazil 2003 calls attention to the systematic extermination and repression committed by police forces throughout the country. In Rio de Janeiro and São Paulo, for example, police killed 1,195 and 868 civilians respectively, significant increases over 2002 levels.

Irresponsible state policies and discourse have fostered these aberrant levels of police killing. In one typical incident, São Paulo State Secretary of Public Security downplayed the remarkable increase in killings by police, attributing it to greater “police deployment in the streets.”

PRISONS

The profile of those incarcerated in Brazil demonstrates the biases involved in a law enforcement and judicial structure designed to target those of the lowest socio-economic strata. The majority of prisoners

in Brazil — 54.2% — are under 30. Some 10.4% are illiterate; 69.5% did not complete elementary school.

A disturbing tendency toward increased use of prison terms has been documented over the past decade. Between 1995 and 2003, the prison population has increased by 84%. Overcrowding, abysmal sanitary conditions, unchecked infectious diseases, guard-on-inmate and inmate-on-inmate violence combine to create the tension that has led to hundreds of violent rebellions and hostage crises in the recent past. In this regard, as this report demonstrates, 2004 was no exception, as we document, scores of violent revolts in police lockups, jails, and prisons marked the year.

TORTURE

Torture is not practiced only as a means of interrogation but also to punish. The most common targets of torture are those on the lowest rungs of the social ladder, young, dark-skinned, without access to information and thus likely to be found in the penitentiary system. As the report demonstrates, those most likely to commit torture are police officers and penitentiary guards.

The single incident of torture that aroused most response in 2003 was that involving Chan Kim Chang, a 46-year old Chinese businessman. Federal Police—widely regarded as Brazil’s most professional force—arrested Chang on August 25 with more than \$30,000.00 in cash on his person. They took him to the Ary Franco prison where his attorney later found him unconscious, bruised, bloodied, and with wet clothes. After several days in a coma, Chang died. The incident provoked outrage among many sectors in Brazil and human rights

activists. Chang—a businessman and foreign national—could hardly be considered among those considered “*torturável*”, literally “torturable”, the Portuguese language term used to describe those of the darker-skinned members of lower socioeconomic classes for whom torture is a daily phenomenon in Brazil.

RACIAL DISCRIMINATION

Segregation in Brazil, in addition to its racial component, is intimately tied to the marginalization of the most impoverished. The result is a complex intersectionality of racial and economic inequality, often linked to other forms of discrimination, such as that based on gender. While Afro-Brazilians make up 46% of the population, they constitute 61% of the poor, according to research by the São Paulo Secretariat of Development, Work and Solidarity (Secretaria do Desenvolvimento Trabalho e Solidariedade). Acts of discrimination, whether committed by state agents or particular individuals, are rarely registered accurately by authorities.

Inherent patterns of racism and discrimination often manifest themselves at the moment when victims attempt to report these abuses. The likelihood that a police official will register a complaint of racism has been demonstrated to be lower when the victim is poor. One example is the instance of racism that victimized Luciano Ferreira da Silva, age 18, the son of a maid for popular singer Caetano Veloso. Military Police officer Leonardo Medeiros, private security attache to novelist Manoel Carlos expelled Da Silva from the *Fashion Mall* commercial center. The police officer and security guard accused Da Silva of selling narcotics. The

police registered the crime committed as racism. With the aid of other security guards, Medeiros fled, on realizing that he had bothered someone important. Quite likely, had the young man not been tied to Veloso, the treatment afforded him by authorities would have been different.

In São Paulo, five police officers killed Flávio Freitas, an Afro-Brazilian dentist, whom they had identified incorrectly as a robber. The case provoked outrage—appropriately—due to the excessive force and racial profiling employed by police. Yet police killing of suspects—frequently young Afro-Brazilian males—is a tragic rights abuse repeated, quite literally, on a daily basis in many Brazilian cities. The killing of Freitas—a dentist, and therefore someone whose social class placed him beyond reproach—demonstrated the racist and classist nature of police use of deadly violence.

PSYCHIATRIC INSTITUTIONS

Increasingly, psychiatric care in Brazil has become privatized. Recent figures indicate that 80% of all beds in the Brazilian mental health system are in private facilities. Mental health represents the fourth largest expense among in-patient costs in the Unified Health System, Sistema Único de Saúde, SUS. Increasingly, serious abuses have been registered and denounced throughout the public mental health system. The death of Damião Ximenes, beaten to death in Ceará state in 1999 of Sandro Costa Fragoso, burnt to death, and José Martins da Silva, beaten to death in the Milton Marinho Psychiatric Hospital in Rio Grande do Norte, as well as the stalled investigations and prosecutions into these and other abu-

ses, raised the issue of violence in mental health centers in 2003.

IMPUNITY

The Judiciary is directly responsible for the high levels of impunity for those who commit serious rights abuses in Brazil. Notwithstanding the involvement of other actors in the criminal justice system (such as the police, prosecutors, prison administrators, etc.), attention was focused on the role of the judiciary in impunity in 2003, in particular by the visit of Asma Jahangir the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. Based on her research in Brazil, Jahangir recommended that the Special Rapporteur on the Independence of Judges and Lawyers visit the country on an urgent basis. The recommendation unleashed a series of critical comments from leading judges and executive branch officials and sparked the much-needed debate on judicial reform.

INTERNATIONAL SYSTEMS FOR THE PROTECTION OF HUMAN RIGHTS

Unfortunately, the political will to end abuses committed in Brazil is lacking. Although advances were registered in 2002 with the recognition of the jurisdiction for reviewing individual complaints of the Committee on the Elimination of All Forms of Racial Discrimination (CERD) and the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), at this writing, Brazil had failed to recognize the individual case jurisdiction of the Human Rights Committee and the Committee Against Torture of the United

Nations. Were the Brazilian government to recognize this jurisdiction, it would enable victims of rights abuses to access international mechanisms for the protection of human rights directly. Access to these oversight bodies is critical, given the high rates of abuse and impunity that prevail in Brazil. In 2003, the Global Justice Center filed three

petitions denouncing violence against rural laborers with the Inter-American Commission on Human Rights, as well as twenty denunciations of summary executions, torture, forced labor, death threats and killings of human rights defenders to the special mechanisms of the United Nations Commission on Human Rights.

CHAPTER I — PRISON SYSTEM

The dreadful situation of prisons

● *Edson Roque and Alexandre Farias Lima — Rio de Janeiro, RJ*

Edson Roque, interned at the Penal Psychiatric Hospital Roberto Medeiros, in Rio de Janeiro, was beaten up and shot by security guards on November 16, 2002. He died the following day.¹

According to the guards, it all began when another patient, Wellington Chagas Braga, tried to escape but was stopped by the guard Odnei Fernando da Silva. Upon leading Wellington to the B wing of the hospital, Odnei was overtaken by Wellington and Edson Roque, having his “head covered by a cloth, being attacked by several patients. The situation was out of control and Odnei was helped after guard Fábio Meacedo saw a sticker² in Edson’s hand, who went to the closet to get a rifle and anti-riot cartridges to contain the patients. He said that when he returned he found “the patients scattered about, Roque in front with the sticker in hand”, when Meacedo “shot the patients in order to contain them.”³

Odnei told the same story, saying that he took Roque and Lima to the State Hospital Rocha Faria, later taking them to the 34th Police District Station, to register the incident.⁴

In contrast, the story told by two patients⁵ who saw the events differs from that of the guards, at least in as much as it diverges from the internal contradictions in Odnei’s statement, and is corroborated by the inquiry undertaken by the General Director of DISIPE⁶. According to the patients, during their daily period outdoors, Wellington approached the wall of the patio to urinate when he was warned by the guard. Upon hearing the warning, Odnei approached Wellington and started beating him up.⁷

After lunch, Wellington was beaten up again by Odnei, this time with a wood stick. Roque then intervened, calling on Odnei to stop the beating, which led to a fight between Odnei and Roque.

Following, Odnei left and returned with a 38 caliber pistol in his pocket, and a rifle

¹ Technical opinion no. 7589/02, IML. Edson died from a shot to his head. He was also shot in the stomach. His body also showed marks from having been beaten.

² This is a rudimentary weapon commonly seen in prisons. It is equivalent to a short knife with a pointed blade used for stabbing.

³ Report of the incident in internal communication of DISIPE/HM, no. 236 from Nov. 18, 2002, pages 3 and 4.

⁴ Incident no. 034-08152/2002, 34th Police District. It is important to highlight the fact that none of the patients were interviewed by the police at the time of the police report.

⁵ Marcos Antônio da Costa Ribeiro and Adjair Justino da Oliveira, in testimony to the Global Justice Center, Feb. 12, 2003.

⁶ Inquiry no. E-06/933.082/2002, published in the *Diário Oficial*, Jan. 16, 2003, page 23.

⁷ Testimony to the Global Justice Center, Feb. 12, 2003.

with rubber bullets in hand. He first shot Lima and then went to Roque's cell, where he was found hiding behind his mattress. Upon ordering Roque to come out of his cell, which he did not do — Odnei shot him in the stomach, and then beat him up while he was handcuffed. Then he went on and shot Roque in the head.⁸

The inquiry found that Odnei “acted in excess”, demonstrated by the “unnecessary violence applied to Roque, since the inquiry found nothing that could justify (Odnei's) allegations.” The inquiry found that “the evidence found directly contradicts the (Odnei's) allegations”.⁹

Finally, because of the threats he suffered, Lima was transferred on December 13, 2002 to the DESIPE-AF, when his testimony was taken. At the end of January, 2003, Lima was found dead, on the same day that he would have testified in the 34th Police District of Rio de Janeiro. The case continues, with out follow-through in the prosecution of the crime.

DIAGNOSIS

Any penitentiary system reflects the society that produces it, acting as a mirror of society's contradictions. It can not be fairly analyzed without also looking at recent economic and social changes.

During the end of the 1980s and all of the 1990s, Brazil consolidated a form of neo-liberal capitalism that has not been productive, in which wealth is sought through speculation instead of economic production. This neo-liberal model is carried

out with a strong State, when breaking the power of unions and controlling finances, but weak in terms of prioritizing social expenditures and economic intervention. Monetary stability has become the backbone of the Brazilian economy. Following this logic, the government adheres to strict budgetary discipline and allows for a so-called “natural” level of unemployment. The reduction of taxes on upper-income levels and wealth and the gains of banks has contributed to the high and ever growing economic inequality of the Brazilian economy.

The construction of the “Minimal State” in Brazil turns the social exclusion of a large part of the Brazilian population into a systemic problem. More than 50 million Brazilians live below the poverty line, a phenomenon also seen throughout Latin America.

Percentage of the population living below the poverty line (\$2 USD per day) in Latin America

Country	%
Ecuador	49.3
Paraguay	49.3
Venezuela	47.0
El Salvador	44.5
Peru	41.4
Mexico	37.7
Colombia	36.0
Guatemala	33.8
Brazil	26.5
Costa Rica	26.0
Chile	8.7
Uruguay	6.6

Source: *Index of Human Development, 2002.*

⁸ Inquiry no. E-06/933.082/2002, Jan. 27, 2003

⁹ *Idem.*

This situation exacerbates the historical concentration of wealth in Brazil, where the richest 10% controls 75.4% of the wealth¹⁰ and the poorest 10% only 1.1% of the wealth. According to the GINI index, Brazil is one of the first in the world in terms of social inequality. The scale runs from 0 to 1, with 1 being the most unequal.

Latin America	GINI
Brazil	0.607
Paraguay	0.577
Chile	0.575
Colômbia	0.5
Mexico	0.519
El Salvador	0.508
Venezuela	0.491
Costa Rica	0.459
Uruguay	0.448

Other Countries

South Africa	0.593
United States	0.408
France	0.327
Canada	0.315
Sweedeen	0.25

Source: Human Development report, UNDP, 2003

Inequality is accompanied by systemic social immobility, where part of the population becomes a mass of second class citizens. Accordingly, a new “dangerous class”¹¹ born, where the danger is no longer

in the “subversive ideology” but rather in the “leftover people”. According to Zigmunt Bauman, “poverty is no longer produces a reserve of labor, now it is poverty without purpose, seen as needing to be isolated, neutralized and dis-empowered”.¹²

The maintenance of this now established order focuses on the necessity of a public enemy. We then see the complete criminalization of poverty. As Loïc Wacquant says, “the maintenance of class order and public order gets mixed up.”¹³

In this context, the prisons take on the role of maintaining order, constituting instruments of control that are not oriented toward reentry into society. The concept of rehabilitation, which is part of a balanced, just and correct society, where crime is an individual error, does not exist in practice. Prisons should serve to rehabilitate individuals who commit crimes, returning them to society in an improved condition. In reality, jail is a space of punishment and exclusion. Overcrowding, rebellions, unsanitary conditions, torture, corruption, physical and mental stress, infectious disease, death and lack of resources are the rule in a process that is a continuation of the pre-prison exclusion of certain groups of Brazilians.

The profile of Brazilian prisoners, precisely illustrates some of Brazil’s social injustices. A recent study by the Center for the Study of Security and Citizenship at Cândido Mendes University¹⁴ illustrates this dramatic scenario.

¹⁰ Pochmann, Marcio, ed. Atlas da Exclusão Social – vol. 3 – Os Ricos no Brasil. São Paulo, Cortez Editora, 2004.

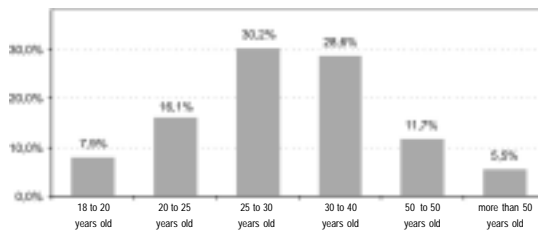
¹¹ For analysis, see: Coimbra, C. “Operações Rio: o mito das classes perigosas. Um estudo sobre a violência urbana, a mídia impressa e os discursos de segurança pública.” Rio de Janeiro, Author’s workshop, 2001.

¹² Bauman, Zigmunt. Em busca da política. Rio de Janeiro, Jorge Zahar, 2000.

¹³ Wacquant, Loïc. As prisões da miséria. Rio de Janeiro, Jorge Zahar, 2001.

¹⁴ This study about the Brazilian Penitentiary System, a work in progress, is from the Center for the Study of Security and Citizenship (CESEC) at Cândido Mendes University. These charts are the result of a questionnaire made by CESEC and turned into the state governments to help answer questions about state prison systems.

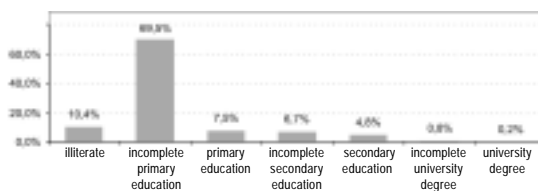
Distribution of Prisoners by Age



The graph indicates that 54.2% of prisoners in Brazil are under 30 years old. A good snapshot of the social contradictions in Brazil, characterizing the lack of hope in an entire generation, victim of deep social inequality in the country. It is interesting to highlight that the prisons themselves are undergoing large transformations, as a result of the increasingly young prison population.

Another relevant statistic has to do with the academic level of the prisoners.

Distribution of Prisoners by Level of Schooling

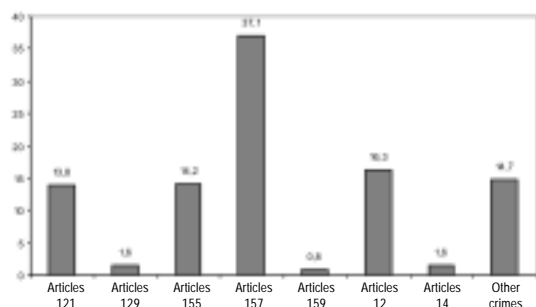


With 10.4% of the incarcerated population illiterate and 69.5% without a complete primary education, the graph shows the degree to which this population was already excluded before entering prison.

It is fundamental that the Attorney General in coordination with the Minister of Education, elaborate a national program to educate prisoners. This investment could be done in partnership with civil society and universities.

Brazilian society views prisons as places for violent people who committed terrible crimes against innocent citizens, and therefore is insensitive to the human rights abuses in prisons. The graph below shows a different population living behind bars.

Distribution of Prisoners by Crime



We see that 51.3% of Brazilian prisoners are detained for violations of articles 155 and 157.¹⁵ Crime against property continues to be the main cause of detention in Brazil. This demonstrates the criminalization of poverty, with a criminal justice system designed to maintain order through control of poor ghettos. In the large urban centers of the Southeast, article 12 of the Drug Law¹⁶ represents the largest cause of incarceration,

¹⁵ Article 155 and 157: theft and robbery, respectively.

¹⁶ Article 12, Law 6368 of 1976: drug trafficking

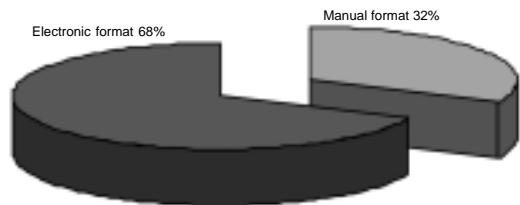
with more than 50% of the prisoners detained for drug trafficking. It is interesting to note that the situation in the large cities does not change the profile of the prisoners, which continues to be of young, poor youth with low levels of formal schooling. The anti-drug efforts are limited to police repression in slums, making all of the residents suspects of the untrained police. In reality, it is only an effort to stop the sale of drugs, with insignificant results. Therefore, the consequence of the prison system is disastrous, leading to the jailing of thousands of youth without hope.

The press considers that jails become violent when rebellions and mutinies occur. They do not recognize and do not see prisons as public spaces scared by violent atrocities. From the absence of toilet paper to the practice of torture, Brazilian prisons systematically violate international norms¹⁷, the National Prison Law (Lei de Execução Penal) and even Brazil's own constitution. Often this naturalization of violence affects the prisoners themselves. As Tânia Kolker¹⁸ said, "torture is so common and so casual that it is seen by the prisoners and the prison staff as difficult to distinguish between what is and what is not torture. In the world of barbarity, the law and the reality complete a mosaic made up of different types of violations, more or less institutional, which do not see the same level of visibility and some are seen as natural. Therefore, when nothing happens to

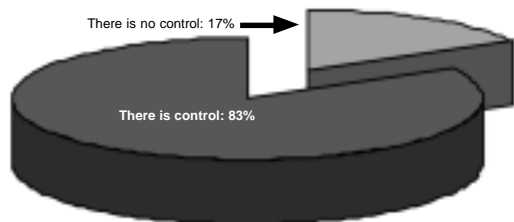
move society, or mobilize authorities, prisoners and staff become used to conditions that are absolutely inhumane and dehumanizing."

Repression is not sporadic in the prison system, it is part of the logic of punishment. The lack of policies for the prison system should be understood as the *de facto* policy of the prison system. The unacceptable abandonment of the system is a political choice of the state governments in Brazil.

Distribution of states by indexing of sentences



Distribution of states where there is control of the end of the punishment



Note: the state of Amazonas did not provide information about this statistic

The graphs show that 17% of the states do not file the sentences of the prisoners.

¹⁷ See: "UN Minimum Rules for the Treatment of Prisoners," adopted by the 1st United Nations Congress on the Prevention of Crime and the Treatment of Delinquents, in Geneva, in 1955, and approved by the Economic and Social Council of the UN through resolution 663 C I (XXIV), of July 31, 1957, supplemented by resolution 2076 (LXII) on May 13, 1977. On May 25, 1984, through resolution 1984/47, the Economic and Social Council approved 13 procedures for the effective application of the Minimum Rules.

¹⁸ Kolker, Tânia: "O que se faz em nosso nome: tortura nas prisões do Rio de Janeiro, Estado e Sociedade. 2004", mimeo.

Of the states that do index this information, 32% do not have it in an electronic format. It is worth remembering the recent change of the National Prison Law, that guarantees each prisoner the right to receive a certificate of the sentence, updated annually. Literally, people are abandoned inside of the prisons.

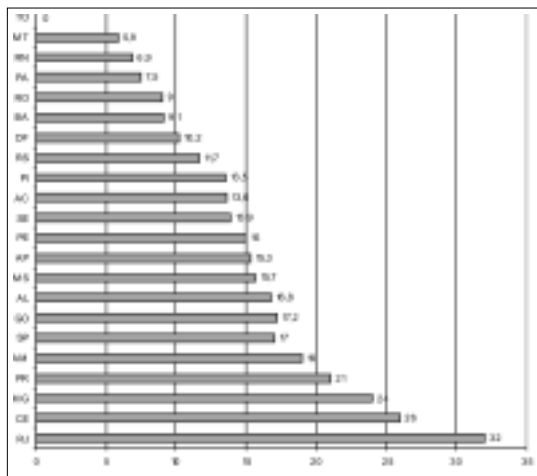
Another problem seen is the lack of regulation of activities and procedures in the prison systems in many states in Brazil. According to a study by the Center for the Study of Security and Citizenship (CESEC) of Cândido Mendes University, half of the states do not possess the Manual of Ascription¹⁹ (Manual de Atribuições) of the different functions, 31.8% do not possess procedures²⁰ described in decrees and legislation and 25% do not have the State Prison Regulations on hand. It is worth highlighting that the National Prison Law only outlines the large abuses, leaving the responsibility for smaller ones to the states. The absence of Prison Regulations makes any internal or external monitoring more difficult, as well as concentrating too much power in the hands of the directors of individual prisons.

The lack of policies for the prison system also generates frequent disrespect for the law and results in human rights violations. Even

facing an increasingly young population, the system is characterized by slowness.

Percentage of prisoners who study in jail in each state of Brazil

Considering that the incarcerated



population is predominately young with an extremely low level of formal schooling, it is worrisome that no states have more that 32% of its prisoners studying. Of the 22 states analyzed, 18 have less than 20% studying in the prisons.²¹ The construction of an education project targeting these youth could be a transformative instrument with in the prison system. Idleness, on the other hand, solidifies the culture of violence and strengthens the power of the drug rings,

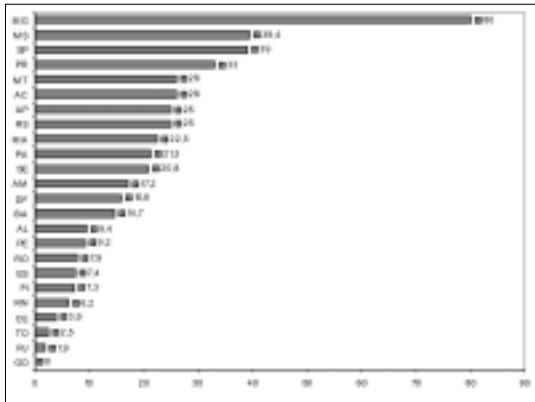
¹⁹ This is a manual containing a set of guidelines that governs the attributions of each employee of the Penitentiary System, determining the roles, responsibilities and rules of their jobs.

²⁰ These are the procedures relative to the day to day life inside the prisons. The lack of such procedures makes planning work impossible, since decisions are made on an improvised basis. This inconsistency inhibits security and makes solutions harder to come by.

²¹ This study about the Brazilian Penitentiary System, a work in progress, is from the Center for the Study of Security and Citizenship (CESEC) at Cândido Mendes University. These charts are the result of a questionnaire made by CESEC and turned into the state governments to help answer questions about state prison systems.

increasingly more violent and powerful within penal institutions.

Distribution of prisoners who work in prisons in each state of Brazil
Work, in addition to being a right granted



in the National Prison Law, is the primary claim of the majority of prisoners in Brazil. It is most abysmal in Rio de Janeiro state, where only 1.9% of prisoners work.²² With this level of idleness, it is understandable that the Brazilian penal system is known for rebellions, escapes and violence. It is important to note that the work conditions often undermine the established legislation, since in many states, the prisoner earns neither a reduced sentence nor a wage.

All of these figures point to a system that reaffirms the order of social exclusion and solidifies the perverse side of social control.

A conservative judiciary that has no external control, an executive branch characterized by corruption, violence, torture and innumerable other human rights

violations in the prisons and a legislative branch that toughens punitive legislation, making Brazil experience a 84% growth in the prison population between 1995 and 2003²³ constitute the principal causes of the precariousness of the prison system all over Brazil.

PENAL TOUGHENING

The Brazilian National Prison Law is recognized throughout the world, and represents one of the most significant juridical advances in Brazilian history. The big challenge of the civil society entities which work in this area has always been to reduce the gap between the legal framework and the reality of the Brazilian prison system. Therefore, beginning in the 1990s the construction of a culture of fear has been making penal legislation suffer setbacks and becoming increasingly more rigid, being the Differentiated Disciplinary Regime (Regime Disciplinar Diferenciado, RDD), the best example of this movement.

In December of 2003, Law 10,792 was approved, altering the National Prison Law. One of the main changes was the creation of the RDD.

In the chapter about disciplinary mistakes, article 52 reads:

“The practice in fact envisioned with a felony constitutes a grave offense and, when it brings about subversion of order or internal discipline, subject to provisory

²² *Idem.*

²³ Source: Penitentiary Department (Departamento Penitenciário, DEPEN)

prison, or condemned, without prejudice of penalty, to a different disciplinary regime, with the following characteristics:

I- maximum duration of 360 days, without risk of repeating the sanction for a new crime of the same type, up to a limit of one sixth of the sentence;

II- confinement in individual cell;

III- weekly visits from two people, not counting children, for two hours;

IV- the prisoner has the right to leave the cell for two hours per day to be outside;

§ 1. the differential disciplinary regime can also exempt provisional prisoners or convicts, Brazilian or foreigners, that are a risk to order and security of the prison or society.

§ 2. provisional prisoners and convicts will be subject to the same differential disciplinary regime if they fall under the category of participation criminal organizations or gangs.

Article 54 states that the inclusion of the prisoner in the differential disciplinary regime depends on the requirement established by the director of the prison or of another administrative authority, depending, necessarily, on the previous ruling of a judge. The judge's decision about the inclusion of the prisoner in the RDD should be preceded by a claim by the State Attorney and the defense in a span of no more than 15 days.

For starters, it is startling that *provisional prisoners* can enter in the RDD before being convicted in court, and that the prison administration can suggest the inclusion of the prisoner in the RDD. The differential disciplinary regime means total isolation from social life, making the possibility of reintegration into society less likely.

Another point has to do with the possibility transferring prisoners to the RDD regime based on *grounded suspicion* of involvement in gangs or organized crime. The level of subjectivity of this article will certainly lead to innumerable cases of authoritarianism and vengeance on the part of prison directors. First and foremost, it is important to highlight the fact that there are no criteria for the decision of prison directors, and second, in the majority of the states, the principle criterion of the state prison systems for classifying prisoners is the supposed gang of which they are a member.

The passing of the RDD should be understood in a broader context of longer prison sentences, maintaining order and class struggle.

It consists in an action against "undesirable people", where its legitimization carries not only the prism of law, but also a moral prism. The popular support that moves this type of legislation to lengthen prison terms is part of the dominant ideology in all sectors of society: that of fear, war, and order.

The frequent dehumanization of prisoners dilutes the responsibility for the consequences that a measure like the RDD might create. It does not matter if the outcome of isolation is insanity, depression or death of the prisoners. The prison officials in Rio de Janeiro, for example, only refer to prisoners as "bums".²⁴ Therefore, torture, suffering, poor nutrition and even the RDD have less impact, since they have to do with so-called "bums". They present barbarity as a necessary instrument against that which society does not want or accept. Violence

²⁴ Statement by Marcelo Freixo, President of the Community Council of the City of Rio de Janeiro and Researcher at the Global Justice Center. Marcelo visits different prisons in Rio de Janeiro and collects complaints of violations and has accumulated much contact and trust with prisoners, prison staff, police and authorities.

with “the other” is more easily disregarded, since it falls outside of the parameters of rights and values. If the police were to act the same way in the rich neighborhoods for 24 hours the way that it acts every day in the slums, we would certainly see a radical transformation in the way that society perceives violence and crime.

The “naturalization” of rights violations has become so routine that the popular image is that prisoners do not suffer enough in prison and do not stay in jail long enough. The logic of this rationale is not one of justice, but one of vengeance and punishment. In this context the RDD satisfies the ideology imparted in all sectors of society: order requires that the enemies of order are punished severely.

One of the most perverse aspects of social inequality is the complete absence of rights and the consequent dehumanization and invisibility of the a significant part of Brazilian society, that prospers, inadvertently, in the police pages of Brazilian newspapers, in the obituaries of police incursions and in the activities of “control” which take place within Brazilian prisons.

GLOBAL JUSTICE CALLS UPON THE BRAZILIAN GOVERNMENT TO:

- Adopt a discourse of respect for human rights and upholding the law in the areas of security and the correctional system. Authorities that are apologists for violence and humiliation of inmates should be held responsible.

- Open an applicant pool to hire more prison staff, guaranteeing an adequate number of guards inside of prisons, in order to reduce the possibility of violence between prisoners.

- Invest in the School of Penitentiary Education (for prison officials), with an adequate amount of class time and sufficient resources. 79.2% of Brazilian states do not have Schools of Penitentiary Formation.

- Continue ongoing training for prison officials in the School of Penitentiary Education, including issues like human rights and the use of force.

- Rate prison officials qualitatively and quantitatively; 71% of states do not have an established salary and job progression plan for prison officials.

- Create an Ombudsman for the prison system, with the post directly reporting to the Governor.

- Invite the participation of external groups (Public Defender and/or Community Council) in the review of prisons, with the objective of preventing abuse of inmates.

- Independence between security and investigative policing.

- Guarantee police investigation and communication to the State Attorney for all executions inside prisons.

- Immediately suspend officials accused of torture, murder or corruption while the claims are being investigated.

- Guarantee that the prison security will only be carried out by individuals who passed the public exam.

- Guarantee a program of psychological assistance to prison officials.

- Carry out public exams to select technical professionals in prisons (social assistance, psychologists, psychiatrists, doctors, nurses, dentists).

- Train technical professionals in human rights.

- Guarantee that inmates have their time filled up — mainly through work and education, meeting the National Prison Law.

- Guarantee the application of alternative

penalties as an instrument to reduce the prison population.

- Audit the construction of prisons to confirm that they are in line with the National Prison Law, including the limitation of the number of prisoners per cell.

- Guarantee the classification of prisoners by the crime committed, since in the large urban centers, the main, sometimes only, form of classification is the supposed link to organized drug rings.

- Streamline legal procedures, guaranteeing that prisoners do not remain in prison longer than indicated in the sentence.

- Stimulate the creation of Community Councils in every city or municipality that has a prison, guaranteeing them autonomy and independence.

- Guarantee the end of extended prison terms being served in police stations.

- Guarantee compensation for the family of prisoners executed in jail, with the burden of proof on the state.

- Guarantee that the reduction of number of deaths in prisons be a prerequisite for federal support for state prisons.

- Guarantee medical treatment for prisoners who are dependent on drugs, especially since the drug trade inside of prisons generates violence and debt for prisoners.

- Guarantee that all prisoners can complain of abuses directly to the director of the prison or an employee authorized to represent the director, with a copy of the complaint sent to the Public Defender responsible for the prison.

- Create a national education program, in partnership with the Ministry of Education, specifically for the prison population.

- Create objective criteria for the nomination of prison directors.

- Encourage states to make the penitentiary systems independent from the secretariats of security.

- The federal government should demand that the states immediately create prison guidelines, since 25% of the states still have no such guidelines.

- The federal government should seek to standardize the payments of security officials and technical professionals.

- Uphold the National Prison Law.

CHAPTER II — TORTURE

The panorama of torture in Brazil

Chan Kim Chang, a Chinese businessman who lived in Rio de Janeiro, was found unconscious by his lawyer, soaking wet and with lesions all over his body in a cell of the Ary Franco prison, which serves as the holding cell of the Federal Police (PF) of Rio de Janeiro.

He had been jailed on 25 August, 2003, accused of trying to leave for the United States with \$30,500 USD of undeclared currency. After being sent to the Ary Franco prison by the Federal Police, he was brutally beaten by the prison guards and left in his cell on the brink of death.

The incident shocked the public domestically and internationally, especially after the element of torture became known. The authorities at the time alleged that the businessman had a convulsion and beat himself to death. Subsequent investigations by forensic experts, however, exposed the actual cause of death: torture.

The case generated a series of controversies and, in spite of the proof obtained, culminated with the firing of the State Secretary of Human Rights and the Head of Internal Affairs of the Unified Police for his allegation that there “was torture” in the Chang case.

The Global Justice Center, jointly with the Human Rights Commission of the Legislative Assembly of the State of Rio de Janeiro (ALERJ) and the city of Rio de Janeiro Community Counsel (Conselho da Comunidade) sent a complaint to the UN and exerted strong pressure to investigate the case.¹

The problem of torture in Brazil goes beyond the simple explanations of those who portray the public agent — policeman, prison official, guard — as the beginning and end of the problem. In reality, there is a fundamental authoritarian spirit in Brazilian society and, correspondingly, also in the police forces and other public agents. The history of omissions and political options realized over the years by the three branches in Brazil’s federative system in relation to torture cannot be overlooked.

In spite of the need for monitoring the crime of torture, State institutions made only trepid steps toward the consolidation of an information system that permits not only the formation of a data base organized for prevention and periodic diagnosis, but more importantly, increased levels of transparency.

¹ For more details about the Chang case, see “*Summary Executions in Brazil: 1997-2003*”, Global Justice Center, 2003, p. 199-201. The Global Justice Center sent a communiqué to the UN Special Rapporteur on Torture, Theo C. van Boonen. Official correspondence GJ/RJ 0129/03.

Even with the difficulties in accessing information, the relative numbers of cases are known by human rights non-governmental organizations and the general public, allowing us to confirm the widespread nature of torture. The existence of torture is a worrisome trend — given that it damages the entirety of rights fundamental to human dignity — which are minimized when torture is established systematically and consequently trivialized in Brazilian society.

As such, facing up to the *modus operandi* of torture, a collection of practices repeatedly observed in the aftermath of the crime, we will seek to demonstrate the *prevalence of public officials* in the perpetuation of torture; *its social nature* and the *hidden complicity of the state*, given the rarity with which the crime is actually punished within the Brazilian justice system.

TORTURE AS AN OPTION:

Even though the crime of torture under Brazilian law includes torture carried out by any actor, its use by public officials is what makes torture such a dangerous practice, since it represents the subjugation of the individual by the excessive force of the State. Therefore, it is necessary to find the point to which torture is used by the State and if it is associated with some implicit objective of the public apparatus.

We should first distinguish the nature of the complaints of torture. Torture is considered institutional when it refers to a practice within public institutions and/or when practiced by State officials. On the other

hand, it is considered a private practice when the allegations are of domestic incidents or are perpetrated by non-public agents. A study by the National Council of Attorneys of the Republic (*Conselho Nacional de Procuradores da República*) in 2001, the year UN Special Rapporteur on Torture carried out an official mission in Brazil, confirms that out of the 240 cases that were initiated since the passing of the Torture Law in 1997, close to 80% of the defendants were civil and military police.²

If torture is considered institutional, in addition to the identification of the perpetrator as a State employee, there is another factor that should be examined: the location of the crime. In Brazil torture often takes place within public buildings, particularly in police stations and prisons.

Torture is a routine practice in prisons and police stations all over Brazil. This is because its principal objective is the “substitution” of the investigative technique with torture. It is carried out as much in the extraction of confessions from suspects as in the discipline of the detention centers, where it is employed with the intention of punishing and/or preventing bad behavior by prisoners.

The civil and military police, responsible for investigative and general policing respectively, are most frequently accused of torture. As such, we can at least infer a logic of action, a *modus operandi* in which there is a perceived connection between the investigation/repression of crime and the practice of torture.

With the investigation/repression of criminality in mind, we should also observe

² Source: Newspaper “O Monitor”, citing a study of the National Council of Attorneys General (Conselho Nacional de Procuradores de Justiça), available at <http://www.bluenet.com.br/omonitor/2003/mai/72/opiniao.html>.

the *motivation* within the cases classified as torture; in other words, what motives account for the carrying out of torture.

A deeper analysis of the cases of torture that were filed shows that “proof-torture” is the primary motive of the crime. By proof-torture we want to specify those cases of torture where it is used to obtain a confession, to assign the responsibility for a crime to someone. Second, there is “punishment-torture”, used as a mechanism of social repression, of a preventative or punitive character, generally observed in the basements of detention centers.

The logical conclusion is that torture is predominantly linked to the actions of the state, and is directed, particularly, as a method of repression and investigation of crimes.

Is torture, however, socially distributed? In other words, does the incidence of torture occur in all social levels or is it directed toward a specific group? What characteristics to the victims share. We shall deal with these questions in the following section.

SOCIAL PROFILE OF TORTURE:

Stating that there is a relationship between the application of torture and a certain social group means affirming that there is limited opposition between the State and the society, and that the limitation is seen in relation to the profile of the victim chosen, specifically their social *status*. As a result, identifying which group or social class is targeted when torture is practiced becomes essential to the analysis of the crime.

The broader picture of criminal justice can be seen through the profile of Brazilian inmates, since the practice of torture compels us to associate it, almost necessarily, with a complex system of mass production of guilty people based on what can be called “*penal labeling*”. This affirmation is based on the motivation (proof and punishment) of the principal perpetrators of the crime (police and prison agents), which is unquestionably associated with the criminal justice system.

Based on the latest National Prison Census (Censo Penitenciário Nacional), carried out in 1997, there is a strong correlation between poverty and the incarcerated population.³ Of all of the people that are in State custody, close to 98% of them are from the most desperate section of the population and have no way to pay for a lawyer. Further, 10.4% of this population is illiterate and 51.3% entered the penal system for a property crime.⁴

While there is no direct relationship between these figures and torture, it can be said that the Brazilian prison system is made up of mostly desperately poor people. The selectivity of penal justice, in this sense, presents an intimate tie with some aspects of the crime of torture, since it is a factor in the entry (proof) into the system, in addition to its repressive use (punishment) in the streets, police stations and prisons.

Torture is also seen more frequently within police stations, which corresponds to the profile described above — since, according to the figures from the 1997 Census, at least 30% of prisoners reside outside of the prison system, occupying and overfilling the police stations all over the country.⁵

³ Note that we are saying there is a relationship between poverty and the *incarcerated population* not between poverty and *crime*.

⁴ Source: DEPEN. Only robbery and theft crimes are included in this statistic.

⁵ *Idem*.

Finally, one other indicator shows a correlation between the profile of those tortured and the profile of those imprisoned: an outline of the social conditions that lead to what we call *torture as a procedural incident*.

Torture as a procedural incident takes place when it is invoked in the course of other legal proceedings in order to secure a confession. Torture as a procedural incident shows up in the majority of the torture cases that were filed in courts, an evidence that compels us to believe that its use is part of the implementation of penal selectivity and confirms its strong correlation between the practice of torture and the acquisition of proof to produce guilty parties.

Therefore, the logical conclusion in relation to the social profile of the victims of torture is that they are almost always from a low social class, young, of color or Black, without access to information, and as a result, apt to enter the prison system. The victims of torture are usually victims of prejudice, leading to the public's association between poverty and crime, and conferring legitimacy to the exclusion of the victims from society.

Torture is in practice a semi-official method of "settling accounts" with society and exerting stern social control - producing and incarcerating guilty parties as it wishes, generating fear and intimidating those who remain free to see the example. It is focused on a specific portion of the population and is sustained by the degrading conditions in which that population lives, as well as the minimal social status of the victims.⁶

Unfortunately we see that torture winds up subtly gaining a certain legitimacy from society, in as much as society shares — and possibly causes — the majority of the prejudices that undermine not only police agents and public security forces, but also members of the Public Prosecution offices, legislators, judges and a range of public officials. We will attempt to demonstrate the role of society in abetting torture in the next section.

SOCIETY'S COMPLICITY

The State apparatus is not alone in its responsibility for the increase in torture in Brazil. A significant part of Brazilian society currently believes blindly in the use of violence as a form of containing violence. Not that this behavior is not also found in the State, but other factors should also be exposed.

The rise in crime, triggered by a dire situation of lack of opportunities and inclusion, is exploited in a sensationalist and irresponsible way by the media, stimulating panic and the belief criminals should be detained *no matter the cost*. Simply taking a look at the television, radio programs or newspapers will turn up apologists for violence against criminals or even suspects.

It is worth noting that in the largest urban centers, torture is both more common and more widely accepted by a range of people. Ironically, within urban centers, people with higher income and educational levels stand in opposition to torture in greater numbers than their lower-class counterparts, according to a *Datafolha* study.⁷

⁶ The Chang case, presented at the beginning of this chapter, while not representative of low social status of the victim, confirms in part our interpretation, in as much as, precisely because of the difference, made the front pages of all of the newspapers, in addition to demanding greater attention on the part of the authorities than in the absolute majority of the cases that we denounce.

⁷ Folha de S.Paulo, February 1, 2004, p. C1.

The same study shows that 24% of São Paulo residents do not object to torture. This number grew by 4 percentage points in the last 7 years, about 0.5% per year. Further, of this group, 7% favor torture on any occasion. Does this mean that the population of São Paulo is authoritarian? Not really — the real cause of the population's worries is violence and lack of security.

The desperation for security has led people to a frenzy of punishment, in which they believe that they live in a war that can only be won by jailing or killing perceived criminals. The problem is worsened by the fact that the targets of torture are people without social standing.

In Rio de Janeiro, Brazil's second largest city, the use of torture is so frequent that it is only considered wrong — and subsequently investigated — when the victim comes from a higher social class. In the last three years, only three cases of torture gained wide attention: *Antônio G. de Abreu*, the cook who was tortured by the Federal Police; the *Chan Kim Chang* case, which involved a Chinese man who was tortured and killed by the Federal Police and prison officials in the Ary Franco prison; and lately, the case of the young student *Rômulo Batista de Melo*, who was brutally tortured to death by military police in Cabo Frio.

It is no surprise that all three of the cases referred to above involved victims who were not from lower social classes.

Unfortunately, the State's inability to provide security, along with underhanded interests that insist on State violence via psychological terror, has led to the de-politicization of the struggle for security and thus been counterproductive.

The position of a certain class of people in relationship to the acceptance of torture as a mechanism of police work shows the hierarchy of life and dignity. It also shows that the police do not hold a monopoly on this behavior, which is taught from a young age by mainstream society.

STATE COMPLICITY

When it is said that the desensitization to torture is a fruit of political options/omissions by the State, this means that the State conduct in relation to the crime has come, either directly or indirectly, to influence its application.

Therefore, it can be said that torture becomes commonplace by its existence as an *option* in as much as it is repeated or systematically employed by public officials. It is further trivialized by the *omission* of the crime's punishment in Brazilian courts.

This analysis is reflected in the behavior of the three branches of government in relation to torture and in the context of the initiatives that have been taken to contain or abolish torture.

Legislative:

With the re-democratization of Brazil and the subsequent Constitution of 1988, the government made the first legal reference to the crime of torture in Article 5, Section III of the Constitution. In reality, the national congress decided to transcribe article 7 from the UN Covenant on Civil and Political Rights, approved in 1966 by the UN General Assembly⁸:

⁸ Although the UN Covenant on Civil and Political Rights influenced Brazilian legislation directly, it was in fact only incorporated into the Judicial system in April of 1992, when it was finally ratified.

“Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

While Brazil had already signed many international treaties and had expressly mentioned torture in the constitution of 1988, even calling it a “hideous crime”, legal classification of torture only occurred in 1997, almost a decade later.

The overly general nature of Brazilian constitutional norms requires that a more specific law be created. As such, the Brazilian government remained in a limbo of unconstitutionality for nine years by failing to write a law against torture.

Finally, on April 7th, 1997, after three years of delay in the National Congress, the Torture Law, No. 9,455/97, was approved, classifying torture as a crime. The delay in passing the law did not contribute to improved legislation, which contains innumerable shortcomings and loopholes.

The first of these is the most important: its failure to classify torture as a State crime (*crime próprio*).⁹ Instead of adhering to the UN’s perspective¹⁰, in which torture is classified as a crime that is exclusively carried out by state agents, the Brazilian congress opted to broaden the law, so that anyone could fall under its jurisdiction. In reality, this option winds up weakening the objective of the law, in as much as it diverts the attention away from the State toward the common citizen.

The Brazilian congress also contributed to make the punishment of the crime of torture more lenient than it should be, by defining the carrying out of the punishment would initiate in a closed prison cell (*regime fechado*) and be subject to subsequent lightened punishment. As such, even though the constitutional amendment against torture classifies torture as a hideous crime — and unable to receive the benefits of lightened sentences — the Brazilian laws state that general laws yield to specific laws when in conflict, granting that benefit to the torturer.

The Torture Law contains other confusing and conflicting elements, which have contributed to its misuse non-application. The Brazilian reality clearly shows that the creation of a law stops short of representing the change of a long held routine. Brazil’s experience attests to the fact that it can be worse when the law is poorly written, as it ends up stalling successive efforts for reform. The Brazilian government had nine years to regulate the crime of torture, and since it did not do so was in violation of its constitution. Now, six years after the Torture Law was passed, it continues to contribute to the overlooking of torture, mainly by not stimulating, within the judicial system, the basic conditions for the punishment of the crime.

Judiciary:

One way of analyzing the State’s will-power to end torture is by gauging its willingness to prosecute State actors. Since the passing of the Torture Law in 1997, the

⁹ Defined under Brazilian law as a crime in which the offender occupies a public duty.

¹⁰ In article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment torture is classified as “inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

number of prosecutions and trials remains much lower than it should be, in view of the large number of allegations compared to the small number of convictions.

In order to discuss torture within the context of judicial decisions, we must identify the way in which the crime fits into the Brazilian courts. This allows us to separate the crime of torture into two distinct groups: torture as *criminal charges* and as a *procedural incident*.

A torture case is known as *criminal charges* whenever it represents an autonomous and independent charge, based on the Torture Law. Torture as a *procedural incident* is when the crime is alleged in the course of another trial, used to disqualify proof obtained in diverse criminal charges, representing the majority of torture cases in the Brazilian courts.

Even with the reluctance to press charges in torture cases, the growing number of accusations, whether as a *form of incrimination* or as an *autonomous criminal charge*, shows the progress of legal reform in Brazil, which unfortunately has not been fostered by the courts.

An example is found in the number of accusations of torture by the Association of Christians for the Abolition of Torture (Associação dos Cristãos pela Abolição da Tortura, ACAT), in the state of São Paulo. Of the 1,651 cases presented, all of them remain unresolved.

Therefore, torture as a procedural incident deserves to be highlighted because it represents the ultimate expression of discrediting the citizen by the State, and symbolizes the judges' counterproductive approach in relation to the Torture Law. This

is because torture invoked in the course of an autonomous trial - procedural incident - has had little or no relevancy in the courts, since only rarely is "evidence" invalidated in virtue of its acquisition through torture.

The question of proof ends up becoming a *legal barrier* to the punishment of the crime of torture, since the external oversight and investigation are almost always carried out by people connected to police forces and therefore involved in protecting police interests or even under threat by those very same police forces. At the same time, the independence of judges is compromised, since marginal populations are discredited by the judiciary and required to present inordinate proof of torture - which even when available often does not result in a conviction.

A good reference about the impact of the Torture Law in the courts is found in the numbers of accusations, trials and convictions obtained since the passing of the Torture Law. A study carried out by the National Council of Justice Attorneys (Conselho Nacional de Procuradores de Justiça) established that in the five years since the law's implementation, Public Prosecutors in all of Brazil processed 524 accusations of torture — a statistic that is alarming, since history tells us that a large number of cases of torture go unreported. These accusations provide a reference from which to evaluate the courts' treatment of torture.

According to the figures found by the National Council of Attorneys General¹¹, of the 524 accusations, only 2.9% (or 15) of them were actually tried. Of these cases, only 9 (1.7%) of them resulted in a conviction.

The majority of the allegations never make it to trial stages, making them legally

¹¹ Newspaper "O Monitor", <http://www.bluenet.com.br/omonitor/2003/mai/72/opiniaio.html>

irrelevant. These statistics show the acquiescence of the judiciary in the labeling since torture as a procedural incident represents the creation of criminals by the State, by gaining confessions through torture.

On the other hand, there is an insignificant number of prosecutions, outdone only by the even smaller number of condemnations. This means that torture is a relatively risk-free act for State agents, with the exception of the few examples when eventually torturers are punished. These facts not even suggest the impression that torture is in fact illegal in Brazil.

Executive branch:

Over twenty years have passed since the fall of the last military president in Brazil. However, many of the essential characteristics of the dictatorship remain — at least for disadvantaged parts of the population — contributing to an ineffective democracy.

Among the most visible and morbid marks of this period, torture and extra judicial executions, stand out but do not gain the necessary attention to abolish their practice once and for all.

Torture was the subject of constitutional repudiation, but reform was stagnated during almost ten years, because of the absence of a follow-up law that would regulate the crime of torture. The legislative omission enabled the large spread of torture as an unofficial practice in the daily relations between police and lower social classes.

With this in mind, as well as the international pressure from the constant denunciations of torture involving the state,

the Torture Law (Law no. 9455/97) was eventually passed in 1997. Its flaws and contradictions have been dealt with above.

Unfortunately, the simple passing of a law, without the needed efforts to make it effective, were not adequate to deter the specter of torture. In 2001, thirteen years after the return of democracy and four years after the passing of the Torture Law, the report of Sir Nigel Rodley, UN Special Rapporteur on Torture, defined the situation of torture in Brazil as “generalized and systematic.”¹² After all, according to the National Campaign Against Torture (Campanha Nacional Contra a Tortura), of the 348 cases forwarded to the Rapporteur, 40% were never responded to by authorities. This situation required the federal government to adopt new measures during the term of Fernando Henrique Cardoso. The government set up the National Campaign Against Torture with the goal of implementing a national network to monitor the crime. In partnership with civil society, represented by the National Movement for Human Rights (Movimento Nacional de Direitos Humanos, MNDH), the campaign would seek to collect statistics and accusations of torture, by means of a telephone hotline, called SOS Torture, with strong media attention. The government should also have trained court officials to “understand the totality and meaning of the rules prohibiting torture, and determined mechanisms for its prevention, punishment and remedy” according to the National Campaign Against Torture.

The campaign, in fact, only achieved the formation of a database of facts about torture in Brazil. While this was undoubtedly an

¹² Report of the Special Rapporteur on Torture, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43, 30 March 2001, available at [http://193.194.138.190/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.2001.66.Add.2.En?Opendocument](http://193.194.138.190/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2001.66.Add.2.En?Opendocument).

advance, it did not represent or lead to definitive changes in the day-to-day practice of torture. This is so because the government actions did not go far enough, and the coordination of State Centers¹³ and the training of judicial officials did not take place or were too timid in the majority of the states.

In this sense, important aspects such as the allocation of resources to State Centers, a more prominent media campaign, along with fostering a common understanding between judges and Attorneys General so that the torture should be punished *as torture*, were not emphasized to the extent needed.

It is necessary to recognize that the federal government is not alone responsible for ending torture, to the contrary, the states need to make basic structural modifications. There is also a gap between political efforts of the federal and state governments. To make matters worse, the unusual federative model of Brazilian government often represents an impediment to the resolution of this type of problem.

Aware of this situation, the federal government has been showing signs of expanding its efforts in relation to practices that attack human rights, in particular torture. To this end the government created the Unified System of Public Security (Sistema Único de Segurança Pública, SUSP) whose thematic goal was to “standardize” the public security policies of the states in order to improve efficiency and accountability of state actors.

Few results, however, have been seen and the attempts at reform seem less than encouraging. The firing of ex-National Secretary of Public Security, Luiz Eduardo

Soares, shows that the upper echelons that profit from insecurity, violence and corruption possess vast powers of resistance and that radical change will require strong coordinated efforts.

With this in mind, the federal government is studying the possibility of accepting jurisdiction over all crimes that constitute human rights violations, assuming the responsibility for punishing human rights violators. While still in the early stages, this initiative could yield positive effects, but the ideal situation would be that state governments stop showing incapacity — or lack of will — to deal with the problem, and instead adopt the consciousness and responsibility to recognize that they cannot carryout or support torture.

While somewhat chaotic, the landscape of torture in Brazil — as in other areas of human rights — is initiating a slow process of advancement. One indication of the situation is found on the international level.

In the middle of 2003, after arduous discussions between governments and NGOs around the world, an international agreement against torture was signed, approved by a supermajority (127 votes in favor, 42 abstentions and 4 votes against)¹⁴ at the UN General Assembly. After having voted in favor of the agreement, in October of 2003 Brazil ratified the “Optional Protocol to the Convention Against Torture”, opening a space for the regular visits by independent experts from the international community. This broke with Brazil’s habitual isolation and increasingly favors its integration into international parameters and norms in the protection of human rights. It remains to be

¹³ State Centers are regional centers of the National Campaign Against Torture whose task receive complaints about torture and process them authorities and the national headquarter, as well as being responsible for the formation of a database about torture within that region.

¹⁴ The United States, the Marshall Islands, Nigeria and Palau were the only countries that voted against the agreement.

seen if the initiative will actually bring about relevant modifications.

While it has advanced on the international stage, the Brazilian government has resisted recognizing the competence of the UN Committee Against Torture¹⁵, which points to the absence of concrete steps toward its control and abolishment.

In this same vein, we will highlight the new federal initiative called the “Protocol of Action Against Torture” (Protocolo de Ação Contra a Tortura), launched on June 26, 2003 at the Brazilian Supreme Court, in Brasilia. In reality this protocol consists of a range of commitments to be completed with the objective of combating and suppressing torture, adding very little to what had been promised by previous administrations. If followed to the letter, this document would represent an important advance, however, given the subjectivity of the Protocol, there are no means of diagnosing its effectiveness, which resembles similar past — and never accomplished — efforts.

...

The national landscape is spotty in respect to human rights, with torture a key example of this situation. As long as words are not turned into deeds, and as long as social inequality permeates the day-to-day judicial operations, torture will continue to be seen as a justifiable excess.

The strengthening and recognition of civil society’s rights will determine whether torture worsens or improves. As long as there

is a hierarchy that determines who is or is not a citizen, neither torture nor any other aspect of protecting and affirming human rights will achieve even minimal success.

Torture only continues because it is employed against a population that many see as “disposable” from Brazilian society, and because the perpetrators are the same people who are charged with its prevention. Also, those who should actually denounce torture are the same who ignore it and end up legitimizing such horrendous practice.

RECOMMENDATIONS

■ No statement or confession made by a person deprived of liberty, other than one made in the presence of a judge or a lawyer, should have probative value in court, except as evidence against those who are accused of having obtained the confession by unlawful means. The Government is invited to give urgent consideration to introducing video and audio taping of proceedings in police interrogation rooms.

■ Where allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture or similar ill-treatment.

■ Complaints of ill-treatment, whether made to the police or other service itself or the internal affairs department of the service (corregedor) or its ombudsman (ouvidor) or a prosecutor, should be expeditiously and

¹⁵ The Committee against Torture was established pursuant to article 17 of the Convention and began to function on 1 January 1988. The Committee constitutes a new United Nations body, entrusted with the specific supervision of a multilateral instrument for protection against torture and other inhuman treatment. The Convention sets out a number of obligations designed to strengthen the sphere of protection of human rights and fundamental freedoms, while conferring upon the Committee against Torture broad powers of examination and investigation calculated to ensure their effectiveness in practice.

diligently investigated. In particular, the outcome should not be dependent only on proof in the individual case; patterns of abuse should be similarly investigated. Unless the allegation is manifestly ill-founded, these involved should be suspended from their duties pending the outcome of the investigation and any subsequent legal or disciplinary proceedings. Where a specific allegation or a pattern of acts of torture or similar ill-treatment is demonstrated, the personnel involved, including those in charge of the institution, should be peremptorily dismissed.

■ Prosecutors should bring charges under the 1997 law against torture with the frequency dictated by the scope and gravity of the problem and request that judges enforce the law's provisions prohibiting bail of those charged. Attorneys-General, with the material support of gubernatorial and other relevant state authorities, should assign sufficient qualified and committed prosecutorial resources for the criminal investigation of torture and similar ill-treatment and for any appellate proceedings. In principle, the prosecutors in question should not be the same as those responsible for prosecuting ordinary criminality.

■ Investigations of police criminality should not be under the authority of the police themselves. In principle, an independent body with its own investigative resour-

ces and personnel as a minimum, the Office of the Public Prosecutor should have the authority to control and direct the investigation. They should also have unrestricted access to police stations.

■ The police should be unified under civilian authority and civilian justice. Pending this, Congress should approve the draft law submitted by the Federal Government to transfer to the ordinary courts jurisdiction over manslaughter, causing bodily harm and other crimes including torture committed by the military police.

■ The appalling overcrowding in some provisional detention facilities and prisons needs to be brought to an immediate end, if necessary, by executive action, for example, by exercising clemency in respect of certain categories of prisoners, such as first-time non-violent offenders or suspected offenders. The law requiring separation of categories of prisoner should be implemented.

■ Federal funding of police and penal establishments should take account of the existence or otherwise of structures to guarantee respect for the rights of those detained. Federal funding to implement the previous recommendations should be available. In particular, the Law on Fiscal Responsibility should not be an obstacle to giving effect to the recommendations.

CHAPTER III — POLICE VIOLENCE

The war on crime: a tool to justify social exclusion

Carlos Magno de Oliveira Nascimento, Tiago da Costa Correia, Carlos Alberto da Silva Ferreira, Everson Gonçalves Silote — Rio de Janeiro, Rio de Janeiro — “Borel Case”

On the evening of April 17, 2003, a military police operation involving sixteen officers from the sixth military police battalion took the lives of four young residents of the Borel favela in Rio de Janeiro. The official account of the episode alleges that the four victims were local drug traffickers, and that they were killed in a shoot-out with the military police. But none of the victims — three of whom were employed and one of whom was a student — had criminal records.¹

Earlier that day, eighteen-year-old Carlos Magno de Oliveira Nascimento, who lived and studied in Switzerland, was on vacation visiting his grandmother in Brazil when he and his childhood friend, nineteen-year-old machine repairman Tiago da Cos-

ta Correia, went to have their hair cut at a local barbershop. As the two stepped out of the barbershop, they military police officers positioned on the roof of a nearby house shot and killed them. Nascimento suffered six shots — three from the front and three from behind — which killed him immediately.² Correia, who suffered five shots,³ lay on the ground for some time, crying for help and saying that he was an innocent worker.⁴ His pleas went unheard by the police officers, who left him to die.⁵

Carlos Alberto da Silva Ferreira, 21, worked as a painter, a stone-cutter, and, during carnival season, a float-builder. On his day off, on April 17, 2003, he went to play soccer on a local playing field. On his way home, he decided to get a haircut, but as he approached the barber shop, he heard the sound of shots and ran. One of the bullets fired hit him in the head, and seven others hit him in the back. In total, Ferreira was shot twelve times, including several times at point-blank range.⁶

¹ *Military Police Accused of Killing 4 in Borel (PMs acusados de matar 4 no Borel)*, O Globo, May 9, 2003. The sub commander of the 6th military police battalion, lieutenant-colonel José Luiz Nepomuceno informed the press that the victims were part of a drug cartel, and that they were found carrying drugs, weapons, and ammunition.

² Autopsy report no. 26258/2003 — Medical Forensics Institute (*Instituto Medico-Legal* — IML).

³ Autopsy report no. 2659/2003 — IML. The autopsy report confirms that several of the shots were fired at point-blank range. Tiago não morreu instantaneamente. Agonizou por cerca de meia hora, tendo os policiais impedido seu socorro.

⁴ The agonizing nature of Correia’s death was attested to by Pedro da Silva Rodrigues, a surviving victim of the Borel police operation. Rodrigues stated that he heard Correia crying out for medical attention, and heard one of the police officers reply that Correia was a “criminal” and was going to die. See *Survivor Becomes Witness (Sobrevivente vira testemunha)*, O Dia, May 19, 2003.

⁵ “*Encontro com a morte*”, O DIA, 18/05/03.

⁶ Autopsy report no. 2657/2003 — IML. Five of the shots Ferreira suffered were to his arms and hands, suggesting that he tried to protect himself from the shots fired at him.

Everson Gonçalves Silote,⁷ 26, worked as a taxi driver. On April 17, 2003, he spent his entire day in local administrative offices in order to register his taxi. As he was returning home, he parked his car on a street in the outskirts of the favela, as the police had closed the roads leading into the neighborhood. Silote continued home on foot. He was carrying an envelope containing his personal identity documents and the documents identifying his car. As he arrived at Independência Street, police officers arrested him. When Silote tried to identify himself, the police hit him, breaking his right arm. The police then killed him as he attempted to retrieve his identity documents from their envelope.

Pedro da Silva Rodrigues, 32, a school bus driver and the coordinator of the municipal government's *Projeto Mel* ("Project Honey") was also wounded in the Borel police operation. Rodrigues was shot as he was coming out of his house, but he remained conscious and later became the principal witness to the events that took place.⁸

The Borel killings did not initially cause much commotion, as the episode seemed to be yet another confrontation between the police and drug traffickers. But the testimony given by local residents and by the victims' families on May 7, 2003, during "Towards

Peace and Against Impunity"— an event in which the Global Justice Center participated — spurred a desire to investigate the deaths more seriously.⁹

Initially, the official version of the event — that police killed dangerous drug traffickers in a shoot-out — was accepted. But after autopsy reports indicating that the victims had been shot at point-blank range were released, the officers involved in the shootings admitted — in statements taken at the 19th military police battalion headquarters — that they "were not sure" whether the victims were traffickers or not.¹⁰

The inconsistencies in reports of what actually happened that day, along with the mobilization of neighbors and family members of the victims, prompted the National Secretary of Public Safety, Luís Eduardo Soares, and the National Secretary of Human Rights, Nilmário Miranda, to visit the favela on May 22, 2003, in order to collect testimony regarding the event.¹¹ Notwithstanding these efforts, military police — including those who had participated in the massacre on April 17 — continued to intimidate Borel residents carrying out another operation in the neighborhood just hours before the official visit.¹²

The statements taken during the Secretaries' visit and the police action carried out

⁷ Silote was shot five times, once in the back and four times from the front. See autopsy report no. 2660/2003.

⁸ *Survivor Becomes Witness (Sobrevivente vira testemunha)*, O Dia, May 19, 2003. Rodrigues' statements enabled both the family members of the victims and the police to understand what actually happened on April 17. See transcript of public hearings held by the Human Rights Commission of the Legislative Assembly of Rio de Janeiro on May 28, 2003, p. 20.

⁹ This desire is evidenced by official visits to Borel on May 14 and 22, and by the public hearings held by the Human Rights Commission of the Legislative Assembly of Rio de Janeiro on May 28, 2003.

¹⁰ *Military Police Say Not Sure Victims in Borel were Traffickers (PMs dizem não ter certeza de que mortos no Borel eram traficantes)*, Folha de São Paulo, May 28, 2003. The officers involved initially affirmed that no close-range shooting had taken place, but this claim was disproved by the autopsy reports, which indicated that the victims had received several shots at point-blank range.

¹¹ The Global Justice Center accompanied the ministers on their visit to Borel.

¹² Residents of Borel registered their complaints about the operation to the commissioner of Rio de Janeiro's unified civil and military police forces in the public hearings held by the Human Rights Commission of the Legislative Assembly of Rio de Janeiro on May 28, 2003. See *Threat to Families in Borel, (Ameaça a famílias do Borel)*, O Dia, May 30, 2003.

just hours before, led the government to conduct further investigations. Forty federal police officers, the police commissioner of Rio de Janeiro, and forensic experts from the federal police department all noted the inconsistencies in the official version of the report. They were able to confirm that some of the shots were fired from a nearby rooftop, corroborating the version to which Rodrigues, the principal witness, testified. This evidence suggested that the operation amounted to an ambush.¹³

On June 5, 2003, a second forensic investigation of the crime scene was conducted. The seven police officers involved in the operation were invited to participate, but none appeared.¹⁴ With the assistance of a key witness,¹⁵ forensic experts, the police commissioner of Rio de Janeiro, the chief of police of the 19th precinct, and two public prosecutors reconstructed the events of April 17. They preliminarily concluded that the four victims had, indeed, been killed in an ambush and not in a shoot-out as alleged by the officers involved.¹⁶ Based on these investigations, the police chief of the 19th precinct charged five of the police officers¹⁷ with aggravated homicide.¹⁸

In this case, it appears that several of the individuals involved in the massacre will, in fact, be brought to justice. It is nonetheless troubling to note the systemic and increasing occurrence of police operations such as the one that led to the four deaths in Borel. In the first four months of 2003, more people were killed in supposed shoot-outs with the police than in all of the year 2000.¹⁹ The National Security of Public Security has criticized the practice of incriminating suspects through the “apprehension” of weapons and drugs as a means of guaranteeing police impunity.²⁰

The above passage was excerpted from the Report *Summary Executions in Brazil (1997-2003)*, launched in September 2003 by the Global Justice Center and the Center for Black Studies. This report draws attention to the systematic extermination and oppression perpetrated by state agents, usually police officers, all over Brazil. In 2003 we have seen an increase in the number of civilians killed by the police in both Rio de Janeiro and São Paulo. In Rio de Janeiro with the number of civilians killed by the police reached 1195²¹ persons, while São Paulo’s police forces killed 868²² in the same period.

¹³ The chief of police affirmed that the victims “were ambushed by the officers, who were hiding on the rooftop of one of the houses.” See *Five Military Police Charged with Deaths in Borel (5 PMs são indiciados por mortes no Borel)*, Folha de São Paulo, June 25, 2003.

¹⁴ Attorneys for the police officers indicated that they would appear only in court. See *Resident Killed in Ambush, say Police (Morador foi morto em tocaia, diz polícia)*, Folha de São Paulo, June 6, 2003.

¹⁵ *Deaths of Four Residents is Reconstructed in Borel (Morte de 4 moradores é reconstituída no Borel)*, O Globo, June 6, 2003.

¹⁶ *Military Police Version Loses Credibility (Versão de Pms cai de novo)*, Jornal do Brasil, June 6, 2003. On the basis of expert investigations carried out by civil and federal police, it became clear that the weapons used and the distance and location from shots were fired did not correspond to information given in the officers’ account of the episode. See transcript of public hearings held by the Human Rights Commission of the Legislative Assembly of Rio de Janeiro on May 28, 2003, p. 29.

¹⁷ The military police charged are second lieutenant Rodrigo Lavandeira, who headed the operation, and officers Paulo Marco Rodrigues Emílio, Marcos Duarte Ramalho, Sidnei Pereira Barreto and Washington Luís de Oliveira Avelino.

¹⁸ *Five Military Police Officers Charged for Death of Four Young Men in the Borel Favela (Cinco PMs são indiciados pela morte de quatro rapazes no Morro do Borel)*, O Globo, June 25, 2003.

¹⁹ See *Resident Killed in Ambush, say Police (Morador foi morto em tocaia, diz polícia)*, Folha de São Paulo, June 6, 2003, citing government statistics.

²⁰ *From Victims to Criminals (De vítimas a bandidos)*, O Dia, May 23, 2003.

²¹ add source

²² Ombudsman of the State of São Paulo. <www.ouvidoria-policia.sp.gov.br>

Controlling police violence is an ongoing challenge in Brazil. Often police violence is encouraged by state governments as a sign of effective policing. This can be seen in the discourse of São Paulo's current Secretary for Public Security, Saulo de Castro Abreu Filho, with respect to the increase in civilians killed in police operations in 2003. He states that, "there is no pattern of increased deaths in situations of confrontation with the Military Police"; he claims that the number of "confrontations with criminals" is related to an increase in the [police] effectiveness in the streets".²³ In fact, when criminality becomes a problem, the following pattern emerges: faced with more violent criminals, public support for increasingly harsh police responses increases, which often means support for human rights violations.²⁴

The central issue in this case is that the police — conceived during the military dictatorship under an ideology of national security and separated into military and civil police²⁵ — does not fulfill the needs of civil society and democratic governments. Consequently the debate about its reform comes to scene regularly.

The end of the military regime and the transition to a democratic government did not have any effect on the police, which maintained the model imposed by decree no. 1,072, of December 30, 1969. This decree dissolved the civil guards all over the

country, downgraded them to the supervision of the already existing state military forces, which were then called "public forces".²⁶ Not even the Brazilian Constitution of 1988 changed this situation, maintaining the police structure and a corporatist judicial system, the military justice system, which is one of the causes for the impunity enjoyed by police officers in Brazil.

The existence of a special tribunals for trying and judging military police (military justice courts) resulted in the consideration of several legal proposals that sought to transfer the jurisdiction over crimes committed by police officers on duty to civilian courts. However, only the trial of cases involving exceptional homicides currently fall under the responsibility of civilian courts. This change came with the approval of Law 9,299-96, also known as the "*Bicudo* law" in 1996. Meanwhile, the initial police inquiry remains in the hands of the police, as well as the decision to classify the crime an "exceptional homicide" or "faulty homicide". The crimes of beating, torture and faulty homicide also continue to be tried in military tribunals when committed by military police officers.²⁷

A new draft law was presented to the Brazilian congress to expand the jurisdiction of civilian courts in the trying of crimes committed by military police while on duty, to include faulty homicide, beatings (*lesão cor-*

²³ "Morte em Confront com a PM sobe 60%". Folha de São Paulo, February 1, 2004.

²⁴ "Crime, Public order and Human Rights. International Council on Human Rights Policy, Verisox, Switzerland. 2003.

²⁵ **The Military Police is in charge of day to day policing and the Civil Police is in charge of investigative matters.**

²⁶ Bicudo, Hélio. "O que significa a Unificação das Polícias?". In: *Violência Policial. Tolerância zero?* Oliveira, Dijaci Dadid; Santos, Augusto dos Santos and Silva, Valéria Getulio de Brito, Goiânia: Ed. of UFG; Brasília: MNDH, 2001.

²⁷ Report on Torture in Brazil, produced by the UN Special Rapporteur on Torture, Geneva, April 11, 2001. The report is available from <http://www.global.com.br>.

poral) and torture.²⁸ However, the organized lobby of the Military Police opposed the proposed law and the Brazilian Congress failed to approve it.

Another central issue to be dealt with is the approval of a constitutional amendment in Congress, creating a unified police force, with a unified command structure, civilian nature, setting up unified careers with access conditioned on continuing police recycling and training.²⁹

The Lula administration's proposal to deal with these issues was the adoption of a National Plan of Public Security that precedes a Unified System of Public Security.³⁰ This system focuses on state police forces and would eventually establish the interface between the Federal Police and municipal guards. It seeks to restructure state police institutions through progressive integration.

According to the government's proposal, the National Secretary of Public Security (SENASP) should discontinue "the current passive relationship with the States, characterized by the funding of specific projects, and replace it with a cooperative partnership around the design and implementation of state public security plans"³¹. The National Fund for Public Security³² would condition future funds on the presentation and discussion of these plans. On the same token, State-level security plans should be guided by the SUSP. This plan encompasses important reforms, some of which have

received strong police opposition over the years in the Brazilian Congress. Among the main measures we point out the progressive unification of police academies and schools, the creation of independent ombudsperson offices, disciplinary changes and rigorous control of the use of lethal force. The measures requiring legislative changes include a) the end of military tribunals and state military auditors, b) the creation of a unified organic law for state police, c) cutting the links between the military police and the military, and d) the independence of forensic institutes, among others.³³

The adoption of a National Plan of Public Security represents an important advance, but it should be understood as a process and lead us to consider the real difficulties in the implementation of these changes.

We should underscore the fact that the system fundamentally depends on state governments. It is rather a pact between the federal, state and municipal governments, all of which share responsibility for public security policies, since the police are controlled by the states and the federal power to intervene is extremely limited.

Another difficulty is to overcome the resistance of police institutions and their lobby in state legislatures and the Federal Congress. One of the main advocates of the SUSP, the sociologist Luis Eduardo Soares, was weakened and eventually defeated by

²⁸ Bicudo, Hélio. "O que significa a Unificação das Polícias?". In: *Violência Policial. Tolerância zero?* Oliveira, Dijaci Dadid; Santos, Augusto dos Santos and Silva, Valéria Getulio de Brito, Goiânia: Ed. of UFG; Brasília: MNDH, 2001.

²⁹ insert source

³⁰ See the National Secretariat for Public Security website, <http://www.mj.gov.br.senasp>.

³¹ "Presentation on State Security Plans." Minister of Justice, National Secretary of Public Security, <http://www.mj.gov.br/noticias/2003/abril/formatosusp.pdf>.

³² Law 10,201 from February 2, 2001.

³³ "Presentation on State Security Plans." Minister of Justice, National Secretary of Public Security, <http://www.mj.gov.br/noticias/2003/abril/formatosusp.pdf>.

the police lobby during his term as Secretary of Public Security of the State of Rio de Janeiro. At that time he denounced the “rotten portion” “banda podre” of Rio’s police. He recently resigned from his position as National Secretary of Public Security for unconvincing reasons.³⁴ Federal Police representative Luiz Fernando Corrêa took his place, even though he did not participate in the design of the current National Plan for Public Security.

The third important factor in this equation is that the National Plan for Public Security is, as seen from the example of the National Program for Human Rights in both of its versions, a set of measures to be implemented. It does not foresee, however, the definition of priorities, of goals and a timeline for implementation. Consequently, the most important measures could be overlooked.

The worrisome part of the SUSP is the belief that the first modifications in this area would be enough to induce long-term constitutional changes. Considering that the current model of policing in Brazil has been the same since the military period, and the fact that it has continuously demonstrated inefficiency in fighting crime, the implementation of the SUSP should have followed a timeline including future measures to change the character of the police within the rule of law. The immediate approval of laws and constitutional amendments presented in the beginning of this chapter is fundamental for the implementation of the SUSP.

The implementation of proposals for public security has been obstructed by financial constraints. In 2003, the budgetary execution of policies in the area of public

security represented only 0.24% of the country’s budget.³⁵

The SUSP is too new to be analyzed in full. But given the examples in our recent past, it is clear that the Brazilian Government will have to overcome the obstacles mentioned above. Furthermore, the government ought to prioritize the approval of laws and constitutional amendments that will give a new face to Brazilian police institutions.

GLOBAL JUSTICE CALLS UPON THE BRAZILIAN GOVERNMENT TO:

- Pass a Law expanding the jurisdictional competence of the courts of law to elucidate and judge crimes committed by military police on duty, including cases of involuntary manslaughter, assault and battery, and torture.

- Grant full autonomy and independence of Oversight Offices and Police Ombudsman Offices, in addition to the funds necessary to the execution of its functions.

- Implement the external control of police activity by the Public Prosecutor Office.

- Grant independence and social control to the Forensic Institutes, in addition to the modernization of its infra-structure.

- Set up programs aimed at removing from the streets police officers involved in cases involving death until his/her motivations are fully investigated and the necessary psychological evaluation is processed.

- Elaboration of a rigorous Statute on how the police should approach suspects, including severe penalties to violent, racist and discriminatory behavior.

³⁴ In October 2003, after a series of accusations of favoring friends in contracts with the government, Luiz Eduardo Soares resigned.

³⁵ Analysis of the 2004 Federal Budget. Published by the Instituto of Estudos Socioeconômicos — INESC. Ano III, no. February 3, 2004.

CHAPTER IV — RURAL CONFLICTS

Private militias in action and the criminalization of social movements

● **Antônio Alves da Silva — Jacaraú, Paraíba**

On June 5, 2003, Antônio Alves da Silva¹, a 43 year-old man, was killed and ten landless workers were injured (including a woman, a 14 year-old boy, and a man who were seriously injured) when a group of hired gunmen led by Marcos Napoleão, a rancher and the owner of the São José fazenda (large farm) in the municipality of Jacaraú, Paraíba, attacked the landless families who were occupying the land since August 5, 2001. This community of landless workers, comprised of 50 families for which the land is their only means of subsistence, received repeated death threats since the beginning of their occupation; on one occasion, they were also the victims of an attempted murder.

The landowner, Marcos Napoleão, is well-known in Paraíba as an illegal arms dealer. He had his house monitored and searched by the Parliamentary Commission of Inquiry of the Legislative Assembly of Paraíba, which investigated complaints of rural violence and the creation of private

militia in the state of Paraíba. Many firearms and ammunition were seized at that occasion. Marcos Napoleão has been on the run since the of Antônio Alves da Silva.

AGRARIAN REFORM AND THE LULA GOVERNMENT

The 2002 presidential elections leading to the victory of Luiz Inácio Lula da Silva, from the Workers' Party (Partido dos Trabalhadores — PT), generated great expectations of social and political change in Brazil, especially with respect to agrarian reform and strengthening family agriculture. Throughout their history, both the Workers' Party and Lula have reiterated many times that they would support the agrarian reform in Brazil and they received the political support of many social groups, including the Landless Workers Movement (Movimento dos Trabalhadores Rurais Sem Terra — MST), the National Confederation of Agricultural Workers (Confederação Nacional dos Trabalhadores na Agricultura —

¹ Global Justice sent a communication to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions regarding this case on 3 July 2003 (Official correspondence JG/RJ 079/03).

Contag), and the Pastoral Land Commission (Comissão Pastoral da Terra — CPT). Despite the Workers' Party and Lula's ties to social movements and their stated goals, the implementation of agrarian reform still faces structural and political obstacles.

Of an initial commitment to settle 60 thousand families, the National Institute for Colonization and Agrarian Reform (Instituto Nacional de Colonização e Reforma Agrária — INCRA), only followed through with 36,301 families in 2003.² According to João Paulo Rodrigues, one of the MST coordinators, only 10 thousand families actually completed the settlement process. Mr. Rodrigues emphasized that "years can separate the monitoring and inspection phase of the expropriation from the final settlement".³

One positive action taken by the government in this area is the National Plan for Agrarian Reform (Plano Nacional de Reforma Agrária — PNRA), announced on November 21, 2003. The elaboration of the PNRA was coordinated by Plínio de Arruda Sampaio⁴ at the request of Miguel Rosseto, Minister of Agricultural Development, and represents an innovation in many ways: in the priority given to the issue, in the concept of agrarian and rural development it offers, in the new agrarian reform model that it defends, and in the large consensus it reached

among the principal social movements in rural areas.⁵

The National Plan for an Agrarian Reform seeks to give land rights to 530 thousand families before 2006, ensuring the settlement of 400 thousand families, and allowing property credit to an additional 130 thousand families, in addition to regularizing the ownership of 150 thousand families⁶. With respect to the *quilombos*⁷, the aim is to give training, technical assistance, and orientation to the settled families on the commercialization of the products produced on their lands.⁸

RURAL VIOLENCE: THE ACTIONS OF PRIVATE MILITIAS

The conflict between large landowners and agricultural workers for the possession of the land is not a new one, but there has been a greater offensive on the landowners' part in the last twenty years with the creation of the Landless Workers Movement, the intensification of the work of the Pastoral Land Commission, and with the general mobilization and organization of the rural laborers.

Between 1985 and 1989, the Rural Democratic Union (União Democrática Ruralista — UDR), a landowner organizati-

² According to the latest news from the Ministry of Agricultural Development. http://www.mda.gov.br/index.php?pg=caderno&id_menu=5&id=60

³ Para MST, jogo da Reforma Agrária este ano dá empate. Carta Maior Agency, December, 29, 2003. See <http://www.cartamaior.com.br>

⁴ Lawyer and ex-deputy at the federal level for the Workers' Party, Plínio de Arruda Sampaio, is an expert with respect to land issues in Brazil. He worked for 30 years at the Food and Agricultural Organization of the United Nations (FAO).

⁵ O sonho da reforma agrária começa a tomar forma, Monthly Electronic Newsletter, Foundation Perseu Abramo and National Secretary of the Political Branch of the Workers' Party. <http://www.fpabramo.org.br/periscopio/122003/texto01.htm>

⁶ See <http://www.mda.gov.br>

⁷ *Quilombo* is a common term in Brazil which means the forest communities formed by runaway slaves in the 17 century.

⁸ Sai o Plano Nacional de Reforma Agrária, Frei Tito Agency for Latin America, November 23, 2003.

on, became known nationally as the number of deaths in the rural areas reached the record number of 640.⁹ The large property owners, united under the pretext of defending their lands against “invaders”, started hiring gunmen (*pistoleiros*) to kill rural workers. The Pastoral Land Commission reveals that, between 1985 and 2000, 1,280 rural workers were killed in Brazil.¹⁰

Since the 90s, the number of rural workers killed every year has began to decrease. The Pastoral Land Commission notes that this can be explained by a change in the large landowners’ strategy, as they started targeting the main leaders of the social movements defending agrarian reform.

Impunity is the general rule in these cases. Of the 1,280 killings, only 121 were brought to trial. Among the people who ordered the killings, only fourteen received a judgment and seven were condemned. Four people who acted as intermediaries in the killings were tried and only two of them were convicted. Among the 96 perpetrators of the crimes, 58 were convicted.¹¹

In 2003, as a result of the election of President Lula and of his positions in favor of agrarian reform, the segments of the Brazilian society linked to large landowners

intensified their attacks against rural workers, also by constituting “private militias”.¹² The strategies adopted by large landowners to fight against the project of agrarian reform include also the creation of clandestine “security agencies”, the use of heavy artillery, training sessions and attacks of workers’ encampments, which amounts to “paramilitary organizations”.¹³

On the UDR’s website, one can find an article entitled “Private Security on Rural Properties: Legal Aspects”¹⁴ (“*Segurança privada na propriedade rural: direito*”) written by Police Chief Marco Antônio Scaliante Fogolin¹⁵. He writes that, “Rural producers live in a time of great governmental insecurity with respect to the adoption of a productive and legal agricultural policy and are confronted with other decisions fomenting many crimes on their properties, such as the formation of illegal groups, theft, robbery, kidnapping, etc. perpetrated by an armed group, the so-called Landless Workers Movement or MST. It is with the intent of maintaining the peace that rural producers today, facing many difficulties in their production and imminent land invasions resulting from this insecurity, equip themselves with weapons, in self-defense.”¹⁶

⁹ In an article published on March 26, 2003 and entitled ‘Radiografia do conflito fundiário’, the weekly magazine *Veja*, speaks of the recrudescence of rural violence.

¹⁰ Report on Crimes Committed in Rural Areas. Pastoral Land Commission and others. August 2003.

¹¹ Report on Crimes Committed in Rural Areas. Pastoral Land Commission and others. August 2003.

¹² Proprietários de terras acusam Inca de apoiar invasões e contratam milícias privadas. *Diário de Pernambuco*, March 12, 2003.

¹³ “Private Militias: Strategies to Impede the Agrarian Reform and Defend Property”. Report of humanrights organization Terra de Direitos.

¹⁴ Fogolin, Marco Antônio Scaliante, “Private Security on Rural Properties: Legal Aspects”, July 2002. See <http://www.udr.org.br>

¹⁵ On the same web page, <http://www.ubr.org.br>, one can find the Chief Police’s Credits: Chief Police of the Police Station of Entorpecentes of Presidente Prudente in the state of São Paulo; Professor authorized by the Federal Police to give courses on vigilantes and private security companies; Shooting Professor at the Investigation and Defensive Division of the Police Academy of São Paulo, Chair in Criminal Law at Unoeste (West University of Sao Paulo — *Universidade do Oeste Paulista*), and author of the book “The Other Face of the MST... A Criminal Organization!!!”

¹⁶ Fogolin, Marco Antônio Scaliante, “Private Security on Rural Properties: A Right”, July 2002. Available at <http://www.udr.org.br>. Translated from the original: “Os produtores rurais, vivem um momento de muitas indecisões governamentais quanto a uma produtiva e legal política agrícola e enfrentam decisões outras que fomentam a prática de crimes diversos — quadrilha, furto, roubo, seqüestro etc. — praticados pelo bando armado do auto denominado Movimento Sem Terra ou MST. É nesse intuito de querer produzir em paz, que produtores rurais, hoje, perante as dificuldades da produção e as iminentes invasões de terra, com a conseqüente instalação da insegurança pública, estão se equipando, com armas, para a auto defesa”.

In his article, the Police Chief draws a comparison between the MST and the First Commando of the Capital (*Primeiro Comando da Capital — PCC*), a criminal organization that operates in São Paulo's prisons alleging that "The so-called Landless Workers Movement — MST is far from approaching any legitimate social movement. Rather, this movement has all the characteristics of real criminal organizations, such as the Mafia for instance. The MST can even be compared to the First Commando of the Capital, which is actually the most active and the better known criminal organization in Brazil".¹⁷

Finally, the Chief Police concludes that "considering that ensuring public security is the state's duty and the citizen's right, considering that during the land invasions, crimes are perpetrated and that human lives and patrimony are threatened, considering that police patrols are practically inexistent in rural areas, considering that private security can be done by a person or their representative, considering that the MST is a criminal organization carrying weapons and finally, considering that the legitimate defense of one's property and one's life is a natural and a legal right, when a rural property is invaded, armed resistance is legally authorized."¹⁸

Unfortunately, Police Chief Fogolim's ideas are not just rhetoric. In 2003, in the State of Paraná, which is exemplary of the rest of the country, the landowners formed an organization made up of 110 landowners under the banner of the First Rural Commando (*Primeiro Comando Rural — PCR*), referring explicitly to the First Commando of the Capital (*Primeiro Comando da Capital — PCC*).¹⁹

The President of the Rural Democratic Union in the Northwest of Paraná, Marcos Prochet²⁰, declared publicly that the INCRA was today "a political ally of the MST in the Lula Government" and announced a "recrudescence" in rural conflicts, raising the specter of rural property owners hiring security agents within the limits of the law to defend their properties.²¹

It is not clear what the large landowners mean by "within the limits of the law", but the private militias' operations are real and led to a recent increase of the violence against rural workers. In 2003, the Pastoral Land Commission (*Comissão Pastoral da Terra — CPT*) registered 73 murders of rural laborers in the context of land disputes which represents an increase of 69.8% in comparison to 2002 and the highest number of deaths since 1990 when they registered 79 killings. The CPT also registered 55 attempted murders in 2003.

¹⁷ *Idem*. Translated from the original: "O auto denominado Movimento Sem Terra — MST, longe está de aproximar-se de um legítimo movimento social. Esse movimento tem características próprias de verdadeiras Organizações Criminais, tal como a Máfia, por exemplo. Assemelha-se, ainda, o MST ao Primeiro Comando da Capital — PCC que, atualmente é a Organização Criminosa mais atuante e conhecida do Brasil".

¹⁸ *Idem*. Translated from the original: "Considerando que a Segurança Pública é dever do Estado e direito do cidadão, considerando que durante as invasões de terra praticam-se crimes e a vida e o patrimônio sofre iminente risco, considerando que o patrulhamento ostensivo é praticamente inexistente na zona rural, considerando que a segurança particular pode ser feita por pessoa física ou jurídica, considerando que o MST é uma Organização Criminosa e Armada e finalmente, considerando que a defesa legítima da propriedade e da vida é direito natural e legal, diante uma invasão a propriedade rural, a defesa armada sem excesso, está autorizada legalmente".

¹⁹ *Milícias Privadas: Estratégias para Impedir a Reforma Agrária em Defesa do Latifúndio*. Report of human rights organization Terra de Direitos.

²⁰ Marcos Prochet is accused of killing the rural worker, Sebastião Camargo, on February 7, 1998, in the city of Marilena, in the state of Paraná. This case was brought before the Inter-American Commission on Human Rights of the Organization of American States on June 30, 2000 and a file was opened under the no. 12.310 in July 2000. See the Global Justice Center website: <http://www.global.org.br>

²¹ *Proprietários de terras acusam Incra de apoiar invasões e contratam milícias privadas*. *Diário de Pernambuco*, March 12, 2003.

CRIMINALIZATION OF SOCIAL MOVEMENTS

Violence against rural workers is also abetted by judges who have formed an alliance with the large landowners. In 2003, 265 workers were incarcerated as opposed to 229 for the same time period in 2002, representing an increase of 15%.²² The great majority of these workers were incarcerated under the accusation of “setting up a criminal gang” (“*formação de quadrilha*”).²³

An example of the persecution of rural workers is seen in the Pontal do Paranapanema in São Paulo state. To justify the incarceration of 11 members of the MST, judge Araújo de Oliveira told the press that his decision was exclusively technical: “My decision has nothing to do with persecuting the MST or with any type of criminalization of the Movement”. However, according to the sentencing text, the accused were condemned without any reference to the perpetration of a criminal act, but only because of the fact that they belonged to the MST’s cooperatives or because they had a close relationship to José Rainha, an important leader of the MST in that region.²⁴

Moreover, there has been an increase in the number of evicted families through judicial warrants: there were 35,292 families affected, involving 176,485 people, the greatest number of evicted families in a year since the CPT began registering these numbers in 1985. This represents an increase

of 263.2% in comparison to 2002. The state with the greatest number of evicted people was Mato Grosso with 562,995 people, that is 35.7% of the total.

A DRAMATIC SITUATION: RONDON DO PARÁ

Throughout the years, Southern and Southeast Pará have been the site of increasing rural violence, resulting in the murders of hundreds of rural laborers, union leaders, and religious and professionals who are active in the administration of workers’ organizations. According to CPT’s research for the diocese of Marabá, there were approximately 600 workers and union leaders murdered in the last 30 years. The statistics also show the ties between the public officials and the organized crime led by large landowners since neither those who order the killings or those who commit them are incarcerated or brought to trial. Moreover, prison terms are not fulfilled and in the majority of the cases, police officers and hired gunmen collaborate in the assassinations. This is one crucial factor that makes violence and impunity prevail in the area.

Rondon do Pará, in the Southeast of Pará, is one of the towns in the area known for organized crime led by large landowners, as shown by a document prepared by the Pastoral Land Commission of Marabá, the National Confederation of Agricultural

²² *Idem.*

²³ *Idem.*

²⁴ Political Incarcerations and Criminalization of Social Movements. Information Agency Frei Tito for Latin America, September 16, 2003. <http://www.adital.org.br>

Workers (Confederação Nacional dos Trabalhadores na Agricultura — CONTAG), the Agricultural Workers Federation for the State of Pará (Federação dos Trabalhadores na Agricultura do Estado do Pará — FETAGRI), the Southeast Regional Division of the FETAGRI (FETAGRI/Regional sudeste), and the Rural Workers Union of Rondon do Pará (Sindicato dos Trabalhadores Rurais de Rondon do Pará — STR).²⁵

THE CRIMINAL ORGANIZATION OF THE ESTATE OF RONDON

In the area of Rondon, there is a group of large landowners and wood merchants that is extremely well organized and willing to eliminate anyone representing a threat to their interests. José Décio Barroso Nunes (Delsão) and Josélio Barros are the most widely known and the most frightening, but there are many others who perceive the precariousness of their property titles and who want to stop the agrarian reform process at any cost. Delsão and Josélio were accused of having ordered many crimes in the municipality, but their files remain in the public officials' drawers or have "disappeared" from the local Courthouse. The public authorities of Rondon do Pará, judges, police officers and prosecutors, have clearly expressed their fear of this criminal organization. The authorities either create alliances with them or simply do not bother them. Anyone

who dared to challenge them would either be killed or would have to leave the city.

A document written on Rondon do Pará and sent to the Minister of Agricultural Development on February 15, 2004, indicates a series of criminal acts committed by landowners in the area²⁶:

Workers killed on the Fazenda of Josélio Barros. In 1976, a complaint received by the Rural Workers Union of Rondon do Pará, stated that two leaseholders of the Fazenda Serra Morena were tortured and savagely assassinated (their bodies were cut with a chain-saw) by hired gunmen working for the landowner Josélio Barros Carneiro. The bodies were found two days later in a river near the Belém-Brasília highway. The crime created such commotion that Josélio was arrested and incarcerated, released shortly thereafter.

Small farmer killed by Josélio Barros' gunmen. In 1985, the farmer Antônio Roldão was assassinated by gunmen hired by Josélio Barros because he did not agree to sell his property titles on a land at the border of Josélio's fazenda. After the murder, Antônio Roldão's widow was forced to sell the titles.

Worker killed by José Hilário's gunmen. In June 1993, in the small town of Gavião, the farm hand Alfim Alves Fagundes, father of four children, was assassinated by gunmen hired by the landowner José Hilário who acted in collaboration with Josélio Barros. Nobody was punished for this crime.

²⁵ Document prepared by the Pastoral Land Commission of Marabá (Comissão Pastoral da Terra de Marabá — CPT Marabá), the National Confederation of Agricultural Workers (Confederação Nacional dos Trabalhadores na Agricultura — CONTAG), the Agricultural Workers Federation for the State of Pará (Federação dos Trabalhadores na Agricultura do Estado do Pará — FETAGRI), the Southeast Regional Division of the FETAGRI (FETAGRI/Regional sudeste), and the Rural Workers Union of Rondon do Pará (Sindicato dos Trabalhadores Rurais de Rondon do Pará — STR), sent to the Minister of Agricultural Development on February 15, 2004.

²⁶ *Idem*.

Slave labor and clandestine cemetery on the Fazenda of Josélio Barros. In 1995, slave labor and the existence of a clandestine cemetery was discovered on the fazenda of Josélio Barros. A Commission formed of civil police officers and representatives of the FETAGRI and STR of Rondon found human remains on the fazenda. The murders were committed by a gunman known under the name of “Raí”.

Attempted kidnap of the union representative Brito. In August 1996, the former Secretary of the STR of Rondon do Pará, José Soares de Brito, was the victim of an attempted kidnapping. Two gunmen who identified themselves as police officers forced him to enter a car. Perceiving the conspiracy, the union representative resisted and succeeded to escape. In 1991, Brito’s house was set on fire by gunmen, and he escaped just in time to avoid being assassinated.

Murder of Reinaldo Félix. In March 1997, in the small town of Gavião, the farm hand Reinaldo Félix, was shot to death by the gunman “Neguinho”. Reinaldo, like Alfim Fagundes, was a leaseholder of the fazenda Simpau. Preventive detention was ordered against the gunman, but he was never incarcerated. No investigation was made to identify those who ordered the crime.

Death threats against the union representative Dezinho. From 1998, the former President of the Rural Workers’ Union of Rondon, José Dutra da Costa, known as “Dezinho”, began to receive repeated death threats from landowners at the head of the organized crime in the area, and especially from Josélio Barros. On February 5, 1998, all these facts were presented by Dezinho to the Public Security Council for the State of Pará during a public hearing in the city of Rondon. No investigation was made with

respect to these denunciations. In the following years, Dezinho regularly spoke to the media and sent denunciations to the Public Security institutions of the State about the constant death threats he received.

At the beginning of the year 2000, a former judge of Rondon supporting the interests of landowners, ordered the incarceration of Dezinho for three days not because he was accused of any crimes, but because he had given an interview in the local press affirming that the landowners’ occupation of unexploited parts of the land was illegitimate.

The union representative Dezinho is murdered. On November 21, 2000, Dezinho was murdered in front of his house. He was shot three times by the gunman Wellington de Jesus. The investigation showed that Delsão had ordered the crime. Igoismar Mariano and Rogério, who both acted as intermediaries in the killing, were never arrested or incarcerated.

Delsão’s motive for ordering the killing of Dezinho was related to Dezinho’s complaints and to the occupation he organized on the fazenda Tulipa Negra, a property located near Delsão’s Fazenda that belonged to one of Delsão’s associates. Delsão feared that Dezinho would organize further occupations on his properties.

The police identified Delsão through the testimony of one of his own people. According to that testimony, Delsão ordered the killing of Dezinho, one month earlier, to one of his gunmen known as Pedro. However, Pedro mentioned the proposition to one of his brothers, who knew Dezinho and admired his work. That brother ended up alerting the Union representative about the situation. The information’s leak reached Delsão who decided to order the killing of his gunman Pedro for having betrayed the secrecy of the

operation. The gunman was shot to death on November 4, 2000, in downtown Rondon. Francisco, Pedro's brother, who is now under the protection of the Federal Program of Protection of Witnesses, testified that his friends were offered a bribe in order to convince him change his story. Delsão is so bold as to attend the annual demonstration commemorating Dezinho's death, as a form of provocation and intimidation.

Delsão ended up being incarcerated, but only for 13 days. He was released by a decision of the former Chief Judge Otávio Maciel, now a State Agrarian's Special Magistrate. The trial has been suspended since the last three years by a decision of the same Chief Judge.

Magno Fernandes do Nascimento, 39 year-old, known as "Careca", was one of the main witnesses of the crime. He was killed by two shots in the head on the morning of September 10, 2002, by two gunmen approximately 200 meters away from his residence. All the evidence shows that it was a crime ordered because the victim failed to remain silent since Magno did not have any enemies in the city and was not involved in illicit activities. According to the information obtained by the CPT and the FETAGRI, Magno had commented to his fellow workers that "he had received threats from important people of Rondon do Pará". In the early morning of September 10, 2002, the neighbors heard two people arriving at Magno's house and calling him. Magno opened the door and left with them. Some hours later, Magno was found dead by his neighbors with two shots in the head. Allegedly, right after opening the door, he was subdued by the gunmen because his body was found without a shirt at less than 200 meters from his house.

The judge who presided over Dezinho's case and who ordered preventive detention

for Delsão was under such pressure and harassment that she asked to be transferred to another district.

Death threats against union representative Maria Joel Costa. Maria Joel Dias Costa, Dezinho's widow, took over the direction of the STR in the middle of the year 2002. From the beginning of 2003, the STR began the registration of landless families in the municipality. The death threats coming from the large landowners increased. The large landowners filed four possessory actions against the Union to prohibit their access to the property. They went to the offices of the Union and to Maria Joel's house accompanied by gunmen and demanded that the settlements not be installed. Concerned with the threats, the STR decided not to install any settlements and on April 4, 2002 negotiated with the INCRA to monitor and inspect three pieces of land with the hope of being able to settle families eventually. However, the INCRA had not concluded the monitoring and inspection process as of the end 2003. Because of the delays, the STR decided to install two settlements of 150 families each. They were organized into settlements far from the fazenda on a hill. Even though they did not occupy the fazenda, the threats intensified. Maria Joel Costa received clear messages that the landowners' intent was to assassinate someone close to her. Worried by the security of Maria's family, on October 28, 2003, representatives of the FETAGRI and of the CPT met with Chief Police Roberto Deixeira, responsible for the civil police in the interior of the state, and asked him to send investigators to the area to investigate the case in a preventive manner. The Chief Police accepted that proposition and asked for a 15-day delay to send police officers to the site. As of the writing of this report, the Chief Police had

not sent anyone to investigate into the case.

Murder of union representative Ribamar Francisco dos Santos. On February 8, 2004, at approximately 7 P.M., the union representative Ribamar was in front of his house when two gunmen appeared unexpectedly on a motorcycle and shot twice in his direction. One of the two shots hit Ribamar at the head. He died approximately one hour later. Ribamar was one of the main leaders of the STR along with their president Maria Joel. He helped to organize settlements and was in charge of the negotiations with the INCRA and with other supporting groups. He firmly denounced the owner of a construction company that built houses funded by the INCRA who failed to finish the construction work. He received threats because of his complaints.

The day before Ribamar's murder, a landowner known under the name of "Pirrucha" said that he would send someone to kill anybody who tried to enter his properties. The landless workers who tried desperately to occupy the land were removed by a group of 12 gunmen carrying high caliber weapons and pointing them to the workers' heads and backs. This landowner was seen many times passing by the residence of Ribamar located in a neighborhood in the periphery of Rondon.

The day after Ribamar's murder, a white pickup truck followed one of the coordinators of the FETAGRI's car for about 20 kilometers. The car had been used all day by the CPT lawyer responsible for that case and by the Counselor of the STR of Rondon.

Two days later, one of the CPT lawyers went to the Rondon Courthouse to look into some cases. Shortly after his arrival, he was approached by two unknown men who wanted to know if he was one of the CPT counsels. The two men were riding a motorcycle.

In the document sent to the Minister of Agricultural Development, the organizations requested the immediate realization of the Agrarian Reform plan in the municipality of Rondon do Pará and the settlement of all the families registered by the STR in the area; they also requested more support and assistance from the federal government to disarm the landowners in Rondon, to investigate the crimes perpetrated and to neutralize the gunmen and other intermediaries by ordering their preventive detention; they finally requested the immediate increase of the number of civil servants in the Ministry of Agricultural Development, the redefinition of the powers and functions of the Agrarian Ombudsman's office and Agrarian Courts in the state and the carrying out of the signed agreements between the INCRA and the social movements in 2003.

On February 13, 2004, Global Justice, the Pastoral Land Commission and the human rights organization Terra de Direitos requested²⁷ to Pedro Montenegro, Ombudsman for the Special Secretary on Human Rights of Brazil, that he take immediate measures to secure an investigation by the Federal police into the murder of Ribamar and the criminal activities of the large landowners in the area.

²⁷ Official Correspondence GJ-SP 10/04, dated February 13, 2004.

**GLOBAL JUSTICE CALLS UPON
THE BRAZILIAN GOVERNMENT TO:**

■ Implement the National Plan of Agrarian Reform.

■ Pass a constitutional amendment limiting the size of rural properties in Brazil. This measure would make agrarian reform possible, by regulating the Federal Constitution's article 186 — which defines the social function of rural properties — by

including an item “V” limiting the size of rural properties in Brazil to 35 fiscal modules.²⁸

■ Use Federal Police force to disarm landowners.

■ Investigate the murders of rural workers.

■ Promote Federal Police investigation to locate — and arrest — the gunmen, intermediate and the landowners who ordered assassinations of rural workers.

²⁸ The proposed amendment is as follows: “V — the entire area of the property should be, at most, thirty-five fiscal modules, in the entire country, in the ownership of, the same physical or legal person. The above requirement will be applied automatically, and any land beyond the limit will become public property, without compensation to the owner”. National Forum for Agrarian Reform and Rural Justice and Campaign for the National Amendment to Establish an Upper Limit on Property Sizes in Brazil.

CHAPTER V — INDIGENOUS ISSUES

Indigenous issues: extermination and resistance

Aldo da Silva Mota¹, of the Macuxi tribe, had no idea of what was going to happen when he was invited on January 2, 2003, by one of Francisco das Chagas Oliveira's employees, to pick up a calf at the Retiro Ranch, which is property of Uiramitã district councilman Mr. Oliveira...

On January 9, 2003, Aldo was only found buried in a shallow grave because of the unusual presence of vultures flying over a specific spot in the Retiro Ranch. Both the ranch and Uiramitã district are situated within the limits of the Raposa/Serra do Sol reserve, an indigenous land that has been the object of intense conflicts.

Even though the State of Roraima's Coroner's Office (IML) concluded that the cause of death was "natural and undetermined", another evaluation, this time carried out by the Federal Coroner's Office, stated that Aldo had been "executed while his hands were up".

The ambush that killed the Macuxi tribesman Aldo da Silva Mota was meticulously reported by Global Justice to the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mrs. Asma Jahangir². Unfortunately, this is not

an isolated case. Ana Paula Souto Maior, a lawyer specializing in indigenous rights confirmed that "It's only one out of many Macuxi Indians from Raposa/Serra do Sol land who were murdered ever since the Indigenous Peoples National Foundation (Fundação Nacional do Índio, FUNAI) started the process of delineating the Macuxi indigenous group's homeland in 1978. We hope this was the last. Ten years ago, in May 1993, Damião, a 72 year old man, was beaten to death by a cattle hand who worked for José Saraiva, a farmer with whom Damião disputed territory nearby the Napoleão Indian settlement. In 1990, another Damião (Mendes) and Mario Davis, from the Macaco settlement, were murdered by gunshots in their backs by another cattle hand, Manuel dos Santos, from the Guanabara Ranch. This ranch, which encompasses five Macuxi settlements and belongs to the farmer Newton Tavares, is located close to the Normandia village. This is the same place that, in 1988, 17 year old Ovelário Tames from Cachoeirinha Indian settlement, was illegally arrested and beaten to death by five civil police officers. Among the officers one is the nephew of an ex-governor. I could go

¹ For a full report on this case, see "Execuções Sumárias no Brasil: 1997-2003", Centro de Justiça Global, setembro de 2003, p.243-245.

² Report sent to the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mrs. Asma Jahangir by Global Justice on March 21, 2003.

*on and on with names and cases: four deaths by gold seekers, another by cow herder Izan Matos, another in front of Placa bar... but, I mean, who really cares?"*³

The indigenous question is currently going through one of its most delicate moments in Brazilian history. Historically oppressed and plundered, Brazil's native population was reduced to scattered tribes from what once were wealthy and nations in terms of lands, and natural and human resources.⁴

The conflict of interest between the powerful elites and the excluded (a characteristic not only of the relationship between indigenous groups and landowners, but also of Brazil's historical consolidation process as a whole) has pushed the indigenous groups to claim and fight for something that should have been established a long time ago: the legal ratification of their lands, as well as the protection and guarantees of all sorts of rights that go along with the fight for identity and respect of Brazil's true "owners". As Raimundo Faoro, one of Brazil's most respected intellectuals, put it, the *owners of the power* in Brazil are others, and they are as old as the Nation itself.

In this sense, the distress caused by the conflict between indigenous groups and non-indigenous groups are due to the following factors: *the slowness or simply lack of clear land demarcation; the lack of inspection and solidity of indigenous rights*; as well as the *inexistence of means of self-determination and development*.

The context for these disputes remains the abundance of natural resources in the indigenous homelands, the greed and audacity of major landowners, gold seekers, and the private militias formed with the purpose of intimidating and even eliminating the indigenous populations that are not seduced by promises or undermined by threats.

Once again, the action of powerful minorities together with the State's omission enables abuses and criminal acts. These are reassured by widespread social prejudice and judicial inertia in relation to those areas. The Brazilian Government is directly responsible for the deplorable situation of indigenous communities. By not enforcing the law to stop abuses, the Government ends up emboldening the powerful minority who acts oppressively for the sake of high profits and land speculation purposes.

MURDERED INDIANS — 1993 TO 2003⁵

In the year of 2003, the number of natives murdered reached the toll of 27, a sum that had not been registered since 1997 when 29 indigenous were killed. This increase in the number of murders is due to stronger steps taken by landowners and farmers, among others, targeting social movements that were once close to the president elected in 2003.⁶

Land conflicts are the biggest problem facing indigenous populations. One impor-

³ "Roraima Dez anos de Retrocesso". Ana Paula Souto Maior, February 22, 2003. <http://www.cir.org.br/artigos>

⁴ Exemplifying what was mentioned, the indigenous people *Cinta Larga* – Rondônia – were identified during the 70's and had about 5000 inhabitants. Today, nearly 30 years later, the same tribe has only 1400 members. "Conflitos em Terras Indígenas". Relatório da VIII Caravana de Direitos Humanos da Câmara dos Deputados – from October 7 to 17, 2003.

⁵ Information provided by the CIMI's Documentation Program to Global Justice on February 12, 2004.

⁶ See chapter on Rural Violence.

1992	24
1993	43
1994	45
1995	30
1996	27
1997	29
1998	21
1999	16
2000	18
2001	17
2002	07
Total:	277 assassinated indigenous ⁷

tant example of these conflicts comes from Pernambuco State. On February 7, 2003, Josenilson José dos Santos, 24 years old from the Atikun tribe, and José Ademilson Barbosa da Silva, 19 years old from the Xukuru tribe, were killed during an ambush against Chief Marcos Luidson Araújo, also known as Marquinhos Xucuru. The two were acting as security guards for the Chief when they were attacked, on their way to the Indian settlement of Cimbres, in a truck. There was loose cattle in the road when they were attacked by a group of leaseholders and a member of a tribe allied with the leaseholders, when they got out of the truck in order to open a path. Chief Marcos managed to escape and had light injuries, but the other two were shot and killed at the site. The Chief's family believes that the attack was planned by local landholders.⁸

These deaths could have been avoided if Brazil had heeded the cautionary measures

stipulated by the Interamerican Human Rights Commission, on October 29, 2002, relating to the need to protect Chief Marcos.⁹ The Indigenous Territory of the Xukuru tribe contains 27,555 hectares, was demarcated in 1992 and officially recognized on April 30, 2001. With the demarcation already done, the leaseholders tried to coopt the leadership of the trib in order to gain their support for a large construction project involving a religious tourism enterprise inside the indigenous territory at the Sactuary of Nossa Senhora das Graças. The proposal would lead to a permanent outside present inside of the territory, through the placement of ranches alongside the enterprise, with activities for tourists-pilgrims. The tribal leaders rejected the proposal, that was accepted by a small group of Indigenous people (known as the “Biá”) who joined the non-Indigenous peoples that remained within the Xukuru land.¹⁰

In function of the insistence of occupying farmers in remaining on indigenous land, the violence against the Xukuru has been unrelenting. Chief Marcos and his mother, Zenilda Maria de Araújo have received on-going death threats over the last three years.¹¹ Chief Marcos' father, Chief Chicão, was killed by a hired gunman on May 20, 1998. On April 23, 2001, another Xukuru leader, Francisco de Assis Santana, known as Chico Quelé, was killed by gun shots inside of indigenous territory.¹²

According to the Missionary Indigenous Council (Conselho Indigenista Missionário,

⁷ “Povos Indígenas: a busca de seus direitos”, in: Moser, Cláudio and Rech, Daniel. Direitos Humanos no Brasil - Diagnóstico e Perspectivas. Rio de Janeiro: CERIS/Mauad, 2003.

⁸ “Summary Executions in Brazil – 1997-2003”. Global Justice Center, September, 2003.

⁹ *Idem*.

¹⁰

¹¹ “Essential Actors our Time”: human rights defenders in the Americas. Amnesty International, November 2003.

¹² *Idem*.

CIMI), most of these murders were either land motivated, or involved speculation and natural resource pillage (mineral and wood extraction, fishing, and hunting). In some cases, the murders were caused by internal conflicts that involved land disputes in one way or another. Tribes internally splitting as a whole has resulted in Indians from the same tribe taking opposite sides in the same dispute.

Other deaths happened because of internal fighting among the indigenous population. Most of the time, these fights were related factors such as alcohol consumption, added to the social disintegration caused by the loss of land and the situation of poverty that they are forced to withstand.¹³

THE LEGAL RATIFICATION QUESTION:

Brazil's 1988 Constitution, in article 231 enforces indigenous groups' "*own social organization, habits, dialects, beliefs and traditions, and original rights over lands where they traditionally live, being the Federation responsible for a clear boundary establishment, and for protecting and making others respect their goods*". It also adds that "*these lands mentioned in this article are undetachable and indisputable, and the rights over them are irrevocable*".

The distance that separates the constitutional and legal world from the reality regarding the ratification of indigenous communities' lands has contributed decisively

to the worsening of the conflicts. The judicial uncertainty that looms over land ownership, attributable to the Federal Government's inactivity, and made even more serious by state governments' complicity with adversaries of indigenous interests, opened the possibility of violent maneuvers against the Indians as well as the gradual loss of lands and lives.

As such, a determining factor in land questions has been the belief by many judges that as long as the land is not finally recognizes (*homologada*), the tribes inhabiting that land do not receive any guarantees or privileges.¹⁴ This enables problems like the construction of roads, irrigation from rivers in indigenous territory, and even the construction of towns within indigenous territories.¹⁵ The instability created by this situation serves to break down indigenous tribes and discredit their claims.

The Federal government's inertia in face of indigenous land conflicts can be traced back to decades of influence of major landowners inside the National Congress, the close ties they have to regional governments¹⁶, and the lack of recognition that indigenous groups have the same rights as any other Brazilian. Conflicts sometimes get worse because of the Federal government's unusual behavior. This is the case of the Uiramitã district, situated inside an indigenous territory, which received Federal funds and drove the indigenous groups to revolt. One should note that at the time of creation

¹³ Information given by the Setor de Documentação do Conselho Indigenista Missionário (CIMI) Global Justice on February 12, 2004.

¹⁴ "Conflitos em Terras Indígenas". Report of the VIII Caravana of Human Rights of the House of Representatives – October 7-17, 2003.

¹⁵ *Idem*.

¹⁶ Members of the Federal Congress' Human Rights Commission, while visiting Roraima, received a huge number of complaints regarding political maneuvers to postpone the resolution of conflicts. They include Flamarion Portela, Governor of Roraima, who joined the Workers Party (PT), the president's left-wing party. The deal included the delay of the ratification of indigenous land Raposa/Serra do Sol in exchange for an increased base of support in the Federal Congress and for Mr. Portela's alliance with the PT at the local level.

of this district, in 1995, the limits to Macuxi indigenous lands had already been established by FUNAI and published in the *Diário Oficial da União* (official government newspaper). The real intention was to lift another obstacle to the ratification of the Raposa/Serra do Sol land. Around the same time, seven rice growers invaded this Indian land despite knowing that the limits were established.¹⁷

The frailty and demoralization to which the indigenous groups are submitted, contributes to the inequality of the dispute. Indigenous leaders are often subject to bribes. In addition, the terrible condition in which they live weakens the resistance of those who are constantly threatened. For instance, during a public meeting sponsored by the VIII Caravan of Human Rights in the State of Mato Grosso, Xavante Indians Tribal Chief Alexandre stated that he gave up the possibility of land demarcation “*to avoid dying at the hands of farmers*”.¹⁸

In every level of the conflict one can see that the omission, and not rarely the action, of the government has lead thousands of Indians to misery and death, undermining and humiliating their millenary culture, and ultimately exposing in a very clear way the social hierarchy imposed by big farmers, cow herders and landowners. (*See table on the next page*)

Explanations:

The survey above was carried out by CIMI’s legal advisers based on the following assumptions:

a) Indigenous lands still to be identified are all those that have yet to receive FUNAI’s approval¹⁹. All those lands that are being identified at the moment are included in this category, excluding the ongoing or future delimitation revisions.

b) Indigenous lands identified are all those that have already been reported by FUNAI and had its report published by both the State and the Federal Official Journals (*Diário Oficial, D.O.*). This procedure should follow the form established by Decree 1,775/96, and the land must have been recognized as part of the district where it is located. Lands still in the process of delimitation revisions are also included in this category.

c) Declared/delimited indigenous lands are those that received an authorization (*Portaria*) by the Ministry of Justice, according to Decrees 22/91 and 1,775/96, in addition to the FUNAI Decrees mentioned above.

d) Reserved lands acquire this status by means of i) a declaration made in conformity to the dispossession decree; ii) government purchase aimed at reestablishing indigenous communities; iii) delimitation by the Indigenous Protection Service (*Serviço de Proteção Indígena, SPI*) as a reserve; or iv) donation

¹⁷ For more information on this case, see <http://www.cimi.org.br>

¹⁸ The farmer’s power does not limit itself to the conflict with the Indians. During the visit of the Human Rights Caravan, Congressmen saw a farmer threatening a member of the CIMI, the same way that the intimidation was extended to them.

¹⁹ The inclusion takes the form of a report, prepared by FUNAI’s Technical Group, which is then approved by the institution’s president.

The Indigenous Land Situation

A GENERAL PICTURE OF INDIGENOUS LAND — BY STATES²⁰ Updated on February 10, 2004

Apart from lands in the DAF/Funai list, lands informed by the regional CIMIs are also included

UF	Registered	Ratified	Declared	Identified	To be identified	Reserved	Without any Measures Taken	Total
AC	19	5	2	0	6	1	5	38
AL	1	0	0	2	2	1	4	10
AM	68	21	24	13	58	0	7	191
AP	4	0	0	0	0	0	1	5
BA	5	5	1	2	5	3	3	24
CE	0	1	1	2	1	0	5	10
ES	2	1	1	0	0	0	0	4
GO	4	0	1	0	0	0	0	5
MA	10	4	2	0	1	0	0	17
MG	3	2	0	1	0	1	2	9
MT	48	2	2	4	14	1	12	83
MS	9	12	4	1	17	8	68	119
PA	17	6	7	4	10	3	20	67
PB	2	0	0	1	0	0	0	3
PE	3	2	1	1	3	1	0	11
PR	9	2	0	1	5	5	10	32
RJ	2	1	0	0	0	0	0	3
RO	15	1	1	0	5	0	11	33
RR	21	6	2	0	1	0	0	30
RS	11	5	2	4	7	0	20	49
SC	2	2	2	5	5	2	4	22
SP	6	5	1	2	4	0	2	20
SE	1	0	0	0	0	0	0	1
TO	6	0	1	0	1	0	0	8
TOTAL	268	83	54	43	146	26	174	794

by the districts to the government as a reserve with physical demarcation without register in the official registry office of that district.

e) Ratified indigenous lands are those with the Ratification Decree signed by the President and published in the federal D.O.

f) Registered indigenous lands are those

with the ratifications published in Registry Offices and in the Federal Patrimony Department. In this category the lands in domain registered in appropriate offices are also included. The lands in the Registry Offices carried out by the old Indigenous Protection Service (SPI) are not included.

²⁰ Information available at <http://www.cimi.org.br>.

THE DEVELOPMENT AND AUTONOMY QUESTION:

Much of the humiliating position faced by indigenous communities is related to a paternalistic and discriminatory view of the State in relation to an alleged incapacity of the indigenous groups to sustain themselves as a group.

In the last 30 years, however, the communities have reached a high level of conscientiousness and have started demanding autonomy, land and national resource-sand the end of dependency. Indigenous groups also created joint organizations and are regularly present in meetings and national and international events defending their rights. Many indigenous communities watch TV, listen to the radio and follow the world outside of their settlements. They have occupied seats at public bodies and even chairs in the National Congress.

Many experiences have already demonstrated the capacity of indigenous groups to take care of their own human development, causing a surprising backlash from powerful groups. These groups will do everything to undermine the progress of indigenous groups.

Among some interesting initiatives, the VIII Caravan of Human Rights from the National Congress' Human Rights Commission provided as an example the creation of an indigenous technical school in agriculture and animal raising in Roraima. This school opened up trading channels between this group and non-indigenous people. In the same State, these indigenous communities

have organized their own health services mixing “white man’s medicine” with their traditional techniques. Besides providing health care to their own population, this initiative not only keeps the native culture alive but it also expands it throughout Brazil.

On the other hand, such initiatives face a series of problems in terms of lack of financial support and infra-structure from the Federal Government, in addition to the government inaction the possibility that indigenous autonomy would affect the extraction of natural resources found in their lands. Greedy entrepreneurs and gold seekers would probably be forced to rationalize the exploitation of those lands and pay tributes to the real landowners, the indigenous people. It is not a surprise that these powerful interests find it more profitable for things to continue as they are.

The Federal Government does not provide many essential services, keeping at a very low level the chances of indigenous self-governing. When services like health, education, security, actually do exist, they were either obtained and implemented by the community itself — without the adequate infrastructure — or came from other people’s and organizations voluntary contribution and, in nearly all cases, are bound to fail. The National Health Foundation’s (Fundação Nacional de Saúde, FUNASA) project of rendering differentiated services to the communities²¹ has been facing strong criticism from the indigenous leadership because the financial resources have not been

²¹ The Decreto 3.156, from August 27, 1999 called “Prestação de Assistência aos Povos Indígenas”, with specific financing to implement this type of program.

²² “Conflitos em Terras Indígenas”. Relatório da VIII Caravana de Direitos Humanos da Câmara dos Deputados – from October 7 to 17, 2003.

²³ National Education Council (Conselho Nacional de Educação, CNE) Resolution 03/99.

²⁴ “Educação Escolar Indígena: Entre a Lei e a Prática”. Posicionamento da Articulação Nacional de Educação do Conselho Indigenista Missionário - ANE/Cimi, on the Indigenous School Education as a policy developed by the State together with indigenous groups. Luziânia, Goiás, December 10, 2003.

adequately applied.²²

The situation of education is not the most optimistic either. Three years after publishing Resolution 03/99– CEB/CNE²³, most of Brazil's States have yet to formalize the Indigenous School (Escola Indígena) or have not even incorporated this type of school to their education agenda.²⁴

The lack of will in most States reflects on the fact that indigenous education is, in its great majority, still under district responsibility. Consequently, the district's Education Secretaries impose the same type of school model (the form and 'content', calendars, evaluation methods, etc.) for indigenous groups as they do for non-indigenous ones, undermining the whole spirit of indigenous autonomy, which is established by law. Another problem is that of the indigenous teachers who, in face of the lack of formalization of their professional status, do not receive full rights. They are submitted to temporary contracts, without paid holidays, labor and other rights that are mandatory to everyone employed in education. The National Education Initiative of the Missionary Indigenous Council (ANE/Cimi) pointed out that the Brazilian government's model of public administration has not fulfilled the indigenous schooling needs. ANE/Cimi proposes an internal controlled education system that respects territorial and linguistic diversity, different pedagogies, and administrative norms. "Only the existence of an indigenous system to handle indigenous education from primary education to college will guarantee the prin-

ciples of specificity, differentiation and autonomy, subverting the colonialist and homogenizing model", says the CIMI²⁵

The problem of indigenous self-government is very similar to the problem of the incorporation of civil society in everyday decision-making. The more independent they are, the greater is their bargaining power, and the respect from the other increases. Hence, more demands and less unequal and obscure favoring situations take place. The cruel logic that enslaves the Brazilian Indian into a caricature of him or herself has the goal of satisfying interests that are very far from those of protection and worthiness. The indigenous population, as any other population, must have the means of developing and sustaining itself, and of maintaining their tradition and culture with utmost respect.

THE INSPECTION QUESTION:

As article 231 of the Brazilian Constitution²⁶ points out, "*acts that are aimed at the occupation, use and possession of lands (to which this article is referred) or the exploitation of natural richness from the soil, rivers and lakes there present, are invalid and extinct, and do not produce any judicial effect, except on cases relevant to the Federation's public interest that are under a complementary law, thus being valid and still existing and not liable to indemnities or actions against the Federation, except, by law, when other establishments are derived from these*

²² "Educação Escolar Indígena: Entre a Lei e a Prática". Position of the National Education Initiative of the Missionary Indigenous Council (ANE/Cimi) on the situation of indigenous schooling. Luziânia, Goiás, December 10, 2003.

²⁶ Brazilian Federal Constitution, article 231, paragraph 6.

well-intended occupations”.

As one can see, it is not because of an institutional void that indigenous lands are left with very little bargaining power. The problems generated by land conflicts are not restricted exclusively to the lack of law enforcement mechanisms for their protection but they arise, mainly, because of the impossibility of making them effective in reality.

Without the adequate infra-structure, indigenous peoples find themselves in a situation of despair, realizing that they are incapable of acting to maintain their lands. They are forced to choose between direct conflict for self-defense, or worse, submit to the evil consequences and impositions of their opponents.

The weakening of FUNAI over the years has represented a major obstacle to the national indigenous policy, besides strongly contributing to the ambiguous relationship between the State and indigenous groups. FUNAI's budget is not enough to fulfill the goals they are set to accomplish, making it impossible to solve the conflicts in a pacific way and respecting the national legislation.²⁷

Not only the low budget contributes to FUNAI's feeble performance, but also, on many occasions, the Foundation itself is partial to non-indigenous interests. On one of these occasions, in the State of Mato Grosso, FUNAI supported an “agricultural part-

nership” between Indians and farmers in which the main condition was that the Indians should give up their land demarcation demands.²⁸

There is still the fact that many indigenous leaders are easily seduced by FUNAI's corporativism, submitting themselves to other peoples' interests. Indian tribal chiefs are often chosen to occupy functions within FUNAI and end up under the illusion that they are co-responsible for the command and decision-making, while they in fact are close at hand to be supervised and controlled.

This is just one of FUNAI's sides, however. There are many serious and dedicated professionals whose work is constantly jeopardized by the violence promoted by farmers, gold seekers and their private militias. In Rondônia, a Task Force (Grupo Tarefa)²⁹ succeeded in expelling many gold seekers from Indian reserve “Roosevelt”. Their work resulted in many death threats against them, as has already happened in the States of Roraima and Santa Catarina, where in September, 2003, a FUNAI employee was shot and killed.³⁰

The treatment given to Indians and non-Indians in these inevitable disputes also differs greatly in relation to the law enforcement. In nearly every State where land conflicts occur, the imprisonment of Indians is infinitely larger than those of non-Indians.³¹ Following the same logic, the

²⁷ As an example, an admission examination has not taken place FUNAI for 15 years, making it impossible to renew the staff and the provision of assistance to indigenous communities. See: “*Conflitos em Terras Indígenas: Relatório da Comissão de Direitos Humanos da Câmara dos Deputados*” VIII Caravan of Human Rights, October 2003, p. 09-10. The report is retrievable at <http://www.camara.gov.br/internet/comissao>.

²⁸ A very common problem is FUNAI's support to dissident Indians, favorable to partnerships between Indians and farmers. See: “*Conflitos em Terras Indígenas: Relatório da Comissão de Direitos Humanos da Câmara dos Deputados*” VIII Caravan of Human Rights, October 2003, p. 09-10. The report is retrievable at <http://www.camara.gov.br/internet/comissao>.

²⁹ FUNAI Order 1.166 (Portaria 1166)

³⁰ “*Conflitos em Terras Indígenas: Relatório da Comissão de Direitos Humanos da Câmara dos Deputados*” VIII Caravan of Human rights, October 2003, p. 09. See: <http://www.camara.gov.br/internet/comissao>

³¹ In 2003, in Roraima 30 Indians were arrested comparing to zero non-Indians for the same public disorders.

³² The figures are from Conselho Indigenista Missionário, CIMI, and are retrievable at <http://www.cimi.org.br>

great majority of fatal casualties are among indigenous groups. As pointed out above, 31 indigenous were killed during President Lula's first year in government.³²

Discrimination reaches its worst levels in the local justice system. A bewildering example of what has been said is taking place at this moment in Rondônia: the amount Indians from Cinta Larga People have to pay for bail in cases of illegal firearm possession is five times higher than what non-Indians pay. This is the State of Rondônia Justice Department's determination. Still in Rondônia, local stores charge the Indians much higher prices to sell them their goods than they do for non-Indians.³³

Finally, the lack of inspection also contributes to the environmental deterioration in indigenous lands. This is due to the communities incapacity to keep guard over their territory, opening the possibility of major environmental attacks, related to illegal extraction activities, monoculture rural investments and extensive cattle breeding and herding.³⁴

Cases like the ones in Roraima, where in 1995 an enormous quantity of birds died due to water contamination — and a huge number of miscarriages took place also — are clear examples of what is happening in these zones devoid of protection. The environmental collapse is charging a high price from the populations that traditionally live from hunting and fishing. Given that the environment is a collective and indivisible

good, such degradation also threatens the lives of non-Indians.

A GLIMPSE AT RORAIMA: RAPOSA/SERRA DO SOL

The indigenous land Raposa/Serra do Sol is the ancestral home to the Macuxi, Wapichana, Ingarikó, Taurepang and Patamona peoples. It includes around 15,000 Indians within a continuous territory of 1,6 million hectares of land, situated in the northeast of Roraima, between the rivers Tacutú, Maú, Miang, Surumú, and the Venezuelan border.

The indigenous land Raposa/Serra do Sol has been going through a delimitation process since 1977³⁵ and for more than a decade the powerful groups of the region — landowners and politicians — have been trying as hard as they can to create obstacles to its legal ratification. As an example, we can use the already mentioned creation of the Uiramitã district that, in spite of its obvious illegality, was formalized by the State government in 1995 within the limits of Raposa/Serra do Sol. Until 1995, the village was used as a support base for illegal gold seeking in the Macuxi land. With the creation of the district, the invaders feel as if the State had allowed their illegal stay. As Uiramitã is an alcohol selling village, it has become the center of a great number of conflicts,

³² “*Conflitos em Terras Indígenas: Relatório da Comissão de Direitos Humanos da Câmara dos Deputados*” VIII Caravana de Direitos, October 2003, p. 04. See the report at <http://www.camara.gov.br/internet/comissao>.

³⁴ For over twenty years large amounts of mahogany, an extremely valuable wood, were illegally extracted from the Roosevelt reserve in Roraima. This same area is becoming a cattle feeding ground partly inside indigenous land.

³⁵ On May 14, 1977, the FUNAI presidency signed Portaria GM/111 (Procedure BSB/3.233/77) establishing an Inter-Ministerial Working Group to start the land delimitation, without any land expansion proposal. “*Conflitos em Terras Indígenas: Relatório da Comissão de Direitos Humanos da Câmara dos Deputados*” VIII Caravana de Direitos, October 2003, p. 07. The report is retrievable at <http://www.camara.gov.br/internet/comissao>.

³⁶ “Raposa/ Serra do Sol: Indigenous groups fight for their land for 30 years.”, report available at <http://www.cir.org.br>

reportedly between those who live there, farmers and indigenous alike.³⁶

Other obstacles were lifted to hinder the indigenous land acknowledgement, such as the creation of the Monte de Roraima National Park [a Conservation Unit inside the indigenous land] and the 6th Special Border Battalion of the Brazilian Army (Pelotão Especial de Fronteiras do Exército Brasileiro). A new party in this scenario is the group of seven rice growers settled in the region with the State's support.

In 1996, then Minister of Justice Nelson Jobim, instituted the “right to the contradictory”³⁷ guaranteeing the indigenous land invaders the chance of contesting delimitation procedures. This decision is in clear contradiction to article 231 of the Federal Constitution. Luckily though, these absurd demands were judged in favor of the Raposa/ Serra do Sol inhabitants.

However, Minister Jobim, on December 20, 1996 decided that³⁸ “some small adjustments, of public interest, in preserving some already established non-indigenous population centers, or maintaining judicially established situations by the Federal Public Power”, excluding from the area old gold seeking support bases, called villages, the highways and the farms titled by Incra (Agrarian Reform Institute) from 1981 onwards, reaching the total of 300 000 hectares.³⁹

Due to pressures from Roraima's Indigenous Council and from all other indige-

nous movements throughout Brazil, Minister of Justice Renan Calheiros signed the Administrative Decision (portaria) no. 820, dated December 11, 1998, excluding 6th Special Border Battalion from the area and recognizing the administrative unit of Uiramitã district.

Despite creating obstacles, local politicians and farmers have lost every law suit and administrative procedures aimed at blocking the land ratification. These procedures reached the final stage in 1998.⁴⁰

The current government has absolutely no justification to holding back the finalization of the land, as the judicial procedures have already gone through every necessary phase, including a favorable sentence by the superior justice tribunal. In Roraima there is a growing fear that more the indigenous rights are included in the negotiation table because of upcoming district elections.

One must to remember that the current situation in Raposa/Serra do Sol is not new to this government. President Lula himself visited the reserve in 1998 when he demanded Fernando Henrique Cardoso — then president — to speed up of the land's legal ratification.

The unjustifiable delay in the ratification act has provoked unnecessary tensions exposing to further risks indigenous leaders and their allies who defend the ratification as established by Administrative decision (Portaria) no. 820-MJ. Those against the indigenous people see the delay as a possibility of winning the case.

³⁷ Decree 1.775/96

³⁸ Minister of Justice Administrative Order number 80 (Despacho n. 80), published in the Official Journal (Diário Oficial da União) 24/12/96

³⁹ “Raposa/Serra do Sol: Avanços e impasses burocráticos”, see report at <http://www.cir.org.br>

⁴⁰ “Conflitos em Terras Indígenas”. Report of the VIII Caravana de Direitos Humanos, October, 2003.

The resistance of a historically committed government to such social problems raises even more questions if one considers this situation together with the fact that there is a Constitutional Amendment Proposal being discussed in Congress about a 50% reduction in indigenous lands, and the handover the ratification power to the Senate. This bill was proposed by Senator Mozarildo Cavalcanti, from Roraima.⁴¹

The situation in Raposa/Serra do Sol worsened after Minister of Justice Marcio Thomaz Bastos declared that President Lula decided to sign the ratification act in January, 2004. After this declaration was made, a group of rice growers, farmers and dissident indigenous started deliberate acts of vandalism, terror and violence that reached its peak with the invasion of FUNAI headquarters in Boa Vista⁴². The revolt continued with highway barricades, plundering of the Surumu mission inside the indigenous land and the kidnapping of the priests Ronildo França, César Avellaneda and Brother João Carlos Martinez. The three missionaries were taken hostages to the Contão settlement where the dissident indigenous defend the rice growers' effort to divide the ratification of the Raposa/Serra do Sol territory. Apart from the kidnapping and illegal imprisonment, this movement

initiated by the rice growers closed down all federal highways that connect Roraima to Manaus, Venezuela and Guyana⁴³.

The hostages were released three days later and were taken directly to Boa Vista's international airport, where a bogus protest awaited them, crying out words of revolt and discontentment. In the pseudo-protest, those present ranged from the ex-mayor of Uiramitã, Venceslau Braz, the current Mayor, Florani Mota (PT-RR), to a group of 30 dissident indigenous taken to that location by State Deputy, Airton Cascavel (PPS). It is worth noting that the Uiramitã district is situated inside Raposa/Serra do Sol and has received Federal funds.⁴⁴

According to Roraima's Indigenist Council (CIR), the criminal acts perpetrated by the "activists" were decided at the Contão settlement on December 29, 2003, in the presence of the rice grower's leader Paulo César Quartieiro and confirmed in another meeting in Boa Vista's Trade Association, along with the presence and support of the Vice-Governor, Salomão Cruz. In a press release, the Governor did not position himself against the "protests".

Up to now, no one has been arrested for the kidnappings. Despite the kidnappers having been caught in the act, discarding need for evidence, Federal Police only opened two

⁴¹ "Conflitos em Terras Indígenas: Relatório da Comissão de Direitos Humanos da Câmara dos Deputados" VIII Caravana de Direitos, October 2003. See the report at <http://www.camara.gov.br/internet/comissao>. Constitutional Amendment number 00038/1999, dated 05/05/1999 (PEC 00038/1999) presented by Senador Mozarildo Cavalcanti.

⁴² The attack was led by the leader of the rice growers, Paulo César Quartieiro, along with 100 dissident Indians against the ratification. Paulo César ordered the invasion that found no resistance.

⁴³ Electronic communication from CIR to Global Justice Center on January 6, 2004.

⁴⁴ Electronic communication from CIR to Global Justice Center on January 8, 2004.

⁴⁵ Note from the National Association of Federal Police Chiefs (Associação Nacional dos Delegados de Polícia Federal, ADEPOL), http://www.adpf.org.br/FrmImpNoticia.asp?cod_noticia=5771

inquiries *to investigate* the crime.⁴⁵

The current situation in Raposa/Serra do Sol continues because of the indigenous organization and persistence to fight for their rights. If there had not been for this type of mobilization and union, the situation would have been sorted out. The reserve would be a calm and massive soy bean monoculture.

Finally, the rise in violence and the obscure political maneuvers are a reflection of the government's silencing to the major social inequalities in Brazil. Lula's stance in relation to the land ratification⁴⁶ puts a question mark on the hopes of solving these types of problems according to constitutional precepts.

GLOBAL JUSTICE CALLS UPON THE BRAZILIAN GOVERNMENT TO:

- Homologate (confirm) the demarcation of Indigenous Land Raposa/ Serra do Sol, maintaining the limits proposed by Portaria 820/98.

- Guarantee the direct participation of the Indigenous peoples in the definition of the Indigenous policy.

- Guarantee concrete means and allocate enough public resources to the enjoyment and implementation of Indigenous rights.

- Treat the Indigenous peoples in its entirety and universality, not as an object of defragmented and de-articulated public policies.

- Create spaces for dialogue and articulation among State and civil society sectors, particularly including Indigenous organizations. These spaces should produce the necessary elements to the formulation of public policies bearing in mind efficient means of social control during its execution. These are the proposals put forward by a broad spectrum of forces represented by a council of indigenous policies, a conference of indigenous peoples and the approval of the Statute of Indigenous Peoples.

- Guarantee the fulfilment and respect of article 231 of the Federal Constitution. This article recognizes the indigenous peoples' organization, costumes, languages, beliefs and traditions, and the original right over the lands that they traditionally occupy. The article sets up the responsibility to the State to demarcate and protect the land and its wealth. Article 67 of the transitory provisions (*disposições constitucionais transitórias*) determines the State duty to conclude the demarcation of the indigenous lands in a period of five years, counted from the promulgation of the Constitution (October 5, 1988).

⁴⁶ Until the end of this chapter on 5 April, 2004, Raposa/Serra do Sol still awaited ratification.

CHAPTER VI — SLAVE LABOR

Slave labor and super-exploitation of labor in Brazil

Cila Oliveira Barros and his wife, Ana Cléia Barbosa dos Santos, left their three children with relatives in their home state of Maranhão and went in search of work in southern Pará, where they had bollocks opportunities were plentiful.¹ Upon their arrival in Pará, they were contracted by a *gato*² to work on the *fazenda Cabeceiras*, where Cila was offered R\$130 for each *alqueire*³ of land he cleared. Ana Cléia was offered a job cooking for the workers in exchange for room and board. They were invited to spend the night in a local hotel, where their lodging and food costs would be covered until the following morning, when they would leave for the *fazenda*.

The next day, they were placed in a truck along with a group of other hired laborers and carted off to an unknown destination. “They threw us in the truck like we were sacks of rice”, Ana Cléia reports. “That’s when I started to suspect something was wrong.” And indeed, when the workers arrived at the *fazenda*, they discovered they had joined the ranks of thousands of workers before them who had been ensnared by false

promises of a living wage and decent working conditions. “We slept in tents with holes in them that let the rain through, and we had no clean water to drink. We either had to drink awful, contaminated water, or die of thirst” Ana Cléia said. According to Cila and Ana Cléia, there were about 100 workers at the *fazenda Cabeceiras* during the time they worked there.⁴

The Ministry of Labor’s Special Mobile Strike Force (*Grupo Especial de Fiscalização Móvel*) — a roving unit that conducts surprise inspections of properties accused of exploiting workers — raided the *fazenda Cabeceiras* in late September of 2003, while Cila and Ana Cléia were working there, but they were not able to free all of the workers on the *fazenda*. “There were two parts,” Ana Cléia explained, “the nice part and the ugly part. We were in the ugly part, which was down a long path, and there was no road to get there. The Strike Force came, but they only got as far as the nice part. Even there they found violations, people working without all their work papers in order. The Strike Force didn’t get to where we were.

¹ Except where otherwise noted, all information about Cila and Ana Cléia’s experience is based on their interview with a Global Justice Center researcher on September 29, 2003 in Marabá-PA.

² Employers typically do not deal directly with workers but hire them through recruiters known as *gatos* (“cats”).

³ A measure of land equal to 27,225m² in Pará; other regions measure *alqueires* differently.

⁴ Ministry of Labor statistics show that during the inspection carried out in September of 2003, 104 workers were found, of which forty-one were freed.

The other workers knew we were down there in the ugly part, but they didn't say anything to the Strike Force — they were too scared.” So Cila and Ana Cléia fled, leaving the fazenda at 3:00 a.m. and traveling twelve kilometers on foot until they reached Marabá, where they reported their experience to the Pastoral Land Commission (*Comissão Pastoral da Terra* — CPT), an organization associated with the Catholic Church that advocates for landless workers and is widely recognized for its national anti-slavery work.⁵

Cila and Ana Cléia's story is not an isolated one, but a characteristic example of a pervasive problem. Indeed, in the year 2003 alone, the Strike Force liberated nearly 5,000 workers from hundreds of fazendas.⁶ According to data collected by the CPT, through September of 2003, 199 cases of slave or exploitative labor conditions were reported, involving a total of 7,152 workers.⁷

In the classic example of modern-day slavery, wealthy landowners — usually in remote, rural areas — employ workers in degrading and dangerous conditions, with little or no compensation, indebted to their employers for the cost of food and work supplies, and without the ability or means to leave. In a typical scheme, employers hire workers to clear forested land, extracting mahogany or other valuable export resour-

ces, to convert the land to pasture for cattle, or to plant and harvest cash crops such as sugar cane. Recruiters, known as “gatos”, work for landowners (*fazendeiros*) by seeking out unemployed, often desperate workers from the poorest regions of the country and enticing them to work on fazendas with promises of high salaries and good working conditions.⁸ But once the workers arrive at their far-off workplace, they discover conditions far different from those that were promised.

According to Marcelo Campos, Adviser to the Inspections Unit of the Ministry of Labor (*Secretaria de Inspeção do Trabalho do Ministério de Trabalho e Emprego*):

*Modern slavery is extremely cruel and even more harmful than the classic model. Today, the slave is not a market good and does not have inherent value that his “owner” can use in market negotiations. He is not a market good, but at the same time, he is devoid of any of the qualities of citizenship. Above all, he is a disposable object to be used and then discarded. As such, no care need be taken with respect to what he eats, what he drinks, where he sleeps, or the state of his health. None of that concerns modern-day slave owners. If a worker ceases to be productive, simply throw him off the property.*⁹

⁵ On December 10, 2003, the Brazilian government awarded the CPT a National Human Rights Award in the category Eradication of Slavery - Institution.

⁶ According to data from the Inspections Unit of the Ministry of Labor, 193 properties were inspected in 2003, and a total of 4,932 workers were liberated. In October of 2003, the Federal Labor and Employment Prosecutor in Pará brought an action against the company Lima Araújo Agropecuária, owner of two properties, one of which — Estrela de Maceió — was cited in the CPT report. The action seeks R\$22 million in damages and is intended to serve as a warning to repeat offenders. The two properties were inspected four times between 1998 and 2002, during which visits a total of 180 workers were found to be working in degrading conditions. See *Trabalho Escravo no Sul do Pará: Pedido de 22 Milhões de Indenização*, document released by the CPT on Oct. 25, 2003.

⁷ *Casos 2003*, document prepared by the CPT National Office.

⁸ The extremely poor north/northeastern states of Maranhão and Piauí states supply the greatest number of slave laborers. See Campos, Marcelo Gonçalves. *O trabalho escravo e as políticas governamentais para sua erradicação*, Ministério do Trabalho e Emprego, Secretaria de Inspeção do Trabalho. Brasília, 2003.

⁹ *Id.*

Although Brazil officially abolished slavery in 1888, a modern-day system of forced labor continues to thrive in many parts of the country. Shortly after his presidential victory in late 2002, Luiz Inácio Lula da Silva pledged to make the eradication of slavery a national priority, announcing a National Plan to Eradicate Slave Labor (the “National Plan”) in early 2003.¹⁰ On October 22, 2003, the federal government, in conjunction with the International Labor Organization (ILO) launched a joint campaign called the National Campaign to Eradicate Slave Labor in Brazil (the “National Campaign”) as part of the National Plan.¹¹ These measures seek to build upon, intensify, and broaden measures established under Fernando Henrique Cardoso’s administration.¹²

While the problem of slave labor tends to be concentrated in Brazil’s frontier areas of the north (in the states of Pará, Rondônia, and Tocantins), central-west (Mato Grosso), and northeast (Maranhão), slave-like work conditions were reported in nine states in 2003, including those not traditionally associated with activities dependent on cheap rural labor, such as Rio de Janeiro and São Paulo.¹³

Ministry of Labor statistics indicate that in 2003, the Strike Force reached 14,518 workers, of which 6,683 were regularized and 4,932 were freed from slave-like conditions.¹⁴ These numbers are the greatest in the Strike Force’s history. The table below compares the results in 2003 with those of preceding years:

Year	Establishments Inspected	Workers Reached	Worker Registered	Workers Freed
2003	193	8385	6.683	5.010
2002	91	8.932	3.067	2.306
2001	195	6.660	1.690	1.174
2000	89	10.415	1.159	527

Source: *Quadro das Operações de Fiscalização Móvel (years 2000-2003)*, documents prepared by the Inspections Unit of the Ministry of Labor.

But the Strike Force’s energetic efforts to free captive workers and to report on the terrible conditions in which they are found are insufficient to put an end to the problem. Without an effective means to hold *landowners* accountable for exploitative practices, there is nothing to stop them from preying on the next group of workers in need of a job. Indeed, a culture of impunity has generated a serious problem of recidivism. According to a report published by the CPT:

The inefficiency of sanctions is proven by recidivism: notwithstanding inspections carried out in 1996, 1997 and 1998, the fines subsequently imposed, and even the cri-

¹⁰ *Plano Nacional Para a Erradicação do Trabalho Escravo* available at http://www.ilo.org/public/portugue/region/ampro/brasil/trabalho_forcado/brasil/iniciativas/plano_nacional.pdf, last accessed January 21, 2004.

¹¹ *Governo e OIT lançam campanha de combate ao trabalho escravo (Government and WLO Launch Campaign to Combat Slave Labor)* Carta Maior, Oct. 22, 2003, available at <http://agenciartamainor.uol.com.br/agencia.asp?coluna=curtas&id=2876>, last accessed January 21, 2004.

¹² Cardoso was Brazil’s president from 1995 through 2002. Among other anti-slavery measures established under his government was the creation of the Mobile Strike Force, discussed *infra*.

¹³ According to Pastoral Land Commission (Comissão Pastoral da Terra — CPT) statistics through September of 2003, 141 cases of forced or exploitative labor conditions were reported in Pará, 3 in Rondônia, 19 in Tocantins, 12 in Mato Grosso, 19 in Maranhão, 3 in Bahia, and 3 in Rio de Janeiro. See *Casos 2003*, document prepared by the CPT National Office. In addition to the states cited by the CPT, the Inspections Unit of the Ministry of Labor registered cases in São Paulo and Mato Grosso do Sul. It is important to note that what is referred to as a “case” is an accusation against a particular employer, which may - and typically does - involve a number of workers. According to data from the Inspections Unit of the Ministry of Labor, the Mobile Strike Force freed as many as 745 workers from a single fazenda in 2003.

¹⁴ Ministry of Labor statistics, *Quadro das Operações de Fiscalização Móvel 2003 Geral*.

minal cases opened, the *fazendas* Primavera (municipality of Curionópolis-PA), Boca Quente (Bannach-PA), Forkilha (Santa Maria das Barreiras-PA), and Estrela de Maceió (Santana do Araguaia-PA) were again caught using slave labor in the following months. The *fazenda* Maciel II, caught in April of 1999, is very near the *fazenda* Flor da Mata, which was caught by the Mobile Strike Force in 1997. That case was widely reported in the regional and national media, but even that didn't keep the *fazenda* São Salvador, in the same municipality, from employing slave labor, as the strike force discovered slave labor conditions there only five months later.¹⁵

One of the *fazendas* cited in this very excerpt of the CPT report — *fazenda* Flor da Mata — was again found in violation of labor laws in October of 2003, when the Strike Force freed fifteen workers from the property.¹⁶

Recidivism is a problem not only of employers, but also of workers themselves, who are often so poor that they take jobs even at the known risk of being exploited. Indeed, complaints on file with the CPT suggest that individual workers are ensnared over and over again. On June 23, 2003 for example, the CPT-Marabá registered the complaint of three rural workers, whose collective statement alleges: “The *gato* didn't like to let the workers leave the *fazenda*. The cook — under orders of the *gato* — threatened the workers, saying that if they complained or caused problems, he would ‘start shooting’, and he always carried a

gun.... Because of these conditions, [we] decided to escape.... In Marabá, [we] came to the CPT, since [the declarant Domingos] already knew about the CPT, having been rescued twice already by the Mobile Strike Force....”¹⁷

While the Mobile Strike Force has carried out hundreds of operations and freed thousands of workers since its inception in 1995, extremely few employers have been held responsible in a court of law. The Administration does not presently maintain an integrated database to track legal or administrative proceedings to which Ministry of Labor inspections may give rise. Plans for such a database are included in the National Plan.

Although Brazil's legal framework ostensibly provides for the punishment of those found guilty of using slave labor, the most potentially dissuasive laws — those involving criminal penalties, including imprisonment — are rarely invoked. Article 149 of the Brazilian Penal Code stipulates that it is a “crime against personal liberty” to “reduce someone to a condition analogous to slavery,” punishable by two to eight years of imprisonment and a fine;¹⁸ and article 207 establishes the crime of “enticement of workers with the aim of transporting them from one locality to another,” setting forth the penalty of one month to three years imprisonment and a fine.¹⁹

Nonetheless, courts have rarely heard cases brought under these provisions. Most claims alleging exploitative labor conditions — when they are brought at all — are

¹⁵ *Slave Labor in Brazil: How Much Longer?* Report published by the Pastoral Land Commission (CPT), available at <http://www.cptnac.com.br/campanhas/camp0002a.htm>, last accessed January 21, 2004.

¹⁶ Ministry of Labor statistics, *Quadro das Operações de Fiscalização Móvel* 2003 Geral.

¹⁷ Statement of Shirlei Sampaio, João Elói dos Santos and Domingos Dionísio Santana made at the CPT-Marabá on June 23, 2003.

¹⁸ Brazilian Penal Code, Ch. VI, § I.

¹⁹ *Id.*, Tit. IV.

brought under the relevant provisions of applicable labor laws (*Direitos Trabalhistas*). Among other difficulties, the appropriate jurisdiction in which to begin criminal charges has, until recently, been the subject of substantial debate. As a result, cases were bounced back and forth between the state and federal courts, each alleging its own incompetence to hear the criminal charges.²⁰ In this way, exploitative employers have, by and large, escaped criminal sanctions, and have merely been required to pay workers' salaries, back-pay, and benefits, and to register workers as formal employees, as required by the labor laws.

Federal Judge Flávio Dino de Castro e Costa, former president and director of the Federal Judges Association of Brazil and a current member of the 2002-2003 Ministry of Justice's Special Commission to Combat Forced Labor, has noted that "in infractions of this nature and magnitude, non-criminal sanctions are insufficient from an economic point of view.... The application of criminal laws is essential to avoid the application of a 'cost-benefit' analysis under which it is cost-effective to employ slave labor, since the worst that can happen is that the employer will incur economic sanctions (fines or moral damages)." ²¹

Indeed, the routine failure to apply criminal penalties means that for exploitative

employers, the risk of incurring economic sanctions is merely a cost of doing business.

It is worth noting, furthermore, that even the relatively less ominous civil actions for damages have been beleaguered by jurisdictional debates, and judicial decisions ordering the payment of meaningful civil fines are nearly as rare as criminal convictions. In November of 2002, after sentencing a *fazendeiro* in a public civil action brought in federal Labor Court to pay "indemnities," or damages, to a collective workers' fund,²² Labor Judge Jorge Vieira, of Parauapebas, Pará, explained why his decision was considered historic: "Until recently, the competence of the Labor Judiciary to decide cases involving moral damages was still being debated... but today there is no further doubt. There is a clear legal basis for ordering those who employ workers under a system of modern-day slavery to pay punitive and compensatory damages."²³

Although convictions in labor courts ordering fines for moral damages remain few and far between, 2003 witnessed several notable cases of this nature. On November 6, 2003, Labor Judge Manoel Lopes Veloso Sobrinho, from Barra do Corda, Maranhão, ordered Congressman Inocêncio de Oliveira, a Federal Deputy from the state of Pernambuco, to pay a civil fine of R\$ 530.000,00 for

²⁰ Telephone interview with Marcelo Campos, Adviser to the Inspections Unit of the Ministry of Labor, granted to the Global Justice Center on December 1, 2003. According to Mr. Campos, the majority view is now that federal courts are competent to hear such claims, although the nation's highest court — the Supreme Court (Supremo Tribunal Federal) — has yet to make a pronouncement on the issue.

²¹ *Step by Step: Legal Aspects of the Fight against Forced Labor (Passo a passo Aspectos jurídicos do combate ao trabalho forçado)*, Consultor Jurídico, June 9, 2003, available at <http://conjur.uol.com.br/textos/19396/impressao/>, last accessed January 21, 2004.

²² Because the public action was of a collective nature, the R\$60,000 indemnity was payable to a collective workers fund, the *Fundo de Amparo ao Trabalhador* (FAT), and not to individual victims, in accordance with Lei 7.347/85. The decision ordering collective damages does not preclude individual claims for damages arising out of the same set of circumstances.

²³ *The Law of the Jungle: Judge Fights Slavery in Pará (Lei na selva Juiz combate escravagismo com rigor no interior do Pará)*, Consultor Jurídico, Dec. 15, 2002, available at <http://conjur.uol.com.br/textos/15661/>, last accessed January 21, 2004 (quoting from interview as it appeared in the *Jornal do Brasil*).

moral damages as a result of the labor conditions found on his property, *Fazenda Caraíbas*, in rural Maranhão.²⁴ The action was brought by the Office of the Labor and Employment Public Prosecutor (*Ministério Público do Trabalho*), and the fine — if it is upheld — will be payable to a collective workers' fund.

In his opinion, Judge Veloso Sobrinho found that the Mobile Strike Force's inspection of Oliveira's property in March of 2003 confirmed reports that workers were being exploited in inhumane conditions, analogous to slavery, without adequate lodging, without adequate and sufficient food, in unhygienic and unhealthy work conditions, without water suitable for drinking or first-aid material, in violation of legal regulations."²⁵ (Emphasis in original)

The Strike Force Inspection Report included comments by inspection agents, excerpts of workers' statements, and photographs of the site. In their observations, the agents noted, *inter alia*, that:

During the inspection, we found workers lodged in unhygienic wood or clay huts, with thatched roofs, dirt floors, no lateral protection, and no toilets. The water used by the workers came from small, stagnant pools, was untreated, and was stored in recycled

containers previously used to store unknown products and not intended for domestic use.²⁶

We should note that to get to one of the huts where workers — including fifteen-year-old J.R.S.S.²⁷ — were living, the Inspection Agents and Federal Police officers had to mount on horseback to cross a river, as there was no alternative access. The workers living in the hut had no transportation of any kind (boat or animal), and to leave the area, they had to swim to the other side of the river.²⁸

During interviews with workers, we discovered that they did not receive a regular salary, just small advances. Only upon completion of the job would the workers to whom a balance was due — after subtracting advances, expenses for food, tools, etc. — be paid.²⁹

One of the “*gatos*” interviewed stated that “if any of the workers wanted to leave the *fazenda* while he was in debt for food expenses or the purchase of tools or boots, he would be required to stay and work until he had paid off the balance of the debt.”³⁰ Several workers noted that Inocência de Oliveira visited the *fazenda* on a monthly basis, staying for several days on each trip, during which time he “went around the *fazenda*, accompanied by [the foreman, Jeremias

²⁴ Case No. 00611-2002-010-16-00-0, *Vara do Trabalho de Barra do Corda/MA*. In a parallel action, Judge Veloso ordered Oliveira to ensure respect for the workers' basic labor rights or risk further fines of R\$1000 per day. Case No. 00611-2002-010-16-0, *Vara do Trabalho de Barra do Corda/MA*. See *Inocência é condenado por trabalho escravo*, Folha de São Paulo, Nov. 8, 2003 p. A13.

²⁵ Sentence, Case No. 00611-2002-010-16-00-0, *Vara do Trabalho de Barra do Corda/MA*.

²⁶ *Fazenda Caraíbas, Relatório de Fiscalização no Estado do Maranhão, 19 a 27/03/2002* (*Fazenda Caraíbas*, Inspection Report in the State of Maranhão, 03/19-27/03, *hereinafter*, “Inspection Report”), p. 6. Subsequent sections of the report include workers' testimony stating that the container used to store drinking water was printed with the words “container not for reuse.” See statements of “*gato*” Vicente da Silva Sousa and cook Francisca da Cruz Pereira Trindade, Inspection Report, pp.8-9.

²⁷ The adolescent's name has been reduced to initials, in accordance with privacy regulations regarding minors.

²⁸ Inspection Report, p. 7.

²⁹ *Id.*

³⁰ Statement of Edilson Diniz Ferreira, Inspection Report, p. 13.

Marcos da Silva], observing the workers, talking to everyone, checking on the work and living conditions and, finally, effectuating payments.”³¹

Congressman Oliveira has publicly denied any wrongdoing, notwithstanding the Strike Force’s findings — noted in Judge Veloso’s decision — to the effect that inhumane conditions analogous to slavery were, indeed, observed on his property.³² In an impassioned speech to the Federal Chamber of Deputies, he declared himself the victim of a groundless scheme to discredit him and to twist public opinion. And, in a startling display of contempt for the judicial process through which he had been tried and sentenced in the first instance, he characterized Judge Veloso’s decision as an unproven, false “accusation” that “denied [him] the right to a defense.”³³ Oliveira has said will appeal the decision. In the meantime, on October 8, 2003, the Federal Office of the Public Prosecutor brought criminal charges against the congressman,³⁴ as well as against the manager of the *Fazenda*

Caratbas, Sebastião César Marques de Andrade, a relative of Oliveira’s, for violations of articles 207, 203 and 149 of the Criminal Code.³⁵

Inocência de Oliveira was not the only public figure to be exposed for exploitative labor practices in 2003. Jorge Picciani, President of the Legislative Assembly of Rio de Janeiro State, and Leonardo Picciani, Jorge Picciani’s son and Federal Deputy from Rio de Janeiro State, are president and treasurer, respectively, of the company Agropecuária Vale do Seriá, S.A., which owns the *Fazenda Agrovas* in São Félix do Araguaia, Mato Grosso. In June of 2003, the Mobile Strike Force inspected the *Fazenda Agrovas* and reported that the vast majority of the fifty-six employees found working there were subject to a regime of “indentured servitude.”³⁶ During the inspection, the Strike Force regularized the work papers of fifty-five workers and liberated thirty-nine.³⁷ According to media sources, on August 21, 2003, the Regional Federal Prosecutor brought charges against

³¹ Statement of Jeremias Marcos da Silva, Inspection Report, p. 10; *See also*, Statement of Vicente da Silva Sousa, Inspection Report, p. 10. A common justification for failing to penalize *fazendeiros* for exploitative labor practices on their property is that the landowners were unaware of the work conditions, having delegated responsibility for the operation of the *fazenda* to the foreman. In this case, Judge Veloso held that “there is no substance to the argument that the requisite employment relationship did not exist, since the defendant recognized the employment relationship in records and through the payment of *verbas de rescisão* [amounts due at the termination of an employment relationship under employment laws]. This occurred after receiving notification by inspectors. The so-called “*gatos*”, or sub-contractors merely acted in the name of the actual owner of the fazenda, who was the employer in fact and in law.” Sentence, ACP-00611-2002-010-16-00-0, *Vara do Trabalho de Barra do Corda/MA*. Para17. Emphasis in original.

³² Sentence, ACP-00611-2002-010-16-00-0, *Vara do Trabalho de Barra do Corda/MA*, para.13. (“The *in loco* mission carried out by the inspection unit confirmed allegations regarding the exploitation of laborers in inhuman conditions, analogous to slavery, without adequate housing, without adequate and sufficient food, without healthy workplace conditions, without potable water or first aid materials....”) (Emphasis in original)

³³ Text of Inocência de Oliveira’s address to the Federal Chamber of Deputies on November 11, 2003. Available at <http://www.serratalhada.net/noticias/mostranoticia2.asp?noticia=noticia7.asp>, last accessed January 21, 2004. It should be noted that Judge Veloso’s decision specifically addressed — and discarded — arguments Oliveira advanced in his defense. *See* Sentence, ACP-00611-2002-010-16-00-0, *Vara do Trabalho de Barra do Corda/MA*, paras. 7-12, 17, 19.

³⁴ *Denúncia*, PGR No. 1.00.000.009077/-2002-60, of the Federal Office of the Public Prosecutor, Citizen’s Rights Division.

³⁵ *Idem*. p. 10-11.

³⁶ *Jorge Picciani é denunciado por exploração de trabalho escravo*, *Tribuna da imprensa online*, August 22, 2003.

³⁷ Ministry of Labor statistics, *Quadro das Operações de Fiscalização Móvel 2003 Geral*.

Jorge Picciani in a federal court (*Tribunal Regional Federal*).³⁸

In addition to the eye-catching prosecution of several public figures, 2003 witnessed another first in the fight against slave labor: On July 8, 2003, the Federal Chamber of Deputies voted to award R\$ 52,000 in damages to José Pereira, a rural worker who had escaped from the fazenda Espírito Santo in September of 1989. This decision marked the first time in Brazil's history that an individual was awarded damages for injuries suffered as a victim of slave labor.³⁹

While the possibility of censure for such public figures as Inocêncio de Oliveira and Jorge Picciani and the availability of individual damages awards represent progress towards ending impunity, it must be emphasized that the wide array of options to settle claims and the appeal of convictions continue to insulate powerful employers from the consequences of breaking laws intended to protect workers.

The National Plan outlines a multifaceted set of measures intended to put an end to the cycle of impunity. These measures are outlined according to six broad categories: General Actions; Improvements in the Administrative Structure of the Mobile Strike Force; Improvements in the Administrative Structure of Police Actions;

Improvements in the Administrative Structure of the Office of the Federal Public Prosecutor and the Office of the Labor and Employment Public Prosecutor; Specific Actions to Promote Citizenship and Combat Impunity; and Specific Actions to Raise Consciousness, Sensitivity and Training.

Among the General Actions, the federal government aims to pass PEC n° 438/01, a proposed constitutional amendment that would provide for the expropriation and redistribution of lands on which slave labor were found to be practiced.⁴⁰ Other General Actions include support for a number of other legislative measures, including Projeto de Lei n° 2.022/96, a bill to prohibit public agencies from entering into contracts with companies that “directly or indirectly use slave labor in the production of goods or services”; a bill to amend the Law of Crimes of Moral Turpitude to include the slavery-related crimes defined in Articles 149 and 207 of the Penal Code; and a bill to impose a fine of R\$ 530.000,00 per worker on persons found to have engaged in any of a series of activities characteristic of the use of slave labor.⁴¹

Other initiatives include measures to restrict credit available to employers who use slave labor, such as the publication of an official list that names companies accused

³⁸ *Jorge Picciani é denunciado por exploração de trabalho escravo*, Tribuna da imprensa online, August 22, 2003.

³⁹ In 1992, the CPT and the Center for Justice and International Law (CEJIL) filed a petition in the Inter-American Commission on Human Rights of the Organization of American States alleging that Brazil violated fundamental human rights with respect to José Pereira. The State and the petitioners agreed to a friendly settlement of the claim, which included Brazil's recognition of the existence of slave labor in the country and a commitment to combat the problem, as well as an agreement to compensate the victim José Pereira.

⁴⁰ Article 243 of the Brazilian Constitution already provides for the expropriation — without compensation — and redistribution of lands used for the cultivation of psychotropic drugs. The proposed amendment would expand the article so that lands on which slave labor were practiced would be subject to the same consequences. According to an article published in the *Folha de São Paulo* on Nov. 8, 2003, the proposed amendment has already passed in the Senate, see *Lista oficial vai mostrar empresas acusadas de explorar escravidão*, p. A13, and was still pending before the House at the end of the year. See *Trabalho escravo: Cidade de sul do Pará terá primeira vara em 2004*, Revista Consultor Jurídico, available at <http://conjur.uol.com.br/textos/23142/>, last accessed January 21, 2004.

⁴¹ *Plano Nacional Para a Erradicação do Trabalho Escravo, Ações Gerais*, available at http://www.ilo.org/public/portugue/region/ampro/brasil/trabalho_forcado/brasil/iniciativas/plano_nacional.pdf, last accessed January 21, 2004.

of such practices. The Human Rights Special Secretariat, the Department of National Integration, and Ministry of Labor published the first list in mid-November.⁴²

The establishment of these and other proposed measures is an important step in putting an end to what Francisco Fausto, President of the Supreme Court of Labor and Employment (*Tribunal Superior de Trabalho*) and recipient of the government's National Human Rights Award for his work towards the eradication of slavery,⁴³ has characterized as “the disgrace, the embarrassment that is slave labor in Brazil, which continues to flourish, even in the twenty-first century.”⁴⁴ By and large, however, the effects of the National Plan remain inchoate. In the words of the CPT's national leadership, “the much longed-for eradication of slavery requires concerted, determined, and insistent action by all, in support of victims; in prevention; in repression; in effective and dissuasive punishment; and in the urgent creation of viable and long-term alternatives.”⁴⁵

The National Plan contemplates the involvement and active participation of various public and non-governmental agencies in the struggle to eradicate slavery, an

important step in realizing the goals articulated by the CPT. But the majority of the measures outlined in the National Plan — even among those slated for “short term” implementation - remain to be carried out.

GLOBAL JUSTICE CALLS UPON THE BRAZILIAN GOVERNMENT TO:

- Establish a national counsel or forum responsible for the on-going evaluation of the National Plan, as contemplated in the Plan's Introduction, to ensure that its measures are being effectively implemented and its objectives met.

- Guarantee that criminal and civil complaints involving allegations of slave-like labor conditions are tried promptly, and that judicial sentences finding employers responsible for employing workers are carried out.

- Create and implement special measures for dealing with “recidivist” employers, including prohibiting them from entering into settlements with the government as an alternative to paying criminal or civil penalties.

⁴² See *Lista oficial vai mostrar empresas acusadas de explorar escravidão*, Folha de São Paulo, Nov. 8, 2003; *Trabalho escravo: Cidade de sul do Pará terá primeira vara em 2004*, Revista Consultor Jurídico, available at <http://conjur.uol.com.br/textos/23142/>, last accessed January 21, 2004.

⁴³ On December 10, 2003, the Brazilian government awarded Francisco Fausto a National Human Rights Award in the category Eradication of Slavery — Individual.

⁴⁴ *Trabalho Escravo: Francisco Fausto defende penas severas para infratores*. Consultor Jurídico, August 20, 2002, available at <http://conjur.uol.com.br/textos/12642/>, last accessed January 21, 2004.

⁴⁵ See *Nota Prêmios de DH para CPT*, document distributed by the CPT on December 8, 2003.

CHAPTER VII — RACIAL DISCRIMINATION

Racial Issues in Brazil: dilemmas and remedies

Discussing race relations in Brazil is not an easy task, as it often exposes a real ideological controversy. The disagreement usually counter poses the belief that there is a fully realized racial democracy in Brazil and the belief that this false image — or myth — is part of the problem and exacerbates racial inequality.

Among the studies that attempt to characterize racial relations in Brazil, the work of sociologist Oracy Nogueira is among the most valuable. Relying on a comparative model between Brazil and the United States, he exposes the particularities and the specificities of Brazilian racism and takes into account Brazil's unique experience.

Nogueira's study is not limited or rendered invalid by its academic nature. He suggests a definition of racial relations based on two distinct models according to which racial prejudice in Brazil is best characterized as "type-based" prejudice (*preconceito de marca*) whereas in the North-American model, racial prejudice is described as "origin-based" prejudice (*preconceito de origem*).

According to Nogueira, "Racial prejudice is a negative disposition, culturally conditioned, towards members of a population who are stigmatized due to their appearance or their ethnic ascendancy. When racial prejudice is expressed in relation to appearance — that is, when it is based on perceptible characteristics of the individual, such as physical traits, physiognomy, gestures, or accents — it may be described as "type-based" prejudice. Where the mere assumption that an individual is of a particular ethnic group suffices for the individual to suffer the consequences of prejudice, such prejudice may be described as "origin-based" prejudice"¹.

While the nature and effects of racial prejudice may at times be controversial, the need to address this issue is undeniable. The issue has been given high priority on the national agenda after the UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, South Africa.²

In September 2001, as a result of increasing pressure coming from the civil society, 20% quotas for Black people were

¹ Nogueira, Oracy: "Preconceito Racial de Marca e Preconceito Racial de Origem: Sugestão de um quadro de referência para a interpretação do material sobre relações raciais no Brasil", in O. Nogueira, *Tanto Preto quanto Branco: Estudo de Relações Raciais*. São Paulo. P. 79.

² Though Durban officially marks the introduction of racial issues into national agenda, other steps had been taken in that direction in the past, such as the adoption in 1995 of a presidential decree creating an Interdepartmental Committee to develop policies to valorize and promote the Black population.

adopted in the institutional structure of the Ministry of Agrarian Development and of the National Institute for Colonization and Agrarian Reform (Instituto Nacional de Colonização e Reforma Agrária — INCRA). Later, in December 2001, 20% quotas for Black people, 20% for women, and 5% for persons with disabilities were also instituted to in the Ministry of Justice. These quotas also apply to third parties subcontracting with these institutions³. Beginning in 2002, the Ministry of Foreign Affairs decided that twenty fellowships would be awarded to Afro-Brazilians to support their preparation for the entrance exam at the prestigious School of Diplomacy, Rio Branco Institute.⁴ Finally, on May 13, 2002, the Federal Program on Affirmative Action was created to develop and support initiatives for Black people in education.

The year 2003 witnessed several victories and landmarks events in the history of the Brazilian Black Movement. The Brazilian Black Movement also made some important gains in 2003. One achievement was the adoption of a system of federal quotas⁵ that established a 20% quota for Black people who achieved the best results above to the minimal required by universities.

Moreover, a bill creating 20% quotas for Black people for entrance exams for government employment and entry into public and private universities was introduced in the Brazilian Congress.⁶

As a general matter, affirmative action policies in Brazil have created quotas for Black people attending universities.⁷ According to the data provided by the Special Secretary for the Promotion of Racial Equality (*Secretaria Especial de Políticas de Promoção da Igualdade Racial — Seppir*) and by universities, there are at least seven state public institutions where quotas have been implemented. The State University of Bahia, the State University of Rio de Janeiro, the University of Brasília, and the Federal University of Paraná have adopted quotas.⁸ In São Paulo, two bills are being debated at in legislative assembly, one in favor and the other against the implementation of a quotas system in the universities of the State of São Paulo (the University of São Paulo — USP, The State University of São Paulo — Unesp, and the University of Campinas — Unicamp).⁹

Affirmative action measures, however, are followed by legal suits questioning the categories used¹⁰ or challenging the validity

³ Ministry of Agrarian Development: Decrees no. 33 — March 8, 2001; no. 202 — September 4, 2001 and no. 222 — September 26, 2001. Ministry of Justice: Decree no. 1156 — December 20, 2001.

⁴ The Rio Branco Institute is the Ministry of Foreign Relations' school of diplomacy. It carries out a public exam every year for new applicants. In order to be admitted into the program, a certain level of preparation is required. These fellowships are intended to support financially Afro-Brazilians to prepare for the exam. See Edict no. 1, 2003 — IRBr, dated May 13, 2003, in which the Institute Rio Branco and the National Council on Scientific and Technological Development (CNPq) established norms and allowed inscriptions for the Affirmative Action Program — “Vocational Fellowships or Grants for Diplomacy”.

⁵ Diversity in Universities Program, Bill 10.558, November 13, 2002.

⁶ See, for example, Edict no. 1, 2003 — IRBr, dated May 13, 2003, in which the Institute Rio Branco and the National Council on Scientific and Technological Development (CNPq) established norms and allowed inscriptions for the Affirmative Action Program — “Vocational Fellowships or Grants for Diplomacy”.

⁷ According to the data of the Center for Afro-Brazilian studies of the University Cândido Mendes and to information taken from the newspaper *Folha* of São Paulo, there are actually some 208 governmental and non-governmental affirmative action initiatives for Black people. 44,2% of these measures were adopted in the education area. (*Folha Online*, Education Section, January 19, 2004)

⁸ UnB Agência. See <http://www.unb.br/acs/acsweb/>.

⁹ *Idem*.

¹⁰ The criteria adopted by Brazilian universities to define race or color is self-declaration.

of the measures on the basis that they discriminate against other racial groups. For instance, in May 2003, the State University of Rio de Janeiro (UERJ) adopted a quotas system that guaranteed 40% of the available spots to Black or Mulatto people and 50% to students coming from public schools. A series of legal suits were then taken challenging the validity of this system. The National Confederation of Schools (Confederação Nacional dos Estabelecimentos de Ensino — Confenen) took its action up to the Federal Supreme Court.¹¹ However, in August 2003, the Legislative Assembly of the State of Rio de Janeiro modified the rules of the system and reduced the quotas for Black people and for students from public schools to 20%. As a result, the suit by the Confederation was considered invalid and was dismissed.¹² One important change should be emphasized: the new bill prevents Mulattos from benefiting from the quotas system. The fact that Mulattos have been left out of the new bill without any compensative measures is particularly alarming in a predominantly mixed country and with a high level of interracial couples where Mulattos are much more numerous than Black people.

This situation also led the State University of Mato Grosso do Sul, which instituted a quotas system for Black people, to prevent 76 persons from registering for the entry

exam alleging that the candidates *did not fulfill the requirements of the program* as shown by their photographs.¹³

A substantive discussion on the efficiency or the effects of quotas systems is beyond the scope of this article. It should be noted, however, that the adoption of affirmative action only in the education area as a response to the claims of the Black community in Brazil has revealed itself insufficient, as it does not go far enough.

One major problem with the emphasis on university education is that it does not respond to the needs of the great majority of the Black population who still struggle to complete their high school degree.

Racial prejudice encompasses much more than exclusion from university education and is best found in the crime sections of Brazil's newspapers every day.¹⁴ Blacks and Mulattos suffer terribly from police abuses especially when other social factors are added considered in addition to race.

The lack of initiatives in this area causes serious distortions in the everyday lives of Black people, since racist acts are only properly registered as such by the authorities when other social characteristics of the individual are involved.¹⁵ In other words, Black Brazilians with social status are protected by anti-racism laws far more than those without.

¹¹ Kamel, Ali: "Sumiram com os Pardos", O Globo, February 11, 2004, p. 47.

¹² Id. Bill no. 4.151, September 4, 2003. Section 1 provides that the bill does not apply anymore to Mulattos.

¹³ Kamel, Ali: "Sumiram com os Pardos", O Globo, February 11, 2004, p. 47.

¹⁴ The majority of police abuses victims are Blacks and Mulattos. See the Global Justice Center's thematic report "Summary Executions in Brazil", September 2003.

¹⁵ These social "characteristics" correspond to distinctive aspects determining racial prejudice in Brazil. They included characteristics of prestige, economic status, social recognition, profession, family name, and other subjective attributes determining who will suffer racial violence in Brazil. In the above-mentioned cases the victims stopped being Black and became dentist or son of "X". With such a discourse, a crime committed against an ordinary Black people becomes something natural that does not even reach the columns of the newspapers and that is often not registered as a racist act in police records.

An example of this is the case of musician Caetano Veloso's son who was the victim of racial discrimination in a shopping center in Rio de Janeiro. According to the police report, a man accusing him of selling drugs in the shopping center approached the young Veloso. The act was considered racist and authorities investigated to find out about the author of this crime¹⁶, resulting finally in the arrest of the suspect.

More than the racist event in itself, what deserves attention here are the repercussions of this case. While the response of the authorities was laudable, it is clear that their substantial efforts — and, indeed, their characterization of the crime as one of racism - were largely attributable to the fact that the victim came from the upper echelons of society and that his father is one of the most widely-acclaimed Brazilian musicians.

The way in which this crime was dealt with contrasts sharply with the treatment generally given to the cases of racism registered in police stations in Brazil.¹⁷ While 95% of the crimes involving racial violence are considered with complete disregard and carelessness¹⁸, the authorities laud this one single case that was inadvertently saved from the negligence affecting "ordinary citizens".

Thus, juxtaposing the measures taken in most of the cases of racism — disregard — with those received in some special cases — careful attention — allows us to conclude that

the treatment of racial discrimination cases in itself is a form of discrimination based on the social characteristics of the victims.

Fight against racism in Brazil is thus linked to broader social issues. In São Paulo for instance, five police officers killed a Black dentist, Mr. Flávio Freitas, because, relying on their "sixth sense", they thought the young man corresponded perfectly to a burglar. Such judgment calls are the result of discrimination and prejudice on which policing is based in Brazil.

Regretfully, the killing of a Black person by the police was not what caught the public's attention in this case. Events like these happen every day throughout Brazil and go unnoticed. The Freitas case received special scrutiny because he was a dentist. Apparently, a dentist has enough social recognition to command respect beyond his or her Black skin.

On the other hand, the gains made by the Black population in Brazil based on their historical claims are significant. Many of these claims are directly associated with the historical struggle for the redemption of their culture.

This is the case with the descendents of quilombolas¹⁹ who have long-established land claims. On November 20, 2003, on National Day for Black Consciousness, the government of the State of Pará gave them the titles of the new portions of lands situated in the cities of Acará and Oriximiná.²⁰

¹⁶ Racism is a crime in Brazil and can lead to imprisonment: Constitution of the Federal Republic of Brazil, section 42; Complementary legislation to the Criminal Code, no. 7.716 of January 5, 1989, section 1 and subs.

¹⁷ A good example of this is the prevailing situation in the State of Pará. According to the Black Municipal Council, from 1998 to this year, 300 cases of racism were sent to trial and none received a condemnation.

¹⁸ Carvalho, Jorge de: "Racial Violence in Brazil: Until When?" (*Violência racial no Brasil: até quando?*), *Correio Braziliense*, March 1, 2004, available at <http://www.correioweb.com.br>.

¹⁹ Quilombolas were runaway slaves forming forest communities starting in the 17th century in Brazil.

²⁰ "Governo do Pará dá títulos de duas outras áreas a Quilombolas", *O Liberal*, November 21, 2003, News Section.

These developments represent a significant victory for the past, the present and the future of Black communities in Brazil. Once legal recognition on the lands is given to the descendents of the Quilombolas, the Black community is relieved from some of its marginal status and redeems part of its dignity and recognition for its legitimate contribution to the social and national formation of Brazil.

It is only regretful that such a recognition comes so late and only in part. Indeed, only 36 of the 743 portions of Quilombolas' lands have been regularized some 116 years after the abolition of slavery in Brazil. This reflects the general disregard from which the Black population has historically suffered in Brazil and helps explain the context of racism in Brazil.

The Black and Mulatto communities in Brazil still have a lot of demands unmet. The difference today is the creation of some legal instruments and the fact that these issues have gained some national attention. Thus, it is not only that the concrete gains in ending racism are important, but that they succeeded

in ensuring a greater awareness about racial issues in Brazil that should create new demands and better responses.

GLOBAL JUSTICE CALLS UPON THE BRAZILIAN GOVERNMENT TO:

- Set up quotas systems in federal secondary schools.
- Present a draft law introducing quotas systems for afro-Brazilians in Brazilian universities, without prejudice to Mulattos or other racial groups.
- Set up compulsory minimum quotas to be filled up by Black or Mulatto people in private companies.
- Create more evening courses at universities, given the generally early need to work among the Black population.
- Regulate the Law no. 6,165/98, which deals with the legalization of lands of descendents of quilombolas in all territory.
- Intensify repression and action against racist behavior.
- Request special attention from the Judiciary to cases of racial discrimination.

CHAPTER VIII — SEXUAL ORIENTATION

Violence against gays, lesbians, bisexuals and transgenders

On December 18, 2002 José Carlos da Cruz, a 36 year-old transvestite known as “Zé Galinha,” was killed by a military police officer, Edras Marques Sampaio, in Manaus, the capital of the State of Amazonas.¹ According to Adamor Guedes, who serves as President of the Amazon Association of Gays, Lesbians, and Transsexuals (AAGLT), military policemen arrived at the scene soon after the crime, when the victim’s body was still “in plain view of witnesses and the accused officer.” Nonetheless, they did not catch Sampaio in the act of committing the murder.²

Guedes was dissatisfied with the steps taken by the police, so he petitioned to have the case moved forward by Marcelo Reis, the Secretary of the Human Rights Commission that operates within the State of Amazonas’ Legislative Assembly. Reis demanded

that the police take specific steps to resolving the case, such as interviewing witnesses and filing for preventive detention of officer Sampaio.³

Two days after the motion to detain Sampaio was filed, someone attempted to break into Guedes’ apartment. Approximately ten days later, Reis was the target of attempted murder. The newspaper “A Crítica” published an article claiming that the ex-Secretary was having breakfast on a bench at the corner of Maceió and Salvador streets, in Manaus, when he was approached by a man driving a Honda Titan motorcycle and wearing a black helmet.⁴ The man shot at Reis, who was hit in the left leg. According to sources close to Reis, the man said to him, “This is so that you never forget about us again.”⁵ Guedes also claimed to have been threatened in the same manner.⁶

¹ Electronic correspondence between Adamor Guedes, President of the Amazon Association of Gays, Lesbians, and Transsexuals (AAGLT), and Justiça Global, Jan. 19, 2003.

² Id.

³ Id.

⁴ Electronic correspondence between Adamor Guedes, President of the Amazon Association of Gays, Lesbians, and Transsexuals (AAGLT), and Amnesty International, Jan. 29, 2003.

⁵ Id. See also “Morte dentro do quarto,” (Death in the Bedroom), *A Crítica* (Manaus — Amazonas), Jan. 28, 2003, and electronic correspondence between Adamor Guedes, President of the Amazon Association of Gays, Lesbians, and Transsexuals (AAGLT), and Amnesty International, Jan. 29, 2003.

⁶ Electronic correspondence between Adamor Guedes, President of the Amazon Association of Gays, Lesbians, and Transsexuals (AAGLT), and Amnesty International, Jan. 29, 2003.

On January 10, 2003 Reis and Representative Mário Frota, the President of the Human Rights Commission in Amazonas, sought state protection for Guedes through Dr. Júlio Pinheiro, the head of Amazonas State's Department of Public Security. This request was denied.⁷ The AAGLT President was only able to ascertain police protection approximately one month after filing the initial request.

*On January 27, 2003 Reis was found dead in his home, located in Manaus's Dom Pedro I neighborhood.⁸ The circumstances surrounding his death have led friends and family members to suspect that he was poisoned. Reis was seen late on the evening of January 26 with two strangers in a bar who forced him to drink a "strange liquid."⁹ The newspaper *A Crítica* confirmed that Reis had left his house to meet some friends late at night on January 26. It also reported that he had called Wilson Marques, a lieutenant of the military police who was on duty at 3:00am that day, to report that he was forced to drink a liquid by two unknown men, one of whom was armed.¹⁰ According to the newspaper, Reis relatives had claimed that Reis was not well during throughout the day on January 26, and Marques told the paper that, "At 6:00pm he called me again, saying that he had stomach pain, probably caused by the drink."¹¹ In accordance with depositions provided by the victim's friends and family members, media sources have reported that*

authorities in the Department of Public Safety, and even Representative Frota, President of Amazonas's Human Rights Commission, doubt that Reis was a victim of poisoning.

*However, Representative Frota initially did not dismiss the possibility that the ex-Secretary had been a victim of poisoning. According to the an article published by *A Crítica*, on January 28, 2003, Frota stated that he, along with the victim's friends and family, believed that Reis, his advisor, has been poisoned.¹² Only on January 29 did Frota negate his earlier claim, and *A Crítica* published information in which Frota affirmed his belief that Reis has not been poisoned, but that his advisor has been a hypochondriac.¹³*

The murder of transvestite José Carlos by a military policeman and the mysterious death of his lawyer, Marcelo Reis, as described in the account above, draw attention to the innumerable instances of discrimination and violence that are committed against homosexuals. These tragedies also demonstrate the flagrant inaction by public authorities who are charged with preventing these crimes and punishing those responsible for them.

Despite the fact that there are numerous cases of violence against homosexuals perpetrated on a regular basis, infrequent investigation into these crimes leads to an understated view of the problem in police records. Furthermore, the available statistics

⁷ Id.

⁸ "Morte dentro do quarto," (Death in the Bedroom), *A Crítica* (Manaus — Amazonas), Jan. 28, 2003.

⁹ "Morte dentro do quarto" (Death in the Bedroom), *A Crítica* (Manaus — Amazonas), and "Versão sobre a morte de assessor surpreende" (Surprising Tale of Advisor's Death), *A Crítica* (Manaus — Amazonas), Jan. 28, 2003.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Account taken from the report on "Execuções sumárias no Brasil (1997-2003)" (Summary Executions in Brazil (1997-2003)).

are almost exclusively based on media reports or figures provided by organizations that run hotlines for victims.

The Center for the Study of Public Security and Citizenship at the Cândido Mendes University in Rio de Janeiro has published research in this area under the supervision of Professor Silvia Ramos.¹⁴ Using data from the first 500 calls attended by the Gay Legal Hotline (Disque Denúncia Homossexual)¹⁵ in Rio de Janeiro, Ramos found that a large proportion of homosexual victimization occurs in the form of abuse that can be classified as “hate crimes.”¹⁶ These crimes are evidenced by the prejudice and intolerance that homosexuals are subjected to regularly.¹⁷

The research findings classified reported crimes in three broad categories:

A) Almost a third of the instances of violence (29.8%) occurred in the victim’s home or neighborhood, indicating that the perpetrator was a relative or acquaintance of the victim. Various forms of criminal behavior that lacked a financial motive fell within this category, such as threats by relatives of one of the partners, parents who

beat their adolescent children, domestic violence between partners, disputes of inheritance, and neighborhood fights.

B) The second grouping of homophobic crimes in the results of Ramos’s research is that which encompasses crimes for monetary gain. In these instances, a gay male is a victim of professional criminals who are frequently organized in groups and who typically identify themselves as police officers. The most common crimes are extortion (10.3%), assaults or robberies (6.6%), and “Good Night Cinderella”¹⁸ (5.4%).

C) Lastly, a large portion of violence against homosexuals can be classified as “hate crimes.”¹⁹ These include acts of discrimination (20.2%) in stores and other businesses (such as not allowing entry or providing poor service) as well as in schools and the workplace (by firing employees). This category also covers physical abuse (18.7%) and violence that results in murder (6.3%).²⁰ The importance of situating these instances of violence in a “hate crimes” category lies in the necessity of understanding homophobia as one of the many forms of intolerance (such as gender, ethnicity, age, religion, social class, etc.).²¹

¹⁴ Silvia Ramos is Coordinator in the Center for the Study of Public Security and Citizenship’s Minorities and Citizenship project at the Cândido Mendes University in Rio de Janeiro.

¹⁵ The Disque Denúncia Homossexual hotline was one of the results of a working group established in the Reference Center Against the Discrimination of Sexual Minorities within the Research and Citizenship section of the Department of Public Security of the state of Rio de Janeiro. To set up the hotline, which has been in operation since January 1999, the Center collaborated with various groups that work to defend gay rights in Rio de Janeiro.

¹⁶ For an evaluation and history of the project, reference the Hate Crime Network (<http://www.hate-crime.net>). For a discussion about international initiatives against same-sex partner abuse, see the Anti-Violence Project (<http://www.lambda.org>).

¹⁷ Ramos, Silvia. “Minorias e Prevenção da Violência” (Minorities and Preventing Violence). Rio de Janeiro, 2002. <http://www.cesec.ucam.edu.br/publicacoes/textos.asp>.

¹⁸ This crime involves adding tranquilizers or other drugs to the drink of a victim, who then unknowingly gives the perpetrator credit cards, keys, and other valuables. The victim typically does not resist the theft and many times is not even aware of it for hours afterward.

¹⁹ For an evaluation and history of the project, reference the Hate Crime Network (<http://www.hate-crime.net>). For a discussion about international initiatives against same-sex partner abuse, see the Anti-Violence Project (<http://www.lambda.org>).

²⁰ Careful attention must be paid to the instances of reported murders, as some of them are linked to drug-trafficking. However, even in those cases, the victim’s sexual orientation (similar to social class, race, etc.) could be an important element of the crime.

²¹ Ramos, Silvia. “Minorias e Prevenção da Violência” (Minorities and Preventing Violence). Rio de Janeiro, 2002. <http://www.cesec.ucam.edu.br/publicacoes/textos.asp>.

A related study²² was organized in partnership between the Center for the Study of Public Security and Citizenship at the Cândido Mendes University, the Rainbow Group for Homosexual Awareness, and the Social Medicine Institute of the University of Rio de Janeiro. The project also benefitted from the participation of the Eighth GLBT²³ Pride Parade in 2003.²⁴ The results confirmed that the crimes committed against homosexuals included instances of discrimination, actual offenses, and threats.²⁵

About 60% of those interviewed claimed to have already been victims of some form of violence motivated by their sexual orientation. Among the gay men interviewed, about 16.6% reported having suffered physical abuse related to their homosexuality, of whom the most victimized were the transvestites and transexuals (42.3%), followed by gay men (19.5%).²⁶

Around 56.3% of the interviewees confirmed that they had already been victims of verbal abuse related to their homosexuality. Within this group, the transgendered people were the most victimized (65.4%). The high incidence of verbal aggression against people across the spectrum of sexual minorities (gays, lesbians, transexuals, bisexuals, and transvestites) greatly surprised researchers. These circumstances highlight the consistently high level of impunity where verbal homophobia is at issue, coupled with the absence of criminal

penalties for offenses targetted against homosexuals. These acts are generally considered tasteless jokes and nothing more.²⁷

With respect to the “Good Night Cinderella” crimes, about 5.2% of those interviewed in the study suffered this offense. Notably, this group only included gays and bisexuals, as there were no instances of lesbian or transexual victims among the study participants.²⁸

The results of the research conducted with participants from the GLBT Pride Parade in Rio 2003 emphasized the vulnerability of Brazilian gays, lesbians, transexuals, and transvestites in the face of violence and discrimination: “The experience of being discriminated against socially seems to be almost inherent in homosexual identities, mainly among transgendered people, given that more than half of our sample reported having suffered various types of abuse, especially discriminatory verbal abuse in public, at work, at school, etc., solely as a reaction to their sexual orientation or identity.”²⁹

BRAZILIAN GOVERNMENT’S DRAFT RESOLUTION ON HUMAN RIGHTS AND SEXUAL ORIENTATION

On April 17, 2003 the Brazilian government presented the “Draft Resolution on

²² The study utilized data accumulated through a survey covering 43 questions (of which about eight were open-ended), and its aim was to collect as many statistics as possible within a three-hour period. About 468 surveys were completed.

²³ GLBT is the acronym used for Gays, Lesbians, Bisexuals, and Transgendered people.

²⁴ According to estimates by the Rainbow Group, the Eighth GLBT Pride Parade held in Rio de Janeiro on June 29, 2003 was attended by 300,000 people.

²⁵ Politics, Rights, Violence, and Homosexuality: Eighth GLBT Pride Parade — Rio — 2003/Coord: Sérgio Carrara, Sílvia Ramos, Márcio Caetano. Rio de Janeiro: Pallas, 2003.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ Id.

Human Rights and Sexual Orientation” at the 59th Session of the United Nations Human Rights Commission. The resolution affirms the universality of human rights, including the basic principle that members of the GLBT community are entitled to the same human rights as all other people. This document signifies an important step forward in the area of GLBT rights at the global level.

SOME OF THE MOST IMPORTANT FEATURES OF THE DRAFT RESOLUTION ARE AS FOLLOWS:

“Reaffirming that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein without distinction of any kind (...) Expresses deep concern at the occurrence of violations of human rights in the world against persons on the grounds of sexual orientation (...) Requests the United Nations High Commissioner for Human Rights to pay due attention to the violation of human rights on the grounds of sexual orientation.”

The Brazilian proposal was the target of passionate disputes, and its detractors attempted to block it from being debated and subsequently put to a vote. However, with the support of 22 countries, consideration of the draft resolution was postponed until the 60th Session of the Human Rights Commission in 2004.

The debate at the U.N. over the “Draft Resolution on Human Rights and Sexual Orientation” also unleashed the mobilization of support worldwide for the Brazilian proposal. In December 2003 a workshop on “Constructing an International Strategy for Sexual Orientation: the U.N. Human Rights Commission and Future Horizons” was held in Rio de Janeiro. Non-governmental organizations (NGOs) from 18 different countries and around 36 participants took part in the project. The principal decision to come out of the experience was to hasten the process of making the world community sensitive to the pertinence, importance, and necessity of staging large-scale shows of support for the Brazilian resolution. One of the concrete steps outlined was the creation of the Brazilian Committee for the Support for the Resolution on Human Rights and Sexual Orientation. Technical support for this committee has been provided by the Brazilian Interdisciplinary AIDS Association, and direct involvement has been pledged by: Grupo Antra (Brazilian Association of Transgendered People), Dignidade (Dignity), Grupo Arco Íris (Rainbow Group), Édson Nérís Institute, Movimento D’Ellas, Nuances e Rede Feminista de Saúde (Feminist Health Network). In addition, the committee received support from the National Council for Combatting Discrimination, the Brazilian League of Lesbians, and the International Lesbian and Gay Association (Brazil Chapter).³⁰

The committee, in partnership with other human rights NGOs, organized a large campaign to support as many public demonstrations as possible so as to exert domestic

³⁰ Electronic correspondence between Centro de Justiça Global and Beto de Jesus, Coordinator of the Édson Nérís Institute, April 15, 2004.

and international pressure to support the U.N.'s consideration of Brazil's draft resolution. Among the many different accomplishments of these initiatives, especially worth noting are the letters of support sent by Centro de Justiça Global (Global Justice Center) and CONECTAS to the offices of all of the foreign diplomatic missions in Brazil.

Despite the massive collective efforts in support of the Brazilian draft resolution, during a meeting of the UN Human Rights Commission in 2004, Brazil once again decided to postpone its presentation. In their defense, Brazilian officials claimed that there was still insufficient support by other countries to pass the resolution.

CHAPTER IX — HUMAN RIGHTS DEFENDERS

On the Front Line: Human Rights Defenders in Brazil

“Congratulations you murderers, all of you from that criminal organization known as pastoral prison-work (pastoral carcerária) are responsible for the murders, tortures, rapes and sexual violence to which our children, friends, mothers and brothers and sisters are subjected.

You all are a nauseous gang of faggot pedophiles, son of a bitch criminal defenders, I hope that you pass along this e-mail to all of you that corrupt young children (Dioceses) and that this homosexual filth (Amnesty International) and to the rights of the “humans” that defend criminals, a race of sons of a bitch; we initiate this week a crusade against you all, and we won’t stop until we institute the death penalty and torture for rapists and murders, we are going to lynch these jerks, and put you in jail for being apologists for crime, you hypocritical jerks.

We are going to start a war against all those who defend these bandits, we are going to empty out the churches and if necessary we are going to attack that group of defenders of crime and sodomy.

It’s about time that the public free itself from the fucking church and its dogmas, even if we have to use force and violence to do so, since God is on the side of just people

and against you miserable priests and pastors that promote conformity and hypocrisy, churches are the world’s cancer.”¹

The above text is a reprinting of an email received by the Pastoral Prison-work of São Paulo days after the brutal murders of upper-middle class youth Liana Friedenbach and Felipe Caffé², in Embu-Guaçu, São Paulo. It reflects a common sentiment within Brazilian society that associates human rights defense with defending criminals and feels that “a good criminal is a dead one.”

Episodes such as the lamentable murders of this young couple, added to the high crime rates in the majority of Brazilian cities and the lack of confidence in the courts, result in generalized panic and a widespread feeling of insecurity. The outcomes are calls for stricter sentences, support for police violence and increasingly calls for “strong” action, something that is understood as support to human rights violations by public authorities.

While in the sixties and seventies the arbitrary state violence and curtailing of civil liberties turned the public against the authoritarian regime in the name of human rights, the rise in crime in the eighties and nineties, “under a democratic regime, led

¹ Official letter GJ/RJ no. 172/03, sent to the UN Special Representative on Human Rights Defenders.

² “Before dying, student was held in captivity,” Folha de S. Paulo, 12 November, 2003.

individuals and groups to turn against the defense of human rights, under the pretext that they help criminals and delinquents more than victims.”³

According to political scientists Paulo Sérgio Pinheiro and Paulo Mesquita Neto, “this turnaround was spurred by the fact that, after the political transition, the defense of human rights included the poor, non-white majority of the population. On the other hand, those sectors identified with ideological authority, which lost their grip on power, used the denouncement of human rights supporters as a pretext, in name of the effort against crime and insecurity, to attack the initiatives of human rights supporters. The electronic media, especially radio talk-shows that are apologists for violence, the electoral campaigns and the emergence of fundamentalist religious movements, in conjunction with the catholic church, played a crucial role in portraying the human rights movement as being harmful to society”.⁴

The murders of upper-middle class youngsters in November 2003 mobilized politicians, artists, people of faith, and the press in favor of a reduction of the legal age and the implementation of the death penalty, in a frontal attack on human rights.⁵

In this hostile context, human rights defenders in Brazil have to choose when to publicly speak out and protest. In some cases, the defense and promotion of human

rights has to be carried out in the shadows, since publicly speaking out can bring about threats and even physical attacks and assassinations.⁶

In Brazil, activists are killed, tortured, “disappeared” and falsely accused of crimes. In some cases, their families and friends are also targeted. The majority of the assassinations, acts of violence and intimidations committed against them are practiced by police forces, death squads and hired gunmen.

The lack of State commitment to deal with the vulnerability of human rights defenders is evident in the failure to investigate threats or assassinations, as well as in the lack of protection offered to threatened human rights defenders. This negligence resulted in the assassination of judge Alexandre Martins Filho on March 25th, 2003 in Vila Velha, Espírito Santo, among many others.⁷

State and federal authorities were aware of the threats against the judge. In July 2002, the Forum React Espírito Santo (Forum Reage Espírito Santo) and the Global Justice Center had already registered the death threats against judge Alexandre Martins Castro Filho and his colleagues Carlos Eduardo Ribeiro Lemos and Rubens José da Cruz, in the report: “Human Rights Crisis in Espírito Santo: threats and violence against human rights defenders”⁸, which was handed to the President at that time, Fernando Henrique Cardoso.

³ Pinheiro, Paulo Sergio and Mesquita Neto, Paulo. *Direitos Humanos no Brasil: perspectivas no final do século*. In: Cinquenta anos da Declaração Universal dos Direitos Humanos. Pesquisas, n. 11. Fundação Konrad-Adenauer, 1998, p.57.

⁴ Pinheiro, Paulo Sergio and Mesquita Neto, Paulo. Id.

⁵ Passeata Contra a Violência Reúne 4000. Folha de S. Paulo, 23 November 2003.

⁶ Licença para matar. Cavallaro, James & Simões, Renato. Caros Amigos, April, 2002.

⁷ “Summary Executions in Brazil (1997-2003)”. Global Justice Center, September, 2003.

⁸ Justiça Global et. al, “Human Rights Crisis in Espírito Santo: threats and violence against human rights defenders,” June to October, 2002.

Judge Alexandre was part of the Federal Government's Special Group that investigated organized crime and the death squad Scuderie Detive Le Cocq in Espírito Santo. He was assassinated after the Federal Police stopped the protection that had been conferred to him.⁹

Special attention should also be given to human rights defenders who work in rural areas. Land conflicts in Brazil between large estate owners (*latifundiários*) and farmers have taken place for years. In the last twenty years, however, with the rise of the Landless Workers Movement (Movimento dos Trabalhadores Rurais Sem Terra, MST) and the intensification of the work of the Pastoral Land Commission (Comissão Pastoral da Terra, CPT), the backlash by the large estate owners has increased.

Between 1985 and 1989, the years that the Democratic Rural Union (União Democrática Ruralista, UDR) was most active in organizing large estate owners, a record of 640 rural deaths took place.¹⁰ The ranchers, united under the pretext of defending their land from "invaders", hired gunmen to execute rural workers. The Pastoral Land Commission reports that, between 1985 and 2000, 1,280 rural workers were assassinated in Brazil.¹¹

Since the early 1990s, the number of rural workers assassinated per year has started to decline. This was a result of a change in the strategy of the ranchers, who

decided, according to the Pastoral Land Commission, to target the leaders of social movements that struggle for land reform.

Impunity is the rule in these cases. Out of 1,280 assassinations, only 121 were tried. Among the architects of the crimes, only fourteen were tried, seven of which were convicted. Four intermediaries have been tried, two of them convicted. And out of the 96 assassins tried, only 58 were convicted.¹²

The State does not act, even when the death is announced beforehand. In the cases of assassinations of human rights defenders who work in rural areas, 90% of the victims had been threatened, and reported those threats to authorities. But without protection they were executed. The result of this trend of insufficient State responses is fear and intimidation of those who raise their voices against human rights violators who protect powerful interests.

The intimidation of and attacks on human rights defenders and the failure to investigate these crimes should be closely analyzed, since these attacks seek to deflect responsibility for the original human rights violation, to disable investigations and to silence human rights defenders.

As a result of a recent mobilization of human rights organizations around the issue of human rights defenders,¹³ the Brazilian government is starting to respond to the issue.

⁹ On 10 October 2002, the President of the State Court of Espírito Santo, chief judge Alemer Ferraz Moulin, received an official correspondence from Federal Police Chief José Paulo Rubim Rodrigues, coordinator of the "Special Group", stating that "following the end of the first phase of the work of the Special Mission in Espírito Santo, the Director of the Federal Police Department has decided to reduce the presence of the Task Force, making it impossible to continue offering security to the judges Alexandre Martins, Carlos Eduardo Lemos and Rubens José da Cruz, as of the 11th of this month". Correspondence 169, 10 October 2002.

¹⁰ *Veja* magazine, 26 March, 2003, in an article titled "Radiografia do conflito fundiário" discusses the increase of land conflicts.

¹¹ Relatório sobre Crimes no Latifúndio. Comissão Pastoral da Terra and others. August, 2003.

¹² Relatório sobre Crimes no Latifúndio. Comissão Pastoral da Terra and others. August, 2003.

¹³ The Brazilian rights groups Terra de Direitos, Justiça Global, Tortura Nunca Mais/RJ and Cejil participated in the two editions of the Latin American Consultation on Human Rights Defenders, which took place in 2001 and 2002, respectively in Mexico and Guatemala.

Continuing the discussion initiated at the end of the previous administration, in May of 2003, the current Secretary of State of Human Rights, Minister Nilmário Miranda, set up a working group¹⁴ mandated to discuss the defense and protection of human rights defenders for a period of four months. The group included the participation of human rights organizations, including Global Justice.

From the working group emerged the National Coordinating Body for Human Rights Defenders (*Coordenação Nacional sobre os Defensores de Direitos Humanos*)¹⁵, of which Global Justice is a member. The mission of this Coordinating Body is to implement similar bodies at the state (province) level in six pilot states. Its work resulted in the draft of a bill establishing a Special Project for Human Rights Defenders and a Protocol of Measures to Protect Human Rights Defenders.¹⁶

The National Coordinating Body, however, has not yet moved ahead in organizing state coordinations¹⁷ or in providing meaningful, effective protection to human rights defenders who receive threats. The National and Regional Coordinating bodies do not have specific budget allocations, a fact that makes its implementation virtually impossible. The plan of action envisaged trips to the pilot States and the realization of training seminars for police officers. The

second weakening point is that the National Secretariat for Human Rights has no control over the Federal Police, which operates under the jurisdiction of the Ministry of Justice. Often there is no contact or collaboration between the Secretariat and the Federal Police to protect human rights defenders under threat or to carry out full investigations.

It is worth noting that the first human rights defender to be offered protection by the National Coordinating Body, lawyer Valdênia Paulino, was forced to leave Brazil in November 2003 due to the fragile protection she had been offered. Valdênia worked at the Human Rights Center of Sapopemba, in the suburbs of São Paulo. In over ten years of work there, she campaigned against police corruption and police violence in the region. This was not the first time that she had to leave the country as a result of threats.

Ana Maria Santos, president of the Human Rights Forum of Santo Antônio de Jesus, in the state of Bahia, had the courage to denounce death squads formed by military police in the area. She was also forced to leave the region after receiving death threats and no State protection. Ana organized a visit by the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions in September 2003 in which the Rapporteur interviewed relatives of victims and survivors of this death squad. After the Rapporteur's visit, which resulted in the imprisonment of two

¹⁴ Administrative rule 66, 12 March, 2003, from the Special Secretary of Human Rights. President of the Republic.

¹⁵ Resolution No. 30 of 25 June, 2003, published in the Official State Newspaper (*Diário Oficial da União*) of 24 June, 2003, p. 3.

¹⁶ This draft bill should be presented to Congress by Congresswoman Iriny Lopes, member of the Chamber of Deputies' Human Rights Commission.

¹⁷ This is also a problem identified in yet another government initiative. The Permanent Campaign Against Torture, carried out in partnership between the government and the National Movement of Human Rights (*Movimento Nacional de Direitos Humanos, MNDH*) has received constant criticism due to its almost exclusive focus on forwarding denunciations, thus becoming rather inefficient. The Campaign's report refers to the lack of budgetary allocation to State Coordinations. Consequently, implementation becomes an almost impossible endeavor.

military police officers, the threats against Ana intensified and she was eventually forced to leave the city and her work. The Global Justice Center formally requested protection¹⁸ for her, but at the time of this report she had not received any sort of protection by the State.

The vulnerability experienced by Valdênia and Ana demonstrates just how much the Brazilian government needs to move forward in order to consolidate an effective system of protection of human rights defenders and promotion of their work.

In 2003, the Global Justice Center sent several reports of human rights violations against human rights defenders in Brazil to the UN Special Representative on Human Rights Defenders, Ms. Hina Jilani. A summary of these cases can be found in the chapter “Brazil and International Mechanisms for the Protection of Human Rights”.

GLOBAL JUSTICE CALLS UPON THE BRAZILIAN GOVERNMENT TO:

- Effectively implement the National Council to the Protection and Promotion of Human Rights Defenders.

- Implement of the State Councils of Protection and Promotion of Human Rights Defenders.

- Introduce a Draft Law establishing special protection to human rights defenders.

- Allocate specific budgetary resources to the actions foreseen in the “Protocol of Measures aimed at the Protection of Human Rights Defenders”.

- Assure impartial and thorough investigations in all cases of threats, harassment or murders of human rights defenders.

- Fulfill the cautionary measures determined by the Inter-American Commission on Human Rights regarding human rights defenders whose lives are in danger.

¹⁸ Official Correspondence GJ/SP no. 46/03, sent to the National Secretary of Human Rights on 3 October 2003.

CHAPTER X — IMPUNITY AND THE JUDICIARY

Arbitrariness and inconsistencies in the Brazilian Judiciary

“Brazil has a judicial system that exists to protect certain people and persecute others.” This statement was made by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions during her visit to Brazil in September of 2003. She strongly criticized the impunity in Brazil and emphasized that the most shocking aspect of the country was “the deafness and slowness in the (Brazilian) courts.”¹

Asma Jahangir’s statements provoked a confrontation between the Executive and Judicial Branches over her recommendation, to be presented in the 60th Session of the UN Commission on Human Rights in April of 2004 in Geneva, that the Special Rapporteur on the independence of judges and lawyers undertake a mission to Brazil soon.²

The Executive Branch agreed with the Special Rapporteur’s assessment, while judges from higher courts strongly criticized the idea. This disagreement has renewed discussion about the independence and external control of the Judiciary, destabilizing the negotiations about judiciary reform that have been underway in the Brazilian Senate.

Controversy aside, impunity is the result of the multiple failings of the Brazilian government apparatus. Judges, by law, have a passive function, meaning that they act in response to the actions of private parties or the State, offering judgments settling disputes. However, this alone does not justify the lethargy, the negligence and the bias with which the Brazilian Judiciary has acted. On the other hand, it is necessary to take note of the fact that laws are not created by judges, but rather by legislators. The laws are, in many cases, flawed, omitting things and guaranteeing rights for only certain parts of society. At the same time, the Executive controls the State apparatus, and is responsible for keeping watch over the workings of State institutions, avoiding corruption and incompetence.

Without a doubt, the independence of judges is imperative and should be defended. The Judiciary, along with other branches of government, should be bounded by principles of transparency and public interest, and should also be subject to oversight.

It is worth reiterating that while other factors contribute to impunity in Brazil, the Judiciary is directly responsible for ending

¹ “As críticas da Relatora da ONU”. Folha de S. Paulo, October 10, 2003; and “Relatora da ONU critica lentidão da justiça”. Folha de S. Paulo, October 3, 2003.

² The report of the UN Special Rapporteur on Extrajudicial, summary or arbitrary executions can be retrieved from http://193.194.138.190/pdf/chr60/7add3AV_F.pdf

its practice, and is at fault for not acting with the required promptness, impartiality and efficiency.

We emphasize that human rights crimes and the impunity that the perpetrators enjoy is enabled by the fact that victims of rights violations are usually also victims of social exclusion.

The Judiciary should be balanced and quick, and should seek to effectively punish rights violators, prioritizing public over personal interest. After all, the role of judges is not only to take decisions, but also to defend fundamental rights of citizens and fulfill their need to be treated equally, advance life and human dignity without exception.

The following cases show the necessity to widen the debate over the performance of the Judiciary and deepen the analysis about the democratization of the system.

JOÃO CANUTO DE OLIVEIRA, PARÁ

On May 22 and 23, 2003, in Belém, Pará, two large landowners were tried under suspicion of having arranged the assassination of João Canuto de Oliveira, president of a rural laborers union in Rio Maria, Pará, in 1985. The “Canuto case” is emblematic of the situation of rural laborers in this region of Brazil.³

The assassination of João Canuto de Oliveira on December 18, 1985 was as tragic

as it was avoidable. Since the 1970s Oliveira lived with his wife and six children in the Rio Maria region, where he worked on a large property of a rancher. Oliveira was an important figure in criticizing the ranchers and their threats and attacks on rural laborers during a period of strong tensions between ranchers and rural workers.

João Canuto had reported the death threats that he received on December 12 and 13, 1985. No measures were taken to protect his life and he was assassinated five days later with 18 bullets by two hired gunmen who were employed by a group of local ranchers.⁴

In 2003, more than 500 rural laborers traveled from Rio Maria to the capital (Belém, over 800 km away) and camped in front of the court house to follow the judgment.

The defendants, Vantuir Gonçalves de Paula and Adilson Laranjeira, mayor of Rio Maria at the time of the crime, were unanimously found guilty, with aggravating circumstances; only two voted for mitigating circumstances. The judge sentenced them to 19 years and 10 months in prison with no chance of parole.⁵

The judge, however, decided to let the convicts remain free until after the appeal, since they had no previous convictions. He could have ordered immediate imprisonment, since the defendants were unanimously found guilty, with aggravating circumstances and some of the witnesses were receiving death threats.⁶

³ A Global Justice Center team followed the judgment in Belém do Pará on 22 and 23 May, 2003.

⁴ FIDH report about the mission sent to Pará to follow the trial of the ‘Canuto Case’, 2004, available at <http://www.fidh.org>

⁵ Sentence read out at the end of the trial, which was observed by a team from the Global Justice Center.

⁶ This decision was taken at the same time as the sentence was read at the end of the trial.

Additionally, since many of the accused parties in the Canuto case fled before the trial, there still exists a risk of the offenders fleeing.

It is worth noting that the same judge who presided over this case, Dr. Roberto Moura, had previously freed Cornel Mário Colares Pantoja and Major José Maria Pereira de Oliveira, army officers who were convicted for 255 and 144 years of prison respectively, for the Massacre of Eldorado dos Carajás.⁷

The benefit granted to the convicts generated resentment against the near impunity; the lack of effective punishment for the crime even 18 years after its carrying out. Their ability to move about freely calls into question the independence of the judicial system in the face of powerful local interests.

There are definite positive aspects of the judgment; notably the presence of the National Human Rights Secretary, Nilmário Miranda, which shows the willingness of the federal government to push for improved courts. Another positive development is the government's work against slave labor, through the Mobile Group (Grupo Móvel), that has been active in Pará state. But even so the situation of rural laborers continues to deteriorate: it is clear that the courts seek to criminalize the Rural Landless Laborers' Movement (MST), while the ranchers continue to use private militias and violence to prevent land occupations while enjoying impunity.

The hired gunmen who killed João Canuto and others involved in the crime remain unpunished.

VIGÁRIO GERAL, RIO DE JANEIRO

Ten years after the massacre of 21 residents of the slum Vigário Geral, on the afternoon of August 29, 1993, in which dozens of hooded men invaded the slum to avenge the death of four policemen, the absurd level of impunity for the criminal military police responsible is still evident.

The death of the police was blamed on drug traffickers from Vigário Geral, however none of the victims of the police retaliation had links to drug trafficking. Among the victims were seven members of one family of workers and adolescents.

Nine military police accused of having participated in the massacre in Vigário Geral were acquitted in a judgment on July 23, 2003 in the 2nd Jury Court of Rio de Janeiro. Their absolution was requested by the public prosecutor, because he suspected that the cassette tape in which the defendants were identified as being responsible for the crime was a set-up and would end up shifting blame away from other defendants on trial.⁸

To facilitate the trial, it was split up into two phases. In the first, known as "Vigário Geral I", there are 33 defendants. In the second, "Vigário Geral II", there are 19. The nine suspects who were tried on July 23 are in the second group. They were accused based on a prison tape, made in 1995, recording of ten policemen under accusation for the first phase of the law suit.⁹

According to the public defender, Paulo Rangel, supported by victims' families, the tape was an attempt to frame the other policemen and absolve themselves. During

⁷ On April 17, 1996, 19 rural workers were executed by the military police in the state of Pará. This massacre was known as "Massacre of Eldorado dos Carajás". The 19 dead participated in the "March for Agrarian Reform" (Caminhada pela Reforma Agrária), which had started on April 10 of that year with 1,500 families of landless workers.

⁸ The Global Justice Center followed this trial on July 23, 2003, in Rio de Janeiro.

⁹ Public Prosecutor Paulo Rangel's statement to the Global Justice Center during a meeting in his office, one day before the trial.

the trial, the defender said that the tape incriminated 19 people, including the nine defendants, and that it was intended to “frame” them.¹⁰

According to Rangel, the tape was made by Lieutenant Cornel Emir Laranjeiras, who was commander of the 9th Military Police Battalion at the time, and suspected of leading the death squad the “Racing Horses”. (Cavalos Corredores). The majority of the 33 suspects in the first phase belonged to the battalion that Laranjeiras was in charge of. The colonel took the tape recorder to the suspects and they themselves recorded the conversation in which they accused the other 19 policemen for the massacre.¹¹

Laranjeiras, who was a state legislator elected from the PSB party, gave the recording to the then Public Prosecutor in charge of the case, José Muiños Piñeiro, who considered it enough to acquit the suspects from the first phase of the crime.

With the decision of Judge Noronha Dantas on July 23, 2003, the second part of the trial — Vigário Geral II — was closed. After the acquittal of the 10 policemen, in November of 1998, in Vigário Geral I, the office of the Public Prosecutors lodged an appeal in the courts in opposition to a non-guilty verdict. On September 2, 2003, the 4th Criminal Court of the State Court of Rio de Janeiro rejected the appeal, maintaining the sentence that absolved those who were probably responsible for the massacre.

One military policeman, Sirlei Alves Teixeira, jailed for participating in a bank robbery, who was a fugitive during the time of the Vigário Geral I trial, was tried and condemned to 56 years and six months in prison, on September 13, 2003, in the 2nd Jury Court. The Jury found him guilty for the 21 murders and four attempted murders. He will be tried separately for another homicide and a bank robbery.¹²

Besides Teixeira, there are other former policemen who were tried for their participation in the massacre separately, considering each murder as a distinct crime.

In 1997, Paulo Roberto Alvarenga was sentenced to 449 years in prison. In 1998, the Brazilian Supreme Court found that this sentence was faulty and that Alvarenga should be tried for a single and continuous crime, establishing jurisprudence over the case. His sentence was reduced to 57 years.¹³

The former policemen sentenced for their participation in the massacre, Arlindo Maginário Filho, who received 441 years in prison in November of 1997 and Alexandre Bicego Farinha, sentenced to 72 years, had the right to a new trial because their sentence was over 20 years, according to the Brazilian Penal Procedure Code.¹⁴

During the new trial, which took place on October 24, 2003, Filho left the 2nd Jury Court in custody. Prison was ordered by judge Luiz Noronha Dantas because the defended had tried to postpone the jury’s

¹⁰ Statement made by Public Prosecutor Paulo Rangel during his oral presentation to the Jury on July 23, 2003.

¹¹ Public Prosecutor Paulo Rangel’s statement to the Global Justice Center during a meeting in his office, one day before the trial.

¹² “Ex-PM é condenado a 59 anos de prisão”. *Jornal do Brasil*, September 14, 2003.

¹³ Rio de Janeiro 2003: Candelária and Vigário Geral, 10 years later. Amnesty International, 2003.

¹⁴ Brazilian Penal Procedure Code (Código de Processo Penal brasileiro), article 607.

decision. The defense lawyer did not show up, and the defendant did not even know the lawyers' name. In 1997, Filho had been sentenced to 441 years in prison, however he was allowed to await the next judgment in freedom. In the next session, scheduled for November 14th, 2003, Filho was absolved by a five-to-two vote. The jury found that there was insufficient evidence against the defendant. The public prosecutor appealed the decision.¹⁵

Sentenced to 72 years in prison with no chance of parole for his participation in the massacre of Vigário Geral, the former policeman Alexandre Bicego Farinha faced a new trial, on November 15, 2003 in the 2nd Jury Court and was found guilty again. This time he was sentenced to 59 years and six months in a majority decision of the jury.¹⁶

Of the 33 suspects from the first phase of the trial, only two were both found guilty and are still in jail. Five died, three are fugitives, three were released on the basis of *habeus corpus*, one was never tried for lack of proof, one has not yet been tried and 18 were acquitted.

CHILDREN CASTRATED IN ALTAMIRA, PARÁ

Valentina de Andrade, 72 years old, was acquitted on December 5, 2003, in Belém, Pará, of the charges of leading a sect that castrates and murders children in Altamira, in the Southeast of Pará state. The Jury Court decided, by six votes to one, to believe the

defense's contention that there was insufficient proof against her. The decision was taken after the longest trial in the history of Pará (17 days).¹⁷

After the verdict was reached, about 150 protestors, including human rights activists, protested in front of the Courthouse against the decision.

Valentina Andrade was the fifth and last person accused of participating in those crimes to be judged. The other four were found guilty: former military policeman Carlos Alberto dos Santos, to 35 years in prison; the businessman Amailton Madeir Gomes, to 57 years; the doctors Anísio Souza, to 77 years and Césio Brandão, to 56 years. They maintained their innocence and appealed the verdict.¹⁸

The crimes took place between 1989 and 1993 and include the castration of nine children and the murder of six of those castrated. The victims were between eight and 14 years of age. Only five of these cases — three murders and two attempted murders — were tried.

The office of the Public Prosecutor of the State of Pará appealed from the verdict. The basis of the accusation was Valentina's links to the believed sect Universal Superior Lineage (Lineamento Universal Superior, LUS), which is based in Argentina, and has reportedly conducted rituals of black magic. The concern is that she might flee before the appeal can be processed. In September of 2003, Andrade was ordered to stay

¹⁵ "Ex-PM manobra para adiar júri e é preso". *Jornal do Brasil*, October 25, 2003; and "PM é absolvido em novo julgamento". *Jornal do Brasil*, November 16, 2003.

¹⁶ "Júri condena ex-PM a 59 anos de prisão". *Jornal do Brasil*, October 11, 2003.

¹⁷ "Acusada de liderar seita que castrava meninos é absolvida", *Folha de S. Paulo*, December 6, 2003.

¹⁸ *Idem*.

in preventative custody by judge Ronaldo Valle, because she tried to flee to Argentina.¹⁹

On December 10, 2003, the office of the Public Prosecutor of Pará State requested the reversal of the not-guilty verdict in Andrade's case. The request is currently being looked over by the Court and could lead to another trial. The argument is that the jury's decision was contrary to the evidence presented.²⁰

The Civil Police started an inquiry into allegations that there was a violation of the isolation of the jurors during the 17 days of the trial. The bank and telephone records of the jury members and court officials were also sought during this period. During the investigation, it was proven that the jurors broke their isolation and the police inquiry was then forwarded to the office of the Public Prosecutor of Pará State.²¹

GLOBAL JUSTICE CENTER CALLS UPON THE BRAZILIAN GOVERNMENT TO:

- Carry out thorough and impartial investigation into cases of corruption and abuse of power involving members of the Judiciary, with the suspension of duty of those involved in these cases.

- Pass the draft bill which federalizes the judgment of human rights crimes.

- Grant Forensic Institutes and other technical bodies independency and autonomy. The staff of these bodies should be increased and better remunerated.

- Strengthen and financially restructure the Ombudsmen offices. Ombudsmen conduct should be guided by principles of independency, autonomy, and increased access to civil society.

¹⁹ Information provided by Pará State Public Prosecutor Marco Aurélio in a telephone interview with the Global Justice Center, February 15, 2004.

²⁰ *Idem.*

²¹ *Idem.*

CHAPTER XI — PSYQUIATRIC INSTITUTIONS

Human rights violations in psychiatric institutions in Brazil

“Reluctantly, she forced herself into the clinic, shouting out with despair for her son who was in a miserable state, bleeding incessantly, with countless bruises and scratches.

Seeing her like that, Albina asked the nurses to clean him up, and went to look for a doctor that could take care of him. She finally found Dr. Francisco Ivo de Vasconcelos — the director of Casa de Repouso Guararapes and the Forensic Institute (Instituto Médico Legal, IML) coroner — who prescribed some medicine, without even examining him.

She then took up the search for her son again, with the help of a hospital employee, only to be informed that a violent fight had occurred between Damião and the nurses, resulting in him losing more blood. She found him locked in a room beside a bed, completely naked and with his hands still tied. She was then warned by a nurse that her son had just calmed down so it would be better not to bother him.

Albertina returned home and when she arrived, there was a message for her that her son had died.”

The text above is an excerpt of the *amicus curiae* sent by the Global Justice Center and the law firm Ropes & Gray LLP on August 1, 2003, to the OAS Inter-American Human Rights Commission reporting the death of young Damião Ximenes Lopes in October, 1999, while he was interned at a private psychiatric hospital in the state of Ceará, Brazil.

At the time of Damião’s internment, the Casa de Repouso Guararapes, which belongs to Mr. Sérgio Antunes Ferreira Gomes¹, was part of a network of private institutions functioning in partnerships with the Unified Health System (Sistema Único de Saúde, SUS) to provide care to people with mental disorders. Besides being the only hospital facility with beds for the internment of patients with mental disorders in the Sobral region (200 km away from the capital, Fortaleza), the Casa de Repouso Guararapes had the only specialized psychiatric ward for miles. This institution was the only option in a region lacking mental health facilities, public or private, to provide services for those in need of psychiatric care.²

¹ Sérgio Ferreira Gomes is related to the Mayor of Sobral at the time, Cid Ferreira Gomes.

² Statement (found in the *amicus curiae*) made by Dr. Lídia Dias Costa in Fortaleza — CE on July 31, 2003, § 9.

More than four years later, local authorities have still not adequately investigated the crime. The civil and criminal lawsuits filed by Damião's parents have not made it past the first stage.³

In the *amicus curiae*, Global Justice argued that the Brazilian State is responsible for the violations of many guaranteed rights established by the American Convention on Human Rights in relation to the death of Damião. The State's responsibility exists despite the fact that the hospital was privately owned. The hospital filled the function of a public institution, so the State still bears responsibility for the human rights violations practiced by the clinic.

The Ximenes case is only one in a long history of systematic abuses committed by psychiatric institutions throughout Brazil. A report published by the Federal Council on Psychology (Conselho Federal de Psicologia CFP) in 2001 entitled "Sinister Institution: Violent deaths in psychiatric hospitals in Brazil" (*Instituição Sinistra: Mortes violentas em hospitais psiquiátricos no Brasil*) documents six cases of violent deaths in psychiatric hospitals in the States of Goiânia, Ceará, Minas Geraes, Rio Grande do Sul, São Paulo and Bahia. The report explains these are merely a sample from a vast number of other cases — known and unknown — that have taken place nationwide. Upon presenting the report, the president of the CFP at the time, Marcus Vinicius de Oliveira Silva, said that, "psychiatric hospitals are a barren, dangerous and violent institution. It has always

been this way due to the overwhelmingly undignified dimensions of its social role which is to exclude the insane in the name of social order"⁴. In fact, the guardianship in relation to those with mental deficiencies in Brazil goes back to mid-nineteenth century when the Imperial Government created asylums with the goal of tracking down and treating "alienated and menacing people"⁵. It is important to note that, before the involvement of the State, this type of "service" was offered in an unspecialized way by the Catholic Church whose influence remained strong for some time.

With the establishment of a republican government in 1889, the separation between the State and the Church in taking care of the mentally deficient became more pronounced, especially concerning the management of the asylums, which was passed along to doctors.

These new institutions generally targeted mentally disabled people from the poorer segments of society, who were seen as undesirable beings that ought to be segregated from society. From the beginning of the institutionalization of asylums onwards, the dominating ideology has been that of containment, isolation and prejudice — which were not seen in the few private clinics at the time that served the upper classes and were not part of the public health system.⁶

This model, characterized by isolation and punishment, was strengthened when President Getúlio Vargas took office in 1930. Four years later, Decree 24,559 classified

³ Inter American Human Rights Commission, Petition 12.237, Damião Ximenes Lopes, Brazil. Additional Petition Observations sent on December 13, 2003.

⁴ Silva, Marcos Vinicius de Oliveira. *A Instituição Sinistra*. Conselho Federal de Psicologia. Brasília, 2001.

⁵ Amarante, Paulo D. Carvalho. *Loucos pela vida — A Trajetória da Reforma Psiquiátrica no Brasil*. 2ª edição. Rio de Janeiro: Ed. Fiocruz, 1998.

⁶ "Avaliação das iniciativas de regulamentação da lei n.º. 10.216/01 a partir do Ministério da Saúde". Original text can be retrieved at http://www.unb.br/fd/saude_agosto.html

mental health as a “police matter of public order”⁷. As a result, the mentally ill lost their citizenship and were placed under compulsory mental treatment. Not surprisingly, there was a boom of new private clinics — especially because of the new relation between the bourgeoisie and the judiciary system⁸, within the context of the President’s ambitions to privatize certain sectors.

It was not by chance that the growth of private psychiatric institutions, over the ensuing years, accompanied by a sharp increase of the asylum population, triggered desensitization to internment. This model peaked during the 1964 military regime, with its large-scale commitment to private interests as a whole reaching into the sphere health care. As such, the State entrusted the private sector⁹ to carry out psychiatric treatment¹⁰ without guaranteeing the safety of those interned. The private sector’s supremacy over the whole social care system, especially in regard to asylums, obeyed the principle of market expansion, which came at the expense of interning people unnecessarily with government subsidies. The principle of cost minimization was also observed, as the conditions in the

asylums were grossly sub-standard. This stage represents the birth of the “industry of madness”, whose origin certainly lies in the economic model of privatization chosen from 1964 onwards.

Looking at the numbers, in 1961 there were 54 public and 81 private psychiatric institutions. Twenty years later, near the end of the military government, these figures had increased to 73 public and 357 private institutions.¹¹ This astronomic increase in private institutions was not accompanied by adequate State monitoring.

These patterns have not gone without a reaction. If the deterioration of conditions in mental health institutions worsened, the human rights movement and the expansion of civil society as a whole (during the 80’s) influenced those who have always fought for the dignity of mentally disabled people. Groups like the Movement of Mental Health Workers (Movimento dos Trabalhadores de Saúde Mental) and the National Movement of Struggle Against Asylums (Movimento Nacional a Luta Antimanicomial) were formed, stemming from the necessity of attending to the complaints of those interned in asylums.¹²

⁷ *Avaliação das iniciativas de regulamentação da lei n.º 10.126/01 a partir do Ministério da Saúde*, Workshop *Inclusão e Luta Antimanicomial*, Augusto César Faria Costa, Coordinator of the Mental Health Program — NESP/CEAM/UnB. 19/04/02, in http://www.unb.br/fd/saude_augusto.html.

⁸ Santos, Nelson Garcia: *Do hospício à comunidade — Políticas públicas de saúde mental*. Santa Catarina: Ed. Letras Contemporâneas, 1994.

⁹ From a total of 3830 hospitals in 1969, 3240 were private. See Bandeira, Luiz Alberto Moniz, *Cartéis e Desnacionalização (A Experiência Brasileira — 1964-1974)*. 3ª ed. Rio de Janeiro: Editora Civilização Brasileira, 1979.

¹⁰ According to political scientist Moniz Bandeira: “about 90% of Brazil’s population didn’t have financial conditions to pay for their own health and 50% couldn’t count on any official support”. In spite of this, the psychiatric clinics represented “more than 1/3 of the [national] hospital network” even though only “0,4% of Brazilians who manifested some kind of mental health problem received medical assistance”. See: *Cartéis e Desnacionalização: A experiência brasileira 1064-2972*, op. cit., p.42.

¹¹ *Estadísticas de Salud de las Americas*: Pan American Health Organization, 2003.

¹² Accusations of abusive behaviour in Brazilian psychiatric institutions aren’t new and they go way back to the nineteenth century, as one can see in “*A prática psiquiátrica no Brasil (1847-1947)*”, Doctorate thesis by Ronaldo Jacobina, Fiocruz/ENSP, 2001. Death cases in psychiatric clinics during the 90’s are widely documented in the book “*A Instituição Sinistra: mortes violentas em hospitais psiquiátricos no Brasil*”, Conselho Federal de Psicologia. For further denouncements see the Human Rights Commission from Brasília’s Deputies Chamber’s report called “*I Caravana Nacional de Direitos Humanos: Uma amostra da realidade manicomial brasileira*”, 2000. It’s important to mention that besides being an old practice, the irregularities are spread out among all Brazilian states. In its report, the Human Rights Commission made a negative evaluation of 19 out of 20 clinics from the states of Amazonas, Goiás, Pernambuco, Rio de Janeiro, Bahia, Minas Gerais e São Paulo.

Finally, with the passing of Law 10,216/01 in 2001, which establishes important changes with respect to mental health, a new posture has arisen in relation to Brazilian psychiatric treatment, in spite of the large gap that still exists between the ideal promoted by the law and the hard realities of these institutions.¹³

Brazil's current population is nearly 170 million people. Of this total, about 20%¹⁴ have some kind of mental disorder (representing the 4th largest public health expenditure for hospital stays).¹⁵ In numeric terms, these expenses reach \$200 million USD¹⁶, of which only a modest 10% is applied in conformity with the new policy determined by the Psychiatric Reform.¹⁷

The 61,393 beds available in asylum wards are spread out in 260 clinics where 80% belong to private owners.¹⁸ A large amount of the SUS money ends up in the hands of people who run health care institutions as if they were only profit-seeking enterprises. The choice made by Brazilian governments through history clearly shows the delegation model perpetuated, instead of making an adequate health investment.¹⁹ The real problem, however, is not the number of private institutions but the way that those institutions operate.

The lack of checks and balances by public authorities in relation to legal determinations that involve the SUS's money, as well as the slowness of these same authorities to investigate human rights violations have favored an atmosphere of impunity and negligence in these institutions.²⁰

The situation at hand involves the State's choice to delegate its constitutional duty²¹ to provide health care and the lack of will to enforce its own laws with respect to private mental health institutions. One can observe the growth of the "industry of madness"²², driven by a jailhouse view of health care which parallels the civil rights violations of the military government.

Although human rights violations in these institutions are widespread, the following cases refer only to those accompanied by Global Justice in 2003, and reflect trends of earlier years. They serve as descriptive models of everyday occurrences in these institutions.

PSYCHIATRIC HOSPITAL MILTON MARINHO (HPMM), CAICÓ-RN

In the last few years, accusations of abuse and violence experienced by patients from

¹³ Written declaration made in Fortaleza-CE by Dr. Lídia Dias Costa on June 31st, 2003, § 19, et. Seq.

¹⁴ Data provided by Instituto Brasileiro de Geografia e Estatística (IBGE), 2000.

¹⁵ Internments for mental health problems are only located, in terms of expense, behind cardiovascular diseases; pregnancy, deliveries and newborn care; and respiratory illnesses. Data provided by the Ministry of Health, for the year 2000.

¹⁶ DATASUS/IBGE — 2001 population estimates/ Área Técnica de Saúde Mental/ MS.

¹⁷ Costa, Augusto César Faria. *Avaliação das iniciativas de regulamentação da Lei 10.216/01 a partir do Ministério da Saúde*. Workshop under the initiative of Faculdade de Estudos Sociais Aplicados from the Universidade de Brasília, on April 19th, 2002.

¹⁸ *Ibid.* Currently, according to the General Mental Health Coordination, the number of beds decreased to 53,180 — data relative to September.

¹⁹ Despite being private, such institutions dispose of 70% to 90% of their beds to SUS care. The type of service provided by SUS convention clinics is very different from the type rendered by those exclusively private ones, usually used by people from upper the social *strata* and, because of this, better than the SUS supported ones.

²⁰ See Brasília's Human Rights Commission report: *Uma amostra da realidade manicomial brasileira*, Brasília, 2000, http://www.camara.gov.br/cdh/ultimos_informes.

²¹ Article 6, Brazilian Constitution.

²² *A Instituição Sinistra*, op. cit. P. 6.

HPMM, an institution controlled by influential local politicians²³, have become one of the most worrying cases according to activists involved in psychiatric reform. Ever since the violent death of Sandro Costa Fragoso, on July 17, 2002, many examples of this type of violence have been publicized, without an adequate response and intervention by authorities. One could even argue that the opposite has happened: the local media censors those who have had the courage make their complaints public; and praises the institution's managers for the supposed improvements.²⁴

Sandro Costa Fragoso, age 22, was found dead, with restraint marks identifying that he was tied to a bed, inside a room of the hospital. In a statement made by Dr. Salomão Gurgel, former Federal Congressman and the hospital's technical chief, Sandro's death was diagnosed as suicide.²⁵ This hypothesis, however, did not explain how Sandro, entirely tied — hands, feet and torso — could have set fire to his own room. After his death, the Police Forensic Institute (Instituto Técnico-Científico de Polícia) from Rio Grande do Norte, dismissed this

theory as absurd, concluding that Sandro was an arson victim.²⁶ As of the writing of this report, nobody had answered legally for his death, though an inquiry has been initiated by Caicó's Police Department.²⁷

The police inquiry merits an extra remark. The first police chief was withdrawn without any public explanation. The second one, Caetano Baunman, was also removed after concluding that Dr. Salomão Gurgel and other hospital managers should be indicted. The complaint was then sent back by the prosecutor who was working on the case from the beginning, Geraldo Rufino de Araújo Jr., with a request for further investigation²⁸. On October 8, 2003, the newspaper *Diário de Natal* announced that the result of the inquiry had been sent to the Public Prosecutor's Office, in which only a Military Police soldier, Paulo César Araújo, who worked at the hospital, was charged. Dr. Salomão Gurgel and other hospital employees were not charged.²⁹ The Public Prosecutor, however, has once again requested deeper inquiries. These had not been concluded as of the writing of this report in November, 2003.³⁰

²³ The HPMM is maintained by the Fundação Hospitalar Dr. Carlindo Dantas, controlled by influential politicians, such as Rivaldo Costa, this institution's director, pre-candidate to Mayor of Caicó and brother of Vivaldo Costa, State Deputy and allied to the Governor Vilma de Faria, according to information published in the newspaper *Jornal de Natal*, Ed. 761, July 7, 2003.

²⁴ See "Casa da Saúde investe na qualidade da assistência em Caicó", *Notícias do Seridó*, 20/08/2003 edition that starts with, "the Fundação Hospitalar Dr. Carlindo Dantas has been making a large investment in reforms and changes in the HPMM to give improved assistance to those who may need it". *Isto É*, a magazine of national influence, published two articles about the institution where these "improvements" weren't emphasised, leading to accusations that activists from anti-asylum movements payed off the magazine, according to Dr. Lídia Dias Costa, Coordinator of Fórum Cearense da Luta Antimanicomial, in a phone interview with Global Justice on November 4, 2003.

²⁵ "Crime em Caicó", *Isto É* Ed. 1744, March 5, 2003, p. 40.

²⁶ Laudo de Exame de Crime Contra a Pessoa No. 01.0599/02, Instituto Técnico — Científico de Polícia/RN.

²⁷ Police inquiry No. 87/02.

²⁸ "The City of Caicó Deserves Respect! Brazil Needs to Demand for the End of Phony and Violent Asylums". Manifesto distributed by Instituto Damião Ximenez and the Human Rights Commission of the Conselho Federal de Psicologia in September, 2003; Dr Lídia Dias Costa, Coordinator of Fórum Cearense da Luta Antimanicomial, in a phone interview to Global Justice on November 4, 2003.

²⁹ "Ministério da Saúde veta atendimento", *Diário de Natal*, October 8, 2003

³⁰ *Idem.*; Dr Lídia Dias Costa, Coordinator of Fórum Cearense da Luta Antimanicomial, in a phone interview to Global Justice on November 21, 2003.

Sandro's death has not been the only tragedy in the HPMM over the last few years. The death of José Martins da Silva, on October 28, 2000, was made public by the Federal Council on Psychology (Conselho Federal de Psicologia), informing that the patient died "restrained in his bed after bearing 8 days with no food or water".³¹ Because of these and other accusations, the Complaints Department of the Health Ministry (Departamento Nacional de Auditoria do SUS — Ministério da Saúde) undertook inspections at the HPMM between December 2 and 6, 2002, and April 13 to 17, 2003.³² The report about José da Silva's death concluded that the circumstances of this fact were in need of thorough examination³³, and the inspections resulted in the termination of the institution's license to work under the SUS convention.³⁴

A police inquiry³⁵ was initiated to examine José da Silva's death, and HPMM doctors Salomão Gurgel, Nina Vasilievna Barinova and Milson Rabelo Ribeiro were accused.³⁶ Salomão Gurgel's lawsuit was filed by the Brazilian Supreme Court (responsible for special judgments such cases involving congressmen) and the others' were sent back to Caicó County Justice to proceed in accordance to the norm.³⁷

In June 2003, the Public Prosecutor's Office published Public Act (Portaria) 150 leading to the de-certification of HPMM due to the inadequacy of services rendered, entrusting the local representatives with the task of closing down the clinic.³⁸ In spite of this, HPMM's hospital unit continued to function normally until October 2003, when, faced by the slowness of the local representatives in carrying out that which was already determined by the Public Act 150, the Prosecutors Office solicited Caicó's Health Secretary to suspend new internments and provide removal for those already there.³⁹

In spite of the results of the inquiry that led to the hospital's closure, Rio Grande do Norte's State government signaled that it intends to keep it open, and made a proposal to invest in hospital reform (of about \$30,000 USD).⁴⁰ This proposal was approved by the Municipal Health Council of Caricó on October 6, 2003, when it was also decided to establish a commission to evaluate the accusations of malpractice determined by the Health Minister.⁴¹

Some of HPMM's employees that triggered the investigations by publicizing the deplorable conditions under which the hospital functioned have been targeted by a series of vengeful actions. Neuzanete Costa,

³¹ According to Neuzanete Costa, general services assistant, after being fired from her job. See the report by the Departamento Nacional de Auditoria do SUS — Ministério da Saúde relative to SUS inspection at the HPPM, in Caicó from December 2 to 6, 2002, Auditoria No. 689, p. 7. See also "Crime em Caicó", *IstoÉ* ed. 1744, March 5, 2003, p. 40.

³² "Ministério da Saúde veta atendimento", *Diário de Natal*, October 8, 2003.

³³ See the report by the Departamento Nacional de Auditoria do SUS — Ministério da Saúde relative to SUS inspection at the HPPM, in Caicó from December 2nd to 6th, 2002, Auditoria No. 689, p. 43.

³⁴ Ministério da Saúde, Secretária de Atenção à Saúde, Portaria 150, June 18, 2003.

³⁵ Police inquiry No. 139/00-DP Caicó-RN.

³⁶ *Diário da Justiça* No. 178, September 16, 2002 — Ata No. 133.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ "Ministério da Saúde veta atendimento", *Diário de Natal*, October 8, 2003.

⁴⁰ "Conselho de Saúde Rejeita Fechamento de Hospital em Caicó", *Seridó Online*, October 6, 2003, available at <http://www.seol.com.br>.

⁴¹ *Ibid.*

general services assistant who worked in the institution for years, was fired after denouncing José da Silva's death.⁴² Psychiatrist Epitácio Andrade, who also denounced the violent treatment of the patients and asked for a public intervention, is being sued for slander and is facing accusations at the Regional Medicine Council of Rio Grande do Norte, with both sets of accusations being levied by Dr. Salomão Gurgel.⁴³

On November 19, 2003, Epitácio Andrade was fired from his job at HPMM. On the same day, the Mayor of Caicó, Roberto Germano, phoned Epitácio and told him that the reason for his dismissal was some of his new statements to *Isto É* magazine, even though his statements had not yet been printed at the time.⁴⁴

According to the local press, Salomão Gurgel will again run for the Mayor's office in Janduís, a town neighboring Caicó, where he was already Mayor from 1983 to 1988.⁴⁵

On December 20, 2003, when Brazil's President visited the city of Mossoró-RN, Rio Grande do Norte's Anti-asylum Movement handed him a report denouncing the current situation at HPMM.⁴⁶

On December 12, Global Justice, Ceará Forum of Struggle Against Asylums (Fórum Cearense da Luta Antimanicomial) and the Franco Basaglia Institute denounced Sandro Frago's death to Mrs. Asma Jahangir, UN Special Rapporteur on extrajudicial, summary or arbitrary executions.⁴⁷

BAHIA'S DETENTION AND TREATMENT HOSPITAL (HOSPITAL DE CUSTÓDIA E TRATAMENTO, HCT)

In July 2003, Global Justice visited *in loco* the Detention and Treatment Hospital (Hospital de Custódia e Tratamento, HCT) in Bahia, that had been widely accused of human rights violations by civil society organizations and both national and local press. The term "mental asylum" (*manicômio*), now used by psychiatric reform activists to designate any institutions with confinement regimes, was originally created to refer to *detention centers* in which the inmates should receive appropriate psychiatric treatment. The HCT, where 20 people died in 2003, is a tragic "mental asylum" example.

Because of countless accusations of extreme violence and degradation at HCT, Bahia's State Public Prosecutors formalized a civil inquiry in order to clarify the patient confinement conditions in February 2003.⁴⁸ In addition to the prior accusations of violence, the opening of the inquiry was based on the following findings:

"(...) deplorable working conditions for the prison guards, deep problems with sanitary installations such as toilets completely clogged up with feces, lack of water in the hallways where dirty inmates are placed, unbearable stench coming from all sorts of

⁴² See the report by the Departamento Nacional de Auditoria do SUS — Ministério da Saúde relative to SUS inspection at the HPPM, in Caicó from December 2 to 6, 2002.

⁴³ Phone interview with Dr. Epitácio Andrade to Global Justice on January 12, 2004.

⁴⁴ According to information given by Dr. Lídia Dias Costa, Coordinator of Fórum Cearense da Luta Antimanicomial, by e-mail to Global Justice on November 19 2003.

⁴⁵ "João Maia: "PL terá candidato em Caicó", *Diário de Natal*, September 29, 2003, available at <http://www.dnonline.com.br/materia.php?idmat=93257>.

⁴⁶ Official correspondence No. 02/2003 from the Movimento Antimanicomial/RN to the President of the Republic, confirmed by the President's adviser Geraldo Magela. Information given by a phone interview from Dr Epitácio Andrade to Global Justice on January 12, 2004.

⁴⁷ Official correspondence No. GJ/RJ 172/03.

⁴⁸ Public inquiry no. 004/03

excrements, poor lighting both internally and externally, rusty beds without mattresses, lack of appropriate medicine, the total inexistence of adequate therapy among other irregularities.”⁴⁹

The importance of the Public Prosecutor’s inquiry stands out when one considers the difficulties faced in investigating the conditions of the HCT. One of the official inspection organs, the State Council of Human Rights Protection (CEPDH), has the legal power (and duty)⁵⁰ to examine public installations. When members of the CEPDH went on an inspection mission to the HCT, they were not permitted to enter. In December, 2002, they returned along with Brazilian Bar Association (Ordem de Advogados Brasileiros, OAB) officials. Once again their entrance was obstructed by the hospital’s director. Faced with OAB and CEPDH’s persistence to enter the hospital, the hospital summoned the Director of Detention Matters, Dr. Arnaldo Agle and Human Rights and Justice Secretary Dr. Sérgio Sanches Ferreira. Both reaffirmed the institution’s position and again denied access. The CEPDH representative protested arguing that “the gesture undertaken by Secretary Sérgio Sanches Ferreira constitutes a blatant disrespect to the CEPDH. Neither the Secretary, nor the Governor, nor any of his assistants will ever have the right to de-

cide when and how the law should be applied”.⁵¹

According to the report made by the CEPDH representative after he was finally allowed to visit on April 3, 2003, “such inhumanity could only be the result of years of abandon and lack of attention. Proof of this is found in the Citizen’s Defense Commission from Salvador’s District Chamber report after an August 2001 inspection. Since it is impossible to imagine there has been malicious intent, we can affirm that, there was at least blatant omission and neglect by those in charge of the HCT and their superiors”.⁵²

In June 2003, when the death toll at the HCT reached 18, the Coordinator of mental health from the Health Ministry, Pedro Delgado, told the press: “The situation in Brazil’s mental asylums is structurally critical. It’s an 82 year-old institutional mistake and the model demands rethinking, and consequently law changing. However, this cannot serve as an excuse for a tragic situation. Bahia’s case is by far the most sinister. It’s a scandal. Eighteen deaths in six months lead us to conclude that we are facing a fact that Bahia’s public authorities should answer for”.⁵³

The asylum treatment and recovery model has been the object of a series of seminars for some time. Debates on structural changes in mental health institu-

⁴⁹ Portaria no. 004/03, February 26, 2003.

⁵⁰ According to Article 5, Law 6.699/94, the CEPDH can have access to State public establishments “to accompany inspections in general and other matters that might concern the organ”.

⁵¹ Letter by Ernesto Marques and member of CEPDH, to the CEPDH body on January 9, 2003.

⁵² See the report “Situação do Hospital de Custódia e Tratamento”, written by Ernesto Marques, representative of the Associação Bahiana de Imprensa, after accompanying a visit made by Bahia’s Public Prosecutor’s office together with members from Ministry of Justice, Ministry of Health and several civil society organizations.

⁵³ “Manicômio ameaçado de intervenção”, *Jornal A Tarde*, June, 27, 2003.

tions are ongoing as are others relative to psychiatric reform. According to the Coordinator Pedro Delgado, “There is a structural mistake. No detention center should be the location of compulsory treatment. This is a fundamental mistake”.⁵⁴

GLOBAL JUSTICE CALLS UPON THE BRAZILIAN GOVERNMENT TO:

- Adopt the necessary measures to fulfill and implement fully the Law no. 8080, particularly the State duty to monitor the execution of services rendered by contracted private parties, all of which should adopt internationally recognized standards in respect to the treatment of mentally ill patients.

- Fulfill and implement fully the Law 10,216/01, in particular the immediate regulation of its article 4, paragraph 3, regarding the definition of hospices that do

not respect the rights of the interned patients, where the Law prohibits internments; and of its article 10, which determines compulsory communication to the family and sanitary authorities, within 24 hours, of facts such as evasion, transfers, accidents or deaths inside the establishment.

- Be more rigorous in its evaluation criteria of the existing hospital establishments, when carrying out inspections regarding the functioning of these institutions.

- Be more rigorous in the investigation of alleged abuses committed in centers of psychiatric care.

- Carry out serious, impartial and thorough investigation of the facts related to cases of death and ill-treatment denounced in particular at Psychiatric Hospital Milton Marinho, at Bahia’s Detention and Treatment Hospital, and at Casa de Repouso Guararapes de Sobral, so that those responsible are properly punished and the victims and families receive due compensation.

⁵⁴ *Ibid.*

CHAPTER XII — INTERNATIONAL HUMAN RIGHTS PROTECTION SYSTEMS

Brazil and the international human rights protection mechanisms

Three weeks after giving testimony to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, the mechanic Gérson Jesus Bispo was killed by four gunshots on the morning of October 9, 2003, in the town of Santo Antônio de Jesus, Bahia.

On September 20, Bispo had met with the UN Special Rapporteur, of whom he requested justice for the assassinations of his brother Antônio Carlos de Jesus Bispo, and friend Adailton Santos. The two were assassinated on August 1, 2002, allegedly by a death squad — formed by policeman — that is active in the Region.

In the testimony to the UN Special Rapporteur, Gérson explained that his brother and friend were shopping in a store in the town center of Santo Antônio de Jesus when they were approached by the police. They were then placed inside a Military Police car and taken to the outskirts of town, where they were killed. Later on, the Military Police took the bodies to a hospital, claiming that the two had died in a confrontation. The coroner's report showed that they had been

tortured and executed. Antônio Carlos de Jesus Bispo's death is included in the report "Summary Executions in Brazil 1997-2003", written by the Global Justice Center and the Center for Afro-Brazilian Studies (Núcleo de Estudos Negros).

Gérson de Jesus Bispo was the second witness killed after testifying to the UN Special Rapporteur. On September 27, the rural worker Flávio Manoel da Silva, witness of the Congressional Inquiry Commission (CPI) on Guns and Drug Trafficking of the Legislative Assembly of Paraíba State, was killed by gunshots in Pedras de Fogo, Paraíba, four days after having testified to Ms. Asma Jahangir.

Flávio Manoel da Silva had already survived another assassination attempt, which led to a request by city councilman of Itambé, Pernambuco, Manoel Mattos, to include him in the federal witness protection program. The request was processed by the country's Special Secretary of Human Rights, but was not activated due to an opinion of the Federal Police, which did not see the need to include Flávio Manoel in the program.¹

¹ According to declarations of a city councilman of Itambé, Pernambuco, Manoel Matos, in a phone interview with the Global Justice Center on April 13, 2004.

These incidents demonstrate not only the absence of adequate public policies to protect witnesses who are threatened, but also the failure of the authorities to investigate those threats.

These are only two examples that lead to strong domestic and international repercussions, since the victims had testified before a UN representative. They are representative of hundreds of other victims whose deaths are announced but whose lives are not protected by the State. Even when the State does not ignore the threat to the victims, the protection offered is inadequate.

BRAZIL AND THE UNITED NATIONS

In September of 2003, Global Justice released the report *Summary Executions in Brazil — 1997-2003*, during Asma Jahangir's visit to the country.

Between September 16 and October 8, the UN Special Rapporteur visited the states of Bahia, Pernambuco, Pará, Rio de Janeiro, Espírito Santo and São Paulo, along with Brasília, the Federal District. In addition to meeting with state authorities, her agenda included meetings with civil society, accompanied by the Global Justice Center, in which she collected information about executions in Brazil. Her report about the mission to Brazil was presented to the UN Human Rights Commission in March of 2004.

Jahangir's visit was important to the national debate about human rights in Brazil. She was in Brazil after being invited by the Federal Government, consolidating the advance in the discussion of issues such as

torture, police violence and death squads.

Her visit led to media attention, both from her findings themselves and the reaction of some authorities, who could no longer ignore the violence in Brazil.

If Jahangir's visit signaled a willingness by the Federal Government to take on important and delicate issues, this willingness was not matched by the states.

During her visit, Jahangir was met with difficulties in carrying out the mission. In São Paulo, she was refused a meeting with Governor Geraldo Alckmin. Her request to visit the Preliminary Care Unit (Unidade de Atendimento Inicial) of the FEBEM (State Foundation for the Well Being of Minors), in the neighborhood of Brás, was initially rejected. After visiting the complex, which was overcrowded, and another FEBEM branch at Pirituba, considered a "model" center by the state of São Paulo, she qualified both locations as "horrible".²

Jahangir challenged the president of FEBEM, Paulo Sérgio de Oliveira e Costa, to "have courage" and open an institution that would allow the children who reside there to speak openly about cases of mistreatment and torture.³ The UN Special Rapporteur made this challenge upon knowing of the FEBEM president's statements disagreeing with her criticisms. Costa claimed that Jahangir's statements were based on preconceptions.

In Rio de Janeiro, the UN Special Rapporteur criticized the absence of official statistics about deaths by policemen in the state and the lack of information from state authorities, who did not have answers to her questions.

² "Horível". Folha de S. Paulo, October 1, 2003.

³ "Relatora da ONU faz desafio à Febem." Folha de São Paulo, October 1, 2003.

The UN Special Rapporteur closed her visit provoking a new discussion between the Judiciary and the Executive branches. Asma Jahangir suggested a visit by the Special Rapporteur on the independence of judges and lawyers to Brazil, which was supported by the Federal Government but the object of much criticism by representatives of Brazilian courts.

The idea of another UN observer being sent to evaluate the Judiciary, to guarantee its transparency and independence, revived a national debate about the issue. The judges' strong rejection against Brazil's insertion into the United Nations system shows a corporatism exacerbated by the judges, who refuse to expose failures and distortions of the judiciary system, even though these shortcomings are widely known. This position is a step backward in the struggle for a faster, more transparent and effective judiciary.

In May of 2003, the UN Independent Expert on the Right to Development, Arjun Sengupta, came to Brazil and met with civil society representatives to discuss the principal obstacles to the right to development in Brazil. On May 14, Mr. Sengupta participated in a meeting organized by the Global Justice Center and the Center for Human rights of the Law School of the Pontifical Catholic University of Rio de Janeiro (PUC-Rio), in which Ford Foundation representatives and a group of mothers from Espírito Santo were also present.

The Independent Expert returned to Brazil, in an official trip, in August 2003. Mr. Sengupta was present at a meeting organized by the Global Justice Center, the Center for Human Rights from PUC-Rio and the Groups for Social Security and Education (Órgãos para a Assistência Social e Educacional, FASE) in which the carrying out of

the right to development was discussed in conjunction with other NGOs.

The UN Special Rapporteur on Child Trafficking, Prostitution and Infant Pornography, Juan Miguel Petit, also made a trip to Brazil. He visited the cities of Belém, Salvador, São Paulo and Rio de Janeiro, between November 4 and 15. His report would be presented to the UN Commission of Human Rights in April of 2004, emphasizing that Brazil needs police reform and a change in the mentality of the judicial system to make progress against child exploitation and other violations of children's rights. The report also asked the Brazilian Government to audit and destroy the domestic and international traffic routes of children and adolescents destined for sexual exploration, mostly in Europe.

These UN visits, following the example of those of Nigel Rodley, UN Special Rapporteur on Torture at the time, in September, 2000, and Jean Ziegler, UN Special Rapporteur on Food Rights, who visited Brazil in March of 2002, solidified Brazil's collaboration with the special mechanisms of the UN, especially in the area of human rights.

Notwithstanding the advances in this area and Brazil's recognition of the jurisdiction of the Committee Against Racial Discrimination and the Committee for the Elimination of all Forms of Discrimination Against Women, Brazil has still not recognized the jurisdiction of the Committee Against Torture and the Human Rights Committee, as it had previously committed to do.

The recognition of the UN committees represent a landmark in the struggle for the promotion and protection of human rights. With the acceptance of the four committees to receive and judge individual petitions, Brazil would demonstrate its determination in granting its citizens access to the interna-

tional tools to guarantee the protection of human rights.

Another important visit was made by Amnesty International's Secretary General, Irene Khan, to Brazil in November. Global Justice supported her visits to São Paulo and Rio de Janeiro. In Rio she participated in a meeting with human rights specialists, organized by Global Justice and the Center for Human Rights from PUC-Rio, in which issues related to public security were discussed. A team from the Global Justice Center accompanied the visit to the shantytown Borel, in Rio de Janeiro, where she made contact with the community and interviewed family members of victims of violence. With support from Global Justice, Khan visited the installations of Polinter (the Federal Police prison) in Praça Mauá, downtown Rio. In São Paulo, the Secretary General participated in meetings with different human rights NGOs, victims and family members, and state authorities.

At the end of her visit, Irene Khan sent a memo to President Luis Inácio Lula da Silva, highlighting that "in Brazil the struggle for human rights continues to be faced with the obstacles of short term political interests and a long tradition of impunity. The Brazilian Government has a crucial role to play to comply with international human rights norms, guaranteeing that all Brazilians have their rights respected and that those whose rights are violated receive immediate and equal justice and reparations."⁴ The document also contains a series of recommendations to the Brazilian Government.

Brazilian Sérgio Viera de Mello, UN High Commissioner on Human Rights, was killed in a saddening incident on August 19, 2003. He fell victim to a bomb attack on the headquarters of the UN in Iraq. He took his post as High Commissioner in September of 2002, but was asked by UN Secretary General to serve for four months in Iraq as his Special Representative.

CASES SENT TO THE UN SPECIAL PROCEDURES

Cases of Summary Executions

● *Murder of Antônio Clênio Cunha Lemos, union leader at Curionópolis, Pará State, Brazil*

On 17 November 2002, Antonio Clênio Cunha Lemos, thirty-six, was shot five times at the Gold Miner's Union headquarters, in Curionópolis, state of Pará. Two of these gunshots were directed to his head, fatally injuring him.

During the weeks preceding his death, Lemos frequently stated that in case anything happened to him, Mr. Sebastião Curió, the mayor of Curionópolis, should be held responsible. In addition, on November 19 Lemos and his Union would have a meeting with the Chamber of Deputies' Human Rights Commission, in which they would present a list of 41,2 thousand miners who wanted to be reintegrated to the Cooperative.⁵ The list is the object of two lawsuits that were about to be filed, also demanding their reintegration to the association.⁶

⁴ Memorandum to the Brazilian President from Irene Kahn, Secretary General of Amnesty International, November, 2003.

⁵ Maurício Simionato, *Curió será ouvido sobre assassinato: Sindicalista foi morto com 5 tiros; policia identificou possível pistoleiro*, Folha de S. Paulo, 19 November 2002, p. A8.

⁶ Maurício Simionato, *Presidente do Sindicato dos garimpeiros é morto com cinco tiros*, Folha de S. Paulo, 18 November 2002.

• ***Summary execution of detainee Manoel Correa da Silva, Cachoeiro do Itapemirim, state of Espírito Santo***

Correa da Silva collaborated with the Special Mission (Missão Especial) established by the federal government to investigate the organized crime in the state of Espírito Santo by testifying against the *Scuderie Detetive Le Cocq* death squad. Correa da Silva died on 22 November, an hour and a half after arriving at the Monte Líbano Penitentiary from a Federal Police Station holding cell in São Torquato, Vila Velha. The judiciary had not authorized the transfer from facilities and Federal Police officers did not request special protection for Correa da Silva, even though he risked his life collaborating with the Special Mission.

According to Captain Alessandro Marin, chief intelligence officer for the Ninth Military Police Battalion, Correa da Silva died in cellblock two. Prison authorities later threw his body at the door that opens to the prison patio.⁷

As a result of Correa da Silva's depositions, police officials located clandestine graves and obtained details into murders committed by organized crime and judges were able to sentence several individuals—including Colonel Gomes Ferreira — linked to *Scuderie Detetive Le Cocq* to prison.⁸

• ***Military Police shooting of two children during a raid of the Baixa do Sapateiro Slum, Complexo da Maré neighborhood, state of Rio de Janeiro***

On March 5, 2003, a piece of shrapnel hit Misael on the head while she and her sister were playing in a public square during a shootout between police officers of the Twenty-Second Military Police Battalion and drug traffickers in the Baixo do Sapateiro slum (favela).⁹ Most of the people in the square escaped after officers opened fire, but Aline and her sister were fenced-in by the shots.¹⁰ The shrapnel hit as she and her sister took cover on the ground. According to a witness, during the shootout, an officer shouted, “take that little brat out of here.”¹¹

The two girls pleaded with officers to cease firing, but officers could not hear their cries above the sharp staccato of the gunfire. Officers only ended the shootout when a sixteen-year-old identified as Sheila, entered the direct line of fire and challenged the officers to continue shooting.¹²

On March 7, Military Police Officials entered Baixo do Sapateiro again after residents blocked the Linha Vermelha Highway in front of the *favela* to protest the March 5 raid.¹³ During the raid, police officials deliberately shot Oliveira as he was walking to the bakery.¹⁴

⁷ “Testemunha contra Ferreira é executada”. *A Gazeta*, 24 November 2002.

⁸ “Testemunha é assassinada em presídio”. *Folha de S. Paulo*, 24 November 2002.

⁹ “Um morto e oito feridos durante tiroteio na Maré”. *Jornal O Dia online*, <http://odia.ig.com.br/odia/policia/pl060311>, March 6, 2003.

¹⁰ Email Correspondence from Yvonne Bezerra de Mello to the Global Justice Center on March 11, 2003.

¹¹ Official Correspondence n° 01/2003 from Yvonne Bezerra de Mello to the Global Justice Center., March 13, 2003.

¹² *Ibid.*

¹³ “Dois feridos na Maré e tentativa de invasão de via expressa,” *Jornal O Dia online*, <http://odia.ig.com.Br/odia/policia/p1080308.htm>, March 8, 2003.

¹⁴ Global Justice Center interview with Fladimir da Mota Oliveira, in Rio de Janeiro, March 15, 2003.

Oliveira, a third year student at Elis Regina Public Primary School, was almost at the bakery, when police shot him twice on the leg.¹⁵ He tried to escape the line of fire but officers surrounded him and shot him again in the abdomen. Once on the ground, Officer Sabóia kicked the boy several times on the head.¹⁶

● ***The summary execution of Judge Antônio José Machado Dias in Presidente Prudente, state of São Paulo***

On March 14, 2003, an unknown assailant killed Judge Antônio Machado José Dias in Presidente Prudente, state of São Paulo.

Dias, a district judge in the town of Presidente Prudente, was the victim of an ambush when an unknown assassin shot him to death in his car, while returning home.

Dias was a judge and prison administrator of seven prisons within the Presidente Prudente region in São Paulo.

Dias was overseeing the trials involving the leadership of the First Capital Commando (Primeiro Comando da Capital, PCC), a criminal faction that operates within the prisons in São Paulo State, as well as the trial of Rio de Janeiro drug lord Fernandinho Beira-Mar, who was transferred to a São Paulo prison on February 27 2003.

Dias received threatening letters in late 2002 and as a result, received police protection for some time. Two days before he was killed, Dias felt that his safety was no longer in question and subsequently dismissed his bodyguards. Police investigations indicate

that the threatening letters came from within the city's penitentiary.

● ***The death of judge Alexandre Martins de Castro Filho, Vila Velha, state of Espírito Santo***

On March 24, 2003, Alexandre Martins de Castro Filho, judge at the Espírito Santo state Criminal Court (Vara de Execuções Penais) was killed in Vila Velha, Espírito Santo. Castro Filho was a member of the State Office of the Public Prosecutor's Organized Crime Fighting Group (Grupo de Repressão ao Crime Organizado do Ministério Público Estadual) and a member of the special task force established by the federal government to fight organized crime in Espírito Santo state.¹⁷

At 8:00 A.M., two unidentified gunman riding a motorcycle shot Castro Filho on the head, abdomen, and left arm as he arrived at the *Bele Forma* gym in the Itapoã neighborhood of Vila Velha.¹⁸ Castro Filho died at 8:30 A.M upon arrival at Santa Mônica Hospital in Vila Velha.¹⁹

Castro Filho was under police protection because he received death threats connected with his work combating organized crime in the state. According to the daily *Folha de S.Paulo*, Castro Filho was assigned a new bodyguard after São Paulo State judge Antonio José Machado Dias was assassinated on March 14 in Presidente Prudente, São Paulo state.²⁰ On the morning of the assassination, Castro Filho went to the gym without his bodyguard because his escort was running late.²¹

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ "Juiz da Vara de Execuções Penais é assassinado em VV," *Jornal Gazeta On Line*, <http://www.gazetaonline.com.br>, March 24, 2003.

¹⁸ "Juiz é assassinado a tiros no Espírito Santo: é o segundo magistrado morto no país em dez dias; a vítima investigava o crime organizado no Estado," *Folha de S.Paulo*, March 25, 2003.

¹⁹ "Juiz é assassinado a tiros em Vila Velha," *Folha On Line*, <http://www.folha.uol.com.br>, March 24, 2003.

²⁰ "Magistrado não estava com escolta policial," *Folha de S. Paulo*, March 25, 2003.

²¹ *Ibid.*

• ***Summary execution of landless worker Antônio Alves da Silva, state of Paraíba***

On June 5, 2003, Antônio Alves da Silva, 43, a landless worker and member of the Pastoral Land Commission (Comissão Pastoral da Terra — CPT) was killed on the rural estate (or “fazenda”) São José, in the municipality of Jacaraú, approximately 65 km from João Pessoa, Paraíba.²²

Alves da Silva, 43, was killed, and ten landless workers were wounded — including serious injuries to one woman, one man, and one 14 year-old child — when a group of heavily armed gunmen, led by the estate’s landowner Marcos Napoleão executed a surprise attack on the workers, who have been occupying the land since 5 August, 2001.²³ The community of 50 families who cultivate a portion of the fazenda land as their only means of survival have suffered repeated threats, assassination attempts, and expulsion since the beginning of the occupation.

• ***Death of Iraildes de Sousa Maciel, fazendeira in the state of Pará***

After an ineffective response of the Brazilian authorities to the repeated reports of death threats and acts of violence committed against Iraildes de Sousa Maciel, a fazendeira (rural landowner) in the municipality of Bannach, located in the southern region of the state of Pará, Ms. Maciel was killed on June 28, 2003, adding

her name to the tragic list of hundreds of rural workers killed in land conflicts in the region over the past twenty years.

Ms. Maciel had been living on the *Irmaãos Maciel* estate, with the authorization of the National Institute of Colonization and Land Reform (*Instituto Nacional de Colonização e Reforma Agrária — INCRA*), since 1984.²⁴ On the morning of June 28, 2003, armed attackers entered Ms. Maciel’s property and shot her to death, also wounding a farm hand, while her son was out tending to cattle. Unlike many victims of rural land conflicts, Mrs. Maciel was not a landless worker, but rather a small landholder who owned the property in which she lived and worked.

• ***The execution of Reginaldo Firmino dos Santos, community leader and gay rights activist, in the city of João Pessoa, state of Paraíba***

Reginaldo Firmino Alves, a thirty-eight year old gay man,²⁵ was murdered at 5:40 P.M on October 12, 2003. He was shot multiple times at point blank range, practically in front of his own home in João Pessoa.²⁶

After spending the day distributing presents to children from the community in need, Mr. Santos was walking back to his house, accompanied by a friend, when two men on a motorcycle called out his name. One of the men got off the vehicle. Standing face to face with Mr. Reginaldo, the aggressor aimed fired a shot into the victim’s

²² Information published by CPT-Northeast and released on 5 June 2003.

²³ On 6 June 2003, representatives of the Global Justice Center met, in Pernambuco, with representatives of the CPT-Northeast and with representatives of both the state and the federal government to discuss the assassination of Antônio Alves da Silva. On this occasion, the Superintendent of INCRA (National Institute of Colonization and Agrarian Reform) in João Pessoa stated that Marcos Napoleão was not, in fact the owner of the fazenda São José, but rather the leaseholder of just 20% of the land on which the fazenda São José is situated.

²⁴ Statement of Raimundo Nonato Barros, INCRA representative in Conceição do Araguaia, Pará, on June 3, 2003.

²⁵ Police Inquiry No. 095/03, page 5, 4th District Police Station, João Pessoa, Paraíba.

²⁶ “Bullet from .12 handgun kills Community Leader”, *Jornal O Norte*, p. 04, October 14th 2003.

forehead. Although this shot was fatal, the assassin continued to shoot at the victim as he laid dead on the ground. The assassin then escaped along with his accomplice.

On the Friday before he was murdered, Mr. Santos had announced on a radio show²⁷ that he intended to testify in court regarding torture practiced by members of the Military Police.²⁸ Mr. Santos was killed two days before he was scheduled to testify.

• *Death of psychiatric patient Sandro Fragoso, Caicó, state of Rio Grande do Norte*

Sandro Fragoso, a patient in the Hospital Milton Marinho, a federally-funded psychiatric institution in Caicó, Rio Grande do Norte was violently dead inside the Hospital. His body was found burned to death on July 17, 2002 inside a closed room of the Hospital.

CASES OF THREATS AND INTIMIDATIONS TO HUMAN RIGHTS DEFENDERS

• *Flávia Helena de Lima, Eduardo Fernandes de Araújo and Adrián Enrique Álvarez, João Pessoa, Paraíba*

On January 20, 2003, a communication was sent to the UN Special Representative on the situation of human rights defenders regarding the non-verbal threats intimidations against the Brazilian lawyers Flávia Helena de Lima and Aduardo Fernandes de Araújo and a U.S. researcher Adrián Enrique Alvarez on January 11 and 12 in João Pessoa, Paraíba.

The team of researchers arrived in João Pessoa on January 10 to investigate cases of summary executions, which were used in a report on the subject that was later handed to the UN Special Rapporteur on Summary Executions. Sometime between 12 noon and 8 pm, an unknown number of people broke into the apartment where the researchers were working and stole two laptop computers, copies of court documents and other materials.

On January 12, Flávia and Adrián were intimidated again, when they called the Global Justice Center from a public telephone, believing the apartment's landline to be wired. Around 8:30 pm, a Volkswagen Gol, driven by a man with dark glasses, slowed down in front of the public telephone and followed them until they ran into the building where they were staying.

• *Father Tiago Thorlby, Recife, Pernambuco*

On May 21, 2003, an official communication was sent to the UN Special Representative on the situation of human rights defenders, informing her of the death threats suffered by Padre Tiago in Pernambuco state.

Father Tiago has worked for the Pastoral Land Commission (Comissão Pastoral da Terra, CPT) as a missionary in the struggle for human rights and land reform. He works with families of rural workers for agrarian reform and against the large sugar plantation owners, who want to expel them from the land where the mills are located.

In recent years, Father Tiago has been

²⁷ Legislative member Rodrigo Soares sent an official correspondence Gab Dh No. 19, on October 14, 2003, to the director of Rádio Sanhuaú requesting the content of the interview (a copy of which was given to them by Reginaldo) with the aim of discovering whom Reginaldo was planning to file an affidavit against. But the radio station claimed they couldn't present the evidence due to technical problems.

²⁸ See note 1.

continually threatened, with the pattern of trying to stop his support to families that have always lived on the land in spite of pressure from sugar plantation owners to leave. In 2003 the threats intensified. The most recent known episode was on April 19, 2003, when a CPT vehicle that Father Tiago drove toward the Canguzinho settlement encountered a Military Police Chevrolet S-10 truck. After passing through the first intersection that gives access to the city of Aliança, the truck began to follow the CPT vehicle.²⁹ According to the workers José Manoel de Jesus³⁰, the day before (April 17), upon leaving Aliança he saw, in the same intersection, a Military Police truck of the same model, stop close to two Volkswagen Gol cars. One soldier left the truck and gave four automatic rifles to one of the people from the Gol car, who was outside waiting.

● *Ana Maria dos Santos, Santo Antônio de Jesus, Bahia*

On November 25, 2003, a communication was sent to the UN Special Representative on the situation of human rights defenders about the situation of Ana Maria dos Santos, in Santo Antônio de Jesus, Bahia.

Ana Maria dos Santos is the coordinator of the Human Rights Forum (FDH) of Santo Antônio de Jesus. Since 2001, the FDH has denounced the existence of a death squad in the region. In May of 2002, the FDH compiled testimonies from the families of victims, witnesses and survivors and sent them to the public prosecutor Ana Rita Cerqueira.

On September 20, 2003, during her visit

to Brazil, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, interviewed Ana Maria and other witnesses. One of them, Gérson Bispo dos Santos, was executed October 9, not long after Ms. Jahangir departed.

Ana Maria received various death threats after Ms. Jahangir's visit and remained in the public prosecutor's office for two straight days, September 24 and 25, due to the imminent threat to her life.

The public prosecutor Ana Rita Cerqueira had requested police protection for Ana Maria on September 22, 2003, but the police that were supposed to protect her were in the same battalion as those who are believed to belong to the death squad. Ana Maria remained in Santo Antônio de Jesus until October 9, when she moved to another city due to the risk to her life.

SLAVE LABOR

On August 20, 2003, a communication was sent to the UN Special Rapporteur on the situation of human rights defenders, in relation to the death threats against Father Xavier Plassat, Silvano Rezende, Márcio Lúcio Avelar and Jorge Vieira in the states of Pará and Tocantins.

In the last year, rural laborers have received death threats in response to their accusations of slave labor in ranches in the south of Pará state. These threats have forced the laborers to live in hiding, which makes it impossible for them to work, live with their families or be seen in public.

The CPT made these complaints official,

²⁹ Testimony of José Manoel de Jesus do Engenho Vazante (Aliança, PE), sent by email by the CPT/Pernambuco to the Global Justice Center on May 2, 2003.

³⁰ *Ibid.*

petitioning the Government to take effective measures to guarantee the freedom of thousands of laborers subject to slavery in Brazil, especially in Southern Pará. In retaliation to these complaints, Father Xavier Plassat, who represents the CPT in the National Campaign Against Slavery and his colleague, Silvano Rezende, received daily threats intended to make them give up their struggle.

The public prosecutor from Palmas, Tocantins, Mário Lúcio de Avelar and the labor judge of Parauapebas, Pará, Jorge Vieira, also received death threats due to their work against slave labor in the area.

● ***Pastoral Prison-work (Pastoral Carcerária) of the Archdiocese of São Paulo, São Paulo***

On December 11, 2003, a communication was sent to the UN Special Representative on the situation of human rights defenders in relation to the threats and intimidation against members of Pastoral Prison-work by e-mail sent on November 15, 2003.

On September 15, 2003, the Pastoral Prison-work of the Archdiocese of São Paulo received an extremely worrisome e-mail. The email contained unfounded accusations, swearwords, and threats against pastoral agents, and sought to intimidate them from carrying out their work.

TORTURE CASES

● ***Torture of approximately 62 prisoners in the Pedrinhas Detention Center, São Luis, Maranhão***

On December 18, 2002, information about the beating and torture of approximately 62 prisoners in the Pedrinhas Detention Center of São Luis, Maranhão, was sent to the UN Special Rapporteur on Torture.

The director of the prison, Carlos James Moreira, ordered a platoon of the Conflict Battalion to invade the B wing of the prison on November 24 around 6 pm. He had received information about an escape. Upon entering the prison, the platoon ordered the prisoners to undress and then carried out a “Polish hallway” in which about 60 people prisoners were beaten, kicked and hit with clubs and rifles.³¹ After the beating, the prisoners were made to lay down on the ground while the police jumped on their backs, and put sticks in their anuses.

As a result of the incident, the prisoners in the C wing began to scream and swear at the police. As punishment, these prisoners were also tortured and humiliated in even more violent fashion. The torture sessions lasted about two hours.

● ***Chan Kim Chang***

On October 9, 2003, an official correspondence was sent to UN Special Rapporteur

³¹ Administrative decision (Portaria) no. 001/2002-PFEP, of November 26, 2002. Technical opinion sent by Medical Doctor Maria Silva Araújo (CRM/MA 2139) to the Public Prosecutor of Penal Executions of São Luis, on December 3, 2002, p. 1; Edvânia Kátia, “Querem a cabeça do diretor”, *O Imparcial*, São Luis, December 2, 2002.

teur on Torture, in regards to the torture and subsequent death of the Chinese citizen, Chan Kim Chang, at the Ary Franco Prison in Rio de Janeiro.

On August 25, 2003, the Chinese businessman was detained by Federal Police agents in the International Airport Antônio Carlos Jobim, as he tried to depart to the United States with \$30,500 USD undeclared.

Chang was taken to the jail of the Federal Police, which is in the A wing of the prison, and remained there until August 27, when he was found unconscious, with his clothes wet and full of lesions. The beating occurred around 4 pm on the 27th, and as of 10:30 pm, he had still not been treated.

He was taken to the Salgado Filho Hospital in a coma, having suffered a severe blow to the head, large bruises, and wounds on the legs, wrists and ankles, lesions on the right side of his head, and scratches all over his body.³² After eight days in a coma, he died on September 4, at 8:40 pm, due to head trauma, brain hemorrhaging and double pneumonia.

● *Jader de Almeida Lopes*

On November 28, 2003, an official correspondence was sent to the UN Special Rapporteur on Torture, and to the President-Rapporteur of the Working Group on Arbitrary Detention, regarding the illegal prison and torture of Jader de Almeida Lopes, on June 21, 2003, in the town of Itagiba, Bahia.

Businessman Jader de Almeida Lopes, 31 years of age, was tortured and arbitrarily detained for 14 hours in the Police Station of Itagibá, Bahia, by policeman Elielson Vitorino Macedo.

BRAZIL AND THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

The Global Justice Center was the first Brazilian NGO to participate in a period of hearings of the Inter-American Court of Human Rights (the Court). During this special session, which took place in Santiago, Chile, on 4 June 2003, the Court received documents and oral arguments from universities and human rights organizations throughout the Americas, including the Global Justice Center.

Since the inception of the Court, 25 years ago, this was the first time that a Brazilian organization made a presentation before the main human rights body of the Organization of American States. The hearing dealt with the incompatibility between some migration control policies and the protection of labor rights of undocumented migrants. This problem exists in several countries in the continent, mainly in the USA, the country with the biggest population of migrants in the world and where the worst violations and abuses against irregular foreign workers takes place.

In May 2002 the Mexican government requested an opinion to the Inter-American Court of Human Rights so that this body set the minimum standards of protection regarding irregular foreign workers.

The *amicus curiae* and the oral presentation by the Global Justice Center on 4 June, 2003, contextualized the situation of undocumented migrants, pointing out the unbalanced juridical protection currently in place and the discriminatory reality observed in six States in the Americas, including Brazil.

³² *Idem*. The businessman was found with lesions on his forearms, around his eyes, his wrists and legs — which means at least that he injured himself trying to defend himself.

The presentation was made in conjunction with the Harvard Law Student Advocates for Human Rights and the Harvard Immigration and Refugee Clinic, both from Harvard Law School. The session was presided over by Brazilian judge Antonio Cançado Trindade, who is currently judge-president of the Court.

During the 117th ordinary session period of the Inter-American Commission on Human Rights, between 24 and 28 February 2003, the Global Justice Center, in partnership with several human rights organizations and parliamentarians from the state of Paraíba, Brazil, presented a report on the human rights situation in that state (“General human rights situation in the state of Paraíba, Brazil”). This report includes themes such as rural violence, death squads, prisons, sexual exploitation of children.

In October 2003, during the 118th period of sessions at the Commission, the Global Justice Center participated in two important hearings. First, the juridical question regarding the scope of State responsibility in cases of murder committed by third parties (based on the lack of proper due investigation), as well as the State’s lack of control over the establishment of private militias, two facts directly related to case no. 12.310 (Sebastião Camargo Filho, rural worker assassinated in the state of Paraná). The Global Justice Center is a co-petitioner in this case alongside the Pastoral Land Commission (Comissão Pastoral da Terra, CPT), the National Network of Popular Lawyers (Rede Nacional de Advogadas e Advogados Populares, RENAP), the Landless Workers Movement (Movimento dos Trabalhadores Rurais Sem-Terra, MST), and the International Law Group.

The second hearing, requested by the Global Justice Center, the Center for Human Estudos Negros (NEN), Núcleo de Rights

from PUC-Rio, Cejil, and Terra de Direitos, dealt with the issue of extrajudicial and summary executions in Brazil. The presentation was divided into three dimensions: a national account, based on Global Justice’s and NEN’s September 2003 report *Extrajudicial and Summary Executions in Brazil*; a regional focus, reporting on the situation in the state of Rio de Janeiro; and a thematic perspective dealing with the matter of private militias and rural killings.

Another important fact in 2003 was the visit of the president of the Inter-American Commission on Human Rights, José Zalaquett, and his staff to Brazil in November. During their one week stay they visited São Paulo, Vitória and Brasília, with the objective of knowing human rights actions and plans in order to improve cooperation between the Commission and these initiatives. The last *in loco* visit by the Commission took place in 1995. Since then, a few rapporteurs of the Commission visited Brazil, and in 2000 the Commission carried out an extraordinary session in the country.

PETITIONS SUBMITTED TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

• *Sétimo Garibaldi*

Petition filed on May 6, 2003 and registered on May 14, 2003 with regards to the assassination of rural worker Sétimo Garibaldi, 52 years of age, on the night of November 27, 1998. Sétimo was killed while at Fazenda São Francisco, located in the municipality of Querência do Norte, state of Paraná, during an extrajudicial eviction operation carried out by landowner Morival Favoreto, a member of the region’s Rural Democratic Union (União Democrática Ruralista, UDR), an organization with strong

ties with local authorities. On February 5, 2004 the Commission initiated the processing of the petition (P321/03).

● ***Damião Ximenes Lopes, amicus curiae***

The *amicus curiae* was sent on August 1, 2003. The Commission had declared the admissibility of the petition on October 9, 2002.³³ This *amicus* aims at supporting the main petitioner who asks for the responsabilization of the Brazilian government with regards the death of an interned patient at a psychiatric institution in Sobral, Ceará. After the *amicus* the Global Justice Center became a co-petitioner in this case.

● ***Manoel Luiz da Silva***

Petition filled on August 25, 2003 with regards to the assassination of rural worker Manoel Luiz da Silva, aged 40, on May 19, 1997. His death took place at Fazenda Engenho Itaipu, located in the municipality of São Miguel de Itaipu, state of Paraíba.

● ***Antonio Tavares***

This petition was filled on December 31, 2003. It refers to the assassination of rural worker Antonio Tavares, which took place on May 2, 2000, next to the city of Curitiba, state of Paraná. The assassination happened during a manifestation attended by more than 1,500 rural workers, including women and children. The rural workers were brutally assaulted by the Military Police on a highway that leads to Curitiba, BR-277. The Military Police acted according to an order given by the state government, without any judicial backing. The number of injured people exceeded 180.

CASES OPENED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

● ***Sebastião Camargo Filho***

Petition processed on June 30, 2000 (P-12.310) about the assassination of rural worker Sebastião Camargo Filho, at the municipality of Marilena, state of Paraná, on February 7, 1998. On January 29, 2003, the Commission decided to open the case under number 12.310 and defer its treatment of admissibility until the debate and decision on the merits. On May 29, 2003, the Global Justice Center, the National Network of Popular Lawyers (RENAP) and the International Law Group presented additional observations about the merits of the case. A hearing about the case took place on October 14, 2003 at the Commission's headquarters in Washington, USA.

● ***Emasculated boys — Raniê Silva Cruz***

This petition was initially processed on July 26, 2001 requesting the opening of investigations and the punishment to the accused of assassinating and emasculating Raniê Silva Cruz. The crime took place in September 2001. Raniê's body presented signs of torture and his sexual organs had been extirpated, becoming the first of a series of cases that came to be known as "Maranhão Emasculated boys". On August 29, 2003, the Commission decided to open the case under number 12,426 and defer its treatment of admissibility until the debate and decision on the merits. On December 16, 2003, the Global Justice Center, the Center for the Defence of Children and Adolescents Father Marcos Passerini (Centro de Defesa da Criança e do Adolescente Pe. Marcos Passerini),

³³ Report no. 38 /02, Admissibility, Petition 12.237

and the Network of Social Justice and Human Rights (Rede Social de Justiça e Direitos Humanos) presented additional observations about the merits of the case.

● *Emasculated boys — Eduardo Rocha da Silva and Raimundo Nonato da Conceição Filho*

On October 31, 2001, the petition about the death of two more children in the case known as “Maranhão Emasculated boys” was processed at the Commission. Eduardo and Raimundo were assassinated on June 7 and 9, 1997 at the municipality of Paço do Lumiar, state of Maranhão. Their bodies presented signs of torture and the extirpation of their genital organs. On August 29, 2003, the Commission decided to open the case under number 12,427 and defer its treatment of admissibility until the debate and decision on the merits. On December 16, 2003, the Global Justice Center, the Center for the Defence of Children and Adolescents Father Marcos Passerini, and the Network of Social Justice and Human Rights presented additional observations about the merits of the case.

FIREWORKS FACTORY

This petition was processed on November 23, 2001 about the explosion of a clandestine fireworks factory that took place on December 11, 1998, in the municipality of Santo Antônio de Jesus, state of Bahia. The explosion resulted in the deaths of 64 employees of the factory, in addition to serious injuries on other five persons, who have since been incapacitated to work. On October 6, 2003, the Commission decided to open the case under number 12, 428 and and defer its treatment of admissibility until the debate and decision

on the merits. On January 17, 2003, the Global Justice Center, the Human Rights Forum of Santo Antônio de Jesus and the Network of Social Justice and Human Rights presented additional observations about the merits of the case.

PRECAUTIONARY MEASURES AUTHORIZED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

On April 1, 2003, the Commission renewed the request of the precautionary measures conceded on September 23, 2002. The Global Justice Center and Paraíba state’s federal deputy Luiz Albuquerque Couto had requested the measures to guarantee the life and personal integrity of councilman Manoel Bezerra Matos, public prosecutor Rosemary Souto Maior de Almeida and three other persons whose names cannot be made public, all from the municipality of Itambé, state of Pernambuco. The five persons denounced the action of gunmen and death squads around the border between the states of Pernambuco and Paraíba since the establishment of the State of Paraíba Parliamentary Commission of Inquiry (Comissão Parlamentar de Inquérito, CPI) regarding banditry and drug trafficking in 2000.

Following councilman Manoel Mattos public denunciation of the action of those armed groups and the omission of both state and federal police, he started receiving death threats and was victim to a series of attempts against his life. The same happened with public prosecutor Rosemary Souto Maior de Almeida, who collaborated significantly to the aforementioned CPI by recovering several archived police inquiries. She also carried out important investigations that lead to the confirmation of the existence of death squads

in the region of Itambé (in Pernambuco) and Pedras de Fogo (in Paraíba). Furthermore, the participation of civil and military police officers in these death squads was notorious. Since then the public prosecutor has been victim of constant death threats and has been harassed within her own institution, the Office of the Public Prosecutor.

GLOBAL JUSTICE CALLS UPON THE BRAZILIAN GOVERNMENT TO:

- Effectively recognize the jurisdictional competence of the international systems for the protection of human rights. The existence of an organ, within the governmental sphere, qualified to act and participate systematically and professionally on these mechanisms would represent a message to society that the protection and promotion of human rights are effectively part of the government's agenda.

- Respect and fulfil the deadlines and recommendations of the Inter-American human rights system, *i.e.* the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The government ought to respect all the deadlines set by the bodies mentioned above, and to implement in full the recommendations requested by these bodies.

- Recognize the competence of all the United Nations' treaty bodies. Notwithstanding Brazil's recognition of the competences of the Committee to the Elimination of Racial Discrimination (CERD) and the Committee to the Elimination of all forms of Violence Against Women (CEDAW), in 2002, the country has yet to recognize the

competence and jurisdiction of the Committee Against Torture (CAT) and the Human Rights Committee (HRC).

- Implement a program capable of effectively protecting witnesses, investigating cases related to threats against the life and personal integrity of these witnesses.

- Coordinate governmental actions amongst its relevant bodies, *i.e.* Secretariat for Human Rights, Federal Police, Office of the Public Prosecutor, Ministry of Justice, in order to efficiently deal with the recommendations of the international human rights systems.

- Approve in Congress the Law Bill no. 3214, currently at the Federal Chamber of Deputies, which deals with the juridical effects of the decisions proffered by the Inter-American Commission and Court of Human Rights. Congressman Marcos Rolim presented this project in 2000. It foresees immediate juridical effects to the decisions proffered by the Inter-American system of human rights, particularly those of indemnization character, which would be automatically considered a legal instrument approved for judicial execution.

- Sign and ratify the First and Second Optional Protocols to the International Covenant on Civil and Political Rights (ICCPR);

- Sign and ratify the Optional Protocol to the Convention against Torture and other cruel, inhuman and degrading treatment or punishment (CAT).

- Sign and ratify the Convention on the Protection of the rights of all migrant workers and members of their families (MWC).

- Ratify the First Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict³⁴.

³⁴ Brazil signed this Optional Protocol on 6 September 2000; the ratification is pending.

■ Ratify the Second Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography³⁵.

■ Brazil is overdue with seven periodic reports to the UN Treaty Monitoring Bodies. The Brazilian government should submit its second, third and fourth periodic reports to the Committee Against Torture (CAT), which are overdue, respectively, since 27 October 1994, 27 October 1998, and 27 October 2002.

■ Submit the second and third periodic

reports to the Human Rights Committee (HRC), which are respectively overdue since 23 April 1998 and 23 April 2003.

■ Submit to the Committee on the Rights of the Child (CRC) the third periodic report, which is overdue since 23 October 2002.

■ Present the Resolution on Human Rights and Sexual Orientation once again to the UN Commission on Human Rights, this time articulating in advance the support of other countries to this initiative — above all the Group of Latin American countries (GRULAC).

³⁵ *Idem.*