

# **FINAL JUSTICE**

## **Police and Death Squad Homicides of Adolescents in Brazil**

**Human Rights Watch/Americas  
(formerly Americas Watch)**

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## **ACKNOWLEDGMENTS**

**The present report is based on a month of research in Brazil conducted by Jim Cavallaro and Ben Penglase, and focuses on the governmental response to homicides of children (those under the age of eighteen) in four states: Rio de Janeiro, São Paulo, Pernambuco and Espírito Santo. The report was written by Ben Penglase. It was edited by Robert Kimzey.**

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**"Final Justice" (or *Justiça Final*) is the name of a death squad headed by a former military policeman that operates in the state of Rio de Janeiro. It is also the name of an American television show ("Equal Justice"), popular in Brazil, in which a judge who is forced to release suspects on legal technicalities enforces justice by his own hands. According to a recent poll of Rio de Janeiro military policemen, the protagonist of the show ranks only behind Charles Bronson as their favorite hero.**

**This report is dedicated to the children who work and sleep on the streets of Brazil's cities and to the street educators and human rights activists who, often in the face of popular disapproval and frequent threats and harassment, courageously assist them with their daily struggles.**

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## **ABBREVIATIONS**

**CAP** Centro de Acolhimento Provisório (Center for Temporary Shelter, a juvenile detention facility)

**CEAP** Centro de Articulação dos Povos Marginalizados (Center for the Mobilization of Marginalized Populations)

**CEDECA** Centro de Defesa da Criança e do Adolescente do Grande ABC (Center for the Defense of Children and Adolescents of the greater Santo André, São Bernardo and São Caetano area)

**Cendhec** Centro Dom Hélder Câmara de Estudos e Ação Social (Center Dom Hélder Câmara for Study and Social Action)

**CONANDA** Conselho Nacional dos Direitos da Criança e do Adolescente (National Council on the Rights of Children and Adolescents)

**CPI do Extermínio** Comissão Parlamentar de Inquérito que Investigou o Extermínio de Crianças e Adolescentes no Brasil (Congressional Commission of Investigation that Examined the Extermination of Children and Adolescents in Brazil)

**DCA Forum** Permanent National Forum of NGOs in Defense of Children's Rights

**ECA** Estatuto da Criança e do Adolescente (Children and Adolescent Statute, the national children's legislation)

**FCBIA** Fundação Centro Brasileiro para Infância e Adolescência (the federal government's child welfare and protection agency)

**FEBEM** Fundação Estadual do Bem-Estar do Menor (the São Paulo state agency in charge of children's welfare and juvenile detention centers)

**GAJOP** Gabinete de Assessoria Jurídica às Organizações Populares (Office for Legal Assistance to Popular Organizations)

**IBASE** Instituto Brasileiro de Análises Sociais e Econômicas (Brazilian Institute



**for Social and Economic Analysis]**

**IBGE Instituto Brasileiro de Geografia e Estatística (Brazilian Institute for Geography and Statistics)**

**IBISS Instituto Brasileiro de Inovações em Saúde Social (Brazilian Institute for Innovations in Public Health)**

**IESBEM Instituto Espírito Santense de Bem-Estar do Menor (the Espírito Santo state children's welfare and juvenile detention agency)**

**IML Instituto Médico Legal (Medical Legal Institute, the state morgue and coroners office)**

**IMP inquérito da polícia militar (military police investigation)**

**ISER Instituto de Estudos Religiosos (Institute for Religious Studies)**

**MNMMR Movimento Nacional de Meninos e Meninas de Rua (National Street Children's Movement)**

**NEV Núcleo de Estudos da Violência (Center for the Study of Violence)**

**OAB Ordem dos Advogados do Brasil (Brazilian Lawyers Association)**

**PC polícia civil (civil police)**

**PM polícia militar (military police)**

**PT Partido dos Trabalhadores (Workers Party)**

**ROTA Rondas Ostensivas Tobias de Aguiar (a mobile, quick-reaction battalion of the São Paulo military police)**

**UAP-1 Unidade de Acolhimento Preliminar (a São Paulo juvenile detention facility)**

**UNICEF United Nations Children's Fund**

## **INTRODUCTION**

**In the early morning hours of Friday, July 25, 1993, two cars drove up to a group of children and teenagers who were sleeping on the streets of downtown Rio de Janeiro, near the famous Candelária church. Several men, perhaps as many as eight, got out of the cars and asked for a boy named "Ruço." They then opened fire on the group of children.**

**Four boys were hit at point-blank range and were killed instantaneously. Another stumbled a few blocks away and died in front of the Candelária church. A sixth boy, Marco Antônio da Silva, who was known as "Ruço," died several days later from gunshot wounds to his right eye and right thigh. After the initial shooting, the killers stopped three more boys several blocks away, shot them and dumped their bodies at the nearby Museum of Modern Art. Only one of the three survived.**

**The killing of eight sleeping street children in downtown Rio de Janeiro, in what became known as the Candelária massacre (a chacina da Candelária), provoked a wave of indignation and shock in Brazil and abroad. As a result of the killings, and of the intense publicity surrounding the incident, the Brazilian government took several welcome, though belated, steps to address the persistent problem of violence against minors.**

**A twenty-two-year-old garbage collector named Wagner dos Santos, who survived the shootings with a bullet lodged in his neck, identified three policemen from the Fifth Battalion of the Rio state military police and a civilian as being among those responsible for the slaughter. The military policemen and the civilian were quickly arrested, indicted and held under preventive detention. The commander of the battalion in which the policemen served was dismissed.**

**At the federal level, President Itamar Franco stated that he was "horrified with what happened" and that he felt the shootings like a "punch in the face." President Franco flew to Rio de Janeiro with Justice Minister Maurício Corrêa to express the concern of the Federal government to Rio's governor, Leonel Brizola. On August 4, after a meeting of the Justice Ministry's Conselho Nacional dos Direitos da Pessoa Humana (National Human Rights Council), it was determined that the Federal Police would launch an investigation into the activities of private death squads in Rio de Janeiro. The Council further recommended that the Federal Police establish a special department to investigate human rights crimes.<sup>1</sup> On**

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<sup>1</sup>"Polícia Federal vai investigar 'exterminadores,'" *A Folha de S. Paulo*, August 5, 1993; and,

August 4, Aristides Junqueira, Brazil's crusading Procurador Geral opened an investigation to determine whether the state of Rio de Janeiro was complying with the federal legislation on children's rights.<sup>2</sup>

With the exception of the public outcry and the hastily-taken reforms, the Candelária killings reflect a consistent pattern investigated by Americas Watch during a month spent in Brazil researching homicides of children. Though the Candelária killing was uncommon because of the number of children killed at once, it was far from an unusual occurrence. According to the Ministério Público, between 1988 and 1991, a total of 5,644 children from the ages of five to seventeen were victims of violent deaths. In the state of Rio de Janeiro alone, according to figures from the state civil police, 424 children under the age of eighteen were victims of homicide in 1992, and 298 were killed in the first six months of 1993. As in the Candelária case, many of the victims are minors who sleep and work on the streets of Brazil's cities. The majority of the victims are male and aged fourteen to seventeen, and a disproportionate share are black.

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"PF investigará extermínio no Rio de Janeiro," *O Estado de São Paulo*, August 5, 1993.

<sup>2</sup> The Procurador Geral is a position similar to the Attorney General in the United States, but with more independence from the Executive branch. The federal *Ministério Público*, which is headed by the Procurador Geral da República, is an autonomous and independent branch of the government which is empowered to ensure respect for the rights guaranteed in the constitution. The Procurador Geral is chosen by the President and approved by the Senate. After serving for two years, the Procurador's position becomes life-long and he or she can only be removed by a two-thirds vote of the Ministério Público. Similar institutions also exist at the state level.

The Candelária killings also reflect the larger pattern of perpetrators and motives. In many cases, homicides of children are committed by on-duty police or by private death squads (known in Brazil as grupos de extermínio), which are frequently composed of off-duty policemen. The killings frequently occur because poor children are perceived as menaces and criminals, who must be eliminated, or because criminal deals made between children and police or organized gangs go awry.

In the case of the Candelária killings, there are several suspected motives. One scenario holds that the killings were in retaliation for a scuffle earlier that day between the police and a group of street children, in which the window of a police van was broken. According to several of the children involved in that incident, the police promised to return and settle scores. Another explanation holds that the killings were part of the actions of a grupo de extermínio hired by local shop and restaurant owners to eliminate children who were living on the downtown streets. The children who lived near the church had apparently been chased away from the downtown area after a group of tourists were assaulted in the church in September 1992, but they had returned and were believed to be responsible for robberies and muggings. During the trial of the three suspects, which was underway in December 1993, a witness alleged the killing was an act of retribution for the death of the wife of a policeman: according to this version of events, the woman was run over as she crossed a street in order to avoid being robbed by the street children.<sup>3</sup> The arrests and indictments in the Candelária case are encouraging. In most cases of homicides of children, however, those responsible are rarely arrested; convictions almost never occur. Although it is hoped that the reforms taken by the Brazilian government will improve the situation, it is still too early to determine whether they can reverse the persistent pattern of impunity for the killers of children.

During the course of a month spent investigating homicides of children in four states in Brazil—Espírito Santo, Pernambuco, Rio de Janeiro, and São Paulo—Americas Watch documented a pattern of killings committed frequently by on-duty police during the course of their official patrolling duties, or by unofficial death squads comprising off-duty policemen. In addition to the participation of policemen in these killings, Americas Watch found a persistent pattern of impunity—referred to above—and in very few of these cases are those

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<sup>3</sup> Renato Garcia, "Morte de mulher causou crime da Candelária," *O Globo*, September 25, 1993.

responsible ever convicted for their actions.

Americas Watch chose, in this report, to focus in particular on the governmental response to homicides and attempted homicides of children and adolescents under the age of eighteen.<sup>4</sup> We also restricted our investigation to killings that are not the direct cause of domestic violence, but fit within the pattern of what Brazilian human rights activists have termed the extermination of children (*extermínio de crianças*), that is: "The homicide of those under the age of eighteen, for extra-familial motives, with the objective or subjective motive of imposing an extra-legal order, whether or not the author is known."<sup>5</sup> As analyzed in more detail below, the governmental response to this tragic human rights problem varies significantly from state to state. Some state governmental authorities are clearly grappling with the problem, seeking to control their own police forces, convict members of *grupos de extermínio* and end the cycle of impunity. In all of the states researched there were police authorities who, within the limits of the available material resources or political will, were investigating these killings. Americas Watch found that in some cases police investigations are carried out and suspects are arrested.

However, all four states still have a long way to go before ending impunity and beginning to resolve the problem of homicides of children. In several states, this journey has yet to reach its first step—the honest admission that a problem exists—and Americas Watch found evidence of official complicity in crimes or, more commonly, omission in addressing the issue. Although there

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<sup>4</sup> We chose the age of eighteen as a cut-off point because the U.N. Convention on the Rights of the Child, Article 1, defines children as "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier." Also, those under the age of eighteen cannot be legally tried as adults in Brazil. Throughout this report, for the sake of simplicity, the words "children" and "minors" (which has a derogatory connotation in Brazil) will be used, unless otherwise specified, to refer to those under the age of eighteen.

<sup>5</sup> On December 13, 1991, the Comissão Nacional de Combate à Violência (National Commission to Combat Violence), a commission formed by national nongovernmental organizations and representatives of the federal government to monitor violence against children, agreed to define *extermínio* as: "*A presunção de homicídios dolosos cometidos contra menor de 18 anos por motivos extra-familiares, com pretensão objetiva ou subjetiva de impor uma ordem extra legal, com ou sem autoria conhecida.*"

are sometimes initial police investigations, it is rare for these to result in actual convictions. Complete, reliable statistics on this issue do not exist (in particular there are no statistics on conviction rates), but the individual cases detailed in the course of this report demonstrate the general pattern of impunity.

The larger problem of violence against children, as with many of the persistent human rights violations in Brazil, is an outgrowth of the country's poverty, lack of financial resources, and tremendous economic and racial inequalities. Obviously, these problems are complex and not amenable to easy solutions. However, homicides of children, especially when state agents are involved in the killings, demand an immediate official response and, Americas Watch believes, can be significantly curbed if the political will exists to address the problem in a consistent and comprehensive manner. That some of the states visited by Americas Watch have attempted to address the issue is to be applauded and, although efforts at reform are as yet incomplete, seen as an encouraging sign.

Brazil enjoys some of the most progressive legislation on children's rights in the world, the 1990 Estatuto da Criança e do Adolescente (Children and Adolescent Statute). This legislation, which was enacted after vigorous lobbying by children's rights and human rights organizations, amply allows for protection against violence. However, in practice, the federal government, with the exception of its actions on the recent killings in Rio, has generally failed to act decisively to see that this legislation is adequately implemented and to address the problem of impunity for the killers of children. The action that has come in the wake of the killings in Rio is crisis control at best, a painfully late response at worst. Though the action is to be welcomed, it is a sad indication of the indifferent attitude towards the deaths of children that despite the killings of hundreds over the past five years, a vigorous federal response has come only now.

Homicides of children, while constituting a violation of the most basic human right—the right to life—are only the most extreme of the various types of violence that afflict Brazilian children. Other types of violence, which often feed and influence the problem of killings, such as police beatings of children and poor conditions at juvenile detention centers, will be referred to in the course of this report but not considered in detail. Americas Watch will continue to devote attention to the violation of the rights of children in Brazil.

# **1 THE KILLING OF CHILDREN OR MURDERS OF TEENAGE BOYS**

## **THE GENERAL PATTERN**

**Studies on homicides of children have revealed several broad and consistent patterns with regard to the victims, the cause of death and the perpetrators. In general, what has come to be known as the killing of "children" is, in the majority of cases, the killing of male adolescents, fourteen to seventeen years of age, a disproportionate share of whom are black. The main perpetrators of homicides of children and adolescents, when they are known, are private death squads or vigilantes (known in Brazil as grupos de extermínio or justiceiros); on-duty police; organized criminal gangs, which are often involved in drug dealing and sometimes include minors; and friends or family members. In the majority of cases, however, the perpetrators are officially reported as unknown.**

**For example, a study conducted by the Núcleo de Estudos da Violência (Center for the Study of Violence, NEV) found that in the state of São Paulo half of the reports about homicides of children contained no information about the relation between the victim and the person responsible for the killing. In the state of Rio de Janeiro, there was no information about the relation between the victim and the killer in 87 percent of the homicides reported in the press.<sup>1</sup>**

**Despite the lack of specific information about responsibility for homicides, there is frequently enough detail to reveal possible underlying causes. Most telling is the frequency with which victims are killed by guns. For example, in the study conducted by the NEV cited above, 71 percent of the homicide victims in São Paulo were killed by bullet wounds. In Rio de Janeiro, 86 percent were killed by guns. Various other studies have also indicated that many of those killed by**

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<sup>1</sup> This study analyzed press reports of violent deaths of children in six states over the course of six months in 1992. See, Myriam Mesquita Pugliese de Castro, coordinator, Cristina Eiko Sakai, Daniela A. Pinheiro, Amarylis N.A. Ferreira and Marcelo Gomes Justo, *Mortes de Crianças e Adolescentes na Imprensa Nacional: Elementos Para a Construção de Um Sistema de Monitoramento da Violência* (São Paulo: Fundação Centro Brasileiro para Infância e Adolescência, FCBIA; Núcleo de Estudos da Violência da Universidade de São Paulo, NEV/USP, October 1992).

gunshots were struck in the head or thorax. The high incidence of killings by guns indicate that many of these homicides were probably deliberate. The frequency of bullet wounds in the head and thorax is an even better indication of the probability of executions.

Figures from the federal police, which registered a total of 4,611 homicides of children over three years, from 1988 through 1990, indicate that the population most at risk are boys between the ages of fifteen and seventeen.<sup>2</sup> A study conducted by Myriam Mesquita de Castro of the NEV, analyzing press reports of homicides in six states during 1992, found that 75 percent of the victims were boys and 62 percent were between fifteen and seventeen years of age.<sup>3</sup>

Other studies have confirmed this pattern in several geographically distinct areas. A study by the NEV which analyzed homicides of children in the state of São Paulo in 1990, showed that the majority of the victims were fifteen- to seventeen-year-old males. In the state of Rio de Janeiro, the NEV found that 82 percent of the minors who were victims of homicide were males. In the northeastern state of Pernambuco, a similar study carried out by the Gabinete de Assessoria Jurídica às Organizações Populares (Office for Legal Assistance to Popular Organizations, GAJOP), found that 69.7 percent of the minors who were victims of homicide were between twelve and seventeen-years-old. Eighty-three percent were male.

Though evaluations of the racial background of victims of violence are somewhat unclear, it is certain that dark-skinned adolescent boys—those identified as preto and negro (black) or pardo (brown)—are more likely to be victims of homicide. According to Brazil's latest official census (for 1990), 55 percent of Brazil's population identified itself as white, 39 percent as pardo, 5 percent as black, and .5 percent as Asian (amarelo).<sup>4</sup> The figures cited above from

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<sup>2</sup> Statistics from the Polícia Federal (Departamento de Ordem Pública e Social, DFP/DOPS), cited in Câmara dos Deputados, *O Extermínio de Crianças e Adolescentes no Brasil* (Brasília: Relatório da Comissão Parlamentar de Inquérito que investigou o Extermínio de Crianças e Adolescentes no Brasil, 1992), pp. 27, 32.

<sup>3</sup> Myriam Mesquita Pugliese de Castro, coordinator, *Mortes de Crianças e Adolescentes na Imprensa Nacional*.

<sup>4</sup> Instituto Brasileiro de Geografia e Estatística (IBGE), *Anuário Estatístico do Brasil 1992*,



the Federal Police for homicides of minors between 1988 and 1990, for example, indicate that 82 percent of the boys killed were black.

However, statistics on race in Brazil should be regarded with some caution. Racial identities in Brazil are not clear-cut, with many people identifying themselves between the extremes of white or black, as *mulato*, *moreno* or *pardo*. Because of internalized racism, respondents to census studies will sometimes misidentify their race, leading some Brazilian Black Consciousness activists to state that the official census underestimates Brazil's true black population. It is also common for economic status to have a great influence on racial identification, with poor individuals being more likely to be classified as *preto* and wealthier individuals of the same skin color as *pardo* or *mulato*, or even white. According to several researchers, racial identities of bodies at state morgues, for example, are often incorrectly classified or racial identities are ignored all together. In addition, dark-skinned Brazilians rank lower on most indicators of wealth and economic status, making up a larger percentage of the poor. Thus, it could be argued that more dark-skinned adolescents are victims of homicide because of their economic background, and not solely because of their race.

Nevertheless, statistics on the race of homicide victims present a revealing pattern, if the exact contours are still somewhat unclear. The initial results of the NEV study of homicides in São Paulo showed that 45.5 percent of the victims were identified as white and 51.7 percent were black.<sup>5</sup> This statistic is especially revealing when it is noted that, officially, more than 70 percent of the population of São Paulo is white. In Rio de Janeiro, two recent studies have reached contradictory conclusions. A thorough statistical study by the Instituto de Estudos Religiosos (Institute for Religious Studies, ISER) claimed that race has little bearing on the likelihood of adolescents being victims of homicide, with the percentages of victims of different races approximating the general percentages

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(Rio de Janeiro: IBGE, 1992), p. 261.

<sup>5</sup> Among those cited for our purposes as black (having partial or total African ancestry) were 37.3 percent identified as *pardo* (brown), 13 percent identified as *negro* (black) and 1.4 percent identified as *mulato*. Less than one percent of the victims were Asian. Mesquita Pugliese de Castro, Cristina Eiko Sakai, Marilis de Almeida Fereira, Marcelo Justo, Nelso Campogrande, "Homicídios de Crianças e Adolescentes no Estado de São Paulo" (São Paulo: NEV and CBIA, 1993).

in the state.<sup>6</sup> From January to July 1993, according to the study, 34 percent of the minors who were victims of homicide were white, 29 percent were black, 26 percent were pardo and in 12 percent of the cases there was no information about the victim's race. However, a different study, by the Centro de Articulação dos Povos Marginalizados (Center for the Mobilization of Marginalized Populations, CEAP) claimed that in 1992, 22 percent of the victims of homicide in the state of Rio were black (preto) and 17 percent were white.<sup>7</sup>

It is also clear that many of the victims of homicide are not street children, criminals or gang members, but simply poor youth. *Vidas Em Risco*, a landmark study on the issue of violence against minors, examined press reports of homicides of minors in three states during 1989. The report found that 38 percent of the victims had a fixed address and many of these lived with their families. The study also found that of 457 victims whose cases were reported in the press, only thirteen were identified as drug dealers and nine as drug couriers.<sup>8</sup> According to information compiled by a branch of the São Paulo municipal government, 76 percent of the victims of homicide in the greater São Paulo area in 1991 worked or studied.<sup>9</sup> A more recent study by ISER found that the neighborhoods of the city of Rio de Janeiro that registered the largest numbers of victims of homicides of minors in the first six months of 1993 did not correspond to the areas where most street children lived. In fact, ISER states that the two areas do not just fail to correspond, but are actually opposed to each other.<sup>10</sup>

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<sup>6</sup> Cláudia Milito, Hélio Raimundo Santos Silva, and Luiz Eduardo Soares, *Homicídios Dolosos Praticados Contra Menores, no Estado do Rio de Janeiro (1991 a julho de 1993)* (Rio de Janeiro: Projeto Se Essa Rua Fosse Minha (FASE, IBASE, IDAC, ISER), 1993), p. 11 and gráfico 12.

<sup>7</sup> "Violência contra menor aumenta 50% no Rio de Janeiro," *O Globo*, November 2, 1993.

<sup>8</sup> *Vidas Em Risco: Assassinatos de Crianças e Adolescentes no Brasil* (Rio de Janeiro: MNMMR, IBASE, NEV, 1991), p. 71. This report was issued jointly by the National Street Children's Movement, the Instituto Brasileiro de Análises Sociais e Econômicas (Brazilian Institute for Social and Economic Analysis, IBASE) and the NEV.

<sup>9</sup> Gilberto Nascimento, "Jovens trabalhadores são mortos em SP," *Folha de S. Paulo*, July 12, 1992.

<sup>10</sup> Milito, Silva and Soares, *Homicídios Dolosos Praticados Contra Menores, no Estado do*

**Statistical studies of the deaths of children, and in particular studies of homicides, are distinguished mainly by their lack of solid information. The lack of comprehensive data on the killing of children is itself revealing, though, of the forces that create and sustain the problem.**

**The majority of the studies on this topic have used two sources of information: press reports on killings or information gathered from the state morgues (known in Brazil as the Instituto Médico Legal, IML). Both sources of information have obvious biases.**

**Newspapers do not detail every killing that occurs and so cannot be the source for a comprehensive statistic on the number of deaths. When newspapers do carry stories on homicides of children they sometimes report on these cases in a sensationalistic manner. More frequently, news stories lack detailed information about the killings. Information is often particularly lacking on the identities of those responsible for the killings, the race of the victim, and the background of the child.**

**Also, though there is no formal censorship of the press, newspaper reports in Brazil, as in most other countries, are often colored by the political considerations of their editors, or reflect in a more subtle way the prejudices of the population. For example, homicides of children in poor suburbs and shantytowns often receive very little coverage, while kidnappings of the children of the elite become front-page stories.**

**Information gathered from the IML likewise has built-in biases. For a start, a death is only registered at the IML when there is a corpse. If, as it is thought to be increasingly common, the corpses of children never appear or are dumped in clandestine burial grounds, the death is not registered at the IML. Also, according to many researchers interviewed by Americas Watch, the death certificates from the IML are often poorly or erroneously filled out and contain very little information beyond the immediate cause of death.**

**In many cases this lack of information is not the result of incompetence, but merely of the limited responsibilities of the IML, which must determine only the cause, and not the manner, of death. Technicians at the IML can, for instance, determine that the cause of a person's death was asphyxiation if they find that there is enough water in the lungs of the corpse to have halted breathing. The IML is not responsible, though, for determining the manner of death. It does not need to determine whether the individual drowned accidentally or was deliberately**

held under water by someone else. Information on the cause of death—for example a postmortem exam showing that the individual was killed by bullets fired at close-range resulting in wounds to the head or thorax—can present enough information to make a fairly precise determination of the circumstances. However, detailed information on the identity of the author of the crime or the motivation for the killing is beyond the scope of the IML.

Finally, the IML as an institution is subordinate to the state Secretary of Public Security (Secretaria de Segurança Pública), which also commands the police force. Thus the IML is not a truly independent institution and, at worst, is highly susceptible to pressure to cover-up information about police involvement in human rights abuses.<sup>11</sup> More commonly, the IML is completely reliant on investigations carried out by the police for any additional details on killings, presenting the police with many opportunities for covering up their participation in homicides.

Beyond newspaper reports and information gathered from the state IMLs, one of the best sources of information on homicides of children could be the state governments themselves. State governors or the federal government could compile comprehensive statistics detailing how many police investigations into homicides of children are opened, how many suspects are arrested, how many investigations identify those responsible, how many investigations are shelved due to lack of information, how many are passed onto the courts, and how many of these cases actually end in convictions or acquittals.

However, statistics with this level of detail do not exist. At best some state governments, for instance that of Rio de Janeiro, maintain monthly records of the number of violent deaths of children. These records are then broken down into various different types of violent death, such as traffic accidents, homicides, or suicides, and contain initial information on suspected authors. These records are usually based on the police report which must be filled out by the state civil police whenever a crime is reported. Thus they would rarely contain information on police participation in crimes or details that could only come to light after a more extensive police investigation. More complete statistics on how many

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<sup>11</sup> For an examination of the role of the Instituto Médico Legal in reporting on human rights abuses during Brazil's military dictatorship see, Americas Watch, Physicians for Human Rights, and the American Association for the Advancement of Science, *The Search for Brazil's Disappeared: The Mass Grave at Dom Bosco Cemetery* (New York: Human Rights Watch, May 13, 1991).

investigations are completed or not, and how many suspects are arrested, do not exist beyond the most fragmentary level. Particularly lacking are comprehensive statistics about the judicial process—information, for instance, on convictions and acquittals.

Obviously, the resources necessary to maintain this level of information would be difficult for any nation, much less a poor, developing and debt-ridden country such as Brazil. Nevertheless, it is apparent that if Brazil's government authorities want to solve the persistent problem of impunity a first step would be to compile comprehensive statistics that indicate where the system of justice is breaking down and point out who is responsible. And, if there were full and complete investigations and prosecutions of the killers of children, compiling statistics would not be difficult.

That such comprehensive analysis does not exist is not only indicative of the lack of resources of Brazil's government, but also of the lack of importance that it attaches to ending impunity.<sup>12</sup> Incomplete information on investigations into the killings of children make a thorough examination of impunity difficult and, as a result, help to perpetuate the phenomenon.

#### **CHILDREN OF THE STREET AND CHILDREN IN THE STREET**

The children who live and work on the streets of Brazil's large cities are particularly at risk of violence, and are frequently the targets of homicide. This occurs for several reasons, but mainly because children on the streets are more likely to become involved in crime or to be perceived as criminals and threats to public safety, and because of their presence on the streets at night, in a vulnerable and unsafe location.

Though precise figures on the number of street children do not exist, it is thought that thousands of children are forced to work, and often live, on Brazil's streets to help supplement the income of their families or ensure their own survival. The exact number of children who live or work on Brazil's streets is not known, and estimates range widely, from 10,000 to 7 million.<sup>13</sup>

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<sup>12</sup> The lack of comprehensive statistics on law enforcement is a problem that Americas Watch has documented not only with regard to violence against children but also with respect to uniformed police violence and violence against women.

<sup>13</sup> Brazil Network, *Children Without a Future* (Washington, D.C.: Brazil Network, September 1992), p. 5.

The United Nations Children's Fund (UNICEF) estimated that in 1990, 7.5 million children and adolescents between the ages of ten and seventeen worked on the streets of Brazil. Almost 40 percent of this group consisted of children and adolescents between ten and fourteen years of age.<sup>14</sup> However, UNICEF did not estimate how many of these children also sleep on the streets. A recent study in São Paulo counted a total of 4,529 children under the age of eighteen on the streets of São Paulo, 895 of whom sleep on the streets.<sup>15</sup> The study was based on actual head-counts of children, on two different days, and as a result probably underestimated the actual number of children who live and work on the streets. According to the coordinator of the study, many of the children were not abandoned, but maintained some ties with their families. A similar study carried out in Rio de Janeiro in 1992 counted approximately one thousand children on the streets of the city at night, though it is thought that the actual number may be over 4,000.<sup>16</sup>

An important distinction is that between children who live on the streets (known as children of the streets or *meninos da rua*) and children who merely work on the streets (called children in the streets, or *meninos na rua*). Children who work on Brazil's streets may occasionally sleep on the streets as well, but more frequently have a stronger link to a family. According to Benedito Rodrigues dos Santos of the Movimento Nacional de Meninos e Meninas de Rua (MNMNR, the National Street Children's Movement):

The vast majority of the so-called street children do not actually live in the streets. They go to the streets to work in the informal market as walking vendors, guarding and washing cars, or shining shoes, and then return to their homes. A small minority, less than 1 percent, of this contingent actually sleeps in the streets.<sup>17</sup>

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<sup>14</sup> "Children's law has no effect in Brazil," *Latinamerica Press*, February 4, 1993.

<sup>15</sup> See articles in *O Estado de S. Paulo*, *Jornal do Brasil* and *O Globo*, October 9, 1993.

<sup>16</sup> "Centro Juvenil Contesta Pesquisa do IBASE," *Jornal do Brasil*, March 23, 1992.

<sup>17</sup> Benedito Rodrigues dos Santos, "The Negation of Citizenship: The Various Faces of the Extermination of Children and Adolescents" (Brasília: National Street Children's Movement, February 1993).

Even those who live more or less permanently on the streets are thought to retain some link to a family member. A study by IBASE, for instance, estimated that 90 percent of the children on the street have at least one living relative, usually a mother.<sup>18</sup> As a result, the population of children on the streets is often in flux, depending on factors such as economic conditions, the weather, and the level of real or perceived danger.

Children are often forced onto the streets, either for work or to live, because of Brazil's extreme poverty and inequality of wealth, and because of domestic violence. Despite having a relatively high per capita income, compared to many other developing nations, Brazil has one of the highest poverty rates in Latin America. The young, who make up almost 40 percent of the population, are particularly at risk.

According to UNICEF, in 1991 Brazil had an infant mortality rate of sixty-seven deaths per 1,000 children under the age of five, the equivalent of 247,000 deaths that year.<sup>19</sup> In 1990, according to national census statistics, 53.5 percent of the children and adolescents in Brazil or about thirty-two million kids, lived in families who earned half the minimum salary (approximately U.S. \$30 a month) or less.<sup>20</sup> Almost 30 percent of children below eighteen years of age, lived in families who earned one-quarter of the minimum salary or less. In the poorer Northeast, the percentage of children living in families earning less than half a minimum salary rose to 79 percent, or about 16 million children.<sup>21</sup> Brazil also has an extremely skewed income distribution with the wealthiest 10 percent of the

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<sup>18</sup> "Meninos de rua morrem na guerra," *O Estado de S. Paulo*, August 1, 1993.

<sup>19</sup> Brazil's infant mortality rate was also higher than other Latin American countries with lower average per capita incomes, such as El Salvador and Paraguay. Gilberto Dimenstein, "247 mil crianças morreram no país em 91," *Folha de S. Paulo*, December 18, 1992.

<sup>20</sup> In August 1993, the minimum salary was CR\$5,534 per month and the exchange rate was approximately CR\$85 to the dollar. Because of Brazil's rampant inflation rate, running at approximately 30 percent a month in mid-1993, all conversions are necessarily only approximations.

<sup>21</sup> Instituto Brasileiro de Geografia e Estatística (IBGE), *Crianças e Adolescentes: Indicadores Sociais, vol. 4*, December 1992, p. 14-15.

population enjoying 46.2 percent of the nation's income while the poorest 40 percent of the population control only 8 percent of the income.<sup>22</sup>

Statistics on health, education and housing are also similarly dismal, all contributing to the consignment of children to poverty and potential violence. For example, less than half the population of children and adolescents (45 percent) live in houses with adequate sanitation (defined as homes with internal water supplies and sanitary installations linked to a general system or a septic tank).<sup>23</sup> And of the children who entered primary education, only 20 percent finished the mandatory eight years of schooling.<sup>24</sup>

Children who live and work on Brazil's streets do what they can to earn money: they sell candy or cigarettes, shine shoes, watch parked cars, beg, deal drugs, prostitute themselves and commit crimes. Those who live on the streets, in particular, often become involved in petty theft. Girls who are on their own also sometimes live on the streets but, according to various Brazilian advocates interviewed by Americas Watch, more commonly become involved in prostitution. It is estimated that there may be as many as 500,000 prostitutes under the age of seventeen in Brazil.<sup>25</sup> It also appears that because of the sexual division of labor, poor girls are more likely to find jobs as maids or domestic servants while boys are more likely to need to find jobs in informal sector areas such as vending or shoe-shining that require them to be on the streets more often.

As a result street children, and frequently poor children as a whole, are seen as criminals or potential criminals. They come to be described and defined by various derogatory terms, including *pivete*, *trombadinhos* and *bandidinhos*, and are seen as nuisances or threats. For example, a public opinion poll conducted by the DataFolha survey agency shortly after the killing of eight street children in Rio found that 46 percent of those polled said that they feel fear when a

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<sup>22</sup> The World Bank, *World Development Report 1991: The Challenge of Development* (New York: Oxford University Press, 1991), p. 263.

<sup>23</sup> IBGE, *Crianças e Adolescentes*, p. 92-93.

<sup>24</sup> *Ibid.*, p. 118-119.

<sup>25</sup> Estimate by the federal government's Fundação Centro Brasileiro para Infância e Adolescência (FCBIA), cited in Gilberto Dimenstein, *Meninas da Noite: A Prostituição de Meninas-Escravas no Brasil* (São Paulo: Editora Ática S.A., 1992), p. 11.



street child approaches them, and 83 percent said that they feel pity. Also, while 61 percent totally disagreed with the statement "These children are not little saints, they are thieves and deserve what happened," a significant portion, 16 percent, agreed either totally or partially, and 21 percent only partially disagreed.<sup>26</sup>

Animosity toward poor children is also frequently fueled by sensationalistic "true-crime" radio shows. Hosts of these shows describe crimes in gory detail, often blaming minors, and applaud harsh action by the police including torture and executions. A commission of the Federal Congress, which investigated violence against children quoted sections of one show, "City Patrol," hosted by state Deputy Samuel Correia that airs on the Rio de Janeiro station Rádio Tupy:

Attention grave-diggers, while the commander of the 20th battalion [of the military police] doesn't take any steps, let's see if we can't knock down a bunch of vagabonds, because the place for scoundrels, perverts and drug dealers that make the lives of families hell is under the ground, eating the grass by its roots. They really have to die. . . Because the bandit that the hunter doesn't deal with really kills...<sup>27</sup>

The host of one of these shows, Afanázio Jazadji, who had spoken in favor of torture and the elimination of criminals was even elected to the national Congress in 1986.<sup>28</sup> In an interview with Americas Watch in 1987, Jazadji described how São Paulo was being overcome by a wave of uncontrolled urban growth, sophisticated and well-armed criminals, inadequately trained and equipped police and human rights activists biased in favor of criminals.<sup>29</sup> Such

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<sup>26</sup> The survey was based on telephone interviews with 1,000 respondents in the city of São Paulo and 620 in Rio de Janeiro, and was conducted on July 28, 1993. *Folha de S. Paulo*, August 1, 1993.

<sup>27</sup> Comissão Parlamentar de Inquérito, Câmara dos Deputados, *O Extermínio de Crianças e Adolescentes no Brasil*, (Brasília: Coordenação de Publicações, 1992), p. 43.

<sup>28</sup> Gilberto Dimenstein, *Brazil: War on Children*, (London: Latin America Press, 1991), p. 63.

<sup>29</sup> Americas Watch, *Police Abuse in Brazil: Summary Executions and Torture in São Paulo*

attitudes, and the implicit permission that they grant to arbitrary police actions and grupos de extermínio killings, seem to persist to this day and may only have been aggravated by Brazil's on-going economic crisis. Shortly after the July 1993 killing of eight street children in Rio de Janeiro, a call-in radio program featured the killings as a topic. Of the twenty-three people who called in to the show, all supported the killing.<sup>30</sup>

The killing of the eight street children in downtown Rio de Janeiro, though, eventually sparked a more general sense of outrage on the national level that could compensate for the public encouragement of violence. Whether this outrage and shock will persist once the newspaper articles about the Candelária killings fade remains to be seen.

#### **THE ESTATUTO DA CRIANÇA E DO ADOLESCENTE (ECA)**

One of the most important initiatives in dealing with violence against children and attempting to provide assistance and support for Brazil's youth was the passage of the 1990 children's legislation, the Estatuto da Criança e do Adolescente (ECA). Violence against children first became a national preoccupation in Brazil in the late 1980's. The First National Congress of Street Children, held in Brasília in May 1986, helped to focus attention on the problems of street children. Brazilian organizations began to actively campaign for solutions to the problem of violence after the publication of several landmark studies—notably the book *Vidas Em Risco: Assassinato de Crianças e Adolescentes no Brasil* (published jointly by the Movimento Nacional de Meninos e Meninas de Rua (MNMNR) and two of Brazil's most respected human rights research institutes, the Núcleo de Estudos da Violência (NEV) and the Instituto Brasileiro de Análises Sociais e Econômicas (IBASE)—and the release of a best-selling book on the topic, *A Guerra dos Meninos* by journalist Gilberto Dimenstein.

During the drafting of the 1988 Constitution, various human rights and children's welfare organizations united their efforts to create more progressive children's legislation by forming the Permanent National Forum of NGOs in Defense of Children's Rights (DCA Forum). Article 227 of the 1988 Constitution, adopted after successful lobbying by the DCA Forum, states:

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*and Rio de Janeiro*, (Human Rights Watch: New York, December 1987), p. 14.

<sup>30</sup> "A chacina das crianças da Candelária," *Veja*, July 28, 1993.

**It is the duty of the family, of society and of the State to ensure to children and adolescents, with absolute priority, the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, liberty and family and community life, as well as to place them safely away from all forms of neglect, discrimination, exploitation, violence, cruelty and oppression.<sup>31</sup>**

**According to a report by UNICEF, Article 227 of the Constitution "introduced the principles of the U.N. Convention on the Rights of the Child, one year before the Convention was actually adopted by the United Nations General Assembly."<sup>32</sup> Brazil was also one of the first countries to ratify the Convention on the Rights of the Child.**

**The constitution also specifies that when "any measure that restricts liberty" is applied to a child or adolescent, the law must take into account the principles of "brevity, exceptionality, and respect for the particular conditions of a person in development."<sup>33</sup> Special services for adolescents addicted to drugs must be provided, sexual abuse and exploitation of children and adolescents must be severely punished, and the constitution mandates special provisions regarding adoption. Children under the age of eighteen cannot be tried as adults.<sup>34</sup>**

**After the implementation of the new constitution, the DCA Forum pressed for the passage of new legislation relating to children's rights. On July 13, 1990, the ECA was adopted, entering into effect on October 12, 1990 and replacing the older Código de Menores of 1979 and all other laws relating to children and adolescents. The ECA took special care to replace the old vocabulary of the Código**

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<sup>31</sup> **Constituição da República Federativa do Brasil, Article 227.**

<sup>32</sup> **Antonio Carlos Gomes da Costa and Barbara Schmidt-Rahmer, "Brazil: Children spearhead a movement for change," in Marjorie Newman-Black, ed., *The Convention: Child Rights and UNICEF experience at the country level*," (New York: United Nations Children's Fund, 1991), p. 39.**

<sup>33</sup> **Constituição da República Federativa do Brasil, Article 227.**

<sup>34</sup> **Constituição de República Federativa do Brasil, Article 228.**

de Menores, which was held to have negative connotations, replacing, for instance, the term minor (menor) with children and adolescents (crianças e adolescentes). For the purposes of the law, children were defined as those under the age of twelve, and adolescents as those from the ages of twelve to seventeen.

A wide-ranging and comprehensive piece of legislation, the ECA provides for all of the civil, social and economic rights of children, and is based on the concept of "integral protection." This concept seeks to protect children and adolescents from the time of their conception (mandating services for pregnant women), and to unite political, social and economic rights and duties into one inclusive whole. The legislation also contains specific sections on the protection of children, the treatment of juvenile criminals, the organizations responsible for developing child welfare policy and penalties for crimes committed against children.

Most importantly, unlike the earlier Código de Menores, the ECA firmly establishes the rights of children and adolescents, guarantees due process for adolescents accused of crimes. The code mandates that children should not be arrested and detained at all, and specifies the conditions for the arrest and detention of adolescents. Under the Código de Menores, police authorities could detain "minors" (anyone under the age of eighteen) for purely arbitrary reasons and keep them for indefinite periods in juvenile detention facilities without due process.

In the section on the protection of children and adolescents, the ECA states that protective measures are to be taken whenever the rights of children are infringed by action or omission of the state, lack of care or abuse by the parents or guardians, or by the child's own actions. The specific measures of protection are to be applied "keeping in mind the pedagogical necessity and with preference to those measures which strengthen ties with the family and community."<sup>35</sup>

The protective measures that can be taken are: remanding the child to the parents or guardians; providing orientation, support and temporary accompaniment; mandating matriculation and school attendance; inclusion in a community or government program designed to assist the family, child or adolescent; requesting medical or psychological treatment; inclusion in drug addiction and alcoholism treatment and prevention programs; shelter with an organization; and placement with a substitute family. The ECA specifies that

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<sup>35</sup> Estatuto da Criança e do Adolescente (ECA), Article 100.

placing the child in a shelter is a "provisional and exceptional measure, to be utilized as a form of transition to the placement of the child with a foster family, not implying the restriction of the child's freedom."<sup>36</sup>

The 1988 Constitution determined that those under the age of eighteen could not be tried as adults. Despite the popular perception that adolescents are *never* punished for crimes they may commit, the ECA establishes special procedures and penalties for trying and punishing, or re-educating, adolescent criminals. Adolescents who commit criminal offenses can be punished through the application of what are defined as socio-educational measures (medidas sócio-educativas). Children who commit infractions are placed under protective measures.

By law, adolescents accused of offenses are accorded due process and full defense. The ECA specifies that "no adolescent can be denied freedom except if detained while committing an offense or by a written order of the competent judicial authority based on probable cause."<sup>37</sup> Adolescents have the right to be told who is detaining them and must be informed of their rights, including the right to a lawyer and the right to remain silent. The detention of an adolescent and the location where he or she is being held must be communicated immediately to the appropriate judicial authority and the child's family, and the adolescent must be presented to the public prosecutor within twenty-four hours. If the adolescent is arrested in flagrante delicto, he or she may only be held for twenty-four hours without a judicial order extending the period of detention. This extension may only be ordered if it is determined that the adolescent must be held for his or her protection or to protect public security. Adolescents cannot be held in detention in the same facilities as adults, unless special facilities for adolescents do not exist. In this case, the adolescent must be held in a separate cell from adult prisoners.

The immediate release of the adolescent must be considered as soon as possible. (Failing to order the immediate release of an adolescent held illegally is punishable by six months to two years in prison.) Detention prior to sentencing "may be determined for the maximum time limit of forty-five days" and can only occur if the decision is "founded and based on sufficient indications that a crime has been committed and that suspect was the author, demonstrating the urgent

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<sup>36</sup> ECA, Article 101, parágrafo único.

<sup>37</sup> ECA, Article 106.

need for the measure."<sup>38</sup>

If it is determined through proceedings in the juvenile court that the adolescent committed an infraction of the penal code, the judge may determine that one or several of the "socio-educational measures" be applied. These measures are: issuing a formal warning to the adolescent and his or her family; ordering repayment of damages; requiring participation in community service; placing the adolescent in a program of assisted liberty, in which adolescents are assigned to social workers; placement in a program of semi-liberty, in which adolescents remain in a detention facility at night but are free to attend school or work during the day; and confinement in a juvenile facility.<sup>39</sup>

The ECA specifies that confinement can only be ordered as the measure of last resort and only if the adolescent committed a violent crime or is a repeat offender. The juvenile criminal's confinement is not ordered for a predetermined period of time, but is instead reviewed every six months. The maximum period of confinement, though, is three years, after which the adolescent must be released and may be placed in an assisted freedom program.

According to the law, the confined adolescent may only be held in an institution exclusively for adolescents, and inmates must be separated by age, physical size, and type of violation. In practice, due to overcrowding of detention facilities and disregard for the regulations, juvenile criminals are rarely, if ever, segregated according to age and type of crime.

Among the crimes against children and adolescents and the corresponding punishments that are set out in the ECA are: detaining a child or adolescent who is not apprehended in flagrante or without a court order, punishable by six months to two years in prison; failing to communicate the detention to the appropriate judicial authority, punishable by six months to two years in prison; subjecting a minor to constraint or annoyance, punishable by six months to two years in prison; subjecting a minor to torture, punishable by imprisonment of one year to thirty years in prison depending upon the severity of injuries or the death of the minor; and detaining an adolescent longer than the mandated forty-five days before sentencing, punishable by six months to two years in prison.

The ECA also calls for the creation of two different types of committees to

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<sup>38</sup> ECA, Article 108.

<sup>39</sup> See ECA, Article 112.

protect the rights of children and oversee all legislation and government programs pertaining to children and adolescents: the **Conselhos dos Direitos da Criança e do Adolescente** (Council for the Rights of Children and Adolescents), to be established at the national, state and municipal levels and the **Conselhos Tutelares** (Protective Councils), which are to be created in each municipality. The **Conselhos dos Direitos da Criança e do Adolescente** are voluntary committees that are broadly entrusted with overseeing and controlling all policy towards children and adolescents. They are to be established in accordance with federal, state and municipal laws, and should be composed of members of the government and of individual citizens, representing nonprofit organizations.<sup>40</sup>

At the national level, for example, the **Conselho Nacional dos Direitos da Criança e do Adolescente** (CONANDA), was established by the Federal Minister of Justice on November 20, 1992. It is composed of fifteen members of the federal government and an equal number of representatives of national nongovernmental organizations such as the National Street Children's Movement and the **Ordem dos Advogados do Brasil** (Brazilian Bar Association). It is led by a representative of the Ministry of Justice, and has created several sub-commissions, including a committee to combat violence. In São Paulo, the state-level **Conselho Estadual dos Direitos da Criança e do Adolescente** was established on January 15, 1993, and is composed of eleven members of the state government and eleven members of nongovernmental organizations.<sup>41</sup> The São Paulo municipal council was created earlier, in April 1992. According to the Federal Ministry of Justice, at the time of Americas Watch's trip to Brazil, eighteen states had established the state-level councils.

At least one **Conselho Tutelar**, composed of five elected members, is to be established in each of Brazil's 4,485 municipalities. The **Conselhos Tutelares** are also given broad powers and obligations, and are entrusted with monitoring the fulfillment of the rights and duties created by the ECA. In addition to this broad responsibility, the **Conselhos Tutelares** are charged with: overseeing the protective measures taken to help children; responding to cases of child abuse, and counseling and assisting needy or abusive families; informing the public prosecutors of any infractions that come to the council's attention; and requesting

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<sup>40</sup> ECA, Article 88, section II.

<sup>41</sup> Gilberto Nascimento, "Entidade vai definir política para infância," *Folha de S. Paulo*, January 28, 1993.

the provision of public services relevant to children and adolescents, such as health care, education, and work training.

Because of their detailed responsibilities, the members of the *Conselhos Tutelares* are to be remunerated for their work. The members are elected for three year terms, with one possible re-election, and must be citizens of the municipality in which they serve, over twenty-one years old, and of good moral character. The municipal legislatures, acting with the support of the *Conselhos dos Direitos*, are to write and pass the legislation that creates the *Conselhos Tutelares*, determines how elections of its members are held, provides for their funding and infrastructure, and specifies their hours of operation.

In theory, and sometimes in practice, the *Conselhos Tutelares* and the *Conselhos de Direito* could be used to bring government and public attention to the problems of violence against children and to press for rapid and adequate steps to remedy existing problems. Activist councils could push for the improvement of juvenile detention facilities and the adoption of new sentencing guidelines, could ensure that local police forces abide by the restrictions on detaining adolescents and communicating their whereabouts to the judicial authorities, could draw attention to reports of torture and abuse, and could press for ample investigations into death squad activity.

Most importantly, the councils could focus political attention and governmental resources on the problems facing children and adolescents. The *Conselho Municipal de Direitos da Criança e do Adolescente* in the city of São Bernardo, for example, played a crucial role in bringing attention to the poor conditions at local juvenile detention facilities, and pressed for rapid improvements and the eventual creation of a new system for dealing with suspected juvenile delinquents. The municipal *Conselho dos Direitos* in São Paulo reached an agreement under which the *Conselhos Tutelares* would deal with specific complaints of abuse and mistreatment, bringing them to the attention of the *Conselho dos Direitos* who would push for action on a political level.

In fact, far too often the councils set up under the ECA are used mainly as symbolic gestures. At the federal level, CONANDA was only established at the end of November 1992, shortly after a series of high-profile rebellions at São Paulo juvenile detention facilities and during the Third National Meeting of Street Children, held in Brasília. Legislation mandating the creation of CONANDA, had been passed by the federal Congress in October 1991. CONANDA's members, though, were only formally installed in office in March 1993, some five months after the commission's official creation.

The councils are also frequently bogged down in local and internal



political fights and lack basic support and infrastructure. Because the ECA calls for the members of the Conselho Tutelar to be elected by the citizens of the municipality, and for the administration, elections, and funding of the Conselhos to be determined by municipal laws, the councils become almost inevitably mired in local partisan politics. The influence of local politics is particularly acute because the funding for the Conselhos has to be approved by the municipal governments, which are already short on money and often unwilling to see funds used for projects that will not directly benefit the party in power.

In São Paulo, it was agreed that there would be one Conselho Tutelar for each of the city's twenty administrative areas, and elections for the one hundred members of municipal Conselhos Tutelares were held on November 7, 1992. The elections and regulations for the Conselhos Tutelares were established under an accord between the Conselho Municipal de Direitos and the municipal government, at the time run by the Partido dos Trabalhadores (Workers Party, PT). However, in December the PT lost control of the municipal government. As a result, the new government had to appoint new official representatives to the municipal Conselho Municipal de Direitos, which it delayed until March, and claimed that regulations regarding the funding and internal regulations for the Conselhos Tutelares had to be renegotiated. At the time of Americas Watch's visit to São Paulo, members of the councils had yet to receive salaries and few of the Conselhos Tutelares even had any office space. Many of those elected to serve on the councils had already quit in frustration.

Similarly, former members of the municipal Conselho de Direitos in São Bernardo told Americas Watch that the council was having a difficult time because the control of the municipal government had changed hands. As a result the council had not yet agreed to guidelines for the elections to the Conselho Tutelar (or even agreed upon how many Conselhos Tutelares São Bernardo should have). These observers felt that the problems affecting the ECA councils in São Paulo were the reflection of bitter political battles between the PT and the right-wing politicians aligned with former governor and current São Paulo mayor Paulo Maluf. They were particularly concerned that if the conselhos do not work effectively this will be used by conservative politicians as an excuse to explain why the ECA itself is not effective.

Indeed, despite its progressive and comprehensive nature, the ECA has been routinely disregarded since its inception, for reasons having to do with a lack of political will to see it properly implemented. Particularly glaring is the failure to restructure the juvenile detention system. In violation of the regulations of the ECA, many of the large and notoriously abusive juvenile detention facilities

are still in operation, with few honest attempts by the state governments to create smaller decentralized centers and segregate inmates by age and nature of offense, much less institute the semi-liberty and assisted liberty programs called for under the law. In fact, several state level prosecutors have filed complaints against the state governments challenging the shocking conditions in juvenile detention facilities.

In São Paulo, for example, the FEBEM's notorious Unidade de Acolhimento Preliminar (UAP-1) in Tatuapé, housed approximately 250 boys in December 1992, though its official capacity was only for seventy. The FEBEM facilities as a whole housed some 1,250 adolescents. The inmates were also not segregated according to age or type of crime, with boys who had been detained for petty thefts kept in cells with those who had committed murders or rapes. Poor conditions and overcrowding have led to several riots in the facility and to frequent escapes, which in turn have only been dealt with by more intense repression by the military police. In the wake of a riot in October 1992, in which adolescent inmates burned several administrative buildings and took control of the unit for twenty-five hours, 180 boys were temporarily transferred to the notorious adult prison, the Casa de Detenção. According to press reports, when a group of fifty-eight boys were returned to the partially-rebuilt Tatuapé unit in early November 1992, they were beaten by FEBEM functionaries while forced to sing the national anthem and ask for the forgiveness of the military police.<sup>42</sup> Though the São Paulo government promised to abolish the large detention facilities—at one point the state Secretary for Children even proposed that the buildings be dynamited so no one would be tempted to use them again—and to create several smaller decentralized institutions, at the time of Americas Watch's visit only one smaller facility was in operation.

Equally disregarded, as several cases presented in this report demonstrate, is the regulation that adolescents only be arrested if they are caught in the act of committing a crime or by written judicial order. Instead, it is extremely common for the police to illegally arrest and detain adolescents, in particular poor adolescents, merely on the suspicion that they may have committed a crime at some time in the past, and for these teenagers to be held illegally in adult jails.

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<sup>42</sup> Article in *Folha de S. Paulo*, November 7, 1992, quoted in Save the Children, *Criança Notícia: Crianças e Adolescentes na Imprensa Brasileira 1992*, Recife, Pernambuco, April 1993.

One of the most useful and important roles of the ECA, though, is to establish a legal context within which activist public prosecutors, when they exist, can force the state to take action to fulfill the law. In São Paulo, for example, prosecutors with the state Ministério Público brought suit against the state government for failing to take steps to bring the FEBEM juvenile detention facilities into compliance with the ECA. Similarly, prosecutors in Brasília, brought suit against the Federal District's government challenging the horrendous conditions at the juvenile detention facilities there, winning a court injunction. The government, though, has challenged the sentence, and conditions reportedly remain wretched with reports of severe overcrowding and poor sanitation.<sup>43</sup> Such activism on the part of Brazil's public prosecutors may in fact be one of the more important steps toward protecting the rights of children and adolescents. In May 1992, an important first step on this path was taken when prosecutors from most of the states in the nation, along with the Federal Procurador Geral da República, signed a document committing themselves to seek, by legal means, the implementation of the conselhos and the adoption of the protective and socio-educational measures called for in the ECA.

Clearly implementation of many of the ECA's provisions would be difficult for any country, much less an indebted and developing one. Nevertheless, the disregard of many of its most fundamental guarantees—which require only that the police and governmental authorities obey the law and not abuse basic rights—leads us to question whether the Brazilian authorities truly hold the rights of children and adolescents to be a "national priority."

#### **BEATINGS AND HARASSMENT BY THE POLICE**

In addition to homicides committed by police officers, which are discussed in detail below, Americas Watch received repeated and disturbing testimony about harassment, beating and illegal imprisonment of street children by on-duty police officers. Policemen frequently extort money from street children and harass, beat and threaten to kill them if they refuse to pay (for a case of an extortion scheme that resulted in the death of a boy by off-duty police see chapter 3). Police also beat and harass minors who they perceive to be criminals or simply nuisances, hoping to scare them away from the areas that they patrol. Human rights activists told Americas Watch that it is even common for the police to confiscate drugs and attempt to sell them back, or for the police to keep part of

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<sup>43</sup> "DF 'cria' menores em celas subumanas," *Folha de S. Paulo*, September 20, 1993.

the money that they apprehend from a child who has committed a petty theft.

The Centro de Defesa Dom Luciano Mendes, a legal-assistance organization that works closely with a downtown Rio de Janeiro program for street children, registered a particularly high incidence of violence by the military police who patrol the city center. In 1992, more than half of the cases of violence against children registered by the organization involved police abuse. According to a social worker with the Centro de Defesa, many of the complaints that are initially filed are never carried through to completion, "because the kids give up the complaints, out of fear."<sup>44</sup>

These accounts of police abuse of children are entirely consistent with testimonies recorded by Americas Watch. "Chico", a fourteen-year-old black boy who lives on the streets of downtown Rio de Janeiro, told Americas Watch that he was beaten and illegally imprisoned by two military policemen in a section of Rio known as the Aterro do Flamengo.<sup>45</sup> Chico told Americas Watch that he has lived on the streets for about five years. He said that he used to sleep next to the building of the Banco do Brasil, and used to get food at the cathedral. Now he says that he sleeps on the streets in the Botafogo neighborhood. According to Chico's testimony, on May 5, two military policemen beat him on the head with the butts of their revolvers and kept him and a friend in their police cabin (the military police frequently are based in small cabins from which they patrol a local area). As he related the episode:

What happened was that I was with a group of five other boys hanging out, early in the morning, playing around. One other boy, who wasn't with us, went and told the police that he overheard us talking about how we were going to rob a bus.

Two policemen came running over towards us and my friends ran away. One of the policemen even shot at one of the boys who was running away, but missed. The police then grabbed me and one other boy. The policeman grabbed me from behind around my neck, and I tried to pull his hands off me. Then the

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<sup>44</sup> "PM é quem mais agride menor de rua," *Jornal do Brasil*, July 25, 1993.

<sup>45</sup> Americas Watch interview, Rio de Janeiro, June 10, 1993. At his request, Americas Watch is not using this boy's real name.

**policeman hit me on the head for the first time with the butt of his gun. They took me and the other boy into their police cabin and beat me 5 times on the side of my head with the butts of their revolvers. Then they let me and the other boy go.**

**With the assistance of lawyers from the legal defense center of the São Martinho foundation, Chico had a medical exam performed and filed an official complaint. He felt, however, that nothing would come of it and stated that he did not trust the police. "I don't trust anyone anymore," he said, "the police are shameless."**

**Americas Watch asked the boy who was with Chico if he also wanted to talk about what happened. He said, "it wasn't anything, it's all fixed now, I don't need to talk to you about it." Another boy who overheard this told Americas Watch that often many children do not want to talk about what happens to them "because they're really ashamed" and because they are afraid or just do not think that it is worth talking about.**

**Another boy named Zé (also not his real name), fifteen years old, related a similar story. Zé told Americas Watch that he now lives at a residential home in Rio for other former street children but had lived on the streets of the city for a long time, though he was not sure how long. As Zé related his story to Americas Watch:**

**One day, about six months ago, I was working—as a camelô (street vendor), selling cookies—when I saw a group of moleques (street children) robbing a man. One kid stuck his hand in the man's pocket and grabbed the guy's wallet. The kids grabbed the money, dropped the wallet on the ground, and took off running.**

**I picked up the wallet and went over and gave it to the man, who had run down the street. When I approached the man to give him his wallet, the man grabbed me and yelled for the police. The man said that I was helping the other boys to rob him.**

**Two policemen came and put me in the patrol car. They beat me, punched me in the stomach and hit me on the head several times, and tried to get me to confess to having stolen the wallet. They beat me with their fists and also with a cassetete**

**(truncheon). I refused to confess and said that I had nothing to do with it. The police beat me some more and then took all the money that was in my pocket—which was money from my job. It was about 26,000 cruzeiros (about \$2.00). Then one of the policemen punched me in the stomach again, very hard. The patrol car dumped me off, on the street, at Cinelândia.**

**When I went to tell my boss what had happened, the boss got upset and fired me. The boss said that I must have been involved in the robbery and must have invented the story of the run-in with the police in order to steal the money too.**

**Zé said that he didn't want to file an official complaint because "it's not worth it." He said: "If I file a complaint the police will just find me, and grab me and maybe even kill me. There's nothing I can do."**

**A sixteen-year-old street boy in the north-eastern city of Recife, who called himself "MacGyver," after his favorite American television show, told Americas Watch that he was stopped by the police, at the Hospital da Restauração, beaten and kept overnight in the police cabin.<sup>46</sup> MacGyver said that he had lived on the sidewalk in front of the hospital since he was abandoned there when he was eight months old. As a result he often got in trouble with the police, although the people at the hospital helped look after him. He told Americas Watch that:**

**On Tuesday, June 15, 1993, at about 4:00 p.m. I was beaten up by the police. They hit me three times on the arms with the butt of a "doze" (a 12-gauge shotgun). They also beat me on my back with a stick and hit me in the stomach. Later I vomited blood.**

**What happened was that at 3:00 in the afternoon, a friend slipped, fell down and cut himself. So I got in a taxi with him and went to the hospital. I left the boy at the hospital when the boy's mother showed up to take care of him. The police then came and grabbed me as I was walking down the hospital ramp, to get some food for lunch. The police are always at the hospital and know me—I also know them but don't know their full names.**

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<sup>46</sup> Americas Watch interview, Recife, Pernambuco, June 18, 1993.

**This is the fourth time that they have beaten me up.**

**First a PC (civil policeman) and a PM (military policeman) grabbed me and later another PC came. The last PC that showed up hit me in the stomach. It all happened in front of the police post of the hospital. They grabbed me when I was inside the hospital and took me to the post, where they kept me handcuffed.**

**According to an affidavit filed with the human rights group Centro Dom Hélder Câmara (Cendhec), which provides legal assistance to children who are victims of human rights abuses in Recife, during the beating MacGyver had his feet and hands handcuffed and was kept inside the police box. He was released the following day, June 16, at 4:00 p.m.<sup>47</sup> A lawyer for Cendhec found MacGyver by chance the following day, when he was at the Juizado de Menores, attempting to file a complaint against the police. MacGyver feared for his life after making his complaint, as he said that a policeman had told him: "You better stop this complaint or you'll end up with a bullet in your head." As a result he was hiding out, away from downtown Recife.**

**MacGyver admitted to being the leader of a gang of street children, using various drugs, and having been through the juvenile courts various times for many different offenses, including armed robbery. He stated that of his gang of eighty-five boys, sixteen had been killed by the death squads or by the police. He described how one of his friends, known as Cat's Eye (Olho de Gato) was found at the garbage dump, having been missing for three days. MacGyver said that Olho de Gato had three bullet wounds in his head and that "his mouth was full of ants."**

**Violence by the police is not limited to street children, but is also sometimes targeted at adult social workers who provide education and services for these children—known in Brazil as street educators. Many street educators told Americas Watch that when they attempt to work with the children on the streets they are harassed and sometimes beaten by the police, who accuse them of complicity with the children's crimes and drug use.**

**Gecivaldo Barbosa Alves, a street educator who runs a residence for former street children and works with a group of about thirty children who live in**

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<sup>47</sup> Affidavit also signed by Lêda Pessoa, Cendhec lawyer, and Fabricia F.M. de Menezes, estagiária (legal intern), at Cendhec, June 17, 1993.

downtown Rio de Janeiro, told Americas Watch that the most frequent problems that street educators face are from the police, because of arbitrary arrests and beatings of children and even harassment of the educators themselves.<sup>48</sup> Gecivaldo, who has been working on the streets for five years, related an episode he witnessed:

**On December 27, 1992, near the São Martinho shelter there was a body of a boy who had been assassinated. He had been shot twice. The seventeen-year-old boy was black. The story was that he had tried to rob someone who pulled out a gun and shot him. Many people were gathered around the body and on the other side of the aqueduct arches, across the street, there was a group of boys sniffing glue.**

**Some police grabbed a couple of the boys, took them over to where the body was and started to humiliate them, saying: "that's what's going to happen to you", and even making them touch the body, shoving their faces near the body. One boy, a fifteen-year-old black boy, became very upset with this treatment and reacted. The policeman pushed him around and accused the boy of trying to assault him.**

**At that moment, I was with a lawyer from São Martinho watching this and decided to intervene. I tried to tell the policeman that the boy was doing nothing wrong, because sniffing glue is not illegal. The policeman became very upset, and punched me and then took out his gun and pointed it at me, telling me to leave, saying that it was none of my business and yelling uncontrollably.**

**While this was going on, my watch fell off, and I think that a policeman behind me grabbed it. I walked away, and the police took the boy to the police station.**

**Later I went with the lawyer to the police station to look for the**

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<sup>48</sup> Americas Watch interview with Gecivaldo Alves Barbosa, Rio de Janeiro, June 10, 1993.



**boy. At the station the policemen again threatened us, saying that we better not stick our noses in what isn't our business.**

**Gecivaldo told Americas Watch that he made an official complaint about what had occurred, but that there had been no response by the police. The boy who the policeman took away, however, was taken to a state institution, and later brought before a judge and accused of assaulting the policeman. Gecivaldo was at the trial, explained to the judge what had happened and the boy was released.**

**In a similar, widely-publicized incident, a priest who works with street children in the Praça da Sé square, in downtown São Paulo, was beaten and harassed by the military police. According to press reports, at night on April 13, 1993, the Argentine priest Pedro Horacio Caballero, and about twenty boys and girls were beaten and harassed by PM in front of the Catedral da Sé.<sup>49</sup> The priest told reporters that the PM were from the 7th battalion and that they told him they were under "orders to clean up the square and scare off the pick-pockets." Father Caballero claimed that two policemen approached the group of children that he works with and threatened them with truncheons. He tried to intervene and was accused by a soldier of "protecting delinquents." Shortly thereafter six more policemen showed up and began beating him.**

**Violence against street educators and street children comes not only from the police, but also from civilians. Many street educators told Americas Watch that people often think that they are too tolerant of crimes committed by the children and that the police even sometimes try to incite people to harass street educators. For example, the São Martinho shelter, a Catholic-run program for street children who live in downtown Rio de Janeiro, was the target of vigorous protests by local residents, who accused children and adolescents who frequented the program of stealing and robbing local residents. In November 1992, in the wake of a series of high-publicity group muggings on Rio's beaches (crimes that became known as *arrastões*, or sweeps, because the muggers would sweep through a particular section of the beach robbing valuables from many different people), a group of seventy residents of the Lapa neighborhood where the São Martinho program is located invaded the organization's offices armed with sticks, attempted to set fire to the building, and said that they were there to "settle accounts" with the street children. Luckily, a nun who directs the organization had heard rumors about local anger towards the children and had**

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<sup>49</sup> "Padre e menores foram espancados em São Paulo," *O Estado de S. Paulo*, April 15, 1993.

sent them on a trip that day to a city park.<sup>50</sup>

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<sup>50</sup> "Socióloga acusa preconceito contra meninos de rua," and "Betinho recorda Carandiru," *Jornal do Brasil*, November 20, 1992.

## **2 WHY THE VIOLENCE?**

### **PERCEPTION OF MINORS AS CRIMINALS**

**Children, and especially poor children and adolescents, become targets of killings by both on- and off-duty police and death squads because they are often popularly perceived as criminals. Violence against children is largely the result of this perception combined with three other factors: the lack of policing in poor neighborhoods; the belief that the justice system is inefficient; and traditions of violence, many dating back to Brazil's era of military dictatorship. In each instance a cycle of official omission, disregard or complicity accentuates the problem and perpetuates the violence. The crucial element that cements these factors is impunity for those who kill children and adolescents.**

**The lack of policing in poor neighborhoods contributes to a general feeling of insecurity and danger on the part of the local population. This leads to the formation of private security firms and illicit vigilantes and grupos de extermínio, who often act, at least initially, with popular support. In some cases, such as in some of the poor shantytowns (favelas) that surround the city of Rio de Janeiro, the local drug dealers are the ones that provide the neighborhood with their own type of "security." More commonly, people come to fear both the police and the local criminals.**

**A study conducted by the organization Instituto Brasileiro de Análises Sociais e Econômicas (IBASE) in the poor urban area of the Baixada Fluminense in October 1990 is instructive in this regard. Those interviewed in the course of the research mentioned their feeling of abandonment by the police, and their fear and distrust of both police and criminals. One person talked about his fear of the police, stating:**

**... the usual is for them to arrive and push you around, throw you against the wall, order you to lift up your hands. They kick you, throw you on the ground and sometimes even take you to somewhere far away and your body shows up riddled with bullets. The majority of these people don't have any families who can do anything about it.<sup>1</sup>**

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<sup>1</sup> Angélica Drska and Rosana Heringer, *"A Gente Enterra o Morto, Silência e Se Conformam": A violência em Nova Iguaçu e Nilópolis na visão dos seus moradores* (Instituto Brasileiro de Análises Sociais e Econômicas, IBASE, and Comissão Justiça e Paz da Caritas Diocesana de Nova Iguaçu e Nilópolis, October 1990), p. 16.

**As a result, according to the study, many of those interviewed relied upon criminal gangs—often involved in drug dealing—for their security and supported summary violence against those thought to be criminals. Another interviewee described how the local criminals enforced order:**

**Someone took a bicycle, a television and a tape-recorder away from one of our colleagues. He went ... and talked to the gang leader (chefão) of the favela. Two days later the same guy that robbed him brought all the stuff back and gave himself up, died. He gave it back because the neighborhood kids went there and pressured him. He was finished, dead.<sup>2</sup>**

**Violence against suspected criminals was widely supported, and a law of silence prevailed:**

**There's only one way to deal: bury the person that died and be quiet. It's the law of the hillside, the favela and the Baixada.<sup>3</sup>**

**Another phenomenon linked to the lack of policing of poor neighborhoods—and a popular belief that the police and justice systems are corrupt and inefficient—is the practice of lynching suspected criminals, which appears to be becoming increasingly common. For example, after a suspected sexual serial killer had raped and killed at least four girls in the Zona Oeste of Rio, the local residents, according to a report in the press, became unsatisfied with police investigations and took matters into their own hands. Within a period of ten days, in the two police jurisdictions of Bangú and Campo Grande, seventeen people accused of the rapes were executed by popular lynchings or criminal gangs "hired" to "make justice."<sup>4</sup>**

**In another widely reported incident, on July 3, 1993, three teenage boys—Carlos Henrique Aguiar dos Santos, sixteen-years-old, Cláudio Pereira da**

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<sup>2</sup> *Ibid.*, p. 15.

<sup>3</sup> *Ibid.*

<sup>4</sup> Antônio Werneck, "Caça ao tarado já matou 17 na Zona Oeste," *O Globo*, June 13, 1993.

Silva, fifteen-years-old, and Marcos Viturino Costa dos Santos, nineteen-years-old—were lynched in the Olaria neighborhood of Rio de Janeiro after being chased by a mob who accused them of robbing a bus. The boys were chased into a square where they were beaten with rocks and clubs, doused with alcohol and set on fire. After the killing a police investigation reportedly determined that the boys were not responsible for the robbery and had no prior criminal record.<sup>5</sup> They were apparently taking the bus back to their homes in Jardim América after playing soccer on the Copacabana beach.

Crime and violence in Brazil is a reality, and appears to be on the increase as the country's economy continues to decline. According to a report by the Health Ministry, every hour three Brazilians are victims of homicide. Homicides are the sixth cause of death, increasing, from 1980 to 1989, by 67 percent while the population grew 22 percent. In 1989 alone, 24,900 people were victims of homicide.<sup>6</sup>

It should be noted, though, that despite the common perception of Brazil, and in particular of Rio de Janeiro, as dangerous and violent, the homicide rate in Rio has actually decreased slightly over the past several years and is not as high as in several other major cities of the world. In 1992, there were 3,225 official registered homicides in the city of Rio, with a population of 5.3 million, or a rate of about 61 per 100,000 inhabitants. Comparing per capita homicide rates between different cities is fraught with statistical problems and inaccuracies, but is nonetheless revealing. Rio's homicide rate, for example, is lower than that of Washington D.C., which had an average rate of 78 homicides per 100,000 inhabitants and far lower than Johannesburg, South Africa, with a rate of approximately 116 or Medellín, Colombia, with a stunning 389.<sup>7</sup> On the other hand,

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<sup>5</sup> Marcelo Auler, "Sangue dos inocentes," *Veja*, July 14, 1993; "Rio Lynching: Mob Justice That Went Wrong," Associated Press, July 31, 1993; and Todd Lewan, "Brazilians Fed Up With Rampant Crime Resort to Vigilantism," Associated Press, July 31, 1993.

<sup>6</sup> Gilberto Dimenstein, "Três brasileiros são assassinados por hora," *Folha de S. Paulo*, November 8, 1992.

<sup>7</sup> See, Paul Taylor, "South Africans Seek Private Remedies as Crime Skyrockets," *Washington Post*, November 7, 1993; Don Podesta, "Rio de Janeiro: Civilians, Police Share Blame for Murders," *Washington Post*, November 7, 1993; Douglas Farah, "Colombia's Violent Culture More Durable Than Escobar," *Washington Post*, December 5, 1993.

the U.S. national homicide rate for 1992 was nine murders per 100,000, while Canada's was three.<sup>8</sup>

Nevertheless, the lack of policing in large Brazilian cities creates a situation where people decide to take justice into their own hands, only increasing and perpetuating violence.

Beyond a general perception that the justice system is inefficient, there is an even stronger opinion that holds that the justice system does not punish children and adolescents who commit crimes. This belief is fueled by a misperception of the 1988 Constitution and the 1990 children's legislation, the Estatuto da Criança e do Adolescente (ECA). Under the Constitution, those below the age of eighteen cannot be tried and sentenced as adults and are subject to special legislation.<sup>9</sup> This legislation, the ECA, which is discussed in further detail below, establishes a series of special detention centers and what are called "socio-educational" measures for juvenile offenders.

The popular perception of this legislation, voiced to Americas Watch many times and often heard in Brazil, is that adolescent criminals are *never* punished for their actions. It is believed, in particular, that teenagers are often used by adult criminal gangs and that as they approach the age of eighteen they often commit more and more serious crimes, taking advantage of their "special" status.

The second in command of the Federal Police at the time of Americas Watch's visit, Geraldo José Chaves, told us that Brazil has "suffered from the effects of an extremely liberal constitution" and that the ECA was elaborated at a time of "great emotion" and "contains provisions which the country will never be able to fulfill." He cited various examples of serious crimes committed by minors for which, he claimed, they were not punished. He added: "The simple fact of adolescents in Brazil knowing that they will not be punished has functioned as an incentive to violence."<sup>10</sup>

Crimes committed by minors is a reality in Brazil, though the majority of crimes appear not to involve violence. In the state of Rio de Janeiro, according to

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<sup>8</sup> Editorial, "Cool Canadian—Bullet-Free—Air," *Washington Post*, January 8, 1994.

<sup>9</sup> Article 288 of the Constituição de República Federativa do Brasil.

<sup>10</sup> Americas Watch interview with Dr. Geraldo José Chaves, Coordenação Central de Polícia Federal, in Brasília, June 2, 1993.

the children's court, the Juizado dos Menores, in the first half of 1993, 954 minors from the ages of ten to seventeen passed through the juvenile court system. Seventy percent of the crimes prosecuted there were theft or robbery. In 1992, the Juizado registered 1,054 incidents of larceny or theft not involving violence (furtos) and 822 robberies or theft involving violence or the threat of violence (roubos) by minors, as well as 159 cases involving drug dealing and 123 involving drug consumption.<sup>11</sup> In the state of São Paulo, the military police (polícia militar or PM) stated that in 1991 they arrested 5,139 minors for various different types of infractions: 1,303 for armed robbery; 15 for homicide; 144 for drug trafficking; and 622 for possessing large-caliber weapons.<sup>12</sup> According to the São Paulo state Secretaria do Menor the number of homicides committed by minors almost doubled between 1990, when 37 homicides were committed by minors, and 1991, when 69 were committed. The number of armed robberies almost tripled, from 11 in 1990 to 37 in 1992.<sup>13</sup>

When minors do commit violent crimes it often results in significant press coverage. For example, in February 1992, Brazilian newspapers ran a series of stories on what they characterized as a "wave of crimes" committed by minors in the city of São Paulo. It was reported that seven people were assassinated by minors in fifteen days, and as a result the state military police decided to conduct an operation to remove children from the streets of the center of the city. In the first four days of the subsequent sweeps, which were challenged by local human rights groups, the military police stopped eighty-eight children, remanding thirty-two to the juvenile protection agency and six to local police stations. The operation took place despite legal guarantees that minors should only be arrested if caught in the act of a crime or with written judicial orders. In fact, some members of the São Paulo Bar Association stated that they felt that the operation was ordered to fuel debate on the possibility of lowering the age at which a minor can be tried as an adult from eighteen to sixteen.<sup>14</sup>

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<sup>11</sup> "Três meninos de rua são mortos a cada dia no Estado do Rio," *O Globo*, August 1, 1993.

<sup>12</sup> "Plano de combate ao 'trombadinha,'" *Jornal do Brasil*, February 27, 1992.

<sup>13</sup> Rogério Menezes, "Dobram assassinatos cometidos por menores," *O Estado de S. Paulo*, February 23, 1992.

<sup>14</sup> "OAB faz crítica a Fleury por querer punição aos 16 anos," *O Estado de S. Paulo*, March 10, 1993.

Despite the perception that minors who commit crimes go unpunished, the juvenile detention centers in most Brazilian cities are notorious for their poor conditions. The federal Ministério Público charges that all too often the juvenile justice system, instead of rehabilitating children and adolescents, is designed to protect society from the presence of these boys and girls. Despite the legal advances contained in the ECA, which heavily punishes torture and mistreatment of children and calls for small-scale, decentralized detention centers, with educational and semi-liberty programs, there has been little actual progress in reorganizing detention centers and improving direct services.

Human rights activists interviewed by Americas Watch singled out the large juvenile detention centers in the city of São Paulo, where torture and beatings of the inmates were reportedly common. The São Paulo juvenile detention facilities, known as the FEBEM (Fundação Estadual para o Bem-Estar do Menor), have been the site of several recent uprisings by adolescent inmates and charges of torture and mistreatment. Following a rebellion in October 1992, in which inmates at the Tatuapé unit took control of the building and set several fires, sixty-nine adolescents were reportedly victims of assaults and beatings by FEBEM functionaries and the military police. Lílana Mercadante Mortari, a prosecutor in the special juvenile courts, the Promotoria da Infância e da Juventude, asked for police investigations to be opened in all these cases and stated that violence at FEBEM had increased since the rebellion.<sup>15</sup>

In the wake of another rebellion that occurred at the Tatuapé unit on March 30, 1993, new allegations surfaced of beatings and mistreatment. According to statements collected by representatives of several human rights organizations, in the aftermath of the riot seventy-five boys were wounded after being beaten with sticks, truncheons and metal bars by FEBEM functionaries and military police.<sup>16</sup> The boys claimed that they were removed from their rooms and beaten after the rebellion had been controlled and that medical treatment was withheld and delayed.

As a result of the poor conditions at FEBEM, the juvenile section of the state prosecutor's office, the Ministério Público, brought a suit against the state

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<sup>15</sup> "Registrados 69 casos de agressões na FEBEM de São Paulo," *Folha de S. Paulo*, March 10, 1993.

<sup>16</sup> Gilberto Nascimento, "A volta da linha dura: a FEBEM aposta na repressão," *Brasil: Agora*, June 7-20, 1993.



government, seeking an investigation into the beatings, mistreatment and overcrowding at the units. According to the complaint, groups of twelve to fifteen boys were sleeping on the ground in cells that measured nine square meters and had only one window.<sup>17</sup> There were no beds, meals were served on the ground, and one hundred boys shared three showers and four toilets. The prosecutors also charged that FEBEM was not implementing the educational and alternative sentencing provisions called for in the ECA. A similar suit about poor conditions at another unit, the Unidade de Acolhimento Provisório, charged that 352 adolescents were being held at a facility designed for 120 inmates. The judge found that these violations existed and issued an injunction ordering improvements to be made within thirty days.<sup>18</sup>

Father Júlio Lancellotti, who works with the Catholic church-based Pastoral do Menor, singled out the conditions at FEBEM as one of the most serious human rights problems affecting children in the state of São Paulo. He told Americas Watch that mistreatment and poor conditions at FEBEM had reached "scandalous levels" and that the institution is marked "by its total disregard for the proper legislation."<sup>19</sup> According to Padre Júlio this mistreatment, and the practice of holding juvenile delinquents in the same facility regardless of the crimes that they have committed, also has a serious effect on the inmates's perceptions of their future and promotes increased criminal activity. Padre Júlio stated:

Torture is a common practice, and a practice which desensitizes the adolescents. Also, boys who kill and those who commit petty thefts, for example a boy who steals a bicycle, are placed in the same institution and treated the same way. As a result, the adolescent loses any sense of morality, of different punishments for different crimes. So for many of these kids there is no reason not to commit the more serious crime. They feel: "Why not, if the punishment is going to be the same?"

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<sup>17</sup> Ibid.

<sup>18</sup> André Lozano, "Juíza acata denúncia do MP contra Febem," *Folha de S. Paulo*, June 2, 1993.

<sup>19</sup> Americas Watch interview with Padre Júlio Lancellotti, São Paulo, June 1, 1993.

The lack of an effective policy to deal with juvenile criminals or with children who need assistance or protection from the state is an essential element that feeds the cycle of violence, whose end result is all too often a dead child. Abandoned or poor children frequently require assistance from the state, either because of their social and economic situation or because they have committed or are the victims of crimes. Adolescents who commit crimes are frequently institutionalized, where they are poorly treated and often housed indiscriminately with more serious offenders. Because of their institutionalization these teenagers are frequently stigmatized as criminals, beaten and harassed.

This stigmatization attached to placement in a juvenile institution affects not only the adolescent's self-image, but the image that society has of these adolescents, who come to be characterized as juvenile delinquents (*infratores juvenis*), radically and even irreparably different from "normal" adolescents. Institutionalization also breaks what tenuous family ties they might have had. When the adolescents escape or are released they often move on to committing more serious crimes. Frequent escapes and increasing criminalization, in turn, motivate segments of the Brazilian society to take matters into their own hands and kill kids who they believe to be incorrigible and unpunishable criminals.

Though the system mistreats and abuses adolescents—often regardless of the seriousness of the crimes that they may have committed—it is seen as lax and lenient by the general population, due to the same maladministration that also results in frequent escapes. The juvenile justice system, despite the efforts of many to reform it, often creates more hardened and anti-social adolescents, and simultaneously a society more likely to tolerate and promote violence against them.

#### **IMPUNITY AND THE POLICE FORCES**

Fueling the violence against children is a persistent impunity for those who commit human rights abuses against them. Impunity is the result of the general inefficiency and inadequacy of the Brazilian judicial system, compounded by several important factors when the victims of crimes are poor children and the perpetrators are on- or off-duty police.

Brazil has three main police forces: the Federal Police, and the civil and military police, forces operated by the state governments. The duties of the Federal police, a relatively small force, include preventing drug trafficking and smuggling, protecting Brazil's borders and exercising the functions of a federal judicial police (executing arrest warrants for those indicted on federal offenses,

for example). According to the constitution, the Federal police is also responsible for "investigating penal infractions against the political or social order ... as well as other infractions whose practice has an inter-state or international repercussion and requires uniform repression."<sup>20</sup> This constitutional provision has not been interpreted to mean that the Federal Police can investigate death squad crimes against minors.

The main police forces are the state-level civil and military police. The civil police, which must be headed by a career police officer, investigate crimes and serve as the judicial police. The military police, known by their Portuguese acronym PM (*polícia militar*), are a uniformed force who conduct day-to-day patrolling and are responsible for the preservation of public order. Both forces are under the control of the state governor, though the military police are also auxiliary and reserve units of the army.

During Brazil's military dictatorship the PM were under the direct control of the army. Specialized mobile "shock units," such as the São Paulo military police's Rondas Ostensivas Tobias de Aguiar (ROTA) battalion, were established to prevent "terrorism" and wage urban war against subversives.<sup>21</sup> These battalions remained in operation after politically-motivated armed dissent was crushed, though control of the military police has, at least nominally, reverted to the democratically-elected state governors. In addition to maintaining the PM shock units after the dictatorship, as a result of a 1979 amnesty law no army or military police personnel were prosecuted for human rights violations committed during the dictatorship. Consequently, abusive policemen remained on the force and there was little or no change in the police forces' daily practices or strategies for combatting crime.

Under Brazilian law, criminal suspects may only be arrested if they are caught in the act of committing a crime or upon the orders of an arrest warrant issued by a judge. It is usually the PM who are responsible for arrests in flagrante of criminal suspects and for responding to crimes while they are in progress, and it is the responsibility of the civil police to investigate crimes once they have occurred. However, the two forces frequently come into conflict over their

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<sup>20</sup> Article 144 of the *Constituição da República Federativa do Brasil*

<sup>21</sup> Paulo Sérgio Pinheiro, "Police and Political Crisis: The Case of the Military Police," in Martha K. Huggins, ed., *Vigilantism and the State in Modern Latin America: Essays on Extralegal Violence*, (New York: Praeger, 1991), p. 169.

respective duties, even to the point of accusing each other of harboring and assisting criminals.

A police investigation (*inquérito policial*), conducted by the civil police, may be instituted by written orders of the police authorities, by request of the victim of the offended party, or by orders of the judge or the *Ministério Público*. Investigations must be opened whenever the police are informed of a possible violation of the penal code.

Once an investigation is opened, the police must collect as many facts as possible about the crime, conduct all needed examinations of the site of the crime, and, if there is enough evidence, state who they think is responsible. The police must hear the victim and can undertake any investigations that they deem necessary, including interviewing witnesses and victims and collecting any physical evidence of the crime. Searches of homes may only occur by written orders of the judge with jurisdiction on the matter, and must occur during daytime. The judge or the prosecutor (*promotor da justiça*) can require the police to conduct additional investigations at any time.

Once the police have identified (*indiciado*) a suspect, they must interview him or her, and may request that the judge issue a warrant for the suspect's arrest. This arrest may occur in order to facilitate investigations or to prevent further crimes. As a check on the use of torture, medical examinations must be performed on suspects at the time of their arrest and when they are released, and the judge can also order medical examinations of arrested suspects at any time. According to many observers, though, these medical exams are often not performed, especially when the suspects are adolescents.

The civil police have thirty days to conclude an investigation if the suspect is at liberty, and ten days if the suspect is detained. If this time limit is exceeded, the judge can extend the investigation for a maximum of an additional thirty days. If the suspect is detained and the investigation is not complete within ten days, he or she must be released.

Once the police have concluded their investigations they must deliver a detailed written report to the judge. This report is passed on to the prosecutor to determine whether a suspect should be indicted (*denunciado*). The indictment (*denúncia*), however, is independent from the investigation and can occur at any moment when the prosecutor determines that there is sufficient *prima facie* evidence. If the prosecutor or the judge believe that further police investigations are necessary, they may request them. Police investigations may only be shelved (*arquivado*) by order of the judge, and at the request of the prosecutor.

Despite these procedural requirements, police investigations of the

homicides of children are often shelved due to a lack of evidence, remain in progress for extended periods—sometimes for several years—or are concluded without determining responsibility for the homicide. When Father Lancellotti of the Pastoral do Menor was asked about how police investigations into violence against children are conducted, he stated ironically:

It would be interesting for us to learn from someone how a police investigation is actually supposed to work. The way an investigation works for us is this: we bring a boy who has witnessed or been the victim of violence to the police to file a complaint; the kid disappears; the investigation never occurs.<sup>22</sup>

One of the main reasons for impunity with regard to the killing of children is that crimes committed by on-duty PMs are judged in a special military justice system, the Auditoria da Justiça Militar, which is separate from the common civilian courts. These courts were established in 1977, during the military dictatorship, to judge crimes committed by military policemen. As Americas Watch has noted, the military justice system is administered so as to make convictions of policemen for violent crimes almost impossible. Crimes committed by military policemen are investigated within the PM battalions, and these investigations almost always determine that homicides were the result of justifiable shoot-outs.<sup>23</sup> A study of the military justice system in the state of Espírito Santo by the newspaper *A Gazeta*, for example, found that over the course of 18 months, 14 cases were brought before the state's military courts. Ninety-two percent of these cases resulted in the acquittal of the police, some of them whom were accused of homicides.<sup>24</sup>

In addition, the military justice system is over-burdened and inefficient, with the military justice system in São Paulo having, at the end of 1992, some 14,000 cases pending in four courts, each with one prosecutor. Despite the best

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<sup>22</sup> Americas Watch interview with Padre Júlio Lancellotti, São Paulo, June 1, 1993.

<sup>23</sup> For more information on the military justice system see Americas Watch, *Urban Police Violence in Brazil: Torture and Police Killings in São Paulo and Rio de Janeiro after Five Years* (New York: Human Rights Watch, May 31, 1993), vol. 5, no. 5.

<sup>24</sup> "Envolvimento de PMs em crimes vira rotina no ES," *A Gazeta*, November 7, 1993.

efforts of the prosecutors, who are frequently serious and committed professionals, cases are summarily dismissed or are so protracted that they are effectively buried in the system. It is not uncommon for cases of homicide to take ten years. Crimes such as abuse of authority or assault, are frequently not even prosecuted at all, as the military system takes so long to handle these cases the statute of limitations runs before the case comes to trial. Recognizing this structural futility, military justice prosecutors will often do not even bother to file such cases. Thus, beatings and abuse of authority by the military police, and indeed most crimes against civilians less serious than homicide, are in practice completely immune from prosecution.

Prosecutors who persist with investigations into crimes committed by the military police have even been threatened with death by the police. In October 1993, São Paulo military justice prosecutor Marco Antônio Ferreira Lima, who is investigating allegations of crimes committed by members of the infamous ROTA battalion, was the victim of an unsuccessful car bombing attempt.<sup>25</sup> One of his colleagues, prosecutor Stella Kuhlmann Vieira e Souza, has also received frequent death threats, several delivered personally by members of the ROTA battalion. Rio de Janeiro prosecutor Tânia Maria Salles Moreira, who investigates death squad crimes, has lived under constant police protection for three years. On August 28, 1993, neighbors warned her that two cars were circling her home. She called the police who arrested three men: all policemen, driving a car with fake license plates and in the possession of unmarked revolvers, frequently used for assassinations. One of those arrested was PM Eduardo José Creazola, who was later linked to the killing of twenty-one residents of the Vigário Geral favela in August 1993, and who was being investigated for involvement in the 1990 disappearance of eleven youths.<sup>26</sup>

In the civilian system the successful prosecution of homicides of children face several other barriers, including the fear of witnesses and victims to testify, the lack of adequate protection for such witnesses, and the general inefficiency of the system.

The fear of witnesses is a particularly acute problem, and is due to the common practice of retaliatory killings of witnesses who dare to speak out

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<sup>25</sup> Cláudio Julio Tognoli, "Promotor acha vestígio de bomba no carro," *Folha de S. Paulo*, October 22, 1993.

<sup>26</sup> Pedro Tinoco and Virginia Leite, "A máscara da lei," *Veja*, September 8, 1993.

(colloquially known as "burning the archives" or "queima de arquivo"). A prominent recent example of this phenomenon was the killing, on January 15, 1992, of Edméia da Silva Euzébio.

Edméia was the mother of one of eleven individuals, including six minors, who disappeared from Magé, near Rio de Janeiro, on July 26, 1990, with the suspected involvement of civil and military police. Edméia and the other mothers, known as the mães de Acarí, after the favela where they live, mounted a high-profile campaign to press for the investigation into the disappearance of their children. The mothers had been repeatedly threatened by police who patrolled the Acarí favela, and on January 6, Edméia had testified about the disappearance and the involvement of the police.

On January 15, Edméia and a friend, Sheila da Conceição, were walking in downtown Rio de Janeiro when they realized that a car was following them. They tried to flee, but the car chased after them. After one of the men in the car shouted Edméia's name, the men opened fire on the women, killing both of them.

Substantial evidence indicates that Edméia was killed because of information that she had about police involvement in the disappearance of the children. According to Carlos Ivanir dos Santos, of the organization Centro de Articulação dos Povos Marginalizados (Center for the Mobilization of Marginalized Populations, CEAP), which helped the mães de Acarí with their campaign, Edméia was conducting a parallel investigation into the disappearances.<sup>27</sup> She found out that a police informer who allegedly participated in the disappearance of the children was in the same prison as a friend of hers, so she struck up a friendship with him. The informant was transferred to another prison, but Edméia maintained the friendship and continued to visit him. Shortly before her killing Edméia had told several people that she thought the informer was about to tell her something important.

The Rio de Janeiro police, though they have not ruled out the possibility of Edméia's killing being in retaliation for her activism with the mães de Acarí, think that the assassination might be linked to a theft at the prison that Edméia visited, which she may have witnessed.<sup>28</sup> They point out that a woman who was with

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<sup>27</sup> Americas Watch interview with Carlos Ivanir dos Santos, Washington, D.C., April 16, 1993.

<sup>28</sup> Americas Watch interview with Lieutenant Colonel Walmir Alves Brum, head of the Rio de Janeiro military police's internal affairs unit, June 11, 1993.

Edméia at the time of the shooting, but who was not killed, was a more important witness in the disappearance case. In October 1993, as a result of investigations into another massacre, allegations surfaced that Edméia's killing was planned and carried out by the military policeman Eduardo José Creazola, who also is suspected of involvement in the disappearance of the eleven people from Magé.

Regardless of the actual motivation for the killing of Edméia da Silva Euzébio, the fear produced by such retaliatory killings is palpable. Many of the street children interviewed by Americas Watch in Rio de Janeiro would not give any detailed information about violence against them, such as names of those who attacked or abused them, due to fear. Other sources insisted on anonymity and were often visibly reluctant to offer information about violence.

Even more dramatically, Americas Watch visited a favela on the outskirts of metropolitan São Paulo, where a group of justiceiros (literally "justice makers"), had killed several adolescents. Even behind closed doors and with the presence of the local priest, residents of the favela denied that there were any problems in the area, besides a man who got drunk and beat his wife. Though the area is well known as a center for crack dealers, residents claimed that no one in the favela sold or used drugs. When Americas Watch, with members of a local human rights group, drove by a house where four women were sitting on the porch and parked across the street, the women, who were talking with each other, spotted the unfamiliar car, stopped talking, and quickly stepped inside. Two days after Americas Watch's visit five adolescents were killed in the favela, supposedly by the local justiceiros. The local residents, however, did not want to speak about what had happened.

Fear of testifying about violent crime is compounded by the lack of any meaningful program to protect witnesses. What few programs do exist are often run by the PM themselves, who are frequently suspected of involvement in crimes. For example, one of the key witnesses to the Vigário Geral massacre, Jadir Inácio, was wounded in the attack on the slum by off-duty policemen and was under police protection while recovering at the hospital. One of the PMs responsible for protecting Inácio was Agnaldo Pirassol Ruas, later arrested for suspected involvement in the killing.<sup>29</sup> Inácio later stated that he felt much safer at home in the favela, reportedly under the protection of local drug traffickers.<sup>30</sup>

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<sup>29</sup> "Testemunha fica sob custódia de suspeito," *Folha de S. Paulo*, September 6, 1993.

<sup>30</sup> Aziz Filho, "Sobrevivente diz que prefere ficar em favela," *Folha de S. Paulo*, September 8, 1993; "Moradores protegem principal testemunha," *Jornal do Brasil*, September 6, 1993.



Even police protection for very high-profile individuals, such as the internationally-recognized labor leader and environmental activist Francisco Alves "Chico" Mendes, is often inadequate. Chico Mendes was killed while two federal policemen were in his home. For unknown witnesses, who often live in the same area as those they accuse, or where the police that they may accuse patrol, fear is even more understandable.

The investigation of violence against minors, especially when the children live on the streets, is plagued with other difficulties. One is that witnesses to violence against street children are often other street children. In homicide cases witnesses are often required to testify at least three times: during the initial police investigation, before the judge and prosecutor, and during the jury trial itself (usually in the presence of the accused, who may be at liberty.) Street children often have no fixed addresses and sometimes no homes at all, and it is very difficult for them to follow a case as long as is necessary, even without the fear of testifying.

Violence is also often common in the lives of street children, who frequently faced domestic violence while they lived at home and encounter harassment on the part of police and the public on a daily basis. Several street educators told Americas Watch that violence becomes a part of the habitual pattern of life for these children and they do not recognize it as a violation of their rights.

Another problem is that street children rarely have the required identity documents, greatly complicating investigations into their deaths and even the collection and identification of their bodies at the morgue. Frequently, when educators or the friends of street children go to the Instituto Medico Legal (IML) to try to see the body of someone they know they are not allowed in, because they are not immediate family. For example, two street educators in Rio de Janeiro told Americas Watch about the murder of a boy named Jair, who had no birth certificate.<sup>31</sup> As a result, his body remained at the IML. Fifteen days after Jair was killed, the death certificate was issued, and said only "man, identity unknown, appearing to be 15 years old." Street educators also complained to Americas Watch that corpses at the IML are not left in a freezer, so that when children are allowed to see their friends the bodies are totally decomposed. The street educators felt that this served as a psychological threat—showing the children what will happen to them in the future.

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<sup>31</sup> Americas Watch interview with staff of the Instituto Brasileiro de Inovações em Saúde Social (IBISS) and IBRADES, June 8, 1993.

Police or death squads who commit violent acts often have the support of the population or, more commonly, the "law of silence" prevails. Few people are willing to testify against grupos de extermínio and those that do can encounter resistance and hostility on the part of their neighbors. For example, following the arrest of the confessed leader of a well-known death squad that operated in the Peixinhos favela, near the town of Olinda in Pernambuco, local residents actually staged a public march in support of him and condemned a local human rights organization that they felt was responsible for his arrest. Local community activists who were opposed to the actions of the death squad did not want Americas Watch to quote them, and were very hesitant to offer more than broad generalizations about the situation. They were particularly fearful because a shop owner who was thought to have financed the death squad was free on bail, living in the area.

One of the methods used by human rights organizations, and those with sufficient economic resources, to try to pressure Brazil's archaic judicial system into quicker action is to hire an assistant to the prosecutor (assistente do Ministério Público or assistente da acusação). Under Brazilian law, as long as the government's prosecutor agrees, the victim or the immediate family can appoint a person to assist them with the case. This individual (who could also be the victim) can propose arguments about the evidence, request questions to be put to witnesses, participate in the oral debate in the case, and participate in the appeals made by the Ministério Público or advance his or her own appeals.<sup>32</sup>

When the family of a victim agrees, Brazilian human rights groups use this tactic to press for action in specific cases. However, the law states that only the victim or the immediate family (defined as the victim's spouse, parents, children or brother)<sup>33</sup> can request an assistant to the prosecutor. As a result, when the victim is a street child, with no immediate family and no interested parties able to follow the case closely, the case sinks into the mire of the inefficient Brazilian judicial system.

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<sup>32</sup> Articles 268-273, *Código de Processo Penal*

<sup>33</sup> Article 31, *Código de Processo Penal*

### **3 POLICE VIOLENCE**

**On October 14, 1989, at around 10:30 p.m., sixteen-year-old Enéas da Silva and several other boys were looking at a pornographic magazine. They were outside, sitting on a water tank, in the Nova Divinéia favela, in the poor São Paulo neighborhood of São Mateus, when they saw a police car approach. Scared of what might happen if they were caught with a magazine prohibited to those under the age of eighteen, Enéas and three of his friends ran away from the approaching patrol car. The policemen—PM soldiers Ednei Segato and Edmilson Pereira de Carvalho, of the 14th company 9th battalion, in police car M-19-403—saw the boys running away, got out of the car and followed them with their revolvers drawn.**

**Enéas ran into the favela and down an alley, until he was caught in a dead-end. There he was surrounded by the two policemen who shot him several times, perhaps as many as eight. Enéas, according to the testimony of his friends and residents of the favela, had never been seen carrying a weapon and at the time of the shooting was unarmed.**

**One witness, a woman who lived in a shack near where the shooting occurred, later testified that she was laying in bed with her family when she heard someone yell: "Stop and put your hands up." She heard a child's voice respond, saying, "Don't shoot me, I'm not a bandit," and then heard approximately eight gunshots.**

**After the shooting, the police fired several shots into the air, firing their own service weapons and a 32 caliber Taurus revolver, which, according to a later police examination, they placed next to Enéas's left hand. The police then called for help on their radio, saying that they had been involved in a "shoot-out with marginals."**

**Several people in the favela, including Enéas's aunt, saw one of the policemen go to the car and radio his commanders. He then ran back to the scene of the killing, where Enéas lay, presumably dead, shooting his gun in the air. Witnesses saw the two policemen remove Enéas's body from the back wall of the shack where he was shot, dragging and kicking it, dump it at the beginning of the alley, and go back to the dead-end, firing their revolvers again.**

**After the radio message was sent, another police car arrived and a policeman got out of the car and threatened Enéas's aunt, who was standing nearby. The policeman held his pistol to her chest and yelled at her to get inside and mind her own business. According to several witnesses, the police then lifted**

up the back seat of the police car, threw Enéas's body in the back, lowered the seat over his body, and drove away.

One of the policemen, in testimony before the official police investigation (the *inquérito da polícia militar*, IPM), claimed that he and his partner entered the favela and saw several "elements" run away. They chased them, were fired upon, shot back, and wounded a boy. They called for back-up, and then put the boy in their car and took him to the Santa Marcelina Hospital where, according to their testimony, the body was pronounced dead on arrival.

#### **POLICE VIOLENCE IN SÃO PAULO**

The shooting of Enéas da Silva by São Paulo's military police fits several depressingly common patterns, and is, unfortunately, only one example of the hundreds of annual killings of civilians by the state's police. Though police killings of minors are a particular problem, they cannot be understood outside of the broader context of police violence as a whole. In 1992, the most violent year yet registered, the São Paulo military police, according to their own statistics, killed 1,470 civilians.<sup>1</sup> In the first eight months of 1993, the PM killed 257. Like many adolescent victims of police violence, Enéas was black.

A best-selling book by journalist Caco Barcellos, *Rota 66: a história da polícia que mata* (Rota 66: the history of the police that kill) which was based on in-depth investigations into homicides committed by the São Paulo military police's ROTA battalion, sets out the pattern. In the shootings that Barcellos examined, he found that regardless of whether a person flees the police, offers resistance, or surrenders, he will be shot repeatedly until dead. The police then take the body, although already dead, to the hospital, to show that they attempted to rescue the person and to make examinations of the scene of the killing more difficult.

Frequently, as in the case of Enéas da Silva, the police will plant a gun on the body, making it appear that the killing happened in the course of a shoot-out. The shooting will then be officially reported not as a homicide, but as resistance to arrest followed by the death of the suspect. The victims, in this scenario, are the police and the real victim becomes the suspect.

The "typical" victims of police violence, according to several studies, are

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<sup>1</sup> By comparison, the Los Angeles police department killed 69 people in 1992.

young black (negro or pardo) men, who live in the peripheral areas of the city, earn low incomes, and are recent migrants to São Paulo. Over the course of twenty-two years, Barcellos documented 4,179 cases of people killed in shoot-outs. Minors, he states, are "among the preferred victims" of the police, with 680 cases registered in his study.<sup>2</sup> Enéas, a black youth from a poor peripheral area of São Paulo, fit this lethal pattern perfectly. Overall, Barcellos estimates that since 1970, the PM have killed between 7,500 and 8,000 civilians.

In the course of tracking similar stories of police shootings over a period of twenty years, Barcellos showed that in a large number of cases shoot-outs did not occur. Instead, the police summarily executed suspects, frequently individuals who were fleeing or offering no resistance. Americas Watch has also documented this pattern in a series of reports issued since 1987.<sup>3</sup> As Americas Watch noted in May 1993, data from the PM themselves suggest that some of the killings could not have been the result of shoot-outs with armed suspects. Most revealing is the ratio between those killed and wounded and the ratio of police killed to civilians killed. If many of these killings occurred in the course of shoot-outs, one would expect that a higher number of civilians would be injured than killed, and that a sizable number of policemen would also be killed and injured.

However, the opposite is the case. In 1991, for example, 898 civilians were killed in greater São Paulo but only 225 were wounded. This ratio increased in the first six months of 1992, when 660 civilians were killed and only eighty-nine were wounded. Statistics on the number of police killed to civilians killed are similarly revealing: in the first six months of 1992 there was only one police casualty.

Police shootings of civilians are motivated by several factors. Because the PM do not investigate crimes, they claim that the elimination of criminals is one of the few measures of their performance. The PM also often feel that the civil police are corrupt and inefficient and the suspects that they arrest will be released and never convicted. This increases the incentive to "eliminate"

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<sup>2</sup> Caco Barcellos, *Rota 66: a história da polícia que mata*, (São Paulo: Editora Globo, 1992), pp. 130-131.

<sup>3</sup> Americas Watch, *Police Abuse in Brazil: Summary Executions and Torture in São Paulo and Rio de Janeiro* (New York: Human Rights Watch, December 1987); and Americas Watch, *Urban Police Violence in Brazil: Torture and Police Killings in São Paulo and Rio de Janeiro after Five Years* (New York: Human Rights Watch, May 31, 1993), vol. 5, no. 5.

suspected criminals, especially if they are children or adolescents who many policemen feel are treated with particular leniency under the children's legislation. The killing of suspected criminals, who are universally referred to by the police as marginais (literally marginals), has also been defended as a justifiable anti-crime measure.

Until recently, statements by officials in the São Paulo government have done little to dispel this attitude. In August 1991, for example, Pedro Franco de Campos, then the São Paulo Minister of Public Security, stated: "The police do not go into the street to kill. We go to protect the population and are received by the criminal elements with a bullet. In these cases, the police have responded with force, and are not expected to give a rose-bud to the marginais."<sup>4</sup> Given the attitude and past record of PM battalions such as the ROTA, such "law-and-order" rhetoric, especially in the absence of any effective punishment for abusive policemen, is interpreted as a license to kill.

As mentioned in chapter 1, one of the most important motivating factors for police violence is impunity. The São Paulo military justice system, in particular, is overburdened and unable or unwilling to prosecute PMs for violent crimes against civilians. (The military justice system is fairly effective, though, at prosecuting policemen for crimes involving corruption or insubordination—crimes which are perceived as damaging to the institution's image.) In 1992, the São Paulo military justice system was handling some 14,000 cases, divided up between just four prosecutors. With such an overburdened system, prosecutors frequently do not even bother to try crimes against civilians that are less serious than homicide. Crimes such as assault or abuse of authority, for example, are almost never prosecuted because they are frequently barred by the statute of limitations.

In the Enéas da Silva case, the policemen erred by placing the gun next to his left hand—testimony revealed that Enéas was right-handed. However, after almost five years, the case against the policemen is still plodding through the São Paulo military justice system.<sup>5</sup> This slow pace has persisted despite the fact that Enéas's murder has been profiled by various international human rights groups, including Americas Watch, and was singled out by a Brazilian national

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<sup>4</sup> Americas Watch, *Urban Police Violence in Brazil*, p. 5.

<sup>5</sup> The case of Enéas da Silva was also highlighted in Americas Watch, *Urban Police Violence in Brazil*

commission as one of ten "exemplary" cases on which to press for action on violence against children. The police who were accused of the shooting continued to work in the neighborhood until the trial itself began almost two years later, on May 19, 1991. They are still on the force.

According to lawyers from the Santo Dias legal defense center, run by the archdiocese of São Paulo, the trial is currently stalled because some of the witnesses have left São Paulo and have returned home to the northeast of Brazil.<sup>6</sup> The most recent witnesses testified before the court on November 16, 1992, and the prosecutor still had two more witnesses to call. After this, the defense will present their witnesses—perhaps as many as eight—before the trial can move into its final phase.

Though lawyers from the Santo Dias center were not happy with the continual delays in the case, they felt that it was actually moving fairly rapidly because of their involvement. In particular, they felt that they were lucky to find witnesses who could demolish the policemen's story of a shoot-out and who were willing to speak out. Itajiba Farias Ferreira Cravo, a lawyer with the Santo Dias center who is assisting the prosecution, stated: "The cases might take ten years—and we will be very upset about this—but without our involvement these cases could take twenty years."

In contrast to the lengthy proceedings in the military justice system, which often end up acquitting the police, human rights lawyers have been successful in securing reparation for the families of victims of police shootings in civil actions. This high success rate is no doubt due partially to the fact that the lawyers must only prove that there was a wrongful death and not that the police acted deliberately or with malice. An equally important factor, though, is the fact that suits for damages are handled in civilian courts.

After the October 1992 massacre by the military police of 111 inmates at the Casa de Detenção prison, São Paulo authorities claim that police killings have decreased. According to official statistics, in the first eight months of 1993, the São Paulo PM killed 257 "marginais." Though the numbers may have decreased, they are still distressingly high, and the statistics continue to bear the signals of probable extrajudicial executions. The decrease, in any event, shows that if sufficient political will exists the problem of police violence can be resolved and is not the inevitable by-product of urban crime.

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<sup>6</sup> Americas Watch interview with Itajiba Farias Ferreira Cravo, at the Centro Santo Dias, São Paulo, June 22, 1993.

**Killings and Woundings of Police and Civilians  
in the State of São Paulo for January-August 1993<sup>7</sup>**

São Paulo	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Total
Civilians Killed	57	41	39	35	25	20	24	16	257
Civilians Wounded	15	11	32	16	12	19	21	24	150
PM Killed	2	3	2	2	1	5	1	4	20
PM Wounded	24	15	19	13	10	8	6	8	103

Paulo de Tarso Mendonça, a representative of the state Secretary for Public Security, the branch of the state government that controls the police forces, told Americas Watch that the decrease in killings was the result of a change of attitude on the part of the new Secretary, Michel Temer, who was appointed in the wake of the October 1992 prison killings.<sup>8</sup> In a revealing statement, Mendonça said that Temer insists that the police act "energetically, but within the law" and that as a result of the decreasing number of civilian casualties, Temer was being criticized by some segments of the population who equate fewer police killings with more crime. Polls conducted after the prison massacre revealed that a surprisingly large number of people supported the actions of the police.

As part of a new policy, policemen involved in violent incidents are now taken off active duty for a thirty-day period of retraining. During this period of retraining, the policemen receive psychological and religious assistance, and participate in programs to help them with their stress. The São Paulo police academies also include human rights training programs. These programs were

<sup>7</sup> Source: Polícia Militar do Estado de São Paulo, Coordenadoria de Inteligência da Polícia.

<sup>8</sup> Americas Watch interview with Dr. Paulo de Tarso Mendonça, Secretario Adjunto, Secretaria de Segurança Pública do Estado de São Paulo, June 23, 1993.



created by the state Ministry of Justice at the suggestion of the Brazilian section of Amnesty International, and include talks by local human rights groups.

However, besides retraining and temporary removal from active duty, little is being done to increase or facilitate the criminal prosecution of abusive policemen. As with the policemen indicted in the Enéas case, it is not uncommon for policemen accused of serious crimes to continue to serve on the force, or indeed to be promoted. For example, three officers who participated in the 1992 Casa de Detenção prison massacre, were promoted in 1993, two of them for "merit." Government officials defend the continuing service of these officers, explaining that every complaint against an abusive policeman must be thoroughly investigated before any action can be taken, and that administrative punishments must await the verdict of criminal cases in the military justice system. As the military justice system is notoriously slow, though, this means that abusive policemen are rarely dismissed from the force. Indeed, Mendonça stated that it would be "unfair" to freeze policemen out of promotions if criminal charges against them are still pending.

Human rights activists interviewed by Americas Watch said that while the official statistics on killings by the PM may have decreased, the police have only "perfected" their techniques, either "disappearing" victims or torturing and harassing them instead of killing them. One practice that human rights activists said was increasingly common was for the PM to detain adolescents (usually illegally, without a warrant), and drive them around the neighborhood. The police, with the adolescent in the front seat of the car, will then stop frequently near houses where drug or criminal gangs operate, giving the impression that the adolescent is informing on other criminals. The police will then release the boy, after keeping him overnight in the police station. These adolescents are then targeted for harassment or killing by local criminals, who fear that they informed the police about their activities.

Indeed, the change in "attitude" on the part of the São Paulo military police may be merely superficial, designed to respond to international criticism over the killings of 111 inmates at the Carandiru prison in October 1992, and not actually to reform the attitudes of the police. The underlying political rationale that promoted police killings in the first place—appearing to be "hard" on crime—remains, making for public statements by São Paulo officials that sometimes appear to be contradictory. For example, the commander of the São Paulo force, João Sidney de Almeida, took office on February 26, 1993, and stated that the Carandiru killings forced the police force to take steps to correct the levels of violence and excesses that characterized the PM in the past. The police,

he told the press, would act more intelligently and avoid confrontation. However, Almeida simultaneously admitted that he himself had killed various "delinquents" in the course of duty. "I can't remember how many," he stated, affirming that all of the shootings were in legitimate self-defense.<sup>9</sup>

#### **Aluisio Cavalcanti Júnior**

The shooting of Aluisio Cavalcanti Júnior and the attempted homicide of Claudio Aparecido de Moraes also provide an example of how the São Paulo PM try to enforce justice in their own way. The case also presents a revealing contrast between the military and civilian justice systems: though police have been convicted in civilian courts for hiding the bodies of Aluisio and Claudio, they still have not been brought to trial in the military courts for the actual homicide, though it occurred some six years ago.

On March 4, 1987, at around 9:30 p.m., three PMs, Corporal José Carvalho and soldiers Luiz Fernando Gonçalves, and Dirceu Bortoloto, arrested two boys, Claudio Aparecido de Moraes and Aluisio Cavalcanti Júnior, in the Itaim Paulista section of São Paulo. Carvalho accused Aluisio of being responsible for the death of his son on January 1, 1987. Aluisio was eighteen and white; Claudio was seventeen at the time and is white.

At the request of Corporal Carvalho, several other policemen came to the scene, including Lieutenant Robson Bianchi and Sergeant João Simplício Filho. They agreed to take Aluisio and Claudio to a vacant lot in the Jardim Camargo Velho neighborhood, to interrogate them about the homicide. According to the prosecutor's report, at this point Carvalho began to demand the deaths of both of the boys.

At the lot the policemen tried to get Aluisio to confess to being a person named "Padre," who Corporal Carvalho claimed was responsible for killing his son. In order to pressure Aluisio, the police faked the shooting of Claudio and said that they would kill him as well unless he admitted that he was "Padre." Aluisio refused, but according to the policemen, Claudio, when he was not in Aluisio's presence, said that Aluisio was "Padre".

With the exception of Sergeant Simplício and one other policeman, all the other lower-ranking policemen present agreed that they wanted to "eliminate" both of the boys. Lieutenant Bianchi was uncertain, and Sergeant

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<sup>9</sup> "Novo comandante da PM-SP conta que matou delinquente," *Jornal do Brasil*, February 27, 1993.

**Simplício argued that Corporal Carvalho was not to be trusted. Despite Sergeant Simplício's argument that the boys should be given the benefit of the doubt and be taken to the police station for the proper investigations, Lieutenant Bianchi ended up siding with Carvalho. After Carvalho announced that the boys had been tried and convicted, four PM soldiers shot the boys who were laying on their backs on the ground. Aluisio was shot twice in the head and killed. Although Claudio was also shot two times, in the shoulder and the left side of his head, and appeared to be dead, he survived the shooting.**

**The policemen put Aluisio and Claudio in a police car and two soldiers took the bodies to a thicket between the neighborhoods of Itaim Paulista and Itaquaquecetuba. When they dumped the bodies, the two soldiers noticed that Claudio was still alive. According to Claudio's testimony, one of the soldiers said that he was certain that Claudio would not live until the next day, so they did not need to shoot him again. Instead they covered the two bodies with branches and leaves and left them there.**

**After dumping the bodies, the policemen returned to their barracks, where they washed the blood out of the interior of the police car. At this point they were informed that their superiors were wondering why the car had been in Itaquaquecetuba, which is outside of the municipality of São Paulo, and outside of their jurisdiction. Fearing that someone had seen them dump the bodies, the PMs returned to the site in their personal cars. At the site they were surprised to find that Claudio was not there, as he had managed to drag himself to a bakery, where someone called an ambulance. The policemen decided to take Aluisio's body to a different lot, in the nearby municipality of Guarulhos.**

**On November 9, 1987, military justice prosecutor José Luiz Borges indicted Lieutenant Robson Bianchi, Corporal José de Carvalho, and soldiers Rubens Antonio Baldasso, Luiz Fernando Gonçalves, Dirceu Bortoloto and Francisco Carlos Gomes Inocência for the homicide of Aluisio Cavalcanti Júnior and the attempted homicide of Claudio Aparecido de Moraes. Sergeant João Simplício Filho and soldier Roberto Carlos de Assis, who did not participate in the actual shooting and disagreed with the execution, were indicted for failing to prevent a homicide.**

**Claudio later testified that in the middle of October 1988, after the shooting, military policemen invaded his home and told his mother that if they found him again they would kill him and show her his body. He stated that on that same day his sister Rose was forced into the back of a police van, where she was beaten and tortured with electrical shocks. Claudio further testified that around Christmas time, in 1988, off-duty policemen went to a bar near where he lives and**

asked about him, saying that they were going to shoot him.

In an interesting and revealing break from the usual pattern of police shootings, one of the crimes committed by the PMs was tried in the civilian courts. Lawyers for the Santo Dias center who were assisting with the prosecution of the case concluded that the police should be charged with two crimes: homicide and hiding a body (*ocultação de corpo*). Unlike other crimes (attempted murder, bodily harm, etc) hiding a body does not merge into the homicide charge, but is prosecuted separately, and, importantly, is not defined in the military penal code, the *Código de Processo Militar*. As a result, the Santo Dias lawyers successfully requested that the charge of hiding a body be tried in the civilian justice system where they successfully secured a conviction. The policemen were found guilty in 1992, and the appeal was upheld at the beginning of 1993.

Despite this conviction in the civilian justice system, the case before the *Justiça Militar* is proceeding with the usual slowness. Only now is the court hearing the witnesses for the defense—the first two witnesses were heard in 1991. (The killing occurred in the beginning of 1987.) The police investigation had begun on June 1, 1987.

### **Alexandre Alves Camilo**

The murder of Alexandre Alves Camilo is a typical example of the police shooting of a poor youth in São Paulo. With no provocation, the police opened fire on Alexandre and two other boys and then tried to make the killing appear to be the result of a shoot-out. The case is only unusual because Alexandre was only ten years old, and because several of the policemen were eventually convicted of homicide. However, the proceedings in the military justice system took so long that lesser charges against several PM officers involved in the case were voided because of the statute of limitations. Though there have been occasional convictions of lower-ranking PMs, convictions of officers almost never occur.

On July 3, 1983, Alexandre Alves Camilo went with two friends, thirteen-year-old Valdemir de Novais, and seventeen-year-old Mauro José Dias Annibali, to see a stolen red Ford, which had been abandoned in their neighborhood of Taboão da Serra. While they were looking at the car, two policemen, Flávio Pereira Batista and Benedito de Jesus Carvalho, arrived at the scene. The police later stated that they had received a phone call advising them that some boys were stealing parts from a stolen car, which had been abandoned in Taboão da Serra. When the PMs arrived near the car they yelled at the boys: "Put your hands up," and when the boys did not respond they opened fire. The boys ran off, but Alexandre was shot from behind, in the neck.

Leaving Alexandre as he lay wounded on the ground, the police ran after Valdemir and Mauro. The police caught the two boys, handcuffed them, and took them to a vacant lot. Five PMs—Pereira Batista and de Jesus Carvalho joined by Osvaldo Virgílio dos Santos, Alberto do Nascimento, and Luiz Beches—beat and tortured the boys, kicking them and hitting them with their fists and with sticks. Mauro was forced to sit on an ant-pile while the police threw ants into his clothes. The police wanted Mauro and Valdemir to confess that they had participated in a shoot-out, and make them responsible for the death of Alexandre. A police captain, Waldir Neccarato, also participated in the torture and coercion of the boys, and induced a witness to testify falsely that he had seen the boys shoot at the police.<sup>10</sup>

The investigation was opened two days after Alexandre's death, on July 5, 1983, and thirty-seven witnesses were heard. On September 2, the policemen were charged with homicide and arbitrary violence. The trial began in the Auditoria da Justiça Militar (military justice courts) on December 5, 1983, and was delayed almost ten years. A final verdict was not reached until May 28, 1992, when the police were sentenced to six years in prison for aggravated homicide.

Because of the repeated delays in the case, the only crime that did not lapse due to the statute of limitations was homicide. In 1986 the case was ready to go to trial, but was repeatedly delayed. There were ten postponements of the trial for various different reasons until 1992. A lawyer for the Santo Dias center stated that this was his personal record for the longest delayed trial.

In this case there was a Lieutenant who was being processed for obstruction of justice, and in the course of defending himself he ended up accusing the other policemen. Because of the delays, the crime of obstructing justice lapsed. Lawyers from the Santo Dias center told Americas Watch that though lower-ranking military police have occasionally been convicted, never in the history of the São Paulo military justice system has a lieutenant or higher-ranking official been found guilty in the shooting of a civilian.

### **Roberto Carlos da Costa**

The disappearance of Roberto Carlos da Costa, presumably at the hands of the military police, reveals the pattern that human rights activists told

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<sup>10</sup> Centro Santo Dias de Direitos Humanos da Arquidiocese de São Paulo, "Alexandre Alves Camilo: 'Vamos ver o carro roubado?'" *Doze Anos de Luta Pela Cidadania* (São Paulo: December 1992).

**Americas Watch was increasingly common: military police detain boys and drive them around the neighborhood in order to make it appear that they are informing on local criminals. In this case, though, it is thought that Roberto was killed because he was bringing a torture complaint against the police, and not due to the vengeance of local criminals.**

**On April 14, 1992, at about 1:00 a.m., Roberto Carlos da Costa was picked up by the ROTA military police in his neighborhood of Parque Santa Madalena, in São Paulo. According to information later given to a local human rights group, Roberto had spent the evening at a disco in the city of Santo André with some friends, and they had returned home to Santa Madalena, drunk, at about 10:00 p.m. When they got back to their neighborhood, Roberto ran into a friend who asked him if he wanted to participate in a robbery. Roberto initially declined, but after his friend persisted, agreed to go along.**

**After committing the robbery, they were stopped by the police. The PM beat them up, found out about the robbery, and started to apply electric shocks to Roberto, to get him to tell them where he had hidden a stolen tape recorder. The military police drove around the neighborhood, shocking and beating him, until about 4:00 a.m., when he was dropped off at the civil police station (the 70th Delegacia Policial). At the police station the beatings and shocks continued, this time at the hands of the civil police, who wanted Roberto to tell them about people in the neighborhood who purchased stolen items.**

**That morning, Roberto was put back in a ROTA military police car and driven around the neighborhood. With Roberto in the front seat, the car stopped at locations where the police thought criminals operated, for long enough periods that the people on the streets could see Roberto. At around noon, the police car that had picked up Roberto stopped at the offices of a local human rights group to ask for a cup of water while the boy was in the car. The policeman told member of the human rights group: "Hey, we have one of your boys here." Roberto was then taken back to the police station.**

**At about 2:00 p.m., Roberto was found at the police station by a person who worked with SOS Criança, the state child welfare agency, who had been contacted by the human rights group. Members of the human rights group, along with one of Roberto's family, were able to secure the boy's release that evening, after spending about six hours at the police station. Marks of torture were plainly visible. According to one of those present: "Roberto looked all beat up on his back and legs. He had cigarette burns on his hands, face and head, and shock marks on his fingers and penis."**

**According to members of the local human rights group, the police did not**

perform the required medical exam when Roberto first entered into the police station. In order to attempt to curb torture, the São Paulo police require medical exams of all those arrested at the time of their initial detention and after their release. In this case the exam should have been performed, because Roberto was clearly beaten up, but it was not done. Similar medical exams are also supposed to be performed when adolescents are first sent by the police to SOS Criança, where juvenile suspects are held pending charges and investigations. However, the exams are actually rarely performed. The personnel at SOS Criança claim that the medical exams are not performed because it is so common for boys to show up there beaten up that they do not find it unusual.

The day after being released, Roberto went to the Instituto Medico Legal (IML) to have a medical exam done and then filed a complaint against the police with the Ministério Público. On April 15, a complaint was also made with a commission of the municipal government that was investigating violence against children.

Soon after this incident Roberto began to receive threats from the local police as well as from boys in the neighborhood who were worried that he had informed the police about their activities. As a result, Roberto went to live with his grandmother in a different neighborhood. On the last week of August 1992, Roberto was followed by a black Opala car. While he was waiting at a bus stop, at about 9:00 at night, the men in the car, who he said were policemen, shot at him several times, though he was able to flee and was not hit.

On September 10, at about 10:00 p.m., Roberto and another adolescent, N., disappeared from the Vila Nova York, where N. lived. After looking for the two boys at the center for juvenile offenders, the hospitals, the morgue, the homes of their friends, and the local police stations, the two families registered a missing persons complaint on September 17 at the 41st delegacia. Members of a local human rights group say that Roberto had disappeared on the day that he was to have viewed a line-up at the military police battalion, to identify the policemen who he said had tortured him.

There was no news about Roberto's whereabouts until June 16, 1993, when the police stated that they had the body of a dead boy, and Roberto's family identified him. Some of those involved in the case feel that the police delayed so long in informing the family that they had found R.'s body in order to complicate the post-mortem exam and make it difficult to determine the cause of death and whether or not torture had occurred.

**Reginaldo da Silva**

**Reginaldo da Silva, a seventeen-year-old student, died on June 12, 1992, at the municipal hospital of Santo André, several days after he was beaten by a military policeman from the School Patrol (Ronda Escolar). The autopsy report concluded that the cause of Reginaldo's death was cranial traumatism, resulting from blows to the head.**

**On June 9, 1992, at about 10:30 p.m., as students were leaving Nicolau Moraes Barros state school in Santo André, an industrial town near São Paulo, a group of students gathered outside the school gates. Rumors had circulated that day about a fight over a girl who studied at the school, and the crowd surrounded two boys who were arguing and about to start fighting. Two military policemen—Corporal Edmilson Vagner Andrade and soldier Fábio Agripino de Lima—from the School Patrol had been warned in advance of the possible fight and arrived in their police car shortly after the crowd had formed. When the military policemen appeared, the crowd broke up and the students started walking away.**

**After speaking with the school guard, Corporal Andrade approached one of the boys involved in the argument, who did not study at the school. Corporal Andrade searched the boy, asked him for his identification documents, and then let him go. While Corporal Andrade was doing this, Lima, the driver of the police car, approached several groups of boys who were lingering nearby, watching what was happening, and yelled at them, telling them to disperse. Lima drove his car up to one group and got out and yelled at them to go away. One student, Reginaldo da Silva, did not run, and Lima swung at him with his police truncheon.**

**According to several witnesses, Lima hit Reginaldo on the head with his truncheon and Reginaldo fell to the ground. The policeman then picked Reginaldo up, hit him three more times, left him lying on the ground, and drove over to where his partner was standing. The policemen then left. Students who had seen the beating helped take Reginaldo by bus to a police station, where he was then taken in a police car to receive medical attention. The boys testified that Reginaldo was bleeding from the mouth, could not talk, and was having difficulty walking. Three days later Reginaldo died from the wounds he had received.**

**The two policemen involved in the incident were suspended from duty. The military justice prosecutor recommended that Fábio Agripino de Lima be indicted for the death of Reginaldo and that his superior, Corporal Edmilson Vagner Andrade, be indicted for failing to prevent the occurrence and not reporting it to his superiors. The military police investigation into the incident was concluded on July 22, 1992. Lawyers from a human rights group who are assisting with the prosecution told Americas Watch that the case (processo**



51.036/92) was stalled in the military justice courts.<sup>11</sup>

#### **POLICE VIOLENCE IN PERNAMBUCO**

Americas Watch also received detailed information on police violence against minors in the state of Pernambuco, which closely mirrors the pattern in São Paulo. The military police claim to be responding to crimes in progress and say that they are shot at by adolescent criminals. However, in several cases detailed testimony shows that the police often open fire on adolescents, particularly poor adolescents, with little provocation and certainly not in legitimate self-defense.

One example is the shooting of Ednaldo Paulo da Silva. On April 16, 1993, Ednaldo, seventeen-years-old, was chased by traffic police in central Recife, near the Hospital Português, and was subsequently shot and killed. His body was found the following day, in the Coque canal. According to statements given by his brother and mother to the human rights group Cendhec, Ednaldo was chased by two traffic police who accused him of stealing a watch. Trying to flee from the police, one of whom was on a motorcycle, Ednaldo jumped off a bridge into a canal.

The traffic police, then joined by a military police car, began shooting at Ednaldo while he was trying to swim away. He eventually became tired and decided to surrender. He swam back to the wall of the canal, and one of the traffic cops told him to come out of the canal or he would be shot. One of the policemen asked Ednaldo, "are you going to give yourself up or do you want me to shoot you?"<sup>12</sup> In response Ednaldo lifted his arms up, out of the water, and began approaching the wall, when one of the policemen shot him two times. Ednaldo's body sank into the water and was not recovered until the following day.

In another case of police violence, on October 12, 1991, the police invaded the home of Rosinaldo Sátiro dos Santos, in the Nova Descoberta section of Recife. During the raid the police shot and killed one of Mr. Santos's sons, Romualdo Sátiro dos Santos, seventeen-years-old, and beat and arrested his two other sons, Ronaldo, sixteen-years-old, and Rosenildo, twenty-five-years-old.

The raid, which was conducted by military police from the 11th battalion,

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<sup>11</sup> Americas Watch interview with the Centro de Defesa da Criança e do Adolescente do ABC, São Bernardo do Campo, June 24, 1993.

<sup>12</sup> Centro Dom Hélder Câmara de Estudos e Ação Social (Cendhec), Letter of April, 23, 1993, to Sr. Promotor da Auditoria Militar do Estado de Pernambuco.

appears to have been in retaliation for an argument between Romualdo and the nephew of one of the policemen. Several days before the shooting, Romualdo accused a twelve-year-old boy named Emerson of stealing some fruit. Emerson complained about this to his mother, who in turn told her brother, a military policeman named Tadeu de Farias. The policeman threatened to kill Romualdo, and the following day participated in the raid on his home.<sup>13</sup>

After firing sixteen bullets from a machine gun and killing Romualdo, one of the policemen reportedly hit Ronaldo with the hot barrel of the gun. Ronaldo was then arrested and taken to the juvenile detention center (Centro de Acolhimento Provisório, CAP) while Rosenildo was taken to an adult jail.<sup>14</sup> The father complained to Cendhec about the incident, and said that he had seen Rosenildo in poor physical condition at the jail. After several days Cendhec was able to secure the release of both Ronaldo and Rosenildo.

Violence at the hands of military police in Pernambuco is also fueled by impunity. In the cases described below, despite detailed testimony, in some cases from boys who miraculously survived police shootings, none of the police involved in the incidents have been convicted, and in two cases they were actually acquitted. Human rights lawyers told Americas Watch that securing convictions is particularly difficult because adolescent victims of police shootings are often presumed to be criminals. This tendency is apparently even more pronounced in the military justice system than in the normal civilian courts, as military tribunals are presided over by police officers who often have little or no formal training in the law. Indeed, lawyers who work with the military justice system told Americas Watch that they sometimes have to instruct the military judges in basic legal terms and theories.

Officials with the Pernambuco state military police stated that the PM were not responsible for violence, but that it was the result of governmental neglect of street children who thus turn to violent crime. In fact, PM officials claimed, adolescent criminals were often more violent than adults. In an often heard formulation, Colonel Toscano, the second-in-command of the state military police force, told Americas Watch that the problem was that the police "act

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<sup>13</sup> Letter from Cendhec to Dr. Antônio Coelho de Cedeiros, Procurador Geral da Justiça, Estado de Pernambuco.

<sup>14</sup> *Jornal do Comércio*, (Recife, Pernambuco), October 15, 1991.

against the marginals and are received with bullets."<sup>15</sup> In this situation, Col. Toscano stated, police shootings were justified and that it is not right to give more rights to a marginal than to a policeman.

Colonel Toscano claimed that the Pernambuco military justice system is very vigorous and that abusive policemen are convicted for their crimes. However, despite several written requests, the Pernambuco military police failed to supply Americas Watch with the details that they had promised regarding investigations, dismissals and prosecutions of abusive PMs. The cases presented below clearly belie claims by the Pernambuco PM that killings happen in the course of shoot-outs and that abusive military policemen are vigorously prosecuted.

#### **Roselândio Borges Serrano**

Roselândio Borges Serrano was shot by the Pernambuco military police in the favela of Peixinhos, near the city of Olinda, on January 17, 1991. He was sixteen-years-old at the time of the shooting. Despite being hit in the back by a bullet, Roselândio survived but was left paralyzed below the waist.

After a speedy trial, the military policeman indicted in the shooting, Sandro Tadeu Oliveira da Silva, was found not guilty on the grounds of "legitimate self-defense." However, substantial evidence indicates that Silva was in fact guilty of shooting Roselândio without provocation and that the military prosecutor, either deliberately or through incompetence, botched the case. Evidence also shows that several of the police involved in the incident attempted to cover up the real version of events.

On the evening of January 17, Roselândio and a friend, known as "Maia," were riding horses in Peixinhos. That same evening, two residents of the favela, Ailton Pedrosa da Silva and his wife Ana Maria da Silva, had complained to the police that they had been threatened by "marginals" in the neighborhood, one of whom had escaped on a horse.

As a result of this complaint, a group of military policemen under the command of Hugo Tadeu dos Santos went to the favela, along with the couple who had filed the complaint. When two PM vehicles commanded by Santos arrived at the favela they encountered military policemen from the 1st battalion in another car.

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<sup>15</sup> Americas Watch interview with Colonel Toscano, Sub-Comandante da Polícia Militar de Pernambuco, Recife, June 18, 1993.

The police presented several different versions of what occurred as they came upon two individuals on horseback galloping towards them. According to the first version, the individuals on horseback were not shot by the police. One of the individuals, later identified as Roselândio, fell off his horse and said that he had been shot by criminals.

In his first deposition, the policeman Sandro Tadeu da Silva stated that at the time he was armed with a 9 mm machine gun and a 38 caliber revolver, but that he did not shoot either weapon. He also said that he did not see any of the other police shoot their weapons, but that after hearing several gunshots he came upon an individual lying on the ground as well as a wounded horse. He asked the individual on the ground who shot him, and the person responded "the guys." According to their testimony, the police searched the wounded person and found a fishing knife.

Policemen from the 1st battalion, however, related a different version. They claimed that they heard several gunshots and when they arrived at the scene they saw policeman Silva with a machine gun in his hands. Silva told them, "I take responsibility for what I did." These policemen said that they heard two bursts of gunshots from a machine gun, and not from revolvers, and saw Silva with two empty machine-gun cartridges in his hand. One policeman, Diniz Santiago do Nascimento, said that he asked the wounded person what happened, and the person responded, "I was shot in the back."

Roselândio himself told Americas Watch that he and Maia were riding horses, galloping near the river, when they came upon a policeman.<sup>16</sup> The policeman said: "Stop you son of a bitch," and shot him as he was trying to stop his horse. Maia jumped off the horse that he was on, and ran away, but the horse was shot and killed. The horse that Roselândio was on survived.

After shooting Roselândio, the police kicked and threatened him, putting a gun to his head and saying that they would kill him if he said that the police had shot him. Residents of the favela had to argue with the police to get them to take Roselândio to the hospital.

The investigation into the incident, assisted by the human rights group GAJOP, produced a key piece of evidence: they found that a bullet that struck one of the horses was fired by a 9 mm machine gun, a weapon used by the PM and prohibited to civilians. The police version of events then changed. They claimed

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<sup>16</sup> Americas Watch interview with Roselândio Borges Serrano, June 16, 1993, Peixinhos, Pernambuco.

that they had divided up into different groups to search the favela, leaving Silva with the couple who had filed the complaint. Two individuals mounted on horses galloped toward Silva, disobeyed orders to stop, and fired revolvers at him. Silva returned fire with his machine gun, wounding one of the individuals and one of the horses. The second person escaped.

Despite claims that the individuals on horseback fired at the police, investigations never found any revolvers or evidence of gun fire other than that from a 9 mm machine gun. The bullet that hit Roselândio, paralyzing him, lodged between two of his vertebrae and doctors recommended not extracting it. However, a forensics expert who analyzed x-rays of Roselândio's spine said that the bullet looked similar to a 9 mm machine-gun bullet.

The military police investigation into the incident—belatedly begun after GAJOP found the machine-gun bullet that wounded one of the horses—was concluded on May 16, 1991. It recommended the indictment of Sandro Tadeu Oliveira da Silva for the shooting of Roselândio, and of Hugo Tadeu dos Santos for failing to take action to report or investigate the incident. In the course of the investigation it was also revealed that Santos pressured other policemen to cover up the true version of events. In a statement to the military police investigators, Diniz Santiago do Nascimento said that Hugo dos Santos had spoken with him before he was to testify. Nascimento testified that Santos told him that he should tell the policemen from the 1st battalion to tell a fabricated version of events to avoid "falling off the horse." Nascimento stated that he ignored this advice and advised the policemen from his battalion to tell the truth.

Despite the evidence revealed in the investigation, the prosecution itself took only seventy days—perhaps a record for the military justice system. The prosecutor failed to indict Hugo dos Santos, and only two witnesses—the indicted policeman Sandro Tadeu Oliveira da Silva, and Ailton Pedrosa da Silva, the resident of the favela who accompanied the police—were heard. The prosecutor chose not to hear the testimony of Diniz Santiago do Nascimento, the policeman from the 1st battalion who contradicted the version of events presented by the defendant, and accepted the defense attorney's motion to move to the decision phase. The judges took almost no time in returning their verdict of not guilty by virtue of legitimate defense.

In contrast to the efficiency of the trial, Roselândio and his mother complained bitterly to Americas Watch about the lack of medical assistance that they have received. They stated that the police agreed to provide medical assistance only after many complaints, and that despite promises of assistance from various government agencies they are currently receiving no help at all.

According to Roselândio's mother, a military police sergeant told her at one point: "If all the boys who were shot by the police went to the hospital it would be totally overcrowded." Roselândio himself showed obvious signs of malnutrition. Roselândio was the oldest son and helped provide for a family of five children. His mother told Americas Watch: "Now what can I do with this boy—he's almost dead."

**Edson Damião Calixto**

Edson Damião Calixto, a runaway boy who lived and worked at a scrapyard, was fourteen-years-old when he became the victim of an assassination attempt by the military police. Though he survived the shooting under miraculous circumstances, he was left paralyzed from the waist down.

On December 28, 1991, Edson was stopped by police in the favela where he lived and was found to have a package containing a gun. The police then beat Edson, took him to another location where they tried to get him to inform on criminals in his neighborhood, and shot him. After the shooting, Edson also stated that a man that he thought was a policeman, although he was not in uniform, threatened him at the hospital. When Americas Watch interviewed Edson he gave the following testimony about what happened to him, the details of which are consistent with several official testimonies that he gave to police authorities.<sup>17</sup>

At about 9:00 p.m., Edson was returning from a party at the square of the favela where he lived, called Dancing Days. There were always parties in the square on Friday nights, and this evening was just before New Year's Eve so it was even more festive than usual. He was walking with several friends, who turned off the main road to go home. Edson continued walking alone on the main road.

After a short while, Edson came across another boy, who was running towards him. The boy gave Edson a package, a brown sack, spoke with him a bit, and told him to hold the package. Then the boy jumped over the wall by the side of the road and ran off into the woods.

Moments after receiving the package, Edson noticed a military policeman approaching him from behind. The PM grabbed Edson by the arms. At that moment a police car drove up and stopped. The policemen asked Edson where the other boy was and he responded that the boy ran into the woods. One of the policemen from the car went into the woods with a 12-gauge shotgun, but Edson did not hear any shots.

The policemen who stayed with Edson began asking him about money

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<sup>17</sup> Americas Watch interview, June 25, 1993, La Salle Center, Brasilia.

from a supermarket robbery. Edson said that he did not know anything about it. The policemen tore off Edson's jacket and shorts, searched him, and then kicked and beat him.

The ranking officer (Edson referred to him as the "capitão" or captain, because he had stripes on his uniform, though his rank may have been different) told Edson, "do not look at my face," while he beat him. The police then handcuffed Edson by one arm and took him into the police van.

After driving for a while and stopping several times, they got to a scrap heap near the airport. The policemen opened the back doors of the police van and told Edson to get out. The captain told Edson: "Take me to where the others are and I'll let you go." Edson said he could not do this because he did not know what the policeman was talking about. The driver of the police van told the captain that it would be better to take Edson to the police station. The captain disagreed, saying, "It's not worth it, after two days they'll release him."

The captain took the revolver out of the sack that Edson had been given and loaded it. He told Edson that if he did not talk, he would shoot him in the mouth. Edson said that he did not know anything. Every time that Edson failed to respond to their questions, the captain kicked him and hit him.

The policemen made Edson tie his jacket around his head to blindfold himself. Then they told Edson to kneel with his back to the policemen, facing the wall. He then felt a bullet pierce his back and fell over. The policemen shot him two more times, and then the van drove away.

About fifteen minutes later, Edson saw a car coming along the road. He motioned with his hand for the car to stop, which it did. The car turned out to be the same police van. The door barely opened, then a hand with the same revolver came out and shot him two more times. One of the policemen said: "now he's dead." Then the van drove away.

Edson dragged himself away from where he had been shot. He tried to slow the bleeding by placing a finger in the hole in his back. After a little while Edson saw a car coming on the road. He was afraid that it would be the police again, so he lay down without moving, as though he were dead.

Edson remained on the side of the road for several hours during which time no cars passed. It was almost dawn when he saw the police van again. The van pulled over behind him, opened the trunk, and the policemen, believing Edson to be dead, picked him up and threw him in the back.

The policemen took Edson to a garbage dump about an hour away. When they got there they threw him into a trash heap and placed garbage on top of him. Edson thought that they did this so that the dump's bulldozer would push him in

with the rest of the trash and his body would not be found. The police van then left.

When Edson realized that his body was covered by ants, he tried to get up, but could not. He also tried to scream, but could not, though he did manage to move a bit from under the trash. Later that morning two men walked by and noticed Edson among the trash. He overheard them saying to each other that it was better not to get involved.

That afternoon, another police car arrived at the dump. Edson remembered that he was still afraid that these policemen were coming to kill him. Instead, the policemen picked him up, placed him in the car and took him to a doctor. The doctor, on seeing Edson, said "there's no way," and did not want to give him medical assistance, but eventually did. Then the three policemen and a nurse took Edson to the Hospital Restauração, an hour's drive away. The doctor there looked at Edson, and left him in the corridor. At about 9:00 or 10:00 p.m., the staff at the hospital realized that Edson was conscious and he was taken to surgery. He stayed in the hospital for about three days.

On December 30, the civil police opened an investigation into the shooting, but by late January 1992, they had collected enough evidence indicating the involvement of the military police to pass the case on the military police system.<sup>18</sup> The military police investigation was eventually concluded and three military policemen—Antônio Pedra da Silva, Edvaldo Santiago de Azevedo and Josenildo José Caldas Lins—were indicted (denunciados) on October 18, 1993. The trial, though, had yet to start by the end of 1993.

### **Cláudio Francisco Alves**

Two civil policemen, Jonas José Mendes de Lyra and Luiz Otávio da Silva Ramos, were accused of killing Cláudio Francisco Alves, sixteen years old, at approximately 4:20 a.m. on November 11, 1987. The incident occurred in the town of Paulistano, in the interior of the state of Pernambuco. Cláudio was black (pardo).

According to the police investigations, Cláudio and two other men, his fourteen-year-old brother, José Paulo Francisco Alves, and Sérgio Severino da Silva, an eighteen-year-old neighbor, were walking to the junkyard where they worked when a car with the insignia of the Secretaria de Segurança Pública approached them. The car was driven by Luiz Otávio da Silva, and Jonas José

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<sup>18</sup> "Soldados da PM tentaram matar menino," *Jornal do Comércio*, Recife, Pernambuco, January 22, 1992.



Mendes de Lira was in the passenger seat. Upon seeing the boys, the policemen drove the car in their direction, scaring the boys, who ran away. As the boys ran, Jonas fired his revolver at them several times, hitting Cláudio once from behind. Various witnesses, including the boys with Cláudio, testified that the policemen were responsible for the shooting.

The two policemen then took Cláudio to the São José hospital, threw him on a stretcher, and fled without registering the occurrence. Cláudio bled to death from a bullet, which entered his right buttock and left through his pubic area. On July 6, 1988, Judge Silvio de Arruda Beltrão accepted the prosecutor's request to indict the two policemen and ordered their arrest. He also decided that the case should be tried before a jury.

Lawyers for the human rights group GAJOP told Americas Watch that the jury trial, which finally occurred on June 17, 1993, hinged on the fact that jurors are prone to believe the testimonies of policemen (or to fear retaliation if policemen are found guilty) and to think that victims of police shootings are automatically criminals. Though the prosecutor and the GAJOP lawyers made a point of showing that Cláudio had no criminal record, the jury accepted the defense's version of events—that Cláudio was shot by two armed men who were chasing him—and found the policemen not guilty.

#### **Police violence in Rio de Janeiro**

Police violence in Rio de Janeiro stems primarily from police corruption and involvement in death squad and criminal activity, usually during off-duty hours. Violence by on-duty policemen appears not to be as great a problem, and certainly does not reach the magnitude of São Paulo or Pernambuco.

Though the Rio authorities do not regularly compile statistics on civilians killed by the police, at Americas Watch's request the office of the Vice Governor collected this information for July and August 1992.<sup>19</sup> During these two months the authorities said that there were six killings in July and three in August. Vice Governor Nilo Batista told Americas Watch that in 1992 the anti-kidnapping division of the civil police (Divisão Anti-Sequestro) was responsible for about twenty-four deaths and the anti-drug division (Divisão de Repressão Entorpecentes) perhaps a few more.<sup>20</sup>

<sup>19</sup> Americas Watch, *Urban Police Violence in Brazil*, p. 19.

<sup>20</sup> Americas Watch interview with Dr. Nilo Batista, Office of the Vice Governor, Rio de Janeiro, June 7, 1993.

The lower number of killings by on-duty police is in no small measure due to the policies of the Rio government. Vice Governor Nilo Batista, who is also the Secretary of Justice and the head of the Civil Police, and Colonel Carlos Magno Nazareth Cerqueira, the commander of the military police, have made respect for human rights an integral part of their programs. In addition to the Central de Denúncias, a special committee created to monitor death squads and discussed further in chapter 4, the Rio state government has taken several other important steps.

In order to increase police contact with the community and community confidence in the police, several pilot programs, called Community Citizenship Centers (Centros Comunitarios de Defesa da Cidadania), have been set up. The centers combine the civil and military police with other government services, such as firemen and disaster relief and youth programs in one building, in order to better provide services to the local community. University training programs have also been established, where civil and military police take courses taught by civilian professors on the campus of the Universidade do Estado de Rio de Janeiro, in areas such as sociology, human rights, and the rule of law. The Rio authorities told Americas Watch that in addition to the training and education programs themselves, it was important to have the civil and military police interact together and to have members of both forces participate, out of uniform and away from the police barracks, in programs that increase their contact with other civilians.

Most importantly, Colonel Cerqueira told Americas Watch that the Rio military police do not hesitate to take administrative action against policemen responsible for egregious abuses. Unlike the military police in São Paulo and Pernambuco, Col. Cerqueira said that the Rio PM administratively dismisses policemen without waiting for the results of the lengthy proceedings in the military justice system. As a result, at least as far as the higher levels of the government are concerned, Rio military policemen are not rewarded for violent actions. According to one report, from 1991 to July 1993, 488 PMs were expelled from the force for various crimes including bank robberies, drug dealing or kidnapping. In the first six months of 1993, 135 were expelled.<sup>21</sup>

However, the Rio police force is also plagued by an inefficient military justice system and by inefficiencies in investigating crimes committed by policemen and reporting these crimes to the force. For example, according to a

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<sup>21</sup> Jorge Antônio Barros, "PMs formam quadrilhas dentro dos quartéis," *Jornal do Brasil*, August 22, 1993.

report by Nelma Trindade, a prosecutor with the 1st military tribunal, 1,243 military policemen were dismissed from the PM ranks since 1987, 630 of these for misconduct. But few policemen were actually convicted of crimes. Of fifty-three cases that went before the military courts in 1992, thirty-seven defendants (or 70 percent) were acquitted.<sup>22</sup> Tânia Maria Salles Moreira, a prosecutor who investigates death squad crimes in the Baixada Fluminense, attributes this low prosecution rate to fear and prejudice against witnesses, stating: "In these cases no one trusts the word of the police, or of the witnesses, who are marginalized and desperate people. ... It's also easy to intimidate the witnesses, so that they change their story."<sup>23</sup> In addition, the military police are sometimes unaware of criminal charges against their own troops, due to poor record-keeping.

Police involvement in corruption and crime has become notorious in Rio. One police official, Lt. Col. Paulo César of the internal affairs division of the Rio PM, even stated that as many as 60 percent of the law enforcement forces, including policemen, judges and prosecutors, are corrupt.<sup>24</sup> In May 1992, the internal affairs division of the military police discovered that six military policemen with the 4th battalion (São Cristóvão) were members of a gang of bank robbers headed by PM Corporal José Roberto Pimental Magalhães. In April the group had robbed a Banerj bank agency where three of the PMs provided security. In January 8, 1993, twenty-two PMs from the 22nd battalion (Benfica), surrounded an armored car delivering money and stole Cr182 million (about \$10 thousand). Two soldiers were charged with participating directly in the theft and dividing the spoils with their colleagues.<sup>25</sup> Some Rio de Janeiro residents have jokingly taken to calling the military police, who wear blue uniforms, the Blue Command (Comando Azul), an unfavorable comparison to the notorious Rio drug gang, the Red Command (Comando Vermelho).

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<sup>22</sup> "PMs não pagam por seus crimes," *O Globo*, August 29, 1993; "Brazil's military police get away with murder," *UPI*, August 29, 1993.

<sup>23</sup> Pedro Tinoco and Virgine Leite, "A máscara da lei," *Veja*, September 8, 1993.

<sup>24</sup> Tova Chapoval, "Police Chief Says Bulk of Rio Law Enforcement Forces are Corrupt," Reuters, February 19, 1992.

<sup>25</sup> "Quadrilhas de batalhão," *Jornal do Brasil*, August 22, 1993; see also, Pedro Tinoco and Virgine Leite, "A máscara da lei," *Veja*, September 8, 1993; and Jorge Antônio Barros, "PMs formam quadrilhas dentro dos quartéis," *Jornal do Brasil*, August 22, 1993.

In addition to the more infamous episodes of police corruption, Americas Watch received many complaints about police abuse and extortion of money from street children. As the section in chapter 1, on beatings of children, discusses in more detail, street children interviewed by Americas Watch in downtown Rio de Janeiro claimed that it was common for the PM to beat them and take away any money or drugs that they might have. Some children even claimed that the police frequently attempt to re-sell confiscated drugs or glue to the children, or sell it to others.

Police involvement in corruption and the off-duty behavior of policemen, are intimately linked with their on-duty performance of duties. Of particular importance is the degree of control and oversight that battalion commanders choose, or are able, to exercise over their subordinates in order to limit and control police corruption. Judged in this light, the Rio military police is in an acute state of crisis, and a large number of troops (as well as many commanders) appear to be beyond the control of their superiors. Though the Rio authorities claim that crimes by corrupt police officers are committed by a small percentage of the 30,000 member force, it appears that the lack of discipline and criminal behavior in the force are far more common.

The most dramatic, and tragic, signs of the limitations and challenges to the reform policies of the Rio government were the Candelária and Vigário Geral massacres. In both cases off-duty military policemen, acting in an organized and pre-determined fashion, killed defenseless civilians: in the Candelária case eight youths and in the Vigário Geral massacre twenty-one people.

In the aftermath of the killings, the Rio authorities, to their credit, lost no time in stating that they felt that the police were responsible. After the Vigário Geral massacre, Governor Brizola not only voiced his outrage over what he called an "unacceptable operation of revenge" but held the commander of the 9th battalion, whose police participated in the killing, responsible, stating: "The battalion is the reflection of its commander, and the 9th battalion, without a doubt, was allowing behavior which should never be tolerated under the regulations."<sup>26</sup> The subsequent investigations, as described in chapter 4, resulted in the arrest and detention of several policemen.

Governor Brizola promised radical reforms in the military police force, including the retirement of many of the force's commanders. The Rio authorities

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<sup>26</sup> See articles in *O Globo*, *Jornal do Brasil* and *Folha de S. Paulo*, September 1, 1993.

also planned to create civilian relations committees within each PM battalion, and proposed decreasing the size of battalions to allow commanders greater oversight of their troops. However, after forty of the force's colonels met to discuss ways to oppose Brizola's proposals—issuing a statement entitled "Don't Massacre the PM"—it appears that the governor backed off from some of his original proposals. As of early November 1993, only eight commanders of the PM were transferred to new positions, most of them reportedly commanders of battalions in the interior of the state. One of those who was transferred was Colonel Pinto, the commander of the 9th battalion, who became the commander of the 23rd battalion (Leblon). The large-scale early retirements that Brizola had promised did not occur.

It appears that the increased police involvement in off-duty killings might be in reaction to, and in defiance of, the pro-human rights stance of the Rio government. Because of his populist rhetoric, some politicians and sectors of the population have long held that Governor Brizola is "soft on crime" and there are strong elements in the state that would favor a much more repressive approach to the state's problems. Vice Governor Batista has even publicly stated that the killings may have been an attempt to provoke federal intervention in the state and discredit both the state government and Brizola's presidential campaign.<sup>27</sup>

An example of the rhetoric at the extreme of the anti-Brizola view are statements by state deputy and retired PM colonel Emir Larangeira, who is a vocal proponent of a more "active" police force and is also suspected of being involved in organizing death squads. In a statement critical of the head of the Rio PM's internal affairs division, and barely disguising a call for active disobedience of the Rio authorities, Larangeira stated:

**The police in Rio is the human rights police of Colonel Walmir Brum. Isn't this the police of omission, of prevarication? Because a police force that doesn't act prevaricates, and that's also a crime. The police that I prefer is a police force that acts and accepts its imperfections.<sup>28</sup>**

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<sup>27</sup> "Os poderosos preferem a polícia que mata," (interview with Nilo Batista), *Jornal do Brasil*, September 5, 1993.

<sup>28</sup> "Entrevista: Emir Larangeira, 'A polícia tem de agir,'" *O Estado de S. Paulo*, September 7, 1993.

Indeed, one of the main questions plaguing attempts at reform in the state is the extent to which the Rio government can actually exert control over its own police force. Clearly the extent of police involvement in death squads and organized crime signal that a type of "parallel force" has been created, perhaps because of a desire on the part of some police and political figures to compensate for the pro-human rights rhetoric of the government. At times this attitude has affected the on-duty behavior of the police.

In one example, in September 1992, a military policeman was kidnapped in the Parque Proletário da Penha neighborhood, apparently in retaliation for police blitzes against local drug traffickers. In response, and acting without the approval of their commanders, a group of military and civil police invaded and occupied the Caixa d'Água favela and several others in the Penha neighborhood.<sup>29</sup> In subsequent shoot-outs at least seven people, including a policeman, were killed. During the burial of the dead PM sergeant, a hooded policeman who identified himself as a member of the 16th battalion, promised revenge and told the press:

**We're united. . . We're tired of being shot at by drug dealers. Now we'll act on our own. We are going to conduct our own operations and will not respect any more orders.<sup>30</sup>**

Among those victimized by the police in subsequent operations were two adolescent boys reportedly shot at point-blank range in the Morro do Sereno favela. The president of the Morro do Sereno residents association told the press:

**I'm not against the police patrolling the favelas (subindo o morro), but the police acted like cowards, killing workers and not criminals. This is already becoming routine here in our community.<sup>31</sup>**

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<sup>29</sup> Plínio Fraga, "Invasão de morro gera briga na polícia do Rio," *Folha de S. Paulo*, September 15, 1993.

<sup>30</sup> "Revolta de PMs: 'agiremos por conta própria'," *O Globo*, September 15, 1992.

<sup>31</sup> "Guerra entre polícia e traficantes mata dois," *Jornal do Brasil*, September 15, 1992.

One of the main challenges facing the Rio reformers is to create a police force that respects human rights while ensuring that official commands and regulations are obeyed and also demonstrating that crime can be combatted without abusing the civilian population. That the record so far has been mixed may be a signal of the difficulties facing the government as much as the limitations of its reforms. Even the Rio authorities seem hesitant to push things too far. Vice Governor Batista, for example, promoted Hélio Vígio, a notoriously brutal civil police detective, to head the anti-kidnapping squad, a particularly high-profile section of the civil police force. Vígio had been accused of torture and summary executions several times, and had apparently once almost been reprimanded for publicly stating, "its the bandit that chooses whether he's going to come with me in a vertical or horizontal position."<sup>32</sup>

The Rio authorities frequently state that although they are attempting to reform the police, they are increasingly encountering heavily-armed and well-organized drug gangs, which operate particularly in the poor hillside favelas that ring the city of Rio and whose members often include adolescents. These gangs, the police authorities state with some justification, possess more sophisticated weaponry than the police, including Colt AR-15 semi-automatic rifles, Uzi 9 mm semi-automatic pistols and AK-47 assault rifles. Large-scale shoot-outs between the police and drug gangs are not uncommon, and frequently claim many lives. In late September 1992, 120 police engaged in a four hour shoot-out with members of the Comando Vermelho gang in a favela in Acari, killing eight people. This gun battle prompted some politicians, as well as members of the Federal Police and armed forces, to call for the army to assist the military police in combatting drug traffickers.

Though Governor Brizola resisted these calls for a military occupation of favelas, and instead agreed that the Rio authorities would share information with the army, there is clearly extensive pressure on the Rio government to combat the drug gangs in a more "militarized" fashion. Already there are some indications of what this might mean. Following the gun battle in Acari, six suspected drug traffickers were interrogated by the army in order to reveal details about how the gang had acquired heavy weaponry usually restricted to the army. According to the human rights group Tortura Nunca Mais (Torture Never Again), the six suspects

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<sup>32</sup> "Vigio na Anti-Sequestro," and "Hélio Vígio: Policial muitas vezes acusado de torturador," *Jornal do Brasil*, July 18, 1992.

were detained for ten days by the army and submitted to physical and psychological torture at the headquarters of the 1st battalion of the Polícia do Exército, a location used for torture during the military dictatorship.<sup>33</sup> Army agents had also apparently already infiltrated the civil and military police and had devised a "combat plan" to deal with the drug gangs based on experiences gained waging war against supposed subversives during the military regime.<sup>34</sup>

More common than full scale battles are shoot-outs in the favelas in which adolescents, who the police say are drug dealers, are killed. Although there are few statistics on exactly how many adolescents are killed as a direct result of involvement in drug gangs, and no statistics exist at all on police shootings of civilians, it appears that this is an increasingly common occurrence. In the case detailed below—which human rights activists described as a typical case of adolescents killed because of supposed involvement in drug dealing—the investigation into this killing was entirely inadequate.

#### **Luiz Carlos Mariano da Silva**

On July 30, 1991, Luiz Carlos Mariano da Silva, fifteen-years-old, and an unidentified black youth, approximately eighteen-years-old, were killed by the civil police at the favela da Lagoinha, in Fonseca, Niterói, in what the police reported was a drug-related shoot-out. The victim, Luiz, was identified as a traficante (drug dealer) and had prior indictments for possession of a 45 caliber weapon and for the possession and use of marijuana.

Though Americas Watch does not possess enough information to contradict the police version of events, we note that the investigation into the killing—which as of June 1993 was still not concluded two years after the killing—was wholly inadequate. In addition, the killing fits the disturbing pattern that in other cases has later been proved to be extra-judicial execution by the police.

According to the two civil police detectives responsible for the shooting, Carlos Augusto da Silva and Marcelo Costa de Barros, the two officers received an anonymous telephone complaint about a crack-house at the Favela Lagoinha. Silva and Barros let their superiors know that they were going to the favela to

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<sup>33</sup> "Torturas em Quartel do Exército no RJ," *O Estado de S. Paulo*, October 21, 1993.

<sup>34</sup> "Exército está pronto para agir no Rio," *Jornal do Brasil*, September 29, 1993; "Exército começa a agir e interroga traficantes," *O Estado de S. Paulo*, September 30, 1993.



investigate, with two other policemen. When the four policemen got to the favela they left the police car at the bottom of the hill and walked up, with Silva and Barros going up one side of the hill and the two other policemen going up the other side.

Silva and Barros say that when they got to the top of the hill, they encountered three individuals, one white the other two black, who after seeing the police hid among the shacks and drew their guns. When the police identified themselves, the individuals shot at the police who "luckily" were not hit. Silva and Barros shot back, hitting two of the individuals. The third escaped. The two other policemen, according to their testimony, came upon the scene after hearing gunfire and saw the two individuals as they were struck by bullets while a third escaped. They were then informed by Silva and Barros that the individuals resisted arrest and fired their guns at them.

According to the testimonies of all four policemen, the two individuals were then carried down the hill and were taken in the police car, wounded but still alive, to the nearest hospital, the Hospital Getúlio Vargas. At the hospital they were denied assistance (one testimony says that this is because the hospital is a children's hospital) so they took the boys to the Hospital Antônio Pedro, where the two boys were listed as dead on arrival. At the hospital the police confiscated the two revolvers and nine packages of marijuana found on the bodies. A technical investigation reported that the nine packages contained 53 grams of marijuana.

According to the civil police files, the goal of the investigation into the incident, which was initiated on the day of the shooting, was to: "investigate the resistance to a legal order of arrest, which caused the death of Luiz Carlos Mariano da Silva and a black individual." The policemen, who presumably should have been under investigation, were listed as the victims.

When Americas Watch went to the police station to inquire about the investigation of the homicide of Luiz Carlos Mariano da Silva, the police were initially confused. After some discussion, the police clerk told Americas Watch: "It is a case of resistance of arrest, not homicide. The kid wasn't killed—he responded to the civil police with a gun and so was shot."<sup>35</sup>

The only witnesses heard in the course of the investigation were the police involved in the shooting and the boy's father, who was not present at the shoot-out and was interviewed by the police on March 1, 1993, almost two years after the killing. No ballistic exams were made of the location of the shooting and

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<sup>35</sup> Americas Watch interview, 78th Delegacia (Niterói), June 11, 1993.

**no one arrested. The police authorities interviewed by Americas Watch, besides being perplexed at why anyone would care about such an incident, said that the investigation was difficult because the police are not trusted by the residents of the favela and it was difficult to get witnesses to testify.**

## 4 DEATH SQUAD HOMICIDES

**There's no way that the police can guard all the neighborhoods, all the streets. They are limited to inefficient patrols. Meanwhile, crime increases and the criminals multiply. If it weren't for us the Baixada (an urban area north of Rio) wouldn't be safe. There would be waves of muggings, lootings and invasions of homes all the time. We impose respect. Where we act the bandits can't be lazy. They know that if they mess around, they're dead.**

—statements made by "Marreco," a former policeman and a confessed member of *Justiça Final* (Final Justice), a Rio de Janeiro death squad.<sup>1</sup>

A large though unknown number of children and adolescents are killed by death squads, known in Brazil as *escuadrões da morte* or *grupos de extermínio* (literally, extermination groups). *Grupos de extermínio* are often formed when local merchants or businessmen hire security firms to protect their businesses. These firms then often become involved in the "elimination" of those who are perceived to be criminals—often whether or not they really are. One newspaper report, quoting a member of a *grupo de extermínio*, stated that the price paid for killings usually varies from Cr500 thousand (about \$10) to Cr2 million (about \$40), though the price could be much higher if the target is a wealthy or prominent individual.<sup>2</sup> *Grupos de extermínio* do not single out minors—they also kill adults—but kill those who they think are criminals. Because children, and particularly street children, are often seen as criminals they become victims of these groups.

Because of their involvement with criminals these security firms or illicit *grupos de extermínio* often become corrupted themselves, either by taking over

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<sup>1</sup>"Denúncias apontam 68 grupos," *O Dia*, July 4, 1993.

<sup>2</sup>"Matadores investem em outros tipos de crimes," *O Dia*, July 4, 1993. Because of Brazil's rampant inflation, running at 30% a month in mid-1993, all conversions are only approximate. The rates used are the monthly averages.

criminal gangs or participating in extortion. Despite the grandiose "law and justice" rhetoric of some of their members, it is very common for death squads to be intimately involved in organized crime. The targets of their action then become not those perceived as threats to public safety, but other competing criminal gangs, thieves who strike bargains with the organizations but then fall out of favor, or local petty thieves who might inadvertently attract attention to the crimes committed by the groups.

Many different studies, in addition to the cases detailed below, have shown that these groups are often composed of off-duty policemen and sometimes operate with the acquiescence, if not active support, of local police officials. A special commission of the Federal Parliament that investigated the killing of children noted that the involvement of agents of the government, in particular civil and military police, in death squads was far from exceptional.<sup>3</sup> Certainly the extent of police involvement in grupos de extermínio means that local police commanders must, at least, know that their subordinates are participating in these groups and do little to stop it.

In some cases, it appears that there is official complicity or collusion with death squads. Many individuals interviewed by Americas Watch stated that local police forces do little to stop the actions of death squads, either because they themselves participate in these activities or because they feel that the death squads are helping to eliminate criminals, drug dealers and other "undesirables." In the Lanchonete Espeto de Prata case, detailed below, the police arrived at the scene of a shooting moments after it occurred, spoke to the owner of the shop where two boys were later found dead, and left without taking any further action. Similarly, a 1991 report by a special commission formed by the Rio de Janeiro state legislature, led by state Deputy Paulo Mello, found "many irregularities that look like complicity on the part of the judiciary" in death squad killings. In particular, the commission found evidence that some accused members of grupos de extermínio possessed documents identifying themselves as "ad hoc" officials of the judiciary, and in some cases weapons that were under the

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<sup>3</sup> Comissão Parlamentar de Inquérito, Câmara dos Deputados, *O Extermínio de Crianças e Adolescentes no Brasil (Relatório da Comissão Parlamentar de Inquérito que investigou o Extermínio de Crianças e Adolescentes no Brasil)*, Brasília, 1992.

possession of the courts.<sup>4</sup>

The November 1991 killing of six children in Nova Jerusalém, a shantytown in the sprawling, poor municipality of Duque de Caxias, in the Rio de Janeiro metropolitan area, is a dramatic example of the links between grupos de extermínio and organized criminals. The six children were killed when armed men broke into a shack where they were drinking Brazilian rum (cachaça) and sniffing glue. The men forced the children to lie on the ground and shot them, execution-style, in the back of the head. One girl, G.C. (not her real initials), then sixteen-years-old, miraculously survived.

A subsequent police investigation led to the indictment of eight men for their involvement in the killing. It is believed that the killing occurred because the men felt that petty crimes committed by the children were attracting too much attention to their neighborhood, and they feared that this would disrupt their own criminal activities. One of the accused stated in a deposition that he wanted to kill the children because several thefts that the children committed were being blamed on him. In one of several twists in this case, it was reported that one of the men who carried out the killings attempted, unsuccessfully, to convince the other killers to spare the only white child in the group.

Despite an investigation into the case—with the crucial testimony of G—only two of those involved are currently under arrest.<sup>5</sup> After a relatively rapid and efficient investigation by the police and public prosecutors the trial was set to occur on August 27. In October, after several delays, one of the main suspects, Luiz Carlos Vargas Faneli (aka "Cabeludo") was found guilty and sentenced to a cumulative ninety-three years in prison (though by law he will only serve thirty years).<sup>6</sup> However, the trial of the other detained suspect, Antônio Carlos Santos Oliveira (aka "Cacá"), was delayed because his attorney failed to appear in court.

Despite having survived the shooting, G's luck has not continued. After

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<sup>4</sup> Comissão Parlamentar de Inquérito para Apuração de Responsabilidade pelo Extermínio de Crianças e Adolescentes no Estado do Rio de Janeiro, *Extermínio: Sinônimo de Impunidade*, Assembléia Legislativa do Estado do Rio de Janeiro, 1991, p. 10.

<sup>5</sup> The suspects who are at liberty are: Marcos Michel Filho, Clóvis Rafael da Silva (aka Cosme) and Jorge Luís Araújo (Ticão), as well as two others accused of helping the suspects: Janaina da Costa Vargas and Luís Eduardo Vieira Dias.

<sup>6</sup> "Assassino de seis menores condenado a 93 anos de prisão," *O Globo*, October 19, 1993.

becoming the brief focus of a media-inspired outpouring of sympathy—including promises by television superstar Xuxa that she would adopt G—she is currently unemployed and living in a favela in the interior of the state of Rio, fearing that the men that she has identified might seek revenge.

As discussed above, one crucial factor allowing for the persistence of unofficial death squads is impunity. Various factors are to blame for the fact that few suspected members of death squads are ever convicted, including the fear of witnesses and the general inefficiency of the Brazilian judicial system. It is not unusual for cases to remain stalled in the courts for years, while the suspects—particularly if they are first-time offenders—go free. Although statistics on the Brazilian judiciary are sorely lacking, a study by Francisco Xavier Neto, the president of the Associação de Magistrados Brasileiros (Association of Brazilian Judges), found that of the cases in which a police investigation is concluded and remitted to the judiciary, 80 percent never come to trial because they exceed the statute of limitations.<sup>7</sup> Of the cases that make it to the trial phase, half again exceed the statute of limitations before the final decision is issued. Suspects who are not under arrest often harass and even kill witnesses, as several cases detailed below amply demonstrate. Programs to protect witnesses, however, are either nonexistent or very inadequate. Some witnesses even refuse to take part in the witness-protection programs that do exist, as this usually means being protected by the very police forces that are also often involved in the death squads.

In addition to the fear of witnesses and the inefficiency of the judicial system, at times impunity appears to be more a product of action than omission. For example, a special commission that was formed to investigate the killing of children in the state of Espírito Santo found that of the 761 investigations into homicides launched by the state civil police in 1991, 334 cases had disappeared from the police files.<sup>8</sup> In the same state, in a case which Americas Watch investigated, a policeman who was accused of participating in the killing of a street child threatened a key witness while armed, uniformed and in a police vehicle, though at the time he was supposedly under administrative detention. The local streetchildren's movement has registered at least forty minors killed in

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<sup>7</sup> "Ciranda da impunidade," *Veja*, February 24, 1993.

<sup>8</sup> Maria Elena Azevedo, "Extermínio Cresce Com A Impunidade," *A Tribuna*, (Vitória, ES), June 13, 1993.

the state since 1992, thirty-four in 1993 alone. It is thought that many of these children were killed by death squads or by the police.

With few exceptions, the state governments have largely treated crimes committed by grupos de extermínio as only one of several public security concerns, and have done little to address the underlying problems of impunity and police participation in the killings. For many governments, this attitude appears to be a direct result of political concerns: local politicians would prefer to be seen as "hard on crime" than to stop abuses committed by police forces under their control (abuses, moreover, that are usually targeted against the least powerful and most disenfranchised sections of the population). Several state government officials interviewed by Americas Watch categorically denied that death squads even existed in their states, claiming that the majority of homicides of children were due to fights between criminal gangs.

Paradoxically, in the same states in which Americas Watch documented these abuses it also encountered several professional and committed police detectives who were determined to investigate the actions of grupos de extermínio. Most often these detectives were assigned to special units known as the "divisão de homicídios de autoria desconhecida" within the homicide division of the civil police force, responsible for investigating crimes that the local police forces have been unable to close.

In some cases, as in the killing of Cristiano Aurino de Oliveira in the Peixinhos favela in Pernambuco, investigations by the civil police resulted in the arrests of some of the suspects and have improved the local situation considerably, decreasing violence and diminishing the activities of death squads. However, even when professional police forces conduct decent investigations, impunity may still prevail if a similar determination to punish members of death squads does not exist on the part of prosecutors and judges. Though suspects may sometimes be arrested, they are frequently released after the time limit for their initial detention has expired and the cases languish in the over-burdened court system. This allows the suspects ample opportunity to harass and intimidate witnesses. At the same time, the public becomes convinced that nothing is ever done to punish grupos de extermínio and that speaking out about these crimes is useless and dangerous folly. This attitude is so pervasive that even the families of victims sometimes see little reason to assist investigations. In addition, even if sporadic arrests occur, they do little to change an ingrained pattern of behavior within the civil and military police forces that tolerates and perhaps encourages participation in death squads. Without a concerted effort on the part of the state government—in particular the civil and military police, the

**public prosecutors and the judiciary—impunity prevails.**

**The exception to this norm has been the government of the state of Rio de Janeiro, which under governor Leonel Brizola has made fighting grupos de extermínio a priority. No doubt due, at least partially, to international pressure, the state government has attempted to compile accurate statistics about the killing of children and has established a special commission run out of the Vice Governor's office, called the Central de Denúncias, to receive anonymous complaints of death squad activities. These complaints are then investigated by a special group of public prosecutors and officials of the military and civil police. However, as the continued high levels of killings make clear, the reform process still has a long way to go before effective control is exercised over the Rio police force and death squad activity is reduced.**

**Until the middle of 1993, the federal government had largely abdicated its responsibilities, under both the Brazilian constitution and international law, to protect its citizens and promote investigations and prosecutions of members of organized death squads. The federal authorities repeatedly stated that due to Brazil's federative constitution almost all law enforcement duties were the responsibility of the state governments. The exceptions are infractions involving inter-state or international actions such as drug smuggling and currency falsification, or those that have a "national or international repercussion." Death squad killings of minors were not considered to meet these criteria. As a result, despite the activist Attorney General's office, which has been eager to prosecute human rights violations, the federal government left repression of death squads to the state governments.**

**The few exceptions to this inaction were mainly symbolic. In 1990 the federal government created a special commission, the Comissão Nacional de Combate à Violência Contra Crianças e Adolescentes (National Commission to Combat Violence Against Children and Adolescents), to propose strategies to end violence against minors. The commission, which was linked to the Ministry of Justice's Secretaria Nacional da Cidadania e Justiça, was composed of government representatives and members of nongovernmental children's rights and human rights organizations. One of its main objectives was to break the cycle of impunity and press for prosecutions in ten cases that were selected as exemplary cases of violence against children. The commission, though, lacked prosecutorial or subpoena powers and relied solely on its political influence. By December 1992, only one of the ten cases, which involved abuse of authority by military policemen in São Paulo, had resulted in a conviction. All of the others**



were stalled, for various reasons, at the investigative or judicial phases.<sup>9</sup>

At the time of Americas Watch's visit to Brazil in June 1993, the Comissão had been disbanded, and its functions were to be taken over by the newly formed Conselho Nacional dos Direitos da Criança e do Adolescente (National Council for the Rights of Children and Adolescents, CONANDA), established under the provisions of the ECA legislation. CONANDA was still in its formative stages, and had officially only been established in November 1992. Nevertheless, representatives of the Ministry of Justice told Americas Watch that CONANDA would not continue to press for action on the ten exemplary cases, but would attempt to expand the pressure exercised by national authorities to cover more cases. Though expanded federal attention to crimes against minors is to be encouraged, Americas Watch fears that the abandonment of the ten exemplary cases and their incorporation into the general work of CONANDA is the product of a desire to obscure the fact that no significant progress has occurred at all and to divert attention from the larger structural problems that this failure revealed. What little pressure the Comissão was able to generate on the ten exemplary cases will now be lost.

Another important step taken at the Federal level was the creation, in the Federal Chamber of Deputies, of a special parliamentary commission designated to investigate the "extermination" of children. The commission became known as the CPI do Extermínio. The CPI, presided by Deputy Rita Camata, was installed on May 28, 1991, and spent eight months researching the issue of homicides of children, travelling to eight cities in seven states and interviewing scores of governmental and nongovernmental officials, as well as victims and the families of victims.

The CPI concluded by calling for various general reforms as well as

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<sup>9</sup> The ten cases were: the disappearance of four adolescents in the state of Amazonas on August 30, 1987; the killing of an adolescent on September 26, 1990, in the state of Bahia; the homicide of a boy on October 18, 1990, in front of a supermarket also in Bahia; the November 15, 1990, abduction and assassination of four boys in the state of Sergipe; the killing of two adolescent brothers on September 4, 1990, in Pernambuco; the beating and death of an adolescent on May 29, 1990 also in Pernambuco; the July 27, 1990, disappearance of eleven adolescents in Rio de Janeiro; the killing of two adolescent brothers, found dead on February 2, 1988, also in Rio; the assassination of an adolescent on October 14, 1989, by the São Paulo military police; and the abuse of authority by two São Paulo military policemen on December 14, 1990.

urging investigations into specific cases of abuse. The commission's final report called upon the military and civil police to fulfill their constitutional obligations and avoid abuse and omission, practices which, it stated, "evolve in a crescendo from negligence to extermination, pure and simple." Also, due to the inter-state and international repercussion of the killings of children and because the problem demands uniform repression, the CPI called upon the Federal Police to act in conjunction with state police forces "at all levels."

On a legislative level, the CPI advised the urgent drafting and enactment of several very important bills, including ones which would: create a permanent Human Rights Commission in the Chamber of Deputies; institute national regulations on the carrying of firearms; restrict the activities of security firms and increasing federal oversight over these businesses; and ensure that crimes committed by military police against civilians are tried in the civilian justice system.

Despite the considerable attention that the CPI drew to the problem of violence against children, at the time of Americas Watch's visit to Brazil very few of its recommendations had been enacted or were even pending consideration. Deputy Camata told Americas Watch that there had been little or no progress with regard to several of the CPI's legislative recommendations.<sup>10</sup> One important exception was legislation aimed at changing the military justice system, proposed by federal Deputy Hélio Bicudo and approved in the Chamber of Deputies. The legislation, in its original draft, sought to remove from the jurisdiction of the military justice system all crimes committed by military police against civilians. In the course of passage through the Chamber of Deputies, though, it was watered down to address only homicides of civilians by PMs. The bill is currently pending before the Senate, where it is hoped that it will be restored to its original language.

In response to two high-profile killings by grupos de extermínio in Rio de Janeiro in mid-1993—the killing of eight street kids on July 23 and the massacre of twenty-one residents of the Vigário Geral favela on August 29—the federal government took several crucial steps to address the problem on a national level.<sup>11</sup> In an immediate reaction to the killings, the federal Minister of Justice,

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<sup>10</sup> Americas Watch interview with Deputy Rita Camata, Brasília, June 2, 1993.

<sup>11</sup> For more details on these killings, see Americas Watch, *The Killings at Candelária and Vigário Geral: The Urgent Need to Police the Brazilian Police* (New York: Human Rights Watch, November 1993), vol. 5, no. 11.

Maurício Corrêa, announced that representatives from his office would follow the two investigations. In addition, the federal Human Rights Council (Conselho de Defesa dos Direitos da Pessoa Humana) decided to create a special Investigative Commission to look into causes of the Vigário Geral massacre and determine who was responsible. At the urging of the Human Rights Council, the Federal Police announced that they would form a special unit to investigate death squads, and would focus on the participation of military and civil police in these groups.<sup>12</sup> Also at the urging of the Human Rights Council, on September 9, President Itamar Franco sent to the federal Congress a legislative proposal which would make crimes committed by death squads non-bailable and exempt from the statute of limitations.

Although these are positive steps it remains to be seen what effect they will have and whether the various legislative proposals will be enacted by an overloaded and scandal-plagued Federal Congress. Serious allegations of high-level corruption effectively paralyzed the Federal Congress in the last three months of 1993, at the very time that it was set to begin the politically contentious work of revising the 1988 Constitution. Also worrying were press reports that the director of the Federal Police, Colonel Wilson Romão, was unhappy with the force's new assignment to investigate human rights abuses, though Justice Minister Corrêa promised that the Federal Police would obey the chain of command.<sup>13</sup>

#### **GRUPOS DE EXTERMINIO IN RIO DE JANEIRO**

Homicides of children and adolescents in the state of Rio de Janeiro have increased dramatically over the past year and a half, though it is not known with precision how many minors are killed by death squads. According to figures from the state civil police, 424 children under the age of eighteen were victims of homicide (homicídio doloso) in 1992, compared to 306 homicides in 1991.<sup>14</sup> In the

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<sup>12</sup> "PF investigará extermínio," *O Estado de S. Paulo*, August 5, 1993; and "Polícia Federal vai investigar 'exterminadores,'" *Folha de S. Paulo*, August 5, 1993.

<sup>13</sup> "Novo núcleo da PF investigará os grupos de extermínio," *O Globo*, August 19, 1993.

<sup>14</sup> Figures released by the state morgue, the IML, and the Juizado de Menores (Minors Court) register higher numbers of deaths of children and adolescents, though they apparently do not distinguish between homicides and accidental deaths.

first six months of 1993 the number of homicides of minors rose dramatically, with 298 registered deaths, an increase of 70 percent compared to the same period in 1992. In addition to the registered victims of homicide, an increasing number of victims are "disappeared." Because these bodies are not found they are not included in the homicide statistics.

The increase in homicides of minors is especially significant when it is compared with the homicide rate for adults. Again according to figures provided by the state civil police, there were 7,212 homicides of adults in 1991, and 7,211 homicides in 1992. Thus, while the homicide rate for adults has remained stable (or even decreased slightly when increases in population are taken into account) homicides of minors are increasing. In fact, studies indicate that the most dramatic increases in homicides are for adolescents between the ages of fifteen and seventeen. According to a statistical study by the Instituto de Estudos Religiosos (Institute for Religious Studies, ISER), which also used police statistics, the homicide rate for minors in this age group jumped dramatically from 1.78 per 100,000 in 1991 to 2.75 per 100,000 in 1992.<sup>15</sup>

In 70 percent of the cases of homicides of minors in 1993, the police statistics, which are based on the initial police incident reports (boletins de ocorrência), do not state who was responsible. Seven percent of the total number of killings were attributed to grupos de extermínio while fights among minors accounted for 9.4 percent. Of the total number of victims, 170 (or 64 percent) were identified as black (preto or pardo) and 96 (36 percent) were white. The vast majority of the homicides were of adolescents: for the first six months of 1993, 115 victims (or 38.5 percent of the total) were seventeen years old and only forty-nine (16 percent) were younger than fourteen.<sup>16</sup>

The killing of eight street children near the Candelária church on July 23, 1993, and the massacre, only a month later, of twenty-one residents of the Vigário Geral favela, once again brought national and international attention to the problem of death squad activity and violence by off-duty police in Rio de Janeiro. In contrast to the state of São Paulo, where uniformed on-duty police appear to be the main violators of human rights, Rio de Janeiro has long had a major problem

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<sup>15</sup> *Homicídios Dolosos Praticados Contra Menores, no Estado do Rio de Janeiro (1991 a julho de 1993)*, Projeto Se Essa Rua Fosse Minha (FASE, IBASE, IDAC, ISER), page 8.

<sup>16</sup> "Meninos assassinados este ano já são 298," *Folha de S. Paulo*, July 28, 1993; "Matança de Menores Cresceu 70% em 93," *O Globo*, July 28, 1993.

with police involvement in un-official death squads. These groups are often intimately linked to organized crime and drug-smuggling gangs, and their existence may be due, at least partially, to the high level of organized criminal gang activity in Rio de Janeiro.

Most recently, in the aftermath of the August 29, 1993, killings at the Vigário Geral favela, unprecedented details emerged regarding police involvement in organized crime. The massacre was in retaliation for the deaths, on the previous day, of four military policemen, murdered in the same neighborhood by drug traffickers. It is thought that these four policemen—Ailton Benedito Ferreira, Irapuam Calixto, José Carlos Santana and Luiz Mendonça Santos—may have been killed when an attempt to extort money from drug dealers went awry.

A subsequent investigation, conducted jointly by the civil police and the internal affairs division of the military police, resulted in the indictment of thirty-three men accused of having participated in the killing of the residents of Vigário Geral, including twenty-eight military policemen and three civil policemen. The accused were part of a death squad known as the Galloping Horses (Cavalos Corredores). At the home of one of the suspects the police confiscated notebooks that reportedly contained information about the group's links to drug dealers and details regarding payments in dollars, of up to \$3,000, to members of the group.<sup>17</sup> Elias Gomes Barboza, an investigator with the civil police's Divisão de Defesa da Vida who presided over the investigations into the massacre, stated that several grupos de extermínio exist within the civil and military police forces, each with distinct areas of operation. These groups, according to Barboza, specialize in kidnapping, extorting money from drug dealers, assassinations for hire, and illegal weapons smuggling, and maintain links with businessmen and politicians, who provide them with alibis.<sup>18</sup>

As a result of a series of taped statements about organized crime in the Rio police force made by an ex-informant, the state government began several new investigations. Some of the ex-informant's more dramatic revelations

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<sup>17</sup> "Agenda indica que PM cobrava por chacinas," *Folha de S. Paulo*, September 10, 1993; "Nas agendas, o preço de cada policial," *O Globo*, September 10, 1993; "Agenda revela ligação de soldados com tráfico," *Jornal do Brasil*, September 11, 1993.

<sup>18</sup> See articles in *O Globo*, *Jornal do Brasil*, *Folha de S. Paulo*, and *O Estado de S. Paulo*, September 25, 1993.

concerned corruption within the higher levels of the civil police and state government. According to statements made by the ex-informant, in 1991 the fugitive Colombian drug lord Pablo Escobar, who was apparently hiding out in a beach resort town near Rio de Janeiro, paid several top figures of the civil police \$10 million in order to avoid arrest. Among those allegedly involved were Elson Campelo, at the time the head of the Divisão Geral da Polícia da Capital, and Luís Eduardo Frias de Oliveira, formerly the chief of staff of the Rio Minister of Justice's office.<sup>19</sup> Allegations also surfaced regarding the illicit enrichment of various police officers who were involved in schemes to extort money from arrested drug dealers and confiscate and sell their drugs and weapons.<sup>20</sup>

Though the Vigário Geral investigation broke open the sordid underworld of police involvement in organized crime, and to its credit resulted in several arrests and the dismissals of military and civil police officers, such denunciations are not new. In a 1992 anonymous poll of over four hundred PMs conducted by the *Globo* newspaper, 27 percent of the respondents stated that they had been invited to join criminal organizations. Eighty-three percent of the policemen invited to join criminal groups said that they were invited to participate in grupos de extermínio.<sup>21</sup> A 1991 commission formed by the Rio state legislature to investigate the killing of minors stated that "it is rare for a grupo de extermínio not to include members of the police."<sup>22</sup> The Rio state government itself, after establishing the Central de Denúncias in April 1991, documented the existence of some 183 grupos de extermínio throughout the state.

More recently, a series of reports about grupos de extermínio in the Baixada Fluminense, a sprawling urban area north of the city of Rio de Janeiro comprising seven municipalities with a total population of some 2.5 million,

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<sup>19</sup> "Escobar subordinou policiais civis do Rio de Janeiro," *Jornal do Brasil* October 4, 1993; "DEA é consultado sobre Escobar," *O Estado de S. Paulo*, October 7, 1993; "Ex-Sócio de Vice-Governador é investigado," *O Estado de S. Paulo*, October 7, 1993.

<sup>20</sup> "Comissão avaliará denúncias," and "Parecer de promotores sai em poucos dias," *Jornal do Brasil*, October 7, 1993; Chico Otávio, "Promotores atuam em 7 investigações," *O Estado de S. Paulo*, October 7, 1993.

<sup>21</sup> Aydano André Motta, "Pesquisa: exterminadores rondam PMs," *O Globo*, June 29, 1992.

<sup>22</sup> *Extermínio: Sinônimo de Impunidade*, p. 8.

appeared in the tabloid newspaper *O Dia*. The reports, based on four months of research, claimed that there were sixty-eight death squads in the Baixada area alone, and that four of these groups were primarily composed of military policemen.<sup>23</sup> Of the 146 military policemen who were accused of participating in death squads, the newspaper reported that forty-seven were still on active duty.

The Rio de Janeiro state government has responded to this problem through several important programs, attempting simultaneously to stimulate complaints of death squad activity and reform the military police. Vice Governor Nilo Batista, who is also the Secretary of Justice, and Colonel Carlos Magno Nazareth Cerqueira, the commander of the military police, both publicly identify themselves as human rights activists and have made fighting death squads a priority. One of the first areas targeted was the Baixada Fluminense, long notorious for death squad activities.

According to Paulo Souto, the director of the civil police for the Baixada, the homicide rate in the area has decreased due to the greater emphasis that the police have put into immediately investigating homicides and reports of death squad activity. Statistics on killings and disappearances, however, are inconclusive. Homicides of minors in the Baixada fell from 136 in 1991 to 129 in 1992.<sup>24</sup> According to Souto, the homicide rate as a whole fell by 21 percent from 1991 to 1992.<sup>25</sup> In the first six months of 1993, though, there was an increase in killings of minors, with seventy-five killings registered, an 83 percent increase over the same period in 1992. In addition, disappearances, which are not registered as homicides if the corpses are not found, increased dramatically: from 162 disappearances of adults and minors in 1991 to 242 in 1992. It is also possible that bodies are being dumped in clandestine graves or outside of the municipality, and that death squads that were active in the region have moved to other parts of the state.

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<sup>23</sup> "PMs reforçam grupos de extermínio na Baixada," and "Denúncias apontam 68 grupos," *O Dia*, July 4, 1993.

<sup>24</sup> Secretaria de Estado da Polícia Civil, Assessoria de Estatística, *Homicídios Dolosos Consumados Praticados Contra Crianças e Adolescentes na Baixada Fluminense do Estado do Rio de Janeiro*.

<sup>25</sup> Americas Watch interview with Dr. Paulo Souto, head of Civil Police for the Baixada Fluminense, at Delegacia Central, Duque de Caxias, June 11, 1993.

Souto told Americas Watch that the civil police in the Baixada were using three tactics to decrease homicides: encouraging witnesses to anonymously report homicides; urging witnesses to make this information formal by filing an official complaint; and cracking down on the illegal possession of weapons. In order to promote complaints, the civil police hand out pamphlets at the scene of homicides and scatter them around the immediate vicinity, urging witnesses to come forward with information and warning: "The next victim could be you." These pamphlets, and the resulting denunciations, have corresponded with a huge jump in the number of people threatened with death in the Baixada. Souto stated that this increase was, ironically, a signal of the success of the police. The increased number of threats, he felt, were a result of the fact that more people were speaking out about grupos de extermínio. Souto also stated that the police have created a special shelter for witnesses (in an old jail). When a particular area or police station appeared to be having problems with investigations, or when the homicide rate rose dramatically, Souto said that the civil police respond by sending additional investigators to the area.

Nevertheless, some prosecutors and police in the Baixada complain that they are overloaded and that many crimes are never fully investigated. According to prosecutor Tânia Maria Salles Moreira, for example, of the 2,350 investigations into homicides that were opened in the 4th Criminal Court of Duque de Caxias from 1973 to 1991, some 2,115 (or 90 percent) have been inconclusive.<sup>26</sup>

Investigations into the participation of military police in groups de extermínio are led by the force's internal affairs division, the setor de assuntos reservados. According to the head of this division, Lieutenant Colonel Walmir Alves Brum, the military police are attempting to work in conjunction with the civil police and state prosecutors to investigate, in a systematic fashion, police involvement in death squad activities.<sup>27</sup> This strategy involved identifying groups de extermínio and locating their areas of operation, and then arresting them *in flagrante delicto* and disarming the local population. These operations have been conducted in various parts of the Baixada, and will move on to focus on São Gonçalo, Bangú, Campo Grande and Niterói. The goal of these operations, Lt. Col. Brum stated, was to increase public confidence in the state government and the police.

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<sup>26</sup> "Investigações não tem continuidade," *O Dia*, July 8, 1993.

<sup>27</sup> Americas Watch interview with Lieutenant Colonel Walmir Alves Brum, Rio de Janeiro, June 11, 1993.



However, crimes by military policemen are initially investigated within the policemen's own battalion, which hardly promotes independent investigations or public confidence. According to Brum, the main setor de assuntos reservados only investigates those cases that may have involved policemen from more than one battalion, or assists battalions when they are experiencing difficulties with their own internal investigations. After the killing of the eight street children in July, a public opinion poll of residents of Rio and São Paulo revealed that 81 percent thought that if the policemen were found to be responsible for the slaughter they would not be sent to prison.<sup>28</sup>

The commander of the Rio de Janeiro military police force, Colonel Cerqueira, told Americas Watch that the force frequently expels from its ranks policemen who are known to be involved in death squad activity without waiting for the conclusion of criminal cases.<sup>29</sup> However, the Rio government worries that many former policemen turn to death squads to earn a living. As a result, the force prefers to discipline administratively policemen involved in less serious abuses, and has experimented with several programs of community service. In one instance, a policeman accused of racially harassing a black suspect was sentenced to work with an Afro-Brazilian cultural organization. Nevertheless, as previous Americas Watch reports have documented, there is serious opposition to these reforms from within the force itself. Even more troubling, because of inadequate internal infrastructure and poor record-keeping, it appears that the military police authorities are sometimes unaware that their own policemen have been accused of off-duty criminal offenses and thus fail to take internal administrative action.

One of the main tools used by the Rio state government to promote increased public confidence is the Central de Denúncias. As of the end of May 1993, investigations by the Central had been responsible for the arrest of 152 people for involvement in grupos de extermínio, fifty of them policemen.<sup>30</sup> The

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<sup>28</sup> The survey was conducted on July 28, five days after the Rio killings, and was based on interviews with 1,000 respondents in São Paulo and 620 in Rio. *Folha de S. Paulo*, August 1, 1993.

<sup>29</sup> Americas Watch interview with Colonel Carlos Magno Nazareth Cerqueira, Rio de Janeiro, September 2, 1992.

<sup>30</sup> Americas Watch interview with Dra. Graça, coordinator of the Central de Denúncias, Office of the Vice Governor of the state of Rio de Janeiro, June 10, 1993.

number of calls to the hotline, though, have been decreasing since its inception—from 1,741 complaints in 1991, to 1,310 in 1992 and 399 in the first six months of 1993—and the Central has begun to receive reports of other types of criminal activity besides death squads. It is unclear whether the decrease in the number of complaints is due to initial enthusiasm and publicity about the hotline, which later wore off, or due to decreased public confidence in the effectiveness of the program.

Though these actions have resulted in the arrests of several members of death squads, there are still cases that remain to be solved, some many years since the killing and despite pressure from high-level commissions. Besides the disappearance of eleven youths from Magé, a case described in chapter 2, another example is the 1988 death of Magno Fernandes Mendes and Aldemir Calixto Mendes.

#### **Magno Fernando and Aldemir Calixto Mendes**

On February 3, 1988, the bodies of two brothers, Magno Fernando Mendes, sixteen-years-old, and Aldemir Calixto Mendes, seventeen-years-old, were found near their home in Duque de Caxias. Their bodies were riddled with many bullet wounds, covered with cigarette burns, and various bones were broken.

This case was one of ten "exemplary cases" singled out by the Comissão Nacional de Combate a Violência Contra Crianças e Adolescentes. Despite its relatively high profile, to date the case is still under investigation by police, no one has been arrested, and the authors of the crime are still unknown.

The two boys were taken from their home on February 2, in the middle of the night, by men who identified themselves as police. The men broke into the house looking for an older brother, named Evandro, who was not present, and dragged the two younger boys out of the house and into an unmarked Chevette. The next morning the bodies were found in front of a local bakery. It is thought that this killing was the work of a grupo de extermínio and was the result of the robbery of the bakery, during which the owner was killed. According to the initial testimony of the two boys' mother, one of those who invaded the house was a former policeman who was the brother of the owner of the bakery.

The man who was shot in the bakery robbery was named Paulo Silva das Neves, a local businessman and candidate for city councillor (vereador). One of his brothers, Edson, was a PM. Edson was interviewed by the police, but the boys' mother failed to pick him out of a line-up. (The boys' mother, Dona Maria Madalena Pires Mendes, also claimed at one point that she was pressured by a representative of the local street children's movement to accuse the chief of the

local police station of indifference to the killing, which she refused to do.)

More than five years after the killing, the case is still under investigation and no arrests have been made, though two individuals, an ex-military policeman and a private citizen, were identified as possible suspects. Later depositions by the boys' mother, however, were contradictory and demanded further investigation. At one point, in early 1992, when the case was transferred from a special commission led by crusading police delegado Hélio Luz to the 3rd Delegacia Central of the Baixada Fluminense, the records disappeared. At the time of Americas Watch's visit, the case, filed as processo no. 7281/91, was awaiting further investigations and the police had not yet discovered who was responsible.

#### **Marco Aurélio Fernandes**

In more recent cases, prompt action by the civil police and the internal affairs division of the military police resulted in the arrest of several off-duty military policemen for the murder of a street child. The case of Marco Aurélio Fernandes shows how prompt investigations, combined with the courageous testimony of an adolescent witness, can succeed in solving cases involving grupos de extermínio.

Marco Aurélio Fernandes, a seventeen-year-old black boy who frequently lived on the streets of Rio de Janeiro, was killed on January 9, 1993, in the favela do Metrô, Mangueira. According to the testimony of S.F. (not her real initials), a girl who lived in the favela and who claimed Marco Aurélio as her adopted brother, he had come to the favela several days earlier, looking for a friend. As he was unable to locate his friend, Marco Aurélio decided to spend a couple days in the favela.

On January 9, in the early evening, S.F. gave Marco Aurélio some money to go to a nearby store and buy some food. As he was walking down the street to the store a white Volkswagen Bug with three men inside pulled up. Two men got out and searched Marco Aurélio, beat him, and forced him to get into the car. The men took the license plates off the car, fired their guns in the air, and drove off. They drove a short distance and at a gas station switched cars, getting into a blue Bug. They drove in this car back into the favela, stopped near a soccer field, and two men got out with Marco Aurélio. According to one witness, a ten-year-old boy, the men then handcuffed Marco Aurélio, beat him, and shot him twice in the head. Street educators told Americas Watch that several days before his death Marco Aurélio told several people that he needed \$50, saying that if he did not come up with the money he would be killed.

Due to the courage of S.F., the key witness in the case, and the rapid and

efficient action by the internal affairs division of the military police, two military policemen were soon arrested for the killing. Shortly after the shooting, S.F. and several other children who had seen Marco Aurélio beaten and forced into the car, went to the 6th military police battalion to tell what had occurred, because the children had recognized the two men as military policemen from that battalion who patrolled the favela. At the battalion, S.F. identified photos of the two men, PMs Paulo Henrique Sabino and Dilson da Silva, and was then taken to the civil police to file a report of the homicide.

S.F. persisted in identifying the policemen despite being threatened several times. On January 12, after identifying Marco Aurélio's body at the Instituto Medico Legal (IML), S.F. was returning home on a bus when she realized that one of the policemen was on the same bus. The policeman threatened her, kicked her and tried to throw her off the bus. Several days later, after S.F. picked the two policemen out of a line-up, Paulo Henrique Sabino and Dilson da Silva were arrested. S.F. and other witnesses remained frightened, though, because a third person was seen in the vehicle that picked up Marco Aurélio. Because this person did not get out of the car, he was not identified and is still at large.

The threats against S.F. continued. On January 28, police detectives were told by residents of the favela do Metrô that a group of twenty men in four cars invaded the favela at about 2:30 a.m., threatening the residents and saying: "Whoever goes to identify someone will die." S.F. received several threatening phone calls and, on March 2, 1993, was shot in the leg as she was getting off a bus.

Following this shooting, several human rights groups publicly complained that they had requested police protection for S.F. several weeks earlier, but that none had been provided.<sup>31</sup> One of the human rights activists involved, lawyer Carlos Nicodemos, told Americas Watch that Lt. Col. Brum, of the military police, had offered to have policemen escort S.F., but that she had felt that this was not a practical option. The police had also offered to have S.F. stay in a house in Cabo Frio, several hours away from Rio, but this option was rejected because S.F. would have to be far from home and because the house was a residence for juvenile delinquents.<sup>32</sup> At the time of Americas Watch's visit, S.F. was

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<sup>31</sup> "Baleada menina que assistiu a crime," *O Dia*, March 4, 1993; "Testemunha de assassinato é baleada," *O Globo*, March 4, 1993.

<sup>32</sup> Americas Watch interview with Carlos Nicodemos Oliveira da Silva of the Instituto Brasileiro de Inovações em Saúde Social (Brazilian Institute for Innovations in Public

living with various relatives, trying to stay on the move as much as possible.

The prosecution of the policemen, nevertheless, has moved forward in a speedy manner. The police investigation into the incident was concluded on February 1, and the prosecutor, Laucy Esteves, requested the indictment of the suspects the following day. Currently the case, processo 4.330/93, is almost at the trial stage, the witnesses for the defense having been heard in court on July 5, 1993. As of early December, the case was expected to go soon before a jury. The policemen remained imprisoned, under a judicial order of preventive detention, though the third suspect is still a fugitive.

One of the human rights groups that was following this case, the Instituto Brasileiro de Inovações em Saúde Social (IBISS), sought to become the assistants to the prosecution (*assistente da acusação*). According to article 31 of the Código de Processo Penal, the immediate family of a victim has the right to an assistant to the prosecution. However, as is the case with many street children, Marco Aurélio did not keep in touch with his immediate family. IBISS argued that article 92 of the ECA—which states: "The director of an organization that provides shelter assumes the responsibilities of a guardian, for all legal purposes"<sup>33</sup>—conferred upon them the role of guardian and thus also assistant to the prosecution. If this argument had been accepted, it could have set an important precedent that would have allowed human rights groups to assist with the prosecution of homicides of street children. However, the prosecutor argued that there was no legal precedent for this approach, and decided not to put the issue before the judge.<sup>34</sup> Despite not being able to become assistants to the prosecution, IBISS felt that the case was being handled adequately by the government prosecutor.

The Marco Aurélio case shows that when the will to investigate death squad crimes exists, efficient action on the part of the military police and adequate investigations can yield results. Yet the case also points to several of the inherent difficulties: many killings are only solved because witnesses courageously come forward, and these witnesses are in turn harassed and threatened. Clearly a more comprehensive system for protecting and assisting threatened witnesses is desperately needed. In addition, the actions and support

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Health, IBISS), June 9, 1993.

<sup>33</sup> ECA, Art. 92, parágrafo único.

<sup>34</sup> Letter of Carlos Nicodemos Oliveira da Silva, IBISS, to Americas Watch, July 16, 1993.

given to witnesses by nongovernmental organizations are often crucial, but this assistance is limited when the victim is a street child with no known relatives.

#### **GRUPOS DE EXTERMINIO AND JUSTICEIROS IN SÃO PAULO**

Though killings by on-duty police are São Paulo's most extreme human rights problem, an unknown number of minors are also murdered by hired killers (known in São Paulo as justiceiros, or "justice makers"). As in Rio de Janeiro, many of these killers are believed to be off-duty or former policemen, though once again clear statistics about killings and off-duty police participation do not exist.

A study of 191 homicides of minors in a twelve month period between September 1990 and August 1991, conducted by the Núcleo de Estudos da Violência, found that in 6.4 percent of the murders grupos de extermínio were identified by the police as being responsible. In 35.7 percent of the cases the author of the killing was described as "unknown" and in 18.7 percent of the cases the person responsible was not mentioned at all.<sup>35</sup> According to the state's civil police there were 326 homicides of minors in the first six months of 1993, which would represent almost double the number of deaths registered in the earlier study; in 70 percent of these killings it was not known who was responsible.<sup>36</sup>

Crimes committed by grupos de extermínio are investigated by the state civil police, as are all other crimes except those involving on-duty military police. In the city of São Paulo, a special division, the Delegacia de Homicídios, investigates homicides. In November 1991, Governor Luis Antônio Fleury Filho decreed that special units were to be created within the department to investigate violence against children and adolescents. According to many observers of the São Paulo police, crimes against people had long been given less priority than crimes involving personal property, and serving on the homicide squad was seen within the civil police as a form of punishment. (This is no doubt partially due to the fact that investigating crimes against people offers fewer opportunities for corruption than investigating robberies, which can yield money

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<sup>35</sup> Núcleo de Estudos da Violência—Universidade de São Paulo, "Banco de Dados 'A Violência no Noticiário da Imprensa'—Assassinatos de Crianças e Adolescentes no Estado de São Paulo," September 1990–August 1991.

<sup>36</sup> Secretaria de Segurança Pública, Polícia Civil de São Paulo, *Estado de São Paulo: Menores Vítimas de Homicídio, 1 Semestre 1993*, Departamento de Planejamento e Controle da Polícia Civil-DEPLAN, Centro de Análise de Dados.

or goods that can be illegally re-sold after they are confiscated.)

When Americas Watch visited the Delegacia de Homicídios, three units investigating crimes against children were in operation. The units only investigated cases in the city of São Paulo, and investigated cases of homicide and grievous bodily harm to minors in which the local police stations had not been able to determine responsibility. On the day of Americas Watch's visit, the units were investigating a total of three hundred cases. Each unit consisted of two detectives (delegados), ten investigators, seven clerks, and other necessary technical personnel. These three units, with a total of six detectives, investigate crimes against children in a city with a total population of approximately ten million. Despite the special decree from the governor creating the units, it has apparently been very difficult to secure the necessary equipment and logistical support.

According to the head of the Delegacia de Homicídios, Nelson Silveira Guimarães, the department does not usually have difficulties investigating homicides committed by organized groups, because the involvement of so many people means that someone always ends up informing on the others.<sup>37</sup> However, Guimarães added that it is more difficult to proceed with the case after the initial investigations because witnesses are often threatened, delaying the case. In particular, he felt that during the lengthy period of time needed to get a case to the trial stage, witnesses are sometimes harassed and change their stories, or memories fade and details become blurry.

In contrast to the statements of the state governmental authorities, many human rights activists interviewed by Americas Watch said that investigations into homicides committed by justicheiros are often inadequate and that the police do little to stop those perceived to be local vigilantes. An infamous example is the justicheiro Clidenor Ancelmo Brilhante, better known as Esquerdinha (Lefty), who operated openly and with impunity in the city of São Bernardo, an industrial city on the outskirts of São Paulo.

Americas Watch documented one case involving Esquerdinha in 1987, in which he was part of a group of men in an official civil police vehicle who unceremoniously shot to death a boy suspected of local crimes.<sup>38</sup> A nun who

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<sup>37</sup> Americas Watch interview with Dr. Nelson Silveira Guimarães, Delegacia de Homicídios, São Paulo, June 21, 1993.

<sup>38</sup> Americas Watch, *Police Abuse in Brazil* (New York: Human Rights Watch, December 1987), p. 29.

witnessed the killing unsuccessfully attempted to push for investigations, but found no local support for her efforts. After repeated threats and indications that authorities would take no steps to investigate Esquerdinha's crimes, the nun left Brazil and now lives in Italy.<sup>39</sup> Esquerdinha was even rewarded for his activities by being bestowed with the title of "Citizen of São Bernardo" by the local town council. At one point he even ran for city council.<sup>40</sup> Until his death in 1992, the only criminal proceedings against Esquerdinha were for the beating of his mother-in-law. Local human rights activists told Americas Watch that they think that Esquerdinha was killed by someone with whom he worked, though they did not know for sure because there was no real investigation into his assassination either.

Specific cases of homicides of children reveal that police participation or collusion with grupos de extermínio is often a crucial factor, and that many cases are never adequately investigated or prosecuted. The case detailed below presents revealing evidence of the military police's failure to respond to killings by private individuals, and shows the difficulties in prosecuting cases when the witnesses are street children experiencing intense pressure and danger.

#### **The Lanchonete (Snack-bar) Espeto de Prata**

On July 10, 1992, in São Bernardo, a large industrial town near the city of São Paulo, two boys were shot and killed as they were breaking into a snack-bar (lanchonete) called Espeto de Prata. Fourteen-year-old Márcio and thirteen-year-old Laércio were shoe-shine boys who were part of the local street children's movement. They were both white. A third boy who is black or pardo, sixteen-year-old F.R. (not his real initials), was with Márcio and Laércio as they were breaking into the snack-bar after midnight on July 10.

According to F.R.'s testimony, he was with Laércio and Márcio when they decided to break into the snack-bar because they were hungry and wanted to steal some food. Because it was late at night and the snack-bar was closed, Márcio and Laércio climbed onto the roof, broke some tiles, and made a hole through the ceiling. F.R. was behind the two other boys, also climbing on the roof to enter the snack-bar, when he saw his two friends go down into the shop and then heard three rapid gunshots from inside.

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<sup>39</sup> Gilberto Dimenstein, *Brazil: War on Children* (London: Latin America Bureau, 1991), p. 77.

<sup>40</sup> *Ibid.*, p. 45-46, 62.



Scared, F.R. climbed off the roof and ran across the street. After he crossed the road he heard three more shots—this time more divided in time. He stayed on the other side of the road for about twenty minutes, when he saw a PM police van come by with two policemen in it. He saw the two PMs get out of the car and knock on the door of the snack-bar. A light went on inside and someone lifted the metal grate covering the door, and talked to the PMs. After a couple of minutes the police left and the person closed the door.

F.R. returned to the snack-bar half an hour later and saw a police van parked outside, this time with two different policemen. He did not see his friends, so he left. Two days later he found out that Márcio and Laércio had been killed. Fearing for his life he went to the Human Rights Service of the city government.

On the following Friday (the shootings happened the previous Friday night), F.R. identified Arlindo Aureliano Filho, the owner of the snack-bar, as the person who had opened up the shop after the shooting and spoke with the police. That day, July 17, the arrest of the owner was decreed. The following week, after the time-limit for detention had expired, the owner was released.

The lawyers who represented Aureliano were prominent local attorneys: the president and ex-president of the São Bernardo bar association (Ordem de Advogados do Brasil). They argued that Aureliano should be released, as the only evidence against him was the testimony of a street child. Their defense was that the owner of the bar was more trustworthy than the boy, who had a history of passing through the juvenile justice system for robbery. The owner of the snack-bar was released and the police investigation into the case was shelved (arquivado) at the 1st Delegacia da Polícia of São Bernardo.

Local human rights lawyers working for a group called CEDECA<sup>41</sup> told Americas Watch that despite initial promises to protect F.R., who wished to remain anonymous, the police took several steps that put him at risk. Two days after the killing, CEDECA denounced the killing to a local judge. The judge had F.R. give a deposition to a detective from the regional police station, omitting F.R.'s name, and address. The following day, a detective from the local police station called CEDECA and demanded F.R.'s name and address, saying that without these details he could not be a witness in the case. CEDECA stated that they could not provide the information.

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<sup>41</sup> CEDECA is an acronym which stands for Centro de Defesa da Criança e do Adolescente do Grande ABC (Center for the Defense of Children and Adolescents of the greater Santo André, São Bernardo and São Caetano area).

Then, several days later, the police had F.R. do a public re-enactment of the crime without taking steps to protect his identity. During the reconstitution of the crime, which F.R. conducted with a tee shirt wrapped around his face, the police initially wanted the boy to act out the part of the defendant in the case and not the witness. The police detective stated that it would be good if the boy contradicted himself.

Lawyers with CEDECA also told Americas Watch that one of the problems with the case was that the prosecutor chose not to indict the owner of the snack-bar.<sup>42</sup> The prosecutor told CEDECA that she did not like the pressure that she was getting on the case from outside the country and that they should be careful with the work that they were doing.

#### **THE ESCUADRÃO DA MORTE IN PERNAMBUCO**

Americas Watch also found substantial evidence of death squad activity in the state of Pernambuco, particularly in the capital city of Recife and the neighboring city of Olinda. One particularly brutal death squad was notorious in the Peixinhos favela, in Olinda, and until the arrest of some of its members operated with the support of many members of the community. As noted above, in chapter 2, when several members of this grupo de extermínio were arrested, residents of Peixinhos actually held a protest march, singling out for specific complaint a local human rights group that they felt was responsible for the arrests.

Romero Leal Ferreira, the director of the homicide division (Departamento de Homicídios) for the civil police admitted that grupos de extermínio operate in the state. Like other Pernambuco state government officials, he assigned a large part of the blame on juvenile criminals. He told Americas Watch, "local businessmen often feel harassed and are bothered by juvenile criminals—especially because the ECA allows for a liberal policy of punishment. These boys aren't imprisoned so the businessmen pay groups to get rid of the kids, to eliminate them."<sup>43</sup>

Officials with the Pernambuco state Justice Ministry and the state

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<sup>42</sup> Americas Watch interview with Débora Costa Ramires and staff of CEDECA, São Bernardo do Campo, June 24, 1993.

<sup>43</sup> Americas Watch interview with Dr. Romero Leal Ferreira, director of the Departamento de Homicídios, Recife, Pernambuco, June 18, 1993.

Ministry for Public Security hotly contested that impunity for those involved in death squads prevailed, and downplayed the importance of death squads while emphasizing the extent of adolescent criminal activity. The police in Pernambuco, these officials stated, arrested 116 people involved in fourteen grupos de extermínio in 1992. During the same year, they added, 1,568 minors were arrested for various crimes. Alexandre Menezes, the Under-secretary of Public Security, summed up the attitude of the Pernambuco government, stating: "the problem is impunity—especially for minors who commit crimes."<sup>44</sup> Djalma Raposo, an official with the Justice Ministry, stated that the majority of killings of adolescents were not due to death squads, but to fights between criminal gangs. He said that he thought more minors committed homicides than were the victims of homicide.<sup>45</sup> One of the main steps taken to deal with the problem of children involved in violence, according to these officials, was a ban on the sale of glue, often sniffed by street children, to those under the age of eighteen.

Statistics compiled from newspaper accounts about violence against children, though, present a different picture. According to a study by the human rights organization GAJOP, in the ten month period from August 1992 to May 1, 1993, ninety-nine children and adolescents were reported to have been victims of homicide by the local newspapers. (During the same period, the total number of homicides registered in the study was 748.) Though in most cases there was no information about who was responsible for the killings, 10 percent were attributed to death squads. The state officials interviewed by Americas Watch contested the validity of these figures, claiming that the real number of homicides of adolescents was much lower: 112 homicides of minors in 1991, ninety-seven homicides in 1992 and forty-three homicides in the first five months of 1993.

Though Americas Watch cannot comment on the validity of the Pernambuco government's statistics, we do note that the officials were far more eager to dismiss the results of a study by a respected human rights organization and to emphasize the involvement of adolescents in crime than they were to discuss the activities of death squads in the state. The cases investigated by Americas Watch below do indeed show that there have been adequate police

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<sup>44</sup> Americas Watch interview with Dr. Alexandre Menezes, Secretario Adjunto da Secretaria de Segurança Pública de Pernambuco, Recife, June 16, 1993.

<sup>45</sup> Americas Watch interview with Dr. Djalma Raposo, Secretaria da Justiça, Recife, June 17, 1993.

investigations and several arrests. This in turn has made a difference in the areas where these killings occurred. However, there have also not been any convictions in these cases. The Pernambuco authorities promised Americas Watch details on the number of police investigations of violence against children that were successfully concluded and the number of suspects arrested, but did not deliver this information despite repeated requests. Though the state authorities insisted that impunity for violence against children did not exist, they also had no information on conviction rates.

**Cristiano "Jerimum" Aurino de Oliveira**

The murder of Cristiano "Jerimum" Aurino de Oliveira was described to Americas Watch as a typical case of a death squad killing. The subsequent police investigation resulted in a number of arrests and, according to residents of the area where the killing occurred, has substantially reduced violence. However, though one man has confessed to participating in the death squad killing, and several others including policemen have been detained, no one has yet been brought to trial. In addition, one of those thought to have financed this death squad remains at liberty.

On September 4, 1990, Cristiano Aurino de Oliveira, a seventeen-year-old white boy known as "Jerimum" ("Pumpkin"), was dragged out of his home and killed, along with one of his older brothers, nineteen-year-old Elias Aurino de Oliveira. Jerimum lived at home, in the favela of Peixinhos, Olinda. People in the neighborhood said that Jerimum was a known drug user and thief, but did not commit violent crimes. His mother admitted that he sniffed glue and kept "bad company."

Several months before the killing, on April 4, 1990, Jerimum's home was invaded by the police of Olinda at about 5:00 p.m. According to GAJOP, the police beat Jerimum in the presence of his neighbors and then took him to the local police station. The Commissioner of Minors (Comissario de Menores) justified Jerimum's arrest—which occurred illegally, without a warrant—by saying that he had received various phone calls from people who said that Jerimum was a thief and that the police were accusing him of three homicides. The police released Jerimum after taking a statement.<sup>46</sup>

On the evening of September 4, at about 1:30 a.m., three armed men knocked on the door of Jerimum's home. His brother, Elias, opened the door, and

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<sup>46</sup> GAJOP statement, January 3, 1991.

the three men rushed in, handcuffing Jerimum and Elias and dragging them to a nearby river. The next day the two boys' bodies were found underneath the bridge that links the neighborhoods of Peixinhos and Chão de Estrelas. They had been shot several times and their hands were bound, the two bodies tied to each other with elastic rope.

The police investigation into Jerimum's killers uncovered the operations of a grupo de extermínio which had long been active in the Peixinhos area, and led to the arrest of several members of the group including two policemen. The inquiry was opened at the 2nd Delegacia Metropolitana of Peixinhos, and was conducted by Antônio Araújo Feitosa. In the course of the investigations, the police arrested Milton Carneiro Barbosa, a man known as "Cú de Ferro" ("Iron Asshole").

Barbosa admitted having been contracted by Tomaz Aquino Leão Cavalcanti, a local businessman, to kill Jerimum because Jerimum had shot at Cavalcanti's nephew. Barbosa also confessed to having killed Jerimum's brother. He said that as a reward he received a 22 caliber revolver and 10,000 cruzeiros (\$132). He stated that two other people, Mirto Ferrari Júnior, a civil policeman, and Jailson Gomes dos Santos, a military policeman, were the ones who actually pulled the triggers. Barbosa also confessed to various other homicides, which he said he committed with Jailson and Ferrari and several other policemen, from both the PM and the PC.

All three men were detained and the prosecutor recommended their indictment. The judge also ordered the arrest of the two men accused of being the intellectual authors—Cavalcanti and Luiz Leão Cavalcanti "Loredo"—but they escaped. By March 1992, a total of six people had been arrested in connection with the case. At the time of Americas Watch's visit, however, they were all awaiting trial, and residents of the Peixinhos favela claimed that Cavalcanti, who was accused of hiring the grupo de extermínio, was at his home, and at liberty. Nevertheless, local residents of Peixinhos told Americas Watch that since Barbosa's arrest and the dismantling of the escuadrão da morte that he participated in, violence in the favela has decreased.

### **Flávio Santos Borges**

Though death squads are often composed of police, this is not always the case. For example, investigations into the killing of Flávio Santos Borges, a sixteen-year-old boy, brought to light the actions of a grupo de extermínio that appears to have been run by a lawyer, and was composed mainly of non-police. Flávio's assassination also shows how adolescents are sometimes killed as a

result of organized crime: in this particular case, to eliminate a witness to an abduction and assassination. As with several other cases of death squad activity in Pernambuco, this case was adequately investigated by the police, but has yet to end with the conviction of those responsible for the killing.

Flávio's body was found along with that of a twenty-three-year-old man, Grimário Dionísio Pereira, in Camaragibe, a neighborhood of Recife. The two had been shot several times on August 14, 1991: Flávio was shot in the back, the side and the head, and according to the detective in charge of the case, he looked like he was trying to run away when shot.<sup>47</sup>

The subsequent police investigation revealed that Flávio's killing was what is known in Brazil as a "queima de arquivo"—the elimination of a witness to a crime, literally, the "burning of the records." On the day of the shooting, several witnesses saw Ivaldo Nunes de Moura, a lawyer, with several other people at the Alto do José do Pinho neighborhood in a black Chevette, looking for Grimário. In a statement taken by Cendhec, Flávio's uncle stated that Moura had represented Grimário when he was charged with illegal weapons possession, and as a result Grimário owed Moura 30,000 cruzeiros (\$90) for attorney's fees.<sup>48</sup>

As Moura was looking for Grimário, he came upon Flávio and asked him to take a message to Grimário. According to the police investigation, Grimário had stolen a computer to repay his debt to Moura. Flávio delivered the lawyer's message to Grimário, and the two left together to find Moura, carrying a box. They were then found dead.

The police investigation into the killing concluded with the arrest of Ivaldo Nunes de Moura and four other men. They were indicted for aggravated homicide, and Moura was also indicted for organizing the participation in a crime or directing the activities of other participants, a charge that could increase his sentence if he is found guilty.<sup>49</sup> At the time of Americas Watch's visit to Pernambuco in July 1993, Moura was in the Paratibe prison, awaiting trial. In late December 1993, the witnesses for the prosecution—a total of 22 persons—were heard in court.<sup>50</sup> It was expected that witnesses for the defense would be heard in

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<sup>47</sup> "Escrudão da morte' elimina mais quatro pessoas no Grande Recife," *Diário de Pernambuco*, Recife, Pernambuco, August 17, 1991.

<sup>48</sup> Statement of Antônio Alves dos Santos, at Cendhec, on August 19, 1991.

<sup>49</sup> Article 62, inciso 1 of the Código Penal.

February 1994 and that the trial might conclude by June 1994.

### **GRUPOS DE EXTERMINIO IN ESPÍRITO SANTO**

**Killing a child in Vitória is very easy. We grab them at night, when they're sleeping in the market at Vila Rubim. We go there and say that we are from the Juizado de Menores [the Juvenile Courts], and they don't get scared and get in our cars. We charge 1 million cruzeiros [approximately \$4,000] to kill a child criminal. The clientele is not small, and is normally only people from high social classes, who feel at risk from the beggars ... These people are oriented by the police to look for us ... There are six military policemen who when they are on duty always leave corpses in greater Vitória.<sup>51</sup>**

**A series of homicides in the state of Espírito Santo—which culminated in November 1992 with the killing of Jean Alves da Cunha, a thirteen-year-old street child elected to represent the state street children's movement in a national meeting in Brasília—present a disturbing picture of the actions of an organized death squad and their close ties to the military police. There are many indications that this death squad is linked to a shadowy organization known as the Scuderie Detetive Le Cocq, which is composed of and has extensive links with members of the civil and military police forces, local politicians, state civil servants and judges. The Scuderie was formed in 1965, during the very first years of the military dictatorship and was named after Detective Milton Le Cocq D'Oliveira. Its emblem is apparently a skull and cross-bones with the initials E.M., which members claim stands for *escuadrão motorizado* (motorized squad). A more obvious expansion of the acronym, though, would be *escuadrão da morte* (death squad). Members of the organization claim that it is a charity with the goals of mutual assistance and community improvement.**

**Until the recent revelations regarding organized death squad activity in**

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<sup>50</sup> Letter from Paulo César Maia Porto, a lawyer with Cenhec, to Americas Watch, December 20, 1993.

<sup>51</sup> Statements of an admitted "exterminator" of children in the newspaper *A Tribuna*, Vitória, Espírito Santo, on March 29, 1991, and quoted in the report of the CPI do Extermínio.

Rio de Janeiro, the killings in Espírito Santo provided, to Americas Watch's knowledge, the most detailed example of how an organized "unofficial" death squad functions, counting on official complicity and omission, convinced of the inevitability of impunity, harassing and even killing witnesses, and acting with flagrant disregard for the law and functioning as a parallel security force enforcing an "extra-legal" order.

Investigations into these homicides by a special commission established by the governor of Espírito Santo were successfully concluded and identified those responsible for the homicides, including several military and civil policemen. The special commission, called the *Comissão de Processos Administrativos Especiais* (Commission for Special Administrative Investigations), recommended the arrest and indictment of the suspects, offering substantial proof of their involvement in the killings. However, in each case, the suspects were arrested but released once the time limit for their initial detentions expired. All of these cases are presently stalled at the pre-trial judicial phase; in none of the cases is anyone still under arrest, and no one has yet been found guilty.

Members of the *Comissão de Processos Administrativos Especiais*, on the other hand, have experienced harassment and intimidation. The Commission was created by Governor Albuíno Azeredo to investigate homicides for which death squads may have been responsible, and is led by a state prosecutor, who is the president of the commission, a civil police detective, and a major from the military police. In the state of Espírito Santo, the local streetchildren's movement has registered at least forty minors killed in the state since 1992, thirty-four in 1993 alone. It is thought that many of these children were killed by death squads or by the police. Since its inception, several detectives have requested transfers after being threatened. The president of the commission, prosecutor Manoel Antônio de Barros, also left in mid-1993, apparently because he felt that the commission was not receiving adequate support from the state government. At the time of Americas Watch's visit, several months after Barros's resignation, the state government had yet to replace him.

Needless to say, given the level of harassment directed at members of an official commission, witnesses to these homicides have been harassed and threatened. The main civil police investigator in the commission, Detective Francisco Badenes Júnior, told Americas Watch that he was having a very difficult time convincing witnesses to speak out, as all the suspects that he had arrested



were now free and witnesses feared for their safety.<sup>52</sup> In late 1993, local newspapers even reported that two hit men, apparently civil policemen from Rio de Janeiro, had been contracted to kill Detective Badenes, but had fled the state before carrying out the assassination.<sup>53</sup>

One of the first killings of street children investigated by the Comissão was the double homicide, on October 23, 1992, of two boys, Benedito Rodrigues de Lima, known by his nickname "Bita," and Wallace Pereira Rodrigues, or "Dentinho." Both boys were black (they were described in Portuguese as being mulato), and at the time of their deaths, Wallace was thirteen and Benedito was fifteen. The two boys lived on the streets of greater Vitória, the capital of the state of Espírito Santo. As with the cases of Jean and Odilon dos Santos Ferreira, discussed below, Benedito and Wallace were killed during a strike by the state civil police.

On October 23, the bodies of the two boys were found by the side of a dirt road in the Cangaíba neighborhood of Cariacica, on the outskirts of Vitória. According to later autopsy exams, Wallace was shot twice in the head, once with the gun barrel placed on the back of his head and once from a further distance, also from behind. Benedito was shot in the head three times, each time from behind and at point-blank range. Two 38 caliber bullets were removed from Benedito's corpse. Though few technical exams were made at the scene of the crime, due to the civil police strike, the investigation stated that the bodies were left in a place of easy and frequent access by local residents and that no efforts were made to hide the corpses.

At the time, crimes by street children in the greater Vitória area were attracting widespread attention in the local press. One newspaper article about the killing of the two boys even stated: "The police informed that the minors had the appearance of delinquents, who in the last months have invaded urban centers, principally beaches and squares."<sup>54</sup> These assertions were made despite the fact that neither body was positively identified until almost a week after the

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<sup>52</sup> Americas Watch interview with Delegado Dr. Francisco Badenes Júnior, Comissão de Processos Administrativos Especiais, Vitória, Espírito Santo, June 14, 1993.

<sup>53</sup> "Descoberto plano para matar o delegado Badenes," *A Gazeta* (Vitória, ES), November 17, 1993; "Identificados suspeitos de tentar matar delegado," *A Gazeta* (Vitória, ES), November 19, 1993.

<sup>54</sup> "Dois adolescentes são assassinados em Cariacica," *A Gazeta*, October 24, 1992.

killing, and presumably only on the basis that both corpses had no shoes and were wearing shorts, with only one boy also wearing a tee shirt. The state Secretary of Public Security at the time, Dr. José Augusto Bellini, similarly stated, with little evidence, that he didn't believe that the killing was committed by a grupo de extermínio but that it was probably the result of a fight between juvenile gangs.<sup>55</sup>

The bodies of the two boys were identified by their families on October 29. Benedito, the third child in a family of eight children, was identified by his father, a carpenter. After viewing the body at the morgue, Benedito's father told the press:

**My son worked to earn his own money. The only thing wrong that he did was sleep on the streets, and I didn't agree with that. ...Neither my son, nor anyone else's, deserved to die like that.<sup>56</sup>**

According to statements later taken from Wallace's brother and several friends of the two boys, on the evening of their killing, Benedito and Wallace had planned to go to a marcenaria (furniture-makers shop) in Campo Grande, to steal glue and a shotgun. Like many street children, Wallace and Benedito sniffed glue. The boys had robbed items from this shop and nearby stores before, and had once taken some glue and two drills. In the process of one robbery another boy, identified only as "Neguinho," had apparently defecated inside the shop. During these robberies, they had almost been caught: the most recent time someone had fired a gun at them from across the street.

Nevertheless, the boys agreed to return to the shop, apparently enticed by a can of glue placed near the grated door and by an old shotgun, which was plainly visible from the street through a window. A key anonymous witness, another boy who was a "street friend" of Wallace and Benedito, told police investigators that he ran into the two boys one night near the Praça Jerusalem, and they invited him to participate in the theft. It was agreed that Wallace and Benedito would enter the shop by climbing up a grate and crawling into the shop through an open space between the grate and the ceiling. The other boy would stay outside, to take the stolen objects that Benedito and Wallace would pass

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<sup>55</sup> "Menores assassinados a tiros," *A Tribuna*, October 24, 1993.

<sup>56</sup> "Identificados adolescentes assassinados," *A Gazeta*, October 30, 1992.

through the grate and to warn of anyone approaching. After about half an hour, the boy said, he heard a loud, strange noise and took off running. Several days later he found out that Benedito and Wallace had been killed.

The manager of the marcenaria, Waldir Danieletto, as well as an employee, Narciso Bravim de Oliveira, the owner of the building, Gilson José Cremasco, and the manager of a neighboring shop, Adolfo Antônio Magri, all lived across the street from the shop, along with several military and civil policemen who were related to the Magri family. When these individuals were interviewed by the police they stated that they and their families were out of town the night that the two boys were killed and had gone with their children to a neighboring state. However, the police investigation discovered that this was untrue, as records showed that several of these individuals' children were in school on the day that they were allegedly travelling. The police also determined that the tire tracks left in the mud near where the two boys were killed matched the type of tires on a truck that belonged to Adolfo Antônio Magri, one of the neighbors and the cousin of the owner of the building where the marcenaria was located. Magri was also the brother of several policemen who lived in the area.

In a key statement to the police, which he later recanted and said was forced, Narciso Bravim Oliveira stated that on October 23 he was woken up by Gilson at about 1:00 a.m. Gilson told Narciso that there were two boys in the marcenaria, inside Waldir's office. Narciso went with Gilson, who was armed, into the office of the marcenaria where they saw two boys hiding in a corner. Gilson closed the door so that the boys could not run away, and pointed his gun at them, telling them to be quiet. Then Narciso and Gilson tied up the two boys with thick nylon cord and put them in Gilson's car.

As they left in Gilson's car, Narciso said that they came across the military policemen Neivaldo Magri and Marcos Antônio Belique, and police in several other cars. According to Narciso, the policemen followed Gilson to a dirt road in Cangaíba, but did not actually stop at the place where the boys were killed. When they got to the side of the road, Gilson took the boys out of the car and executed them by shooting them in the head. Narciso stated that Adolfo was also at the scene of the execution. As Gilson was pointing his gun at the boys one of them said: "Please mister, don't kill me." Narciso claims that he tried to tell Gilson not to kill the boys but Gilson refused.

The investigation by the civil police, concluded on January 1, 1993, requested the arrest and detention of nine people: Gilson José Cremasco; Adolfo Antônio Magri; Waldir Danieletto; Narciso Bravim de Oliveira; military policemen Neivaldo Magri, Marcos Antônio Belique, and Herval do Carmo Chagas; civil police

investigator João Antônio Magri; and civil police clerk (escrivã) Helena Luiza Magri. The investigation stated that there was evidence suggesting that several of the suspects lied about their whereabouts and enticed the boys to steal objects from the *marcenaria*—by placing them in close view—in order to catch them in the course of a robbery and kill them. The motive for the killing, the police speculated, was revenge for the earlier robberies committed by the boys, aggravated by the fact that during the previous robbery one boy had defecated inside the shop.

On January 15, Judge Ben-Hur Felipe da Silva ordered the arrest of the nine suspects, under preventive detention, due to the fears that the suspects might harass or kill witnesses and that they might escape from the area. Eight of the nine were arrested the following day. However, after the time period for their initial detention expired, on January 22, 1993, Judge da Silva turned down the prosecution's request to extend the period of detention. This request was denied despite the fact that a ballistic exam proved that the guns that killed Benedito and Wallace belonged to the PMs Neivaldo Magri and Marco Antônio Belique.<sup>57</sup> In addition, civil police detective Ubiratan Jomar Santos, who was investigating the case, was threatened by two of the suspects, PCs Helena Magri and João Antônio Magri. The Magris apparently showed Santos a skull-and-bones key-chain, the symbol of the Scuderie Le Cocq, when they threatened him.

When he ordered the release of the suspects, judge da Silva stated that though there were still doubts about who committed the crime, the prosecutor, if he or she was astute, "should have an easy time with the case." Nevertheless, at the time of Americas Watch's visit to Espírito Santo, the case remained in the pre-trial phase and the suspects continued at liberty.

Less than a month after the killing of Benedito and Wallace, on November 12, 1992, the body of Jean Alves da Cunha was found at the Morro da Fonte Grande, in Santo Antônio, Vitória. He had been shot once, point-blank, in the head, near his left ear. Only three days before his death, Jean, a thirteen-year-old boy, had been elected to represent the street children of his state at the Third National Encounter of Street Children, to be held in Brasília on November 18. Jean was active with the state street children's movement and had frequently denounced police violence against children who lived on the streets of Vitória.

Jean had been repeatedly detained by the police and interned at the juvenile detention facility, the Instituto Espírito Santense de Bem-Estar do Menor

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<sup>57</sup> "Justiça solta acusados de matar menores em Cariacica," *A Tribuna*, January 26, 1993; "Soltos acusados de assassinato," *A Gazeta*, January 26, 1993.

(IESBEM), having been processed by the juvenile authorities some thirteen times for various offenses including drug use and robbery. He was released from the Unidade de Integração Social, the IESBEM's detention unit, the day of his killing so that he could travel to Brasília.

The subsequent investigation conducted by Detective Badenes, with the assistance of the Federal Police (because the state civil police were on strike), determined that on the evening of his murder, Jean had been stopped by two military policemen at about 10:00 p.m., after he had tried to steal some objects from a car and rob the doorman of a building. According to a key witness, Jean clearly identified himself to the two PMs, and asked not to be arrested as he had to travel to Brasília. The PMs, Sergeant Marco Aurélio Sian and Soldado Luiz Carlos Francisco Chagas, pushed Jean around and Chagas kicked him in the head. Sergeant Sian then wrote up a report of the incident and gave it to the doorman who had filed the complaint, but advised him to just tear up the report, saying that it was useless. They then let Jean go. Shortly thereafter, Jean was stopped by other policemen and put in a police van.

The two policemen Sian and Chagas later denied having arrested Jean on the evening of November 10, and no police reports about the incident were found in the military police battalion's files. However, the civil police found a second copy, which the PMs had given to the doorman who filed the complaint. In this report, the policemen did not identify Jean correctly, writing down the name Wellington. Jean was well known to the police, though, and one of the PMs had actually arrested him once before. In addition, several witnesses claimed that Jean had clearly identified himself to the policemen, who appeared to know him. As a result of their false statements, Sergeant Sian and Soldado Chagas were placed on disciplinary detention.

Another key witness then came forward stating that she had seen Jean inside a police van later that evening, at about 10:30 at night. This woman stated—on three separate occasions in front of three different people and in testimony which was repeatedly consistent—that the police had come to her home in the van that Jean was already riding in and arrested her son. As a result, she said that she clearly saw Jean inside of police van 411. She also stated that she saw Jean at 10:30, shortly after he had been released by the first two PMs, making her statement even more credible.

The civil police then interviewed these policeman and several others, from the elite 1st battalion of the military police designated to respond to bank and bus robberies, who were also placed at the scene of the crime. All the policemen denied seeing, or even knowing Jean. However, the policemen in van

411 had arrested Jean twice before, and several of the other PMs had also arrested him.

On April 30, 1993, fifteen military policemen were arrested, by order of Judge Ronaldo Alves of the military justice system.<sup>58</sup> However, on May 10, when the initial time limit for their detention expired, the judge denied the prosecution's request to extend the policemen's detention, saying that detective Badenes had not produced enough evidence to warrant their continued arrest.<sup>59</sup> By July 1993, only two of the policemen had been suspended from normal patrolling duty, though they remained on the force.

On October 29, 1993, acting on the authorization of Judge Magda Regina Lugon Arantes of the military justice courts, Detectives Badenes and José Porfírio de Bessa raided the headquarters of Scuderie Le Cocq, seizing revolvers, rifles, hoods, ammunition, and documentation about the organization. The same day, Judge Lugon ordered the preventive detention of fifteen military policemen.<sup>60</sup> The court proceedings against the policemen, before the Special Council of Military Justice (Conselho Especial de Justiça Militar) began on November 9, 1993, presided by the judge Magda Regina Lugon Arantes.<sup>61</sup>

Luiz Renato Azevedo da Silveira, a prosecutor with the military justice system, also asked for the opening of an internal investigation to examine the conduct of Captain Della Fuente, who was responsible for the military police investigation into Jean's death, and of Colonel Luiz Guilherme Paterlini, the head of the military police's 1st battalion. The military police investigation, which would have been the only investigation if the special Commission had not been set up, concluded that the police were not responsible for Jean's death. Detective Badenes recommended Della Fuente's indictment, on charges of obstruction of justice. Colonel Paterlini was accused of creating obstacles to the investigation and even of beating a witness inside the PM headquarters.

Only six days after the second arrest of the policemen, the military justice tribunal, composed of four PM officers and one civilian, Judge Lugon,

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<sup>58</sup> "Presos quinze PMs envolvidos na morte de menor," *A Gazeta*, May 1, 1993.

<sup>59</sup> "Soltos os 15 PMs acusados do assassinato de Jean," *A Gazeta*, May 11, 1993.

<sup>60</sup> "Delegados invadem a Le Cocq e promovem devassa," *A Gazeta*, October 30, 1993.

<sup>61</sup> "Justiça Militar inicia processo contra policiais," *A Gazeta*, November 10, 1993.

decided to release the fifteen PMs accused of killing Jean. The statements of some members of the tribunal indicate what sort of justice it might hand down and are extremely disturbing. Captain Fronzio Calheira Motta, one of the military police officers on the tribunal, stated that the policemen should be released because they are innocent. Though the case was still in its initial phases, Captain Calheira told the local press that he would not participate in the trial "while fifteen innocent men are arrested for a crime that they did not commit and are far away from their families." He also stated that the policemen were being scapegoated, claiming, "They are paying for something that they don't owe."<sup>62</sup>

Several witnesses who spoke out about Jean's assassination were harassed and threatened and there were several serious irregularities with the detention of the policemen. For example, Sergeant Sian, while he was supposedly under disciplinary detention, went armed and uniformed and in a police vehicle to threaten one of the key witnesses. Another witness stated that she and her daughter were also harassed by policemen and that after being interviewed on television (on the popular news show *Globo Reporter*), she was threatened by people who identified themselves as members of Scuderie Le Cocq. Two of the detained PMs were also members of the organization.

After the civil police seized weapons and hoods at the headquarters of the Scuderie Le Cocq in October 1993, one local newspaper columnist wondered why an organization that claimed to be philanthropical needed hoods. "Surely," he noted, "it is because they are so humble. They would hate to be identified by those that they are helping."<sup>63</sup>

Investigations into Jean's killing brought to light further troubling evidence of police complicity with death squad killings and links with the Scuderie Le Cocq organization. For example, some of the policemen in the Jean case also appear to have been involved in the killing of Joaquim Fortunato de Melo, a boy known as "Boca-Roxa" who was murdered on the night of February 11, 1991. However, civil police investigators noted that the file on internal police investigation into this incident was missing from military police archives. In addition, three of the policemen—José "Dudé" Geraldo Duarte Miranda, Maurício Sampaio, and Pedro Fernandes de Castro Moraes—were reportedly involved in the

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<sup>62</sup> "PMs vão responder em liberdade," *A Tribuna*, November 18, 1993; "Soltos os policiais acusados de assassinar Jean," *A Gazeta*, November 18, 1993.

<sup>63</sup> Álvaro José Silva, "Escuadrões e escuderias," *A Gazeta*, November 18, 1993.

shooting of twenty-two-year-old Aloízio Cardoso Santana, and sixteen-year-old Rubens Rodrigues da Silva, though there also appears to have been no investigation of this case.

During the course of investigating the Jean killings, the Comissão de Processos Administrativos also looked into other homicides which had occurred during police strikes. One of the cases that came to light was the murder of an adult car-washer named Odilon dos Santos Ferreira, whose body was found at Morro da Fonte Grande, where the body of Jean was also found, on September 2, 1991. In this case, in violation of the Brazilian penal code, a police investigation had not even been launched. The police investigation subsequently revealed, perhaps un-surprisingly, that one of the key people implicated in the killing, José Coimbra, was the brother of the chief of the local police station.

The investigation by the Comissão determined that Odilon had been murdered by mistake, because he had been confused with another person. A month before Odilon's death, this person had been involved in an altercation with one of the managers of the Clube Náutico, a social club where both the Scuderie Le Cocq and the civil policemen's union frequently held their meetings. In retaliation for the beating of his cousin by the vice-president of the club, this individual fired several gunshots at José Coimbra, the Clube Náutico's director and a town councilor (vereador). That same day, according to the person's statements, he was beat up by the two policemen Dudé and Sampaio, who took his watch. He claimed that the policemen said he was "marked for death."

That night, Odilon, who looked very similar to the individual involved in the fight with Coimbra, went to the Clube Náutico. Various people testified that a fight broke out at the club and that Odilon and two other men were grabbed by the club's security guards, handcuffed and taken into the manager's office. The security guards at the club that evening were the military policemen Sampaio, "Dudé," Moraes, and Paulo César de Azevedo, all of whom were also later implicated in the killing of Jean. Odilon and the two other men were released shortly after being taken into the manager's office. Then, inexplicably, there was a black-out at the club and Odilon disappeared. According to a press report, several witnesses saw José Carlos Preciosa, a civilian employee of the club, and several other men force Odilon into a black Opala car.<sup>64</sup>

Because Odilon was killed during the police strike, no autopsy was performed at that time. On April 30, 1993, the police exhumed Odilon's body and

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<sup>64</sup> "PMs suspeitos de outra morte," *A Gazeta*, May 5, 1993.



removed two bullets. On the same day, the police arrested José Carlos Preciosa, and two other men, Rogério Barcellos da Matta and Jamil Júlio Miguel, and searched their homes.<sup>65</sup> At Preciosa's home the police seized several suspicious items, including a revolver and ammunition; a black Opala with irregular registration papers; identification documents from the *Comissário de Menores*, the policemen's union and the city government; and a key-chain and medal with the Scuderie Le Cocq's skull-and-bones symbol. They also found an extensive file containing clippings about juvenile delinquents, the police strike of 1991 and Scuderie Le Cocq, as well as a photograph of the side of a road which, the police report thought, "suggests a location for dumping bodies." A ballistic exam determined that the bullets removed from Odilon's body were fired from the revolver seized at Preciosa's house.

Police investigations into the killing of Odilon and the links between organized grupos de extermínio and the Scuderie Le Cocq were brought to a standstill when the main suspect in the Odilon killing, José Carlos Preciosa, was himself murdered on the morning of June 6, 1993. Preciosa was shot in the head three times with a 38 caliber revolver. Also shot, though not fatally, was his girlfriend, Laurenir Brás.

Several days before his death, Preciosa telephoned detective Badenes and told him that he was being threatened by members of Scuderie Detetive Le Cocq, and that he wanted to leave the state, or even the country. Preciosa promised to give Badenes full details about the involvement of the Scuderie in organized crime if the police could provide him and his family with protection in another state. The two agreed to meet to discuss this further on June 6, the day that Preciosa was killed.

Though shot in the head three times, Preciosa did not die immediately, and was taken by the police to the hospital. On the way there, he told the police several times that he had been shot by someone named "Thor" who was acting on the orders of José Coimbra. According to one witness, when Preciosa got to the hospital he said, as if Thor was present: "Thor, you didn't have to do this to me. I didn't turn in anyone, I didn't say anything."

Wanderley "Thor" da Silva Ferreira turned himself over to the police voluntarily, and confessed to having shot Preciosa. He claimed that on the morning of June 6, he had seen Preciosa, Laurenir and another person walk past his home, and resolved to kill Preciosa and Laurenir. Thor claimed that he had

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<sup>65</sup> "Capturados três acusados de extermínio," *A Gazeta*, May 1, 1993.

once gotten into a fight with Preciosa and that Preciosa had threatened to kill him and to set his brother on fire. Thor stated that he approached the three people with a 22 caliber revolver and wearing a hood made out of women's stockings. He shot once, to scare them and make the other man run away, then shot Preciosa in the face and Laurenir in the thorax. He then shot Preciosa two more times in the neck. Thor claimed that he acted alone and killed Preciosa out of personal vengeance.

Thor's statement, though, contrasts with what Preciosa had said about Thor acting on orders of José Coimbra, and with the statements of several other people. One anonymous witness claimed that another man, Carlos "Pretinho" Maurício Falcão, also participated in the killing. The initial civil police investigation also stated that two men participated in the shooting. Several people who knew both Preciosa and Thor also claimed that there was no personal quarrel between the two. One person even said that Preciosa had told her that he was being threatened and that his days were numbered.

Not surprisingly, several witnesses in these cases were extremely concerned about their own safety. Odilon's own mother reportedly asked detective Badenes not to investigate the murder of her son, saying that she feared for her husband and her ten other children. She stated, "The justice system is not going to give back Odilon's life, and it could end the lives of the others."<sup>66</sup> By mid-June, Thor, the killer of Preciosa, was himself saying that he was being threatened and that he feared for his life.

In addition to the threats against witnesses and the links to the police and the Scuderie Le Cocq organization, another common thread runs through these cases: all of the murders occurred during police strikes. Odilon, for example, was killed when a strike by the civil police was at a peak moment of tension, with the Governor threatening to disband the force. Policemen reportedly physically blocked the opening of the morgue, threatening that blood would run through the streets. Similarly, Jean was killed during another tense moment during a police strike, only six hours after a three day "truce" in the strike had ended.

It appears that in addition to the personal motives behind the killings, they were also carried out in order to send signals to the governor that he should not challenge the power of the police force. The killing of Jean, in particular, appears to have had this motivation, and it is believed that Jean's killers infiltrated the meeting where he was chosen to represent the state's street children in order

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<sup>66</sup> "Família de Odilon sofre e ainda teme represália," *A Tribuna*, (Vitória, ES), June 13, 1993.

to find out who would be the best target. At the meeting Jean had forcefully denounced the mistreatment of the city's street children by the local police.

The killings in Espírito Santo also show that even when professional and persistent police and prosecutors are determined to investigate the crimes as fully as possible, without additional political will to push for prosecutions, impunity can still prevail. Though the state government had originally set up the Comissão de Processos Administrativos expressly to investigate these sorts of murders, the commission was obviously handicapped in its work by a lack of additional political and logistical support, as well as by the continuous threats to its members.

When Americas Watch interviewed the state Attorney General, Dr. Wellington da Costa City, he agreed that the commission was indeed low on resources and lacked a president, but dismissed this concern saying that the whole state government was low on resources.<sup>67</sup> (He bragged, nevertheless, that he had hired four juvenile prosecutors, one more than he said was necessary, to prosecute adolescents accused of committing crimes). Dr. City also minimized the problems that the investigations were facing, adding that some crimes are just not solvable.

A representative of the Minister of Justice claimed that investigations into these crimes were difficult because of the participation of the police themselves. He lamely excused the responsibility of the government, which at least on paper exercises control over the police, by saying that the problem would not be solved until organized civil society got involved. This official stated that he knew of various cases in which policemen had been excluded from the force for extortion and corruption, but not for violence against children and adolescents. He knew, in fact, of no convictions of police for the killings of minors. Despite repeated communications by the local street children's movement, the state governor canceled his meeting with Americas Watch at the last minute, and did not specify when it could be rescheduled.

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<sup>67</sup> Americas Watch interview with Dr. Wellington da Costa City, Vitória, Espírito Santo, June 14, 1993.

## **5 CONCLUSIONS AND RECOMMENDATIONS**

**Despite the considerable attention that has been brought to the problem of assassinations of adolescents, impunity for those responsible for these abuses has, in most respects, continued to prevail. As the cases investigated by Americas Watch reveal, this impunity is the product of several factors, but one primary, underlying force is the lack of political will to adequately investigate and prosecute those responsible for violence against children and adolescents. When the will to prosecute does exist, convictions are possible. Unfortunately, this is rarely the case, and even individual convictions in a handful of high-profile cases may have little impact on the larger problem and on the structures of violence that fuel abuses by Brazil's police force and unofficial death squads.**

**Brazil now stands at a crossroads. Recent massacres, such as the July 1993 killing of eight street children in Rio de Janeiro, have refocused national and international attention on violence against children and adolescents. The Rio killings, followed in short succession by the killing of twenty-one residents of the Vigário Geral favela, provoked a wave of indignation and shock on the part of Brazil's population, and have spurred new initiatives by the federal government. Some states had already begun, even before the shocking July and August massacres, to address the issue and work towards the eradication of death squads and police violence. In order to reduce significantly and permanently violence against children and adolescents, though, the reforms undertaken so far need to be deepened and strengthened, and further steps must be taken to address the issue in a comprehensive manner. As we suggest below, the gravity of this problem demands a vigorous and uniform response on the part of Brazil's federal government.**

**The initiatives undertaken by the state governments of São Paulo and Rio de Janeiro to curb violence against adolescents by on-duty police are instructive of both the limited successes and continuing challenges to reform. In São Paulo, the killing of civilians by the state's military police peaked in 1992, when the force killed a staggering 1,470 civilians including 111 inmates massacred at the Casa de Detenção prison. Since then, the number of killings has decreased significantly.**

**In the wake of the Casa de Detenção massacre, the São Paulo government replaced the state Secretary for Public Security, Pedro Franco de Campos, who had initially withheld information about the prison massacre. The new Secretary, Michel Temer, and the new commander of the military police force,**

**Colonel João Sidney de Almeida, both publicly stated that they would not tolerate the excessive use of force by the police. Policemen involved in violent incidents were taken off active duty and submitted to a period of retraining. Perhaps most significantly, prosecutors with the military justice system recommended the indictment on charges of homicide and abuse of authority of all those directly involved in the prison killing, including the commanders of the units that participated in the raid on the prison, who have been removed from the daily command of police units. Overall, the number of São Paulo military policemen suspended from the force increased in 1993.<sup>1</sup> It was thus clearly shown that the extreme levels of violence that had characterized the São Paulo military police in 1992 carried a political price and the São Paulo force responded accordingly, with fewer killings.**

**However, the fundamental factors which allowed police violence to reach such levels remain unchanged. Despite the fact that the decrease in the number of killings of civilians by the PM has not corresponded with a significant increase in the crime rate, the public pressure on the state government to be "hard on crime" persists. More importantly, nothing has been done to ensure that abusive policemen are successfully prosecuted for their criminal behavior or are dismissed from the force. No substantial changes have been made to the military justice system, which continues to be severely backlogged and unable to respond adequately to cases of police violence against civilians. The military justice proceedings against the policemen involved in the Casa de Detenção case, for example, have been typically slow, with only twenty-five of the 120 indicted policemen heard in court by October 1993, a year after the massacre. No one involved in the killing has been arrested or fired from the force. Notoriously abusive policemen remain on the force, and some have been promoted. Prosecutors who attempt to investigate crimes committed by military policemen are threatened and little is done to protect them.**

**In Rio de Janeiro, where on-duty police violence has been less severe, the state governmental authorities are less tolerant of violence by on-duty policemen. The military police in Rio, unlike their counterparts in São Paulo or Pernambuco, suspend notoriously abusive policemen from the force. Stopping violence against children and adolescents has also been a priority, and the Rio government,**

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<sup>1</sup>"Aumenta N° de PMs afastados por homicídio," *Folha de S. Paulo*, November 10, 1993.

perhaps more than any other, has taken several crucial steps towards ending impunity. Particularly important have been quick and effective investigations into homicides of children and coordination between the civil police and the internal affairs division of the military police. The internal affairs division of the military police has played the most important role in uncovering abuses by its own troops.

However, these commendable attempts to address the problem of on-duty violence by the military police have apparently had little effect on police corruption or police involvement, during their off-duty hours, in unofficial death squads. In fact, the several large massacres committed by police death squads in 1993 may actually be a backlash against attempts by the state government to curb on-duty violence.

Continuing police involvement in corruption and death squads reveals that the policies of the higher-levels of the state government are either not entirely effective or not shared, and sometimes actively opposed, by lower level figures, particularly lower-ranking commanders of the military police and state-level politicians. Police involvement in corruption and off-duty violence is a natural (and with an underpaid force perhaps inevitable) result of a lack of discipline enforced by battalion commanders. A police force that does not obey its commanders, and commanders who do not adequately carry out the orders of their superiors turning a blind eye to police involvement in corruption, are forces that have a powerfully corrosive impact upon democracy. As such, these problems should be addressed with utmost urgency, and not seen only in terms of the immediate abuses that, as this report has shown, are most often targeted against poor adolescents who have already been marginalized by much of the rest of society. The investigations into the killings at Vigário Geral, and the evidence that they have uncovered regarding police involvement in death squad activity and organized crime are a crucial step. Hopefully they will be followed by prosecutions and reforms within the state military police force. Though the Rio authorities contend that the policemen responsible for violence are only a small portion of the force, it is apparent that addressing this problem will require large-scale and drastic reforms.

The problems that the states of Rio de Janeiro and São Paulo face with regard to violence against children and adolescents are not unique. Indeed, as this report has shown, the states of Pernambuco and Espírito Santo face problems that are very similar and in some ways perhaps even more troubling, particularly because of the lack of adequate action on the part of the state authorities.

In Pernambuco, the state authorities, in their meeting with Americas Watch, sought to minimize the importance of killings of adolescents by the police

and death squads and emphasize the involvement of street children and poor adolescents in criminal gangs. Despite several prominent cases of executions of adolescents by the military police, the state had taken no visible steps to address on-duty police violence, and had also viewed police involvement in death squads as merely one of many public security problems. Military police officials repeated to Americas Watch the old and often contradicted assertion that police shootings of adolescents occur mainly when suspects resist arrest and fire at the police. Though the civil police in the state had carried out several positive investigations into death squad activity, these investigations, if not coupled with policies that attempt to identify police involvement in death squads and curb this behavior, will have only limited effects.

In Espírito Santo, the state government established a special commission to investigate the killings of children and adolescents. Yet the obstacles and lack of support that the commission has experienced are almost as glaring as the evidence that a well-organized and politically powerful organization is closely linked to the executions of several street children.

In the months after the Vigário Geral and Candelária killings, the Federal government has taken up, with greater urgency than ever before, its responsibility to protect children, adolescents, and all Brazilians from violence on the part of the police and death squads. Among the most important steps that have been taken are the creation of a unit of the Federal Police which will track killings by death squads and the active involvement of the Ministry of Justice and its Council on Human Rights in carrying out independent investigations and proposing measures to address the violence. In late November 1993, Minister of Justice Maurício Corrêa announced that the Federal government would soon seek to have military police charged with intentional violence against civilians tried before the civilian courts instead of before military tribunals, as now is the case.<sup>2</sup> These steps are very encouraging and, as the specific recommendations below make clear, should be followed up with further reforms to ensure that the Brazilian government is making the lives of children and adolescents a priority as expressed in the Constitution.

The struggle to end the pattern of homicides of adolescents will not be fast or easy. A large measure of blame for this violence must be attributed to the poverty, economic and racial inequalities, domestic violence and substance

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<sup>2</sup> Claudio Julio Tognolli, "Corrêa quer fim parcial da Justiça Militar," *Folha de S. Paulo*, November 30, 1993.

abuse problems that draw poor Brazilian youth onto the streets or into involvement with crime. Similarly, complex social forces create a situation where extralegal justice is frequently an acceptable method of protecting communities—which are often poorly served by the police and by the elected governments—from those who are perceived as criminals and threats to safety. The acceptance and banalization of violence is another factor in this equation. The fear and unwillingness of many witnesses to the assassinations of adolescents to testify is also an element that makes even the most diligent police investigation difficult. And in some states it appears that police involvement in corruption, violence and death squads may be so widespread as to demand radical reorganization of forces.

Yet protecting Brazil's children and adolescents from violence—and particularly the most common targets of violence: poor, black or dark-skinned adolescent boys—cannot and should not wait for the solutions to other entrenched social problems, particularly when it is apparent that the police, either on or off-duty, are responsible for a significant proportion of the killings. Homicides of minors are also, as the report has shown, not an isolated problem but part of the larger issues of police violence and death squad activity. (Several observers in fact told Americas Watch that those who are most at risk of police and death squad murders are probably eighteen to twenty-two-year-old adult males.) As a result, putting an end to the homicides of minors must be only part of the larger project of halting police and death squad violence against all Brazilians.



## RECOMMENDATIONS

### Steps to be Enacted at the Federal Level

The most important step for the federal authorities, and the one that has so far not occurred, is for federal authorities to become directly involved in the investigation and prosecution of the homicides of minors. Though federal commissions from the Minister of Justice's office and the federal Congress have investigated specific killings and the broader problems facing minors, these commissions lack both subpoena and prosecutorial powers. Thus, while these commissions are helpful and bring increased attention to criminal prosecutions, their hands are significantly tied and their impact inherently limited.

#### • Federal Investigatory Authority

It is currently unclear to what extent the federal Procurador Geral can participate in the investigation of crimes. This power should be clarified, as Procurador Geral Aristides Junqueira has suggested, to enable his office to investigate a pattern of state abuses without relying on the voluntary cooperation of state officials.

The powers of the Federal Police to investigate state-level crimes should also be clarified and Brazil's constitution should be interpreted to empower the force to investigate police and death squad killings of minors. According to the Constitution, the responsibilities of the Federal Police include:

investigating penal infractions against the political or social order . . . as well as other infractions whose practice has an inter-state or international repercussion and requires uniform repression.<sup>3</sup>

The homicide of minors clearly fits these conditions, and has not met with adequate state-level prosecution thus requiring uniform repression and the attention of the Federal Police.

A useful step may be to formally extend to the National Council on the Rights of Children and Adolescents (CONANDA) the power of determining whether federal investigations and prosecutions are warranted. Though the power to call for federal investigations should not be held exclusively by CONANDA, the

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<sup>3</sup> Article 144 of the *Constituição da República Federativa do Brasil*.

commission is in a particularly opportune position to call for federal action in cases of violence which state authorities have failed to investigate.

This, in fact, has already occurred in a limited manner. In 1993, at the urging of CONANDA, the Federal Police opened an investigation into a gruesome series of rapes and killings of young boys in Altamira, in the state of Pará, after the local authorities proved unwilling or unable to solve the crimes. This power should be regularized, CONANDA should establish a regular commission to propose federal investigations—perhaps using the already existing Subcommittee to Combat Violence—and investigations by the Federal Police should be combined with federal prosecutions. CONANDA, or the federal prosecutors, may want to designate certain crimes, such as homicides of minors with the suspected involvement of police or organized death squads, as cases that automatically warrant federal investigation.

- **Federal prosecution**

The federal Congress should enact legislation creating a new federal crime punishing the organization of and participation in groups, either legal or illicit, which carry out homicides of minors. This legislation would be in keeping with the Constitution's guarantee that children and adolescents be considered a national priority and would allow for investigations that could cut through the inefficiencies and local biases that doom many state-level investigations into the homicides of adolescents. A law punishing the organized homicides of minors could be combined with other human rights legislation proposed by Americas Watch concerning federal prohibitions against human rights abuses committed by state and federal police officers.<sup>4</sup> This federal legislation would not preempt or supersede local prosecutorial responsibility; instead it would allow for prosecution of individuals who were not convicted in state courts after the federal Procurador Geral made showing that the state investigation and prosecution was not done in good faith, or failed to protect the rights of the victims or their families to see justice done.

- **Federal witness protection program**

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<sup>4</sup> For more details see, Americas Watch, *The Killings in Candelária and Vigário Geral: The Urgent Need to Police the Brazilian Police*, (New York: Human Rights Watch, November 1993), vol. 5, no. 11.

In addition to witness protection programs at the state level, the Federal government should establish an adequately funded and staffed protection program at the national level. This system could be used when the state protection programs are inadequate or when threats against witnesses are serious enough to warrant relocation to other parts of the country.

- **National registration and oversight of private security firms**

Death squad activity is closely related to the actions of private security firms, and the participation of off-duty police moonlighting in these companies. As a result, all private security firms should be required to register with the state and national government and the Federal Police should monitor and investigate all allegations of crimes or illegal activity on the part of these companies. Particular attention should be given to frequent inspections to determine to whether companies are hiring individuals with criminal records and whether the weapons used by the firms are legally owned and properly registered.

- **Legislation modifying the appointment of assistants to the prosecution**

One of the ways in which Brazilian activists have pressured for prosecutions in homicides of minors is by acting, when they have the consent of the families of victims, as assistants to the prosecution (assistentes do Ministério Público). However, when the victims of violence are children with no known family members, this step is impossible. As a result, legislation should be passed empowering children's rights organizations, or organizations that have provided shelter and care to children without active families, to act as assistants to the prosecution.

- **Legislation making the organization and participation in death squads non-bailable**

Impunity for those who participate in death squads is fueled by the fact that they are frequently free on bail while responding to criminal charges and are thus able to intimidate witnesses. Charges of participation in death squads or their organization and financing, when based on probable cause, should be made non-bailable. There should also be active prosecutions resulting in the tolling of the statute of limitations, so that these crimes do not go unpunished because of unwarranted delays.

- **Federal prosecution of state governments for violation of the ECA**

In cooperation with state-level prosecutors, federal prosecutors should

consider action against state governments that have shown a pattern of disregarding or violating the children's rights legislation, especially the provisions regarding the protection of minors from violence, the measures to be applied to adolescent criminals, and whether state governments have established the *Conselhos Tutelares* and *Conselhos dos Direitos da Criança e do Adolescente*.

- **International assistance to reform justice and police systems**

The international community, primarily through international financial institutions such as the World Bank, could assist Brazil with the fight against violence by funding programs to improve the police, prosecutorial and judicial systems. Particular attention should go to establishing a nation-wide system of monitoring violence against minors and of evaluating the institutional response of the police and judiciary. This system could maintain accurate records of such crucial information as the number of reported homicides of minors, police investigations successfully concluded, arrest warrants issued, and suspects convicted or acquitted. Funds could also be targeted to assist several of the reforms suggested by Americas Watch, such as witness protection programs and special police commissions designated to investigate violence against minors. These funds should, furthermore, be dependent upon actual improvements and should be terminated if measurable results—such as decreasing homicide rates or increased rates of convictions for murderers of minors—are not achieved.

**Steps to be Enacted at the State Level:**

- **Prompt investigation and prosecution of homicides of minors**

All cases of homicides of children and adolescents should be investigated and prosecuted as quickly and thoroughly as possible. A crucial element fueling impunity is the lack of speedy investigations and arrests. This lack of response on the part of the police both convinces death squad members that they will not be punished for the homicides of minors and signals to witnesses of these crimes that there is little use in speaking publicly about what they have seen. Rapid and thorough initial police investigations can significantly reduce these two perceptions.

- **The creation of special commissions to investigate violence against minors**

In order to speed investigations into the homicides of minors, all Brazilian states should create centralized commissions, comprising

representatives of the military and civil police and public prosecutors, to handle investigations. These commissions should report directly to the state Governor or to the Minister of Justice, and all relevant branches of the police and judicial system should be ordered to cooperate with their investigations. Centralizing investigations in this manner, and creating independent commissions, could significantly cut through the local-level complicity, omission and bureaucratic lethargy which frequently frustrates successful investigations into the deaths of minors.

Beyond the investigations themselves, these commissions could also serve to collect all information regarding the killing of minors and the arrests and prosecutions of those responsible. The commissions could also, as has occurred in Rio de Janeiro, function as a center to receive anonymous denunciations of death squad activity. Centralizing the collection of information about homicides of minors could serve both to more clearly define exactly who the victims are and why they are killed, and to show how the police and judicial systems are responding or failing to respond to these crimes.

A crucial component of such commissions is full political backing by the top levels of the state government. As the case in Espírito Santo shows, the mere creation of such commissions, if they are not then adequately staffed, funded and supported by the top levels of the state government, may have only limited effects.

- **Increased support to the Homicide Divisions of the Civil Police**

The creation of special commissions should not be seen as a substitute for adequate funding and staffing of basic police investigations. Americas Watch recommends in particular that special divisions within the Homicide Division of the civil police be established—as is presently the case in São Paulo—to focus on the assassinations of minors. These divisions, to prove effective, must also be allocated sufficient personnel and resources.

- **Modification of the military justice system**

One of the important contributing factors to impunity for police killings of minors is that these cases are handled in a separate military justice system which is often overburdened, understaffed, and predisposed to accept the excuses of abusive policemen. Investigations into crimes committed by on-duty military police are also conducted by the force itself, with obvious problems concerning a lack of impartiality.

Two essential steps should be taken. First, cases of violence committed against civilians by military policemen should be tried in civilian courts. As of the

writing of this report, it appeared that the Federal government was set to act upon a legislative proposal first promulgated by São Paulo Congressman Hélio Bicudo and modify the legislation so that the intentional homicide (homicídio doloso) of a civilian would no longer be tried in military courts.

This is a welcome move, which is to be applauded. However, one of the crucial elements in police violence against adolescents—and civilians of any age—is precisely the issue of intentionality: military policemen who kill civilians often claim that they are doing so not intentionally but in self-defense. If investigations into these incidents, which are conducted by the military police themselves, accepted these allegations then many cases might never be transferred into the civilian courts. In addition, as the version of the law stands only intentional homicides would go to civilian courts, with all other types of police abuse of civilians tried before the military justice system. As a result, Americas Watch recommends that *all* crimes committed by military policemen against civilians be tried in civilian courts.<sup>5</sup>

Second, investigations into allegations of abuse by the military police should not, as is presently the case, be investigated by the same battalions to which the suspects belong. Such a system only invites abuse and bias in favor of the police. Instead, all allegations of crimes committed by the military police should be investigated by an entirely separate force such as the civil police. Barring this, the military police should, at a minimum, create a central and independent internal affairs division within the force, charged with investigating all allegations of crimes committed by military police both on and off-duty.

- **Creation of civilian police review panels**

In previous reports, Americas Watch has recommended that Brazilian states establish human rights councils with formal investigatory and reporting powers, and composed of representatives of the government and non-governmental human rights organizations.<sup>6</sup> These councils could establish special police review panels to oversee the police and receive complaints from

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<sup>5</sup> This is not to argue that the military justice system should be abolished entirely. Clearly there are some issues involving internal police matters—such as insubordination or indiscipline—which it should still address.

<sup>6</sup> Americas Watch, *The Killings in Candelária and Vigário Geral: the Urgent Need to Police the Brazilian Police*, p. 6.

civilians against individual police officers. Complaints could be passed on to the prosecutors and the internal affairs division of the police for appropriate action, and the police review panel could also issue regular periodic reports on the status of police practices.

- **Administrative dismissal of abusive policemen**

Notoriously abusive policemen should be removed administratively from the force or, at the very least, suspended from active duty until criminal charges against them have been resolved. The present pattern of waiting for the outcome of the lengthy process in the military justice system before taking administrative steps should be immediately suspended. Another similar step is to ensure that military policemen who have been accused of violence against minors, or of other crimes, are not promoted until the investigations into these allegations are complete. The practice of promoting notoriously abusive policemen against whom charges are still pending, as has occurred in São Paulo, should be recognized for what it really is: rewarding illegal violence.

- **Increased attention to discipline within the military police and expanded efforts to combat corruption**

The participation of members of the military police in death squads during their off-duty hours could be significantly curbed if more attention were paid to police involvement in corruption and if regulations concerning proper conduct towards civilians were adequately enforced. Americas Watch received repeated testimony, for example, about the military police beating, harassing, and even extorting money from street children. It is easy to see how official tolerance of these abuses may lead policemen to feel that they will not be punished for torturing or murdering of minors.

Investigations have also shown that police involvement in death squads is often the result of revenge operations for the killing of police officers, or police investigations into crime, in particular theft and drug-dealing, and the corresponding problems of corruption. As investigations into the Vigário Geral killings have made clear, if police commanders are attentive to signals such as policemen living far beyond their salaries or policemen frequently carrying out operations without orders or out of their areas of jurisdiction, much police involvement in corruption and death squads could be stopped while in its incipient stages. In the most obvious case, the military police forces must develop more effective methods of maintaining information on criminal charges pending against policemen for crimes they may be accused of committing during their off-

duty hours.

- **Protection of witnesses**

A crucial element which perpetuates the pattern of impunity for those who kill minors is the fear of witnesses to testify. Witness protection programs, when they do exist, are inadequate and inefficient. In order to break through the "law of silence" which fear produces, all states should create witness protection programs. These programs should ideally be run and staffed by special units within the civil police and representatives of the state Ministry of Public Security to ensure the independence and impartiality of those who protect witnesses.

Special procedures should also be considered to speed investigations and protect witnesses from retaliation. Though Americas Watch opposes the use of anonymous witnesses, it is clear that steps must be taken to ease and speed the process of testifying in the lengthy police investigations and trials. Creative use could be made of videotaped or recorded testimony, minimizing the number of times that witnesses must appear before the police or in court.

- **The urgent establishment of the Conselhos Tutelares and Conselhos dos Direitos da Criança e do Adolescente**

If properly established and funded, the municipal-level Conselhos Tutelares and the state-level Conselhos de Direitos da Criança e do Adolescente, both called for by the Estatuto da Criança e do Adolescente (ECA), could be very useful in protecting minors from violence and ensuring that their rights are respected. Unfortunately, these councils, when they exist, are often caught in local partisan politics and conflicts over political influence and resources. Many municipalities have not even created the councils, though the ECA has been in effect for over three years.

All state and municipal governments should make it an immediate priority to establish the councils, adequately fund them, conduct elections for the members of the Conselhos Tutelares, and empower the councils to supervise and oversee all matters affecting children and adolescents, as specified in the legislation.

- **Redoubled prosecution by the Ministério Público of abusive or negligent government agencies**

One of the crucial ways in which state governments can be prodded into acting on issues affecting children and adolescents and held accountable for their failure to protect minors from violence is through the activism of the state's



prosecutors. The great degree of independence of the state level **Ministério Público** (somewhat analogous to the Attorney General's office in the United States) enables this office, if it deems necessary, to bring suit against abusive government agencies or against the state governor.

In several cases mentioned in this report—in São Paulo and the Distrito Federal, both with regard to poor conditions at juvenile detention facilities—the **Ministério Público** has brought legal action against the state governments thus focusing greater attention on the abuse of the rights of minors. This sort of activism should be encouraged and all state **Ministérios Públicos** should be attentive to their duty to take appropriate action against government agencies that fail to comply with the law. The state prosecutors should continue to examine whether the state governments are complying with the ECA children's legislation, particularly its provisions protecting minors from violence, police procedures that deal with juvenile suspects, and measures taken to deal with adolescent criminals. Prosecutors could also set a time limit by which state and municipal governments must establish the councils called for by the ECA or be prosecuted for failure to comply with the law.

• **Reform of the juvenile detention system**

The lack of adequate and humane facilities for juvenile offenders is another crucial element that fuels violence against minors. Because of the inefficiencies of the juvenile detention system and frequent escapes from these facilities, the public often believes that juvenile criminals are never punished. Simultaneously, poor conditions in the facilities, the beating and abuse of adolescent inmates, and the indiscriminate housing of violent offenders with those who have committed less serious abuses, promotes increased recidivism and juvenile crime.

Thus juvenile detention facilities must be immediately and drastically overhauled. The provisions of the children's legislation, which call for decentralized small-scale detention facilities and alternative sentencing for less serious offenders, should be instituted as soon as possible, and the mistreatment and abuse that occurs in juvenile detention facilities must be stopped immediately.