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Dear Governor Alckmin and Attorney General Elias Rosa,

I am writing to share with you our concerns regarding obstacles to police accountability for unlawful killings in São Paulo state. In a December 2009 report, *Lethal Force: Police Violence and Public Security in Rio de Janeiro and São Paulo*, Human Rights Watch documented how legitimate efforts to curb violent crime in São Paulo were undercut by police officers who misreported executions and manipulated crime scenes to hinder investigations into these crimes.

Since that time, we have conducted an in-depth review of the case files of scores of killings committed by police in São Paulo state. We have also carried out interviews on the issue with government officials, state and federal prosecutors, police officers, public security experts, civil society organizations, and family members of people killed by police. In addition, we have analyzed the content and implementation of reforms passed by your administration aimed at curbing police abuses, as well as other relevant data on homicides.

Human Rights Watch is encouraged by statistics that point to a significant decline in the homicide rate in São Paulo state over the past decade, which has fallen by 63 percent in the state and by 80 percent in the capital city since 2000.¹ Also encouraging is the fact

¹2: The New Patterns of Violent Homicide in Brazil,” Sangari Institute, cia.org.br/pdf2012/mapa2012_web.pdf (accessed July 24, 2013).

that police killings in the state decreased by approximately 34 percent during the first six months of 2013 from the same period in 2012.² Nevertheless, police killings remain alarmingly high in São Paulo: averaging six killings per week in the first semester of 2013.³

In addition, we recognize that the São Paulo government has taken positive steps to reduce unlawful police killings and cover-ups, such as the enactment in January 2013 of a new policy requiring that police involved in shootings immediately contact emergency response teams rather than transport victims to hospitals themselves. Similarly positive is the fact that state government officials have repeatedly condemned police abuses and pledged to punish officers who commit them.

We also understand that police officers in São Paulo often face real threats of violence, and undoubtedly certain killings reported by police are the result of the legitimate use of force. Under international and domestic law, law enforcement officials may only intentionally use lethal force in self-defense or defense of others when strictly necessary in order to protect life.⁴ However, evidence gathered by Human Rights Watch strongly suggests that—in spite of declining homicide rates in São Paulo and important accountability measures implemented by the state government—police misreporting and other forms of cover-up are a serious problem in the state.

If, as this letter will recommend, the reforms passed by the São Paulo government are fully implemented, rigorously enforced, and complemented by effective prosecutions of police who carry out unlawful killings, we believe they can play a significant role in preventing executions and make it harder for police officers to cover up these crimes. This, in turn, will improve the professionalism and accountability of the state's police forces, which is critical to strengthening public security.

False Accounts of “Resistance” Killings

Misreporting of unlawful killings by police remains a very serious problem, according to the Brazilian criminal justice officials and public security experts who spoke to

² “Trimester Statistics,” São Paulo State Public Security Secretariat, <http://www.ssp.sp.gov.br/estatistica/trimestrais.aspx> (accessed July 25, 2013).

³ *Ibid.*

⁴ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990); United Nations Code of Conduct for Law Enforcement Officials, adopted December 17, 1979, G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979); Joint Ordinance No. 4.226, adopted by the Brazilian Ministry of Justice and Ministry of Human Rights, Brasilia, 31 December 2010; Resolution 8/2012, adopted by the Human Rights Defense Council of the Ministry of Human Rights, Brasilia, December 20, 2012. Brazil has the obligation to prevent and punish both extrajudicial executions by its police forces and deaths produced by the excessive use of force. Force used by law enforcement officers is considered excessive when it contravenes the principles of absolute necessity or proportionality.

Human Rights Watch in recent months. Since July 2012, Human Rights Watch examined 22 police killings from 2010, 2011, and 2012 in which the available evidence casts serious doubt on claims by police that the use of lethal force was justified. In researching the cases, we interviewed prosecutors, public defenders, and family members of the victims, analyzed police investigations, and examined official autopsy reports and hospital records.

In November 2011, for example, police reported shooting two minors, Douglas Silva and Felipe Macedo Pontes, in self-defense in São Bernardo do Campo. However, three witnesses gave formal statements to the São Paulo State Police Ombudsman and the Civil Police Homicide Investigation Department (DHPP) that the minors were unarmed and the police in fact shot them, unprovoked. Then, according to one of the witnesses, the officers threw the minors into a police vehicle as one of them pleaded for his life. A fourth witness told DHPP investigators that he arrived at the scene and found Silva, unarmed and wounded, in police custody. The witness said Silva begged him to “call his mother and [her] neighbors because the police were going to kill him.” Silva’s official autopsy report shows five gunshot wounds, including one in his lower back that struck his left lung. The police investigation into the shootings was still ongoing at this writing.

More recently, César Dias de Oliveira and Ricardo Tavares da Silva were fatally shot by police officers in July 2012 in São Paulo city. The officers involved in the shooting reported the deaths as “resistance” killings following a motorcycle chase and shootout, yet two witnesses provided official testimony that there had been no shootout. One of the witnesses stated that police shot into the air while calling the Military Police Operations Center (COPOM), appearing to fake a fire. Witnesses also told investigators that they saw police place Oliveira—who was wounded in the leg and pleading for his life—into their police vehicle. He arrived at the hospital dead, with two bullet wounds in the chest, according to his official autopsy report.

Of particular concern is the record of the Rondas Ostensivas Tobias de Aguiar (ROTA) shock troop contingent.⁵ In 2010, 2011, and 2012, police from the ROTA killed 247 people in “resistance” incidents in the state, while only injuring 12 people.⁶ The much higher number of people killed raises doubts as to whether police exhausted non-lethal measures before using lethal force. Also, while it is positive that no on-duty police were killed during these episodes, this raises serious questions about whether the use of lethal force was always necessary.

⁵ The São Paulo Shock Police Command is a special operational branch of the state military police containing the Rondas Ostensivas Tobias de Aguiar (ROTA), a rapid reaction police unit designed to respond in very short time frames to emergencies and high-risk situations.

⁶ “Monitoring of Lethal Operations Involving Military Police Officers of the Shock Police Command of the São Paulo State Military Police,” São Paulo State Police Ombudsman’s Office, January 2, 2013. On file with Human Rights Watch.

In one episode, ROTA police reported six “resistance” killings following an “intense shootout” at a supermarket in Taipas in August 2011. However, a video from the time of the shooting shows the police officers at the supermarket pointing to a surveillance camera and then turning it away from the storage room where the alleged shootout occurred. Photographs of the six suspects who were killed indicate that they were shot multiple times in the head, back, and nape of the neck, according to the respected Brazilian daily, *Folha de São Paulo*.⁷

In another case, a ROTA police officer reported killing Caio Bruno Paiva in a “resistance” episode in Itaim Paulista in November 2011. Yet a witness attested in a formal statement at the São Paulo State Ombudsman’s office that the officer shot Paiva, unarmed, at point-blank range as he professed his innocence. Other witnesses told the press that the officer fired into the air while calling COPOM, another example where evidence suggests that an officer faked a shootout.

False Rescues and Other Forms of Police Cover-up

In addition to offering false reports of shootouts, police at times engage in other forms of cover-up, according to criminal justice officials and cases analyzed recently by Human Rights Watch.

One cover-up technique in police killings is the false “rescue”: police take the corpses of their execution victims to hospitals in order to destroy crime scene evidence under the false pretext of attempting to rescue them. In 20 of the 22 cases Human Rights Watch looked into, the available evidence suggests that police officers involved in alleged “resistance” shootings removed victims from crime scenes and delivered them to hospitals in what they claimed were “rescue” attempts. Not one of the 20 “rescued” victims survived. In addition, police sometimes also remove or fail to preserve victims’ clothing, which hinders subsequent forensic analysis.

A well-publicized example of a false rescue involved the killing of Dileone Aquino at a cemetery in Ferraz de Vasconcelos in March 2011. Police claimed Aquino was a suspected car robber who was wounded in a shootout following a car chase, and that officers had rushed him to a hospital to attend to his injuries. However, a witness reported to COPOM that she saw police drag Aquino from a police vehicle and shoot him at point blank range. When the witness asked one of the police officers whether he had shot Aquino, the officer claimed to be “rescuing” him. The police incident report on the shooting states that Aquino “was given first aid at the hospital but ultimately succumbed to his injuries,” and “there were no indications of irregularities and no doubt as to the legality of the [police] officers’ actions.” The two

⁷ “ROTA suspected of ambush to send a 'message' to robbers in SP” (Rota é suspeita de emboscada para dar 'recado' a ladrões em SP), *Folha de São Paulo*, August 23, 2011, <http://www1.folha.uol.com.br/cotidiano/963926-rota-e-suspeita-de-emboscada-para-dar-recado-a-ladros-em-sp.shtml> (accessed April 22, 2013).

officers involved were acquitted of aggravated homicide charges on May 23, 2013, but the public prosecutor in the case told reporters that he intends to appeal the decision.

Human Rights Watch was able to obtain hospital or official autopsy records for victims in 12 of the 22 police killings recently analyzed. In 11 of these cases, the victims' clothing had been removed and discarded before their bodies were delivered to the Forensic Medical Institute (IML) for forensic analysis. Based on these records, it was not possible to determine whether the clothes were discarded before a victim's body was taken to the hospital, during transport, or after the victim arrived (perhaps by hospital staff). Regardless, the failure to safeguard victims' clothing deprives forensic investigators of a key form of evidence.

Forensic and civil police investigators interviewed by Human Rights Watch stated that gunshot residue patterns on victims' clothing can shed light on whether the shots were fired at point-blank range (from a distance of less than 50 centimeters). However, they were unaware of any government directive or protocol to ensure that hospitals and the Forensic Medical Institute safeguard victims' clothing for forensic analysis. In fact, according to a September 2012 letter from the Forensic Medical Institute to the São Paulo Public Defenders' Human Rights Commission, when the body of a shooting victim is delivered to the Institute clothed, "the clothing that accompanies the body is described in an autopsy report and then discarded because it is dirty or deteriorating."⁸

In addition, Human Rights Watch found evidence that in some cases police continue to plant evidence on victims following police extrajudicial executions. In the case mentioned above of two minors killed by police in São Bernardo do Campo in November 2011, for instance, a witness reported in a formal statement to the Police Ombudsman's office that he saw a police officer put on plastic gloves, remove bullet casings from the ground, and place guns at the scene before the arrival of forensic experts. Similarly, in the case of César Dias de Oliveira and Ricardo Tavares da Silva—shot and killed by police on July 1, 2012—the public prosecutor was able to determine that police had planted "three guns [at the scene of the shooting] to create the false impression that the victims had been armed and dropped their guns during the shootout."

Steps to Address Police Cover-ups

The former attorney general of São Paulo state, Fernando Grella Vieira (now the State Secretary of Public Security), took an important step in June 2010 when he expanded the mandate of the **Special Task Force on Police Control (GECEP)**, a unit within the

⁸ Letter from the Forensic Medical Institute, No. 1051/2012, to the São Paulo Public Defenders' Human Rights Commission, September 17, 2012. On file with Human Rights Watch.

state prosecutor's office, instructing it to investigate alleged abuses committed by military police officers. (Previously the unit only had the mandate to investigate alleged abuses committed by the civil police.) Among other changes, the new mandate also called for the creation of a database of cases to help prosecutors identify patterns of police abuse.⁹ The creation of permanent units within state prosecutors' offices in São Paulo and Rio de Janeiro dedicated to systematically reviewing and leading investigations into killings by police officers was one of Human Rights Watch's main recommendations in the 2009 report, *Lethal Force*.

GECEP prosecutors have worked closely with police investigators to ensure that they have adequate infrastructure and sufficient staff, and in several police killing cases GECEP guaranteed that investigations have been opened and key evidence safeguarded. The unit has also produced comprehensive guidelines for the proper investigation of police killings, including the key pieces of evidence that civil police investigators should obtain immediately upon being assigned a case.¹⁰ For example, according to the guidelines, investigators should promptly seek out video recordings from the areas where shootings occurred, as well as audio records of calls from the cell phones and cars of the officers involved in the shootout.

Unfortunately, however, GECEP prosecutors cannot independently charge and prosecute police suspected of wrongdoing without the permission of the prosecutor designated by law (*promotor natural*) and the attorney general. The unit also lacks the resources and staff to thoroughly investigate and prosecute unlawful police killings committed in São Paulo city, such as sufficient investigators and support staff to conduct essential field research and analysis. Although initially the unit was supposed to have six prosecutors, GECEP currently has only three prosecutors.

⁹ Normative Act 650/2010-PGJ-CPJ, São Paulo State Prosecutors' Office (Ministério Público), June 18, 2010, http://biblioteca.mp.sp.gov.br/PHL_IMG/Atos/650.pdf (accessed February 20, 2013).

¹⁰ Commission on the Prison System and External Control of Police Activities of the São Paulo State Prosecutors' Office – Working Group: Combating Death Squads, Resistance Killings and Summary Executions, "13 points that every investigation of a resistance killing should have," May 27, 2012, available at http://www.mp.sp.gov.br/portal/page/portal/noticias/publicacao_noticias/Fotos/13%20pontos%20-%20cnmp.pdf (accessed April 12, 2013). The 13 points are: "1) Identify all of those involved, including their tax numbers and cellular phone numbers; 2) identify and interview all victims' family members; 3) obtain photographs of the victims' bodies through the Forensic Medical Institute (IML) and implement the Prosecutors Offices' Standard Operating Procedure vis-a-vis the Criminalistics Institute or IML in order to improve the quality of forensic tests; 4) obtain the criminal records of all of those involved; 5) obtain a copy or certificate of the military police's 'Hardcopy'; 6) obtain proof that the Copom operator accessed the military police's Data Processing System with regards to the victim's name and identification document number, including the password used; 7) obtain certificates regarding the bullets of the weapons used; 8) obtain the weapon's registration and owner's identification number or the Certidão do Prontuário if it mentions the weapons at issue; 9) identify the cellular phones or NEXTEL radios used by the police officers involved and registered in their names; 10) obtain a copy of the report of the Patrol Force Command (CFP) and a copy of the report of the Patrol Group Command (CGP); 11) obtain a copy of the Motorized Service Report; 12) in cases of violent confrontation, the competent authority must provide information about all audio communications between the police cars involved and between the police cars and Copom and Cepol within 30 days; and 13) the GECEP prosecutor shall quickly check the police incident report and facilitate the collection of evidence." Unofficial translation by Human Rights Watch.

GECEP prosecutors have not filed criminal charges against a single police officer in an unlawful killing case.¹¹

Moreover, problems with crime notification procedures undermine the ability of prosecutors to use their investigative and oversight powers to help investigate police executions and cover-ups. Federal and state prosecutors have unrestricted access to police precincts and any documents related to police activities, including investigations of “resistance” cases.¹² However, they are generally notified of police killings after 30 days have passed, which is the maximum time limit established by Brazil’s Criminal Code for police investigators to send their case files to justice officials.¹³ Often prosecutors do not find out about police killings until weeks after they have occurred, by which time key physical and testimonial evidence have been lost or compromised, according to several prosecutors who spoke with Human Rights Watch. Consequently, prosecutors usually rely entirely on investigations carried out by the police investigators without GECEP oversight, which are often inadequate.

In an encouraging effort, the former São Paulo State Police Ombudsman established a partnership with the State Attorney General’s Office in 2008 whereby the ombudsman provided early warnings about suspicious “resistance” killings, and the Attorney General assigned them to specific prosecutors for investigation and monitoring.¹⁴ During its implementation, this arrangement significantly reduced notification delays in some cases. However, most state prosecutors continued to learn about potential police abuse cases weeks after they occurred, limiting their ability to provide guidance to police on what types of evidence to seek in investigations. The partnership expired in February 2013, and an official from the Police Ombudsman’s Office told Human Rights Watch that steps have not been taken to renew it.

In another positive step, on January 7, 2013, the São Paulo Public Security Secretariat issued a new policy on the handling of police shooting victims. **Resolution SSP-05**

¹¹ In December 2012, Human Rights Watch reviewed 36 criminal charges filed by GECEP prosecutors from 2004 to 2011 against police officers for conspiracy, extortion, fraud, abuse of authority, illegal phone-tapping, unlawful home entry, and corruption, among other crimes. The review was conducted at the Mário Guimarães Criminal Court in São Paulo.

¹² Complementary Law No. 75, Art. 9, Office of the President, May 20, 1993, http://www.planalto.gov.br/ccivil_03/Leis/LCP/Lcp75.htm (accessed July 15, 2013); Complementary Law No. 734, Art. 103, São Paulo Legislative Assembly, November 26, 1993, <http://www.mp.sp.gov.br/portal/page/portal/estrutura/734.htm> (accessed July 15, 2013).

¹³ Criminal Procedure Code (Law 3.689), Office of the President, October 3, 1941, http://www.planalto.gov.br/ccivil_03/decreto-lei/del3689.htm (accessed April 1, 2013). According to Article 10 of the Criminal Procedure Code, police investigators must conclude their investigations and send them to the designated prosecutor within 10 days in cases where the police officers involved in the killings were preventively detained. If the police officers involved in the killings were not detained, investigators legally have 30 days to conclude their investigations and send a final report to the designated prosecutor.

¹⁴ Partnership Agreement between the Attorney General’s Office and the Police Ombudsman’s Office of São Paulo State, February 26, 2008. On file with Human Rights Watch.

requires the police to contact emergency response teams to provide assistance and treatment to injured victims, and prevents police from haphazardly removing victims from the locations where they were shot or otherwise injured.¹⁵ The resolution instructs military police to secure the locations of killings and immediately notify civil police authorities, who are charged with interviewing all persons involved. According to the new policy, forensic investigators must go to shooting sites immediately upon learning someone has been shot by police, and fatalities are to be officially recorded as “homicides resulting from police intervention,” rather than “resistance” killings.

In the days following the adoption of this new policy, some critics argued that police officers have a duty to provide assistance to shooting victims, and that the failure to do so would constitute a criminal omission. However, according to prosecutors and public security experts in São Paulo interviewed by Human Rights Watch, police who immediately call emergency response teams and paramedics to assist victims at shooting sites fulfill their duty to assist victims and cannot be held liable for omission. Moreover, the new policy is in line with local practice regarding most car accidents: police rescuers provide, at most, first aid in cases of grave injury, but do not move victims from the scene prior to the arrival of medical professionals.

Critics of the resolution also said that police officers are best placed to provide speedy transportation for shooting victims to a hospital in order to save their lives. Yet existing evidence suggests that the police’s track record in saving the lives of persons shot in “resistance” episodes is very poor. Human Rights Watch analyzed all of the São Paulo Homicide Investigation Unit’s (DHPP) police reports of “resistance” killings in São Paulo city in 2012.¹⁶ During 317 “resistance” killing incidents involving on and off-duty civil and military police officers between January 2 and December 31, 2012, police transported 379 people to hospitals. Of these, 360 (or approximately 95%) ultimately died, according to the police reports.

On May 14, 2013, a São Paulo state first instance court partly suspended Resolution SSP-05 pending trial, arguing that “crime scene preservation is secondary to the right to life.”¹⁷ However, the following day, the president of the São Paulo Court of Justice granted an injunction to ensure the implementation of Resolution SSP-05 while the legal challenge against it was pending before the courts. The decision noted that the resolution did not prohibit the police from rescuing shooting victims

¹⁵ Resolution SSP-05/2013, São Paulo State Prosecutors’ Office (Ministério Público), January 7, 2013, http://www.mp.sp.gov.br/portal/page/portal/noticias/publicacao_noticias/2013/janeiro_2013/2013%2001%2016%20Resolu%C3%A7%C3%A3o%205%202013%20D.O.E_0.doc (accessed February 29, 2013).

¹⁶ Human Rights Watch obtained copies of the São Paulo Homicide Investigation Unit’s (DHPP) police reports of “resistance” killings that occurred in São Paulo city in 2012 from Álvaro Magalhaes, reporter at the *Diário de São Paulo*.

¹⁷ Civil case 0015107-71.2013.8.26.0053, São Paulo 4th Court of the Central Public Treasury, May 14, 2013. The quoted excerpt is from Judge Marco Pimentel Tamassia’s decision, which suspended Article I, Paragraph 3 of Resolution SSP-05.

when emergency medical services were not available, and highlighted that police killings in the state decreased after the resolution went into effect.

On May 16, 2013, the São Paulo Military Police command issued a revised Standard Operating Procedure (POP) on the resolution stating that police officers may remove shooting victims from crime scenes only in two circumstances: first, in the absence of emergency health services; and second, with the express authorization of COPOM in cases in which the emergency response time is “inadequate.”¹⁸ The revised procedure also emphasizes that police should not remove shooting victims who display “clear signs of death” from crime scenes and must take all the necessary steps to preserve forensic evidence.

The first instance court that initially suspended parts of the resolution archived the case on June 4, 2013. As a result, the resolution is currently in full force.

Recommendations for Next Steps

One of the most effective ways to address the serious problem of misreporting of extrajudicial executions as lawful killings—and to deter future abuses—is to make certain that police officers who break the law are brought to justice. And the key to holding police accountable is to conduct prompt and impartial investigations into cases of police violence. To this end, we urge the São Paulo government and the State Attorney General’s Office to pursue the following concrete measures:

Military Police

- Ensure that military police officers involved in shootings secure the shooting sites and immediately notify civil police authorities and emergency response teams, in accordance with Resolution SSP-05 and the Standard Operating Procedure dated May 16, 2013. Officers who remove shooting victims from crime scenes under circumstances not expressly allowed by the resolution should be appropriately sanctioned.

Civil Police

- Ensure that civil police officers thoroughly investigate police killings according to the guidelines issued by the Special Task Force on Police Control (GECEP) of the São Paulo State Attorney General’s Office.
- Work with the State Attorney General’s Office to create a formal, statewide notification system whereby all prosecutors, including those at GECEP, are notified about police killings committed in their jurisdiction immediately after they occur.

Forensic Police and Public Health Authorities

¹⁸ Standard Operating Procedure (POP), São Paulo State Public Security Secretariat, May 16, 2013.

- Issue a clear protocol to ensure that hospitals and the Forensic Medical Institute secure the clothing of gunshot victims for forensic analysis. Relevant medical personnel should be trained to safeguard forensic evidence.

State Attorney General's Office

- Ensure that prosecutors rigorously monitor the civil police investigations of police killings immediately after they occur.
- Equip GECEP with sufficient staff and resources to ensure that investigations of police killings are properly conducted, as well as to analyze patterns of abuse (in particular, to identify police battalions with track records of human rights violations).
- Create a special team of investigators reporting exclusively to GECEP, who, together with the unit's prosecutors, have unrestricted access to information related the civil police's investigations of police killings.
- In cases where GECEP finds evidence that suggests police committed unlawful killings or cover-ups, ensure that officers suspected of involvement are effectively prosecuted.

In closing, I would like to reiterate Human Rights Watch's support for the São Paulo government's recent efforts—both from the Governor's Office and the State Attorney General's Office—to improve the performance and accountability of the São Paulo police forces. We believe that, if taken, the steps outlined above to end unlawful killings, cover-ups, and impunity for such abuses, will further advance the goals of professionalizing São Paulo state's police and improving public security.

Sincerely,



José Miguel Vivanco

CC:

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 Fernando Haddad, São Paulo city mayor
 Giovanni Guido Cerri, São Paulo state health secretary
 José de Filippi Junior, São Paulo city health secretary
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