

**DEMOCRATIC CONSOLIDATION
AND HUMAN RIGHTS IN BRAZIL**

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ABSTRACT

Thirteen years ago the authoritarian regime in Brazil came to an end and the civilian transition government was installed. Three years later the Constitution of 1988 was promulgated with the most comprehensive and specific bill of rights in Brazilian political history. Today, despite the democratic guarantees in effect since then, the country is still ravaged by systemic violence in which the arbitrary actions of State institutions are combined with high rates of violent criminality, organized crime, intense physical aggression in conflicts among citizens, and a climate of generalized impunity. This paper evaluates the improvements in terms of political and civil rights that democratization has brought to Brazil as well as the serious problems that remain. The author raises the issue of the links between violence and economic and social inequality and examines the actual practice of the institutions that are supposed to apply the rule of law equally to all citizens—the police, the judicial system, and prisons. In conclusion he comments on the important roles of both civil society and the state in raising awareness of and upholding human rights.

RESUMEN

Hace trece años el régimen autoritario en Brasil llegaba a su fin y asumía el gobierno civil de transición. Tres años más tarde se promulgó la Constitución de 1988 con la declaración de derechos más comprehensiva y específica de la historia política brasileña. Hoy, a pesar de las garantías democráticas vigentes desde entonces, el país continúa siendo devastado por una violencia sistemática en la que las acciones arbitrarias de las instituciones del Estado se combinan con altas tasas de criminalidad violenta, crimen organizado, intensa agresión física en los conflictos entre los ciudadanos y un clima de impunidad generalizada. Este artículo evalúa las mejoras que la democratización ha traído a Brasil en términos de derechos sociales y políticos así como los serios problemas que aún persisten. El autor señala los vínculos entre la violencia y la desigualdad económica y social y examina la actual práctica de las instituciones que, se supone, deberían aplicar el imperio de la ley igualmente a todos los ciudadanos: la policía, el sistema judicial y las prisiones. Concluyendo, el autor comenta sobre los importantes roles tanto de la sociedad civil como del estado en la concientización y la defensa de los derechos human

For Severo Gomes

Thirteen years ago the authoritarian regime in Brazil came to an end and the civilian transition government was installed. Three years later the Constitution of 1988 was promulgated with the most comprehensive and specific bill of rights in Brazilian political history. Today, despite the democratic guarantees in effect since then, the country is still ravaged by systemic violence in which the arbitrary actions of State institutions are combined with high rates of violent criminality, organized crime, intense physical aggression in conflicts among citizens, and a climate of generalized impunity.

This endemic violence, embedded in a profoundly asymmetrical system of social relations,¹ is not a new phenomenon in Brazil: it is the continuation of a lengthy tradition of the authoritarian practices of elites against 'nonelites' and class interactions. These social relations were concealed by the repression and censorship imposed by the military governments. The formal political configuration of democracy created conditions for expressions of protest, and serious social and economic conflicts could be aired with greater freedom. Despite the return to democratic constitutionalism, however, these movements confronted the survival of old arbitrary practices that had always restrained any attempts at autonomous protest in society.

There is a fundamental difference between the present and past with respect to human rights violations: the State does not organize or directly coordinate acts of illegal violence as it did during the dictatorship—even though many of its agents continue to commit abuses. Nonetheless, as the painful personal testimonies selected by Gilberto Dimenstein in a recent study² show, the serious human rights violations that occurred during the democratic periods before 1964 (when there was practically no awareness of the issue of human rights, despite the Universal Declaration of Human Rights of 1948) and during the military dictatorship persist in the current democratic regime. The political opposition is no longer persecuted, but the poor, the nonwhite, residents of urban peripheries, racial minorities, groups discriminated against because of their sexual orientation, labor union or human rights

¹ The classic leading study on the subtleties of the Brazilian social hierarchy is, of course, Roberto Da Matta's *Carnavais, malandros e heróis* (Rio de Janeiro: Zahar, 1978).

² Gilberto Dimenstein, *Democracia em pedaços: Direitos humanos no Brasil* (São Paulo: Companhia das Letras, 1996); a Portuguese version of this paper introduces the volume.

activists, indigenous groups, and children and adolescents continue to be the most likely victims of violence and crime, as they have been throughout Brazil's history.

If in democracy the State no longer organizes parallel and illegal coercion, its responsibility now lies in enforcement, impeding illegal repressive practices by State agencies

and thwarting the impunity of these crimes as well as those committed by private citizens. While the various post-1985 democratic administrations have not deliberately perpetrated violence, they have demonstrated a marked inability to control it and singular incapacity to reduce criminal practices and guarantee social peace.

According to international law, the primary responsibility for guaranteeing human rights falls to national States. The fact that in Brazil's federal system the control of public order, judicial administration, and the penitentiary system is in almost all cases under the jurisdiction of the states is not a justification for inaction or omission. Since it fully joined the international legal system for the protection of human rights, the Brazilian government has often faced the paradox of having the responsibility but not the means to act.³ This is especially evident when the inaction by state authorities directly responsible for the control of violence (military as well as civilian police are under the authority of the governors) appears to tolerate, if not actually incite, these criminal actions.

In contrast to the failure of authorities in almost all the states, federal administrations have progressed in recognizing the need to create respect for the rule of law and for the international legal norms for human rights, although a great deal remains to be accomplished. This progress at the federal level only began in the 1990s, largely due to pressure exerted by national and international nongovernmental organizations (NGOs) to respect the obligations assumed by Brazil's adherence to the principal instruments for international protection of human rights.⁴

Despite these positive changes in the political and legal frameworks, the failure to effectively control illegal violence remains evident: torture of suspects and criminals in police precincts, maltreatment of prisoners and individuals confined in state institutions, deliberate executions by the military police, and death squads operating with the participation of State officials. Underlying these repeated

³ José Augusto Lindgren Alves, *Os direitos humanos como tema global* (São Paulo: Perspectiva, 1994), 110.

⁴ All the principal texts of international human rights law (to which the military governments did not adhere) have been ratified in the 1990s and enacted in domestic legislation as established by the Constitution. These include (by treaty and date): the Interamerican Convention to Prevent and Punish Torture (1989); the Convention on the Rights of Children (1990); the International Covenant on Economic, Social, and Cultural Rights, the International Covenant on Civil and Political Rights, and the American Convention on Human Rights (1992); the Convention against Torture and Other Cruel and Degrading Treatment or Punishment (1993).

violations is impunity ensured by government inefficiency and inaction, especially at the state level. This failure to implement the law weakens constitutional guarantees, perpetuates the illegal cycle of violence, and undermines efforts to strengthen the legitimacy of the democratic government as a promoter of citizenship.

I. Democratic Consolidation and Human Rights

The present conjuncture of democratic consolidation, understood as continuous attention to a minimal list of prerequisites—such as freedom of opinion, expression, association, and organization, free and competitive elections, rotation in power, mechanisms of government accountability, the ability of social movements to participate openly in the public sphere, and State commitment to the protection of human rights—constitutes a privileged moment to understand the persistence of authoritarian practices. We should distinguish among three types of rights: 1) political rights—political participation, the expression of popular will in electoral processes, political institutions and accountability; 2) civil rights—where the worst human rights violations are perpetrated; and 3) social and economic rights. These sets of rights are indivisible, as the Vienna Declaration and Program of Action reaffirmed.⁵ This is not merely an argument about doctrine; rather, there is an effective interdependence among the varied elements of these clusters of rights: freedom to organize and construct solidarity; distribution of economic resources and power and the pacification of society; access to information and control of elites by ‘nonelites’; education and the judiciary. Though we distinguish among groups of rights for the sake of analysis, the connections among them are numerous. In this study the emphasis is placed on civil and political rights. We mention relationships between inequality and violence simply to better understand the Brazilian context.

1. Political Rights

There is a commonsense tendency to assume that political institutions are consolidated and that problems persist only in the sphere of civil, social, and

⁵ According to article 5 of the Declaration: “All human rights are universal, indivisible, interdependent and related. The international community should treat human rights globally in an equitable and just form, on equal footing and with the same emphasis.” See “Declaração e Programa de Ação de Viena” (adopted consensually in plenary

economic rights. As we shall see, not even the democratic institutions for political representation and for the exercise of the monopoly of legitimate physical force, such as the police and the judiciary, meet the minimum requirements of formal democracy.⁶ The political institutions for citizen representation were designed by the authoritarian regime with the purpose of limiting the power of urban and more populous areas, and many of these limitations were preserved in the 1988 Constitution.⁷

In Brazil post-1988 there was an effective change of regime; yet several elements of the dictatorship endure, even though the configuration of the groups in power became broader and more complex with the participation of representatives of new social groups and political parties committed to human rights, such as the PSDB (Social Democrats) on the federal, state, and municipal level, and the PT (Workers' Party) in two state governments and in several municipal governments. Compared with the authoritarian continuities of other consolidation processes,⁸ what stands out is the preservation of political leaders from the military governments as governors, ministers, and political representatives tied to the political oligarchies.⁹ Many of these state leaders respond to serious human rights violations, if at all, by whitewashing them. The democratic regime is burdened by practices of political groups and political structures rooted in the dictatorship, creating a system of government marked by continuity. It is different from the authoritarian regime that preceded it but incapable of fulfilling the prerequisites of formal democracy. If the

by the World Conference on Human Rights on 25 June 1995) in Alves, op. cit. n. 3, 153.

⁶ I use 'formal' here in the sense employed by Agnes Heller, "On Formal Democracy" in John Keane, *Civil Society and the State* (London: Verso, 1988), 136–38. For Heller the constituent elements of formal democracy include the guarantee of civil liberties (human rights), pluralism, the contract system, and the principle of representation.

⁷ Freedom House, on a scale of one to seven, designated Brazil a three for political rights and four for civil rights, a nearly equal assessment of the two groups of rights, situating Brazil in the category of 'partially free.' See Freedom House Survey Team, *Freedom in the World: The Annual Survey of Political Rights and Civil Liberties—1993–94* (Washington: Freedom House, 1994), 163. Despite disputes over the criteria for this classification, the question lists proposed for the evaluation of the two groups of rights are a useful instrument for comparison of respect for human rights. See Joseph E. Ryan, "The Comparative Survey of Freedom—1993–94: Survey Methodology" in *Freedom in the World*, 671–76.

⁸ Guillermo O'Donnell addresses this in his seminal essay, "Transições, continuidade e alguns paradoxos" in Fábio Wanderley Reis and Guillermo O'Donnell, eds., *A democracia no Brasil. Dilemas e perspectivas* (São Paulo: Vértice, 1988), 41–71.

⁹ Carmen Kozaj and Márcia do Carmo, "PFL, um projeto de poder perpétuo," *Jornal do Brasil* (26 February 1995).

populist democracy, the military regime, and the current postdictatorship civilian democratic regime, as well as the elected state and federal governments, are considered from a human rights perspective, with the exception of the end of political repression, there are many more common attributes than differences. Given the absence of radical change in the sphere of citizenship, the continued climate of corruption, the worsening of human rights violations, and ongoing impunity, the authoritarian regime (1964–85) and the constitutional regime of 1988, leading to civilian transition and elected governments, were differentiated expressions of the same structure of domination based on hierarchy, discrimination, impunity, and social exclusion.¹⁰

Clientelism and Electoral Super-Representation

One of the most surprising aspects of the former dictatorship left untouched by the new constitution of 1988, and one that in our view limits possibilities for expanding formal democracy, is the political over-representation of the least populous states in relation to the most populous. The state of São Paulo has only sixty deputies (11.9% of the total members of the Chamber of Deputies) representing 20,774,910, or 21.9% of all the Brazilian electorate (94 million).¹¹ In comparison, the state of Roraima elects the minimum of eight state representatives (1.6% of the total of the Chamber), although it has 119,399 voters, or 0.1% of the total electorate in the country. This over-representation ensured that the Constitutional Congress and subsequent legislatures would resist political reforms.¹²

Beginning with the first civilian government, relations between the Legislature and the Executive have been marked by clientelistic demands that parallel the type of relationship that political representatives of the less populous states with less developed citizenship maintain with their constituents. Despite the rhetorical support for the shrinking of the State that prevails in mainstream politics, elite control of

¹⁰ The economic aspects of continuity in the political regime from transition to consolidation have been analyzed by Ignacy Sachs, École des Hautes Études en Sciences Sociales, Paris, and by Joao Manoel Cardoso de Mello, Instituto de Economia, Universidade Estadual de Campinas (Unicamp).

¹¹ “Eleitorado ultrapassa a marca de 94 milhões,” *Folha de S. Paulo* (25 August 1994), Especial 2; “Câmara nunca seguiu proporcionalidade,” *Folha de S. Paulo*, (31 August 1994), Especial 2.

¹² Despite the reforming impetus of the PSDB, the National Congress is currently dominated by the PFL and a faction of the PMDB, the majority party. The PMDB and the PFL together have 198 deputies in Congress and 43 senators. The control of votes in the Senate, which has the authority to make modifications that were approved in the lower house, is concentrated in the hands of the president of the senate, José Sarney, PMDB, and Antônio Carlos Magalhães, who controls the

regional public investments continues to be the relevant power resource in a population with weak political citizenship and high levels of illiteracy.¹³ For these dominant political groups, the distribution of government appointments, in addition to State investment, is a crucial source of power.¹⁴ This spoils system is facilitated to the extent that Congress, composed of 513 deputies and 81 senators, is divided into 23 corporatist interest blocs that give priority to their own projects. The rural bloc is the most extensive and always votes as a solid bloc. The interests of the blocs are articulated to obtain the greatest possible resources, often making use of illegal maneuvers—such as the manipulation of the federal budget—to defend their interests which, in the case of economic blocs, finance their candidacies and protect the jobs connected with these areas.¹⁵

It is no coincidence that the greatest concentration of illiteracy is in the North and Northeast, the most over-represented states in Congress: 46% in the Northeast and 35% in the Northern states.¹⁶ In some states the rate of illiteracy is much greater than in others: Sergipe, 23.3%; Alagoas, 32.22%, Maranhão, 21.68%, Paraíba, 21.64%, almost ten times greater than the most populous

PFL. See Christiane Samarco and Ricardo Amaral, “Busca da maioria faz de FH refém no Congresso,” *O Estado de S. Paulo* (24 February 1995), A-6.

¹³ This certainly implies a serious challenge for the crafting of reforms.

¹⁴ The importance of the second-echelon positions is measured by the economic resources that can be controlled by the state oligarchies and their political representatives. Among the great second-tier positions are the three presidencies of the Banco do Brasil, the Caixa Econômica Federal, and Petrobrás: the Banco do Brasil alone loaned 14 billion reals in 1994. The telephone companies are equally heavily fought over: Telebrás had 3.5 billion in investments in 1995; Telesp has a 45% share of all the telephone expenditures in Brazil. Probably all the directors of the twenty-seven state telephone companies will be removed, except one, the director of Telebahia, as determined ten years ago by Senator Antônio Carlos Magalhães. The National Highway Department (DNER) had one billion reals to invest in 1995 in 22,000 kilometers of roads and for corrections on contract projects. The Federal Railroad received two billion just for maintenance. Delegations from the Ministry of Education and Culture (MEC) distribute millions of books and school lunch resources. Ministry of Labor representatives have few resources, but they can make noncompetitive nominations. See “Na fila do emprego,” *Veja* (8 March 1995), 20–21.

¹⁵ Following are the voting blocs with the number of members: ruralist, 99; contractors, 62; communications, 46; labor unions, 35; hospital owners, 33; public health, 31; private enterprise, 25; evangelicals, 21; bankers, 21; state, 17; judiciary, 15; education, 13; municipalities, 11; builders, 8; manufacturers, 8; social welfare, 7; Catholics, 7; mine owners, 7; transportation, 6; multinationals, 6; private schools, 6; others, 96, including interest blocs with less than three members, such as tourism. See “Esperando FHC,” *Veja* (1 February 1995).

¹⁶ “Taxa de analfabetismo diminui para 20%,” *Folha de S. Paulo* (4 August 1994), p. 3–2c.

states—São Paulo, 3.07%, and Rio de Janeiro, 3.09%.¹⁷ In these over-represented states, local elites and their governments and representatives perpetuate a situation of limited citizenship and the worst social indicators.

Lack of Transparency and Lack of Accountability

In those states where elements of social authoritarianism are most visible, representatives of the oligarchy have enjoyed continuous power since at least 1964. Access to information and transparency are more limited there, and local politicians control the media. Television and radio public broadcast concessions are awarded to politicians by Congressional commissions on which they themselves serve, and the print media is dominated by businesses which they own.

The wide gap between the relative transparency of the South and Southeast and the constraints on access to information in the states of the North, Northeast, and Central-West continues in democracy. The development and technical progress in communications promoted by the authoritarian regime paradoxically helped the print and, especially, the electronic media to become less provincial and to reach new and broader audiences. From politics to scientific discussion, from social movements to microinstitutions, the spaces for critical communication, opened up in the transition, expanded with the growth of commercial networks that are often manipulated by advertisers and by the culture industry.¹⁸ Despite these structural limitations, it must be acknowledged that all forms of censorship were abolished and that both the print and electronic media address polemical issues and investigate government actions. Investigative journalism developed impressively, especially in the South, as shown by the campaigns for the impeachment of President Collor and against corruption in the National Congress. As in other democracies, the media pay a lot of attention to issues of crime and violence, but they also regularly cover human rights violations. Civil rights organizations and their activists are routinely invited to express their points of view, and their activities receive broad coverage.

How can we explain such a contrast between technical expansion of communications and growing transparency, on the one hand, and the limited access to information for large segments of the electorate, on the other? There was an unparalleled opening of spaces for public debate—much more intense and sophisticated than in other new democracies in Latin America and greater than in the

¹⁷ In Brazil 9.02% of voters are illiterate (8.5 million) and 26.73% (25.3 million) know how to read and write but have never had access to a school. See “Eleitorado...,” op. cit. n. 11.

Eastern European countries. But despite important changes mandated in the constitution, the structure of oligopolistic control over the means of communication remained unchanged. There has yet to be effective implementation of measures prescribed in the 1988 Constitution to impede collusion among sectors of the electronic media, political representatives, and powerful economic groups, which become more visible during electoral campaigns. The disrespect for most of the laws regulating ownership goes without saying.¹⁹ The fact that Brazil, unlike other democracies, does not restrict cross ownership of broadcast and print media allows private groups to control firms in all areas of media.

In large part this continuity is due to the fact that political power in most states is based on control over the media. It would be incorrect to say that this situation characterizes only the North, Northeast, and Center-West, because in the South and the Southeast the same distortions occur. But the electorate in the less populated, over-represented states in the National Congress is more subjugated to clientelist manipulation, the organization of civil society is frailer, law enforcement agencies like the judiciary and police are weaker and less autonomous from political power, citizens are subjected to arbitrary State rule, and there is less citizenship. This context makes the limits on transparency more distinct and makes access to media an even more decisive resource for the exercise of political power.

The Origins of ‘Electronic Coronelismo’²⁰

This limited transparency is linked to the fact that nearly 115 members of Congress own television and radio networks. Many of these representatives serve on the Congressional Communications Committee, the authority that happens to award communications concessions. (There are only a few public networks, the majority are private businesses granted public concessions for a given period of

¹⁸ On the development of the media, see Jean L. Cohen Arato and Andrew Arato, *Civil Society and Political Theory* (Cambridge: MIT Press, 1992), 461.

¹⁹ At the end of Itamar Franco’s government, specifically, in the last five days, 349 radio concessions were granted. One of the greatest beneficiaries was the then Minister of Communications, Djalma Moraes, the likely hidden associate of a business with R\$3,000 in capital that received 41 broadcast concessions. There is a proposal in the Chamber of Deputies to annul these concessions, sponsored by Tilden Santiago, and a joint request in the Attorney General’s office by two members of Congress seeking an investigation. Janio de Freitas, “Reação ou conivência,” *Folha de S. Paulo* (23 February 1995); “Boas e más ações,” *Folha de S. Paulo*, (24 February 1995).

²⁰ This expression was suggested by the report “Coronelismo agora é eletrônico,” *Jornal do Brasil* (8 July 1994). Like the Spanish term *caciquismo*, *coronelismo* refers to rule by local political bosses.

time.) As the jurist Leonidas Xauza observed, those who do not have electronic or print communications enterprises fear those who have ‘access to the antenna.’ In addition to the conflict of interest inherent in having individual congressmen exercise granting and regulating powers from which they themselves benefit, their ownership of media creates an imbalance of power among legislators (often in states already advantaged by over-representation). Since they own electronic media, they edit, censor, and manipulate information presented in newscasts to their own advantage. During elections parliamentarians, governors, and cabinet ministers ignore the restrictions on electoral propaganda both for their own benefit and for the candidates they support, flouting the law.

Television, the principal source of electoral information, is managed in ways that amount to flagrant disrespect for the Constitution. Seven private groups control television throughout the country with a virtual oligopoly that covers 70% of television sets. Many concessions are divided among members of the same family in order to evade the legal requirement that prohibits the concentration of more than ten television concessions per owner. Obviously, the intent of this analysis is not to establish a mechanical link between politicians’ access to the media and their political influence but to call attention to one more aspect of disrespect for the law, with the collusion of legislators guaranteeing themselves impunity. These flaws in the democratization of media access—the incapacity of new democracies, like Brazil, to make the media “independent and responsible, free and just,” as Jorge Castañeda said²¹—together with the shortcomings in the system of representation restrict political coverage and diminish the prospects for accountability. This hampers human development and discourages the organization of civil society.

The acute underdevelopment to which the populations of the North and Northeast are subjected is not the result of fatalism or pathology. Rather, it stems from social authoritarianism maintained by political oligarchies through the complex interaction between the control of political institutions (representative bodies, media access, judicial institutions, and the police) and the control of economic resources (businesses favored by State loans and subsidies and private appropriation of State resources through corruption), as was demonstrated by the investigation of the Mafia in Congress. Endemic poverty and illiteracy are products of the continuity of traditional and authoritarian elites in the current democratic consolidation. These elites, who are not subject to the control of ‘nonelites,’ often gain systematic advantage from

illegal violence and even terror, as seen in rural conflicts. Lack of transparency, lack of accountability, and impunity are the pillars of traditional economic and political domination. With the additional problem of monopolistic control over the electronic media, transparency and the strengthening of democratic institutions become impossible.

By holding elected officials and State bureaucrats responsible to the voters, transparency through the media is an indispensable aspect of confronting human rights abuses. Thanks to the broad debate sustained by the media, parliamentary investigations, followed by police investigation and criminal prosecution, have instigated widespread mobilizations across the country. The parliamentary hearings and the trial of the president by the Federal Supreme Court in September 1992 were transmitted live by electronic media.

The impeachment of President Collor and the fiscal racketeering in Congress are indicative of the corruption ingrained in the exercise of political power. As in other new democracies, immediately following the political transition in Brazil political decisions remained concentrated in the Executive—which holds many legislative and judicial powers as it did in the dictatorship. Because of this concentration of power along with impunity, many officials can be tempted to place a price on their decisions.²² During the more than twenty years under the military regime the National Congress had no say over the preparation of the budget. When, after the return to democracy, Congress assumed control of the budget, decisions were made through a sort of collusion between members of Congress and Executive branch officials, whose criminal action was made viable precisely by the concentration of power and by the secrecy of the Executive's decisions. This same collusion is practiced by congressional representatives in other spheres, with the media, police, judiciary, and private enterprise, as they seek to optimize their power resources in an unequal society, protected by parliamentary immunities extended to common crime. Thus, concentration of power, over-representation, and impunity complement one another. Even though congressional representatives have had their mandates revoked after the investigations of the budget racket in 1992, the resistance of political institutions to reform is revealed by the fact that a good number of those accused of corruption continued to serve on the budget commission for 1994, as if nothing had happened.

²¹ Jorge Castañeda, *Utopia Unarmed* (New York: Knopf/Random House, 1993), 389.

Without democratic access to electronic media it becomes more difficult to mobilize the judiciary and the police to undermine these practices.

2. Civil Rights: Laws and Impunity

Brazilians live with the paradox of rigorously defined constitutional guarantees yet very weak citizenship. Through the 77 provisions of article 5, chapter I, "Individual and Collective Rights and Duties," the Constitution of 1988 established the most comprehensive and precise definition of civil rights in history. These rights and individual guarantees still make up part of the unreformable nucleus of the text; no amendment aimed at abolishing or restricting the list of individual guarantees can be considered. The Constitution brought enormous progress to the protection of individual rights by conferring special treatment on human rights, recognizing their universality and immediate applicability. In stark contrast with the 1940s Penal Code, which emphasized the defense of the patrimony, it takes a clear position enumerating fundamental guarantees for the defense of life and the individual.

Violations that always marked the life of the majority of the poor population, like torture and racial discrimination, were now treated as crimes: the rights to life, liberty, and personal security were reinforced. The right of physical integrity of the individual, precisely the area most frequently affected by human rights violations, is well defined in many sections: the dignity of the individual (art. 1, III); the primacy of human rights (art. 4, II); the criminalization of any behavior threatening fundamental rights and freedoms (art. 5, XLI), and of torture, which must be treated as an offense without bail or statute of limitations (art. 5, XLIII); the physical integrity and the mental well-being of persons subject to State custody (art. 5, XLIX); federal intervention by decree permitted in the member states and the Federal District for disrespect of individuals (art. 34, VII, b); independent oversight of police activity by the Public Ministry (art. 129, VII);²³ criminalization of everyday discrimination of any kind, including racism, which became a crime without bail or statute of limitations (art. 5, XLII).

However, while the formal recognition of these rights meant remarkable progress in terms of constitutionalism, the relatively short time during which the

²² Judicial requests are now pending to prosecute more than fifty members of Congress who committed common crimes, including physical assaults and one homicide.

²³ Brazilian Ministry of Foreign Affairs, *Relatório inicial relativo ao Pacto Internacional dos Direitos Cívicos e Políticos de 1966*, Fundação Alexandre de Gusmão and the

Constitution has been in effect has not been enough to modify substantially the pattern of serious civil rights violations, which in many areas are more considerable than in previous periods. Brazil, as Alfred Stepan noted, is a country with serious problems concerning the normative and institutional presence of the State. Large numbers of Brazilians do not believe that the State has, or ever has had, any commitment to equal and impartial implementation of the law for all citizens, and many are convinced that the judicial system exists to protect the powerful.²⁴ This gap between formal guarantees and violations persists because it corresponds to the discrepancy between the letter of the Constitution and the functioning of the institutions charged with its protection and implementation as well as the practices of their agents, such as the police and the judiciary.

Government Policies

It would be inaccurate to assume that the constitutional text was all that changed with respect to human rights. After 1985 both the transitional government and the elected civilian administrations, especially at the federal level, undertook initiatives that, if at times intermittent and interrupted, sought a new official approach to human rights violations. (Brazil's full entry into the international legal system for the protection of human rights was also promoted, as we will analyze below.) The government of José Sarney, with Deputy Fernando Lyra as the Minister of Justice, launched a 'collective effort against violence,' with the collaboration of the Teotônio Vilela Commission on Human Rights. The initial program text was written by Fernando Gabeira, a former political exile from the dictatorship who is now a federal deputy.²⁵ In the first two years of his term during the military dictatorship, the Governor of São Paulo, Franco Montoro (1983–87), set a standard with his government by taking a stance of defense of human rights and calling for State action against illegal police violence institutionalized in combating common crime and within penal institutions.²⁶ For this he became a target of heavy attacks from conservative sectors. During the same period, Rio de Janeiro's governor, Leonel Brizola,

Núcleo de Estudos da Violência at the University of São Paulo (Brasília, Funag, 1994), passim.

²⁴ Juan Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Postcommunist Europe* (Baltimore: Johns Hopkins University Press, 1996), passim.

²⁵ On the Teotônio Vilela Commission and this period, see P.S. Pinheiro and Eric Braun, *Democracia vs. violência* (São Paulo: Paz e Terra, 1986).

²⁶ Secretary of Justice José Carlos Dias took innovative action by clearly promoting a human rights policy and encountered powerful resistance.

proposed new policies for training and performance for the military police.²⁷ An open dialogue with human rights organizations was maintained by the Ministers of Justice who served during Fernando Collor's government, Senator Jarbas Passarinho and the former Justice of the Federal Supreme Court, Celio Borja.

The greatest advance occurred under the government of Itamar Franco, after the 1993 World Conference on Human Rights took place in Vienna. In response to the request by Brazilian NGO representatives, Minister of Justice Mauricio Correa (currently Minister of the Federal Supreme Court) held several meetings in 1993 between the government and civil society to define a national agenda for human rights. Between July and October of that year representatives of about thirty human rights groups met with civilian and military ministers, members of Congress, and representatives of several police forces and their professional associations. These meetings, the first of their kind in Brazilian history, were an extension of another meeting between human rights NGOs and the Foreign Ministry, convened in May of 1993 at the Itamaraty (the Diplomatic Service Institute) by the then-Chancellor Fernando Henrique Cardoso in order to prepare the Brazilian agenda for the World Conference in Vienna. The discussions in the Ministry of Justice sought to improve existing legislation and refine existing mechanisms. Work groups were formed to debate the issues during the months separating the two large general meetings. Soon afterward, synthesizing the suggestions put forth in this process, the Minister of Justice, Senator Maurício Corrêa, announced a National Program to Fight Violence. Presented at the Núcleo de Estudos da Violência of the University of São Paulo on 10 December 1993, in commemoration of the 45th anniversary of the Universal Declaration of Human Rights, the program included the following proposals: establishment of a forum of ministers to define citizenship policy; reformulation of the National Council for the Defense of the Individual; and six legislative proposals. The latter, which were undertaken with extreme urgency, dealt with, among other topics: transforming the Secretary of the Federal Police into the Federal Secretary of Public Security; obligating the state to provide legal assistance to prisoners, scholarships for children and adolescents, protection for victims, and legislation specifying human rights crimes. Despite the support of the Council for the Defense of the Individual and of the Ministry of Justice itself, not included in the collection of proposals was a measure providing for civil jurisdiction over the common crimes of military police. With a new Minister of Justice and the beginning

²⁷ Especially noteworthy is the reform initiative of the secretary of the Military Police, Colonel Magno Nazareth Cerqueira, who opened a new dialogue with civil society.

of an election year, the government commitment to reform disappeared. The new minister chose different priorities and the National Congress did not consider the proposed measures.

Foreign Policy and Human Rights

The change in government practices after the return to civilian government has also been felt in human rights foreign policy. Until the political transition, control over State violence and serious human rights violations was so nonexistent that any reference to international texts was merely rhetorical, given the enormous distance between the illegal practices of State agents and the requirements of international human rights law. In reality, the grammar of human rights in Brazil is conjugated successfully by Brazilian governments only after 1985, when several essential instruments for the protection of citizens against serious human rights abuses were submitted by the Brazilian Executive to the National Congress. These included the International Covenant on Civil and Political Rights, the Covenant on Economic, Social, and Cultural Rights, and the American Convention on Human Rights. President José Sarney signed the Convention on Torture when he participated in the UN General Assembly in 1985. More emphasis was placed on this issue after 1989, with the acceleration of the ratification processes promoted by Chancellors Francisco Rezek and Celso Lafer. Similarly, in the 1990s the Brazilian government has defended transparency on human rights violations in Brazil by accepting international monitoring initiatives aimed at overcoming institutional structures that impede the full realization of the rule of law.²⁸

Ambassador Celso Amorim, the Foreign Relations Minister, opened his speech to the UN Assembly in September 1993 by offering a nice synthesis of the current position of the Brazilian government: “Transparency in the decisions and actions of the government constitutes an important aspect of Brazilian policy. This transparency is also manifested in the fluid and cooperative dialogue with the segments and organizations of society dedicated to the fight for the observance of

²⁸ These phases also correspond to the various stages in the evolution of the Brazilian government’s participation in the UN Human Rights Commission, as José Augusto Lindgren Alves described well. First, from 1978 to 1984, the period of political opening, “characterized by conservative, but not obstructionist positions.” Second, from 1985 to 1990, the Sarney transition government, “characterized by the still relatively timid recognition of the legitimacy of multilateral initiatives to deter violations.” Finally, the current period, beginning in 1991, characterized “by the understanding that the international mechanisms do not constitute threats to the principle of nonintervention.” See Alves, *op. cit.* n. 3.

human rights in the country.”²⁹ The new government has advanced this policy with the presentation of the Initial Brazilian Report relating to the International Covenant on Civil and Political Rights, undertaken in an unusual collaboration with the Núcleo de Estudos da Violência of the University of São Paulo. The creation of the Department of Human Rights and Social Issues by Cardoso’s government constitutes a clear signal of the strengthening of the politics of transparency. Ambassador Luís Felipe Lampreia, Minister of Foreign Relations, signaled a strengthening of the policy on the occasion of the presentation of that Report: “The commitment of the Brazilian government to human rights is a necessary and irreplaceable corollary of democracy and of our desire to transform for the better Brazilian society, its social patterns and economic structure. This commitment is not simply a response to the international interest, it is a reflection of the citizenship that is consolidated in the country.”³⁰

To control State violence, the incorporation of international norms for human rights into domestic legislation, as mandated by the Constitution, is of the most immediate relevance. Despite the institutional difficulties indicated here, the ratifications of international agreements and the policy of transparency in progress in the Foreign Ministry make the judiciary’s application of these norms more viable. Furthermore, reference to these principles by the State and by civil society can contribute to transforming the practices of the agencies responsible for State violence by encouraging more effective action to confront violations and abuses.

3. Violence and Inequality

As we have seen, political rights are directly linked to the living conditions of the population. Thus, we are obligated to raise the issue—even though this paper does not attempt to deal with economic and social rights specifically—of whether civil and political rights are adequately protected in countries like Brazil, in which ‘structural violations’ of social, economic, and cultural rights are an apparent characteristic of the society.³¹

²⁹ *O Estado de S. Paulo* (28 October 1994).

³⁰ Luís Felipe Lampreia, “Um compromisso afirmativo,” *O Estado de S. Paulo* (6 March 1995).

³¹ Rodolfo Stavenhagen, “América Latina: Derechos humanos y desarrollo,” IFDA Dossier 79, 42–52, cited in P. Pinheiro, M.E. Poppovic, Malak El Chichini, and Túlio

The implementation of social and economic rights cannot be considered separately from or as additional to the consolidation of democracy: the attainment of citizenship, essential for political democracy itself to become reality, requires social and economic reforms. What is urgently needed is not only the extension of the already existing political democracy into new social and economic areas but also substantive reforms to remove social and economic obstacles that impede citizenship itself.³² Obviously, there cannot be meaningful citizenship without democracy but, in the current conjuncture of global capitalism, neoliberal reforms without social policies (as is the current case of Argentina) pose the serious risk of promoting the institutionalization of democracy without the effective empowerment of the population as citizens. In the event that social reforms do not urgently confront structural violations of rights, Brazil will be consolidating a model of democracy without citizenship, as has occurred in other countries.³³

The Brazilian case clearly illustrates the problems faced by new democracies attempting to close the enormous gap between the political achievements of democratic consolidation and the persistent violations of the civil, social, and economic rights of the majority of the population. Brazil presents the paradox of being simultaneously both the best and worst of worlds: today the country is the tenth largest economy in the world with a gross national product (GNP) of 414.1 billion dollars in 1991,³⁴ placing it in the group composed of the United States, Japan, Germany, France, Italy, Great Britain, Canada, Spain, and Russia (with which our pattern of serious human rights violations should be compared) and followed by China, Australia, India, Holland, South Korea, Sweden, and Mexico.

Kahn, *Poverty, Marginalization, Violence, and the Realization of Human Rights* (New York: United Nations General Assembly), A/CONF. 157/PC/60/Add. 8 (World Conference on Human Rights, Preparatory Committee, Fourth Session, Geneva, April 1993), 19–39. An abbreviated version of this study in Portuguese is also available: P.S. Pinheiro, M.E. Poppovic and T. Kahn, “Pobreza, violência e direitos humanos,” *Novos Estudos CEBRAP* 39, July 1994, 189–208.

³² Paul Cammak, “Democratization and Citizenship in Latin America” in Geraint Parry and Michael Moran, eds., *Democracy and Democratization* (London: Routledge, 1994), 189.

³³ *Idem*, *ibidem*, 192.

³⁴ United Nations Development Program (UNDP), *Report on Human Development, 1994* (Lisbon: UNDP, Tricontinental Editora), 1994; *The Economist, Pocket World in Figures* (London: Hamilton/Penguin, 1993), 22.

In addition to being one of the largest industrial economies, with the fifth largest population in the world (in 1991 there were 153.16 million inhabitants³⁵), it is a largely urban country; 77% of the population lives in urban areas, 39% in cities with more than one million inhabitants. If we look at only the urban population, this latter percentage is more than half: in 1990, 51% lived in cities with more than one million inhabitants, and São Paulo in the 1980s was already the city with the largest population in the world (11.3 million), surpassing Seoul and Mexico City.³⁶

Even though illegal violence is spread throughout the rural areas in the Brazilian interior, 'endemic violence' is most visible in urban areas. In the majority of metropolitan regions violence coincides with the places where the poor live: in those areas deaths are principally attributed to violent causes. The pattern in São Paulo is repeated in other metropolitan areas. There is a clear correlation between living conditions and violence and mortality rates in areas where violations of civil and political rights overlap—violence is clearly a part of social privation.³⁷

Any effort to identify a causal relationship between social and economic factors and violence would be seriously misleading. But even though crime may involve individual moral responsibility, it is undeniably a social and economic issue. The family, cultural, and social environment of the most oppressed, unemployed, undereducated, and marginalized groups creates the conditions for their greater involvement in violent conflict and crime than those who are privileged and well off (who also commit violent and other crimes, but with greater impunity.)³⁸

³⁵ *The Economist*, op. cit. n. 34. Surpassed only by China, India, the United States, and Indonesia.

³⁶ *The Economist*, op. cit. n. 34.

³⁷ Amartya Sen, "The Economics of Life and Death," *Scientific American*, May 1993, 46. On São Paulo, see also Carolyn Stephens, Ian Tiameus, Marcos Akerman, et al., "Saúde e meio ambiente em países em desenvolvimento: Uma análise de diferenças intra-urbanos de mortalidade através do uso de dados existentes. Pesquisa conjunta em Acra, Gana e São Paulo, Brasil," São Paulo, Republic of Ghana/London School of Economics, London, Fundação Sistema Estadual de Análise de Dados (SEADE), 1994.

³⁸ Researchers in evolutionary psychology, who are interested in biological influences on human behavior, recognize that the two issues of universal human nature and the power of environment are intricately related. It is the power of the environment—family, culture, and social happenstance—that leads to considerable diversity in human behavior from person to person or group to group, not the reflexive conclusion that genetic variation is the explanation. See Richard Wright, "The Biology of Violence," *The New Yorker* (1 March 1995), 72. See also the seminal study in this debate by Martin Daly and Margo Wilson, *Homicide* (New York: Aldine de Gruyter, 1988).

The oppressed live under the threat of being further victimized by the violence and criminalized by the repressive apparatus. Those with family income below the poverty line, according to the 1988 National Household Survey (Pesquisa Nacional de Amostragem Domiciliar, PNAD), were most often victims of violent crimes. A recent survey by the Brazilian Institute of Social and Economic Analyses (IBASE) of a total of 265 investigations of 306 homicides in Rio de Janeiro shows that the majority of murdered children and adolescents (under eighteen years old) are poor black or mulatto males and residents of popular neighborhoods and favelas. The age group most impacted by the violence is fifteen to seventeen years old (78.9%), followed by fourteen-year-olds (13.9%): these crimes principally affect blacks and mulattos, who made up 70.9% of the total victims.³⁹

In 1994, 4,494 homicide victims were registered in São Paulo, an increase of 14.7% from the previous year (3,917). Nonaccidental violent deaths are the third leading cause of death in the municipality, trailing only circulatory system illnesses and all types of cancer. Most (3,391) of the homicides were committed against men between 20 and 49 years old; nineteen-year-olds were the second age group most affected (787 deaths). As one moves from the center to the periphery in São Paulo, the *causa mortis* ceases to be cancer and cardiac illnesses and becomes violent death and traffic accidents: 85% of the homicides committed by the Military Police (PM) that I studied between 1977 and 1987 occurred in the periphery of São Paulo.⁴⁰ The blacks and browns (as they are classified by the census) are attacked at a much higher rate than their relative presence in the population. In the streets of São Paulo, where more than a quarter of the automobiles in use in the country (about 4.5 million) circulate,⁴¹ traffic accidents were the second most frequent cause of violent death (18.3%), responsible for 2.5% of total deaths.⁴²

³⁹ Most of the victims had a permanent address in favelas and shantytowns surrounding the city; in 80.9% of the cases the children were not armed when they were killed. As to the circum-stances of the crimes, 81.4% were characterized as 'execution/assassination,' indicating that the death did not occur in a confrontation between the victim and the aggressor. Cleber Praxedes, "Pesquisa traça perfil das vítimas da violência," *O Estado de S. Paulo* (24 February 1995).

⁴⁰ P.S. Pinheiro, Eduardo A. Izumino, Maria Cristina Jakimiah Fernandes, "Violência fatal: Conflitos policiais em São Paulo: 1981–1989," *Revista da USP*, 9, March-April-May 1991.

⁴¹ Brazil has one of the highest rates of fatal traffic accidents in the world: in 1991 more than 50,000 deaths, 2,626 of them in the state of São Paulo, testify to another dimension of impunity, given that the overwhelming majority of those responsible

The growth of slums on the urban periphery takes place in a context of profound inequality between rich and poor, a gap that is much greater than in many countries with similar levels of development and creates a wide chasm that divides all of Brazilian society. The tenth industrial economy in the world coexists with the second worst distribution of income in the world: the ratio of the wealthiest 20% to the poorest 20% of the population between 1980 and 1991 was 32.1. This number was exceeded only in Botswana, with a GNP of 3.6 billion dollars in 1991 and a population estimated at 1.3 million in 1992,⁴³ where the ratio was 47.4.⁴⁴ Although this index is subject to errors, the seriousness of the income concentration problem is reflected equally in the human development index as measured since 1990 by the United Nations Development Program (UNDP).⁴⁵ Among 173 countries analyzed by UNDP in 1994 Brazil ranks 63rd, placing it among the countries with average human development, a position inferior to countries with considerably fewer human and economic resources. Between 1980 and 1987 Brazil experienced an elevenfold increase in income per capita, while Germany's increased twelve times and that of the United States by nine.⁴⁶ But this formidable increase was not accompanied by a more equitable distribution of income or by progress for the most disfavored sectors of society, which remain the majority: in

for these deaths did not suffer punishment. For the sake of comparison, these numbers equal half the number of homicides in the same state.

⁴² Homicides are responsible for 6.9% of total deaths and 48.2% of all violent deaths. Traffic accidents caused the deaths of 1,708 people, of whom 1,105 were between fifteen and forty-nine; 398 registered deaths were over fifty. General Mortality Profile in the city of São Paulo, City Hall, Programa de Aprimoramento das Informações de Mortalidade no Município de São Paulo, PRO-AIM, cit., Heliana Nogueira, "Homicídio cresce mais que morte por AIDS," *O Estado de S. Paulo* (22 February 1995).

⁴³ UNDP, op. cit. n. 34, 180.

⁴⁴ A comparison of the Brazilian distribution of income from 1980–91 with a few other countries from the group of the forty largest industrial economies with democratic regimes for the same period indicates the gravity of the Brazilian situation: Germany, 1,570 billion (1991), ratio of the wealthiest 20% to the poorest 20%, 5.7; Italy, 1,150 billion (1991), 6; France, 1,200 billion (1991), 6.5; Canada, 511 billion (1991), 7.1; India, 221.9 billion (1991), 4.7; Venezuela, 53.4 billion (1991), 10.3. See UNDP, op. cit. n. 34, 164, 180, 196, and 205.

⁴⁵ This index includes indicators for GNP per capita, level of adult literacy, median level of education, and life expectancy.

⁴⁶ José Serra, "Existe uma saída," *Veja* (1 August 1991).

1990 the richest 10% controlled 49.7% of the national income while the richest five percent had 35.5%.⁴⁷

This brief analysis obviously does not seek to establish a direct correlation between the socioeconomic data and systemic violence. The low level of human development in Brazil weakens the potential for the population to modify this picture, since it affects the mobilization and

⁴⁷ PNAD 1990; "Aumenta a concentração de renda do país," *Folha de S. Paulo* (22 November 1991), 1–10. According to the Economic Commission for Latin America (ECLAC), the numbers of poor and indigent in Brazil are greater than the Latin American average. See Teixeira Mauror, "São Paulo cai para a rabeira do 4º mundo," *Folha de S. Paulo* (20 October 1991), 1–17. According to the UNDP (op. cit. n. 34, 164), between 1980 and 1990 47% of the population (73% of the urban population, 38% of the rural) was in absolute poverty.

participation conditions necessary for constructing solidarity among citizens. All efforts to promote human rights must consider how these factors can become social and economic obstacles: the achievement of full citizenship is possible if the structural constraints to citizenship are overcome.

Even as these impediments persist, human rights violations must be curtailed and those responsible prosecuted in keeping with the civil rights defined by the 1988 Constitution and the obligations assumed by the Brazilian State before the international community. The federal State is responsible for the promotion and achievement of human rights protection, and neither social and economic deficiencies nor internal difficulties in the political or judicial systems justify avoiding its obligations. Given Brazil's position among the ten most industrialized countries, the excuse of lack of resources for the failure to comply with its responsibilities is unacceptable. Instead of presenting justifications for continued violations, it would be more appropriate for the State to initiate reforms that put an end to impunity.

II. Institutions and Impunity

Careful evaluation of law enforcement institutions indicates that the constitution and the international principles ratified by Brazil are not reflected in practice by the functioning of law enforcement agencies, such as the police, the judiciary, and the Justice Department, at either the federal or state level. Admittedly, the situation differs in each region or state and at the federal and state levels. And it would be misleading to ignore improvements that have been initiated in all institutions by governors more sensitized to the need for promoting the rule of law, following the return of direct elections for governor and president. The legal framework defined by the Constitution allowed several institutions to achieve autonomy and improve their performance. But inherited structures still remain: The 'authoritarian debris' of Brazilian legislation, in the words of then Senator Fernando Henrique Cardoso in 1985, is a long way from being entirely removed. A long list of new legal mechanisms for enforcing constitutional provisions has come within reach.⁴⁸ Many serious human rights violations would be drastically diminished through political reforms, better control over the repressive apparatus, and improved functioning of the judiciary, even in the current legal framework.

1. The Police System

The Civil Police

A basic element of criminal prosecution in Brazilian criminal law is the investigation directed by the chief of police. Nevertheless, in most states police investigations are feebly done, with enormous deficiencies in personnel and equipment. In 1993 in São Paulo, the most developed state of the federation, there were 29,317 Civil Police officers with specific roles for judicial investigations, with clerks and investigators making up 53% of the total.⁴⁹ In October 1994 there was a large disparity between the highest salary (\$2,604.01 without including additional pay for function and rank), earned by the special class of police chiefs with more than thirty years of service, and the lowest (\$169.16), earned by prison guards and police recruits. Most officers fall within an intermediate range between the small group of chiefs and the lowest ranks of career employees.

In most states, especially in the North and Northeast, disparities in salary and function coincide with a lack of professionalism in the police force. Many police chiefs do not have bachelor degrees in law.⁵⁰ Furthermore, the chiefs, like the rest of the police, do not compete in merit exams but are politically appointed through nominations from governors, Secretaries of Public Security, and political leaders,

⁴⁸ For an analysis of constitutionalism and the judiciary in the Brazilian political consolidation, see Oscar Vieira, *Supremo Tribunal Federal: Jurisprudência política* (São Paulo: Editora Revista dos Tribunais, 1994).

⁴⁹ There are 80,000 employees in the Military Police which consists (approximately, as there are always vacant positions) of 109,317 positions, or 331 police officers per 100,000 inhabitants, one for every 301 inhabitants. These numbers are comparable to European countries with somewhat similar populations: United Kingdom, population 57 million; 140,000 police; 245 police per 100,000 inhabitants; 407 inhabitants per police officer. France, population 56 million; 36,200 police; 362 police per 100,000 inhabitants; 276 inhabitants per police officer. Spain, population 38.4 million; 139,000 police; 361 police per 100,000 inhabitants; 276 inhabitants per police officer. Germany (only the former Federal Republic of Germany), population 61.2 million; 194,000 police; 317 police per 100,000 inhabitants; 315 inhabitants per police officer. Italy, population 57 million; 199,000 police; 349 police per 100,000 inhabitants; 286 inhabitants per police officer. See Jean Claude Monet, *Polices et sociétés en Europe* (Paris: Documentations Française, 1993), 124–25. If only the police on active street patrol are considered in São Paulo, 18,000 in the entire state, the insufficiency is clear: 54 police officers for 100,000 inhabitants is a police officer for every 1,833 inhabitants.

⁵⁰ Unfortunately, the 1988 Constitution only indicates in article 40, paragraph 4, that “the civil police be led by police chiefs with *formal training*”; the Constitution of the State of São Paulo specifies bachelors degrees in law in article 140. In many states

aggravating the tendency towards *caciquismo*. According to a recent survey by the professional police unions,⁵¹ the situation in some states follows a common pattern: in Bahia, about 60% have not passed exams and do not have law degrees. Agencies essential to the conduct of investigations, such as forensic medical and criminal institutes, remain linked to the police and are at least half a century behind current development of scientific techniques. How can the police prove guilt in a homicide if they do not have a uniform archive of fingerprints for the entire country?

Militarized Policing

The same inefficiency, though with different contents, characterizes the forces responsible for patrolling the streets, the military police. Despite civilian control over the military police, the militarized concept of public security formulated by the military governments after 1967 was maintained in the 1988 Constitution, which leaves the organization of the police untouched in Title V, chapter III, on public security, art. 144. This is one of the examples of insensitivity to the need for demilitarization of the State apparatus after the dictatorship as a condition of full formal democracy. The maintenance of this militarized structure also reveals the influence that the military continues to exercise in the democratic regime; since the military police are auxiliary forces, the armed forces continue to have influence in everything related to them through an inspector general of the military police.

As the former Justice of the Federal Supreme Court, Clovis Ramalhete, observed, these old state armies no longer have a reason to exist. The state military forces grew out of the need for the new state governments to arm themselves against the troops maintained by the local oligarchies. Today, when no governor faces an armed challenge from oligarchs, the state armed forces in their present structure are an anachronism.⁵² No large democracy, not even federated States like Germany or Canada, maintains an army at the disposition of federated units.

This mistake was aggravated during the military dictatorship when small armies were integrated with the civil police patrol. The extinction of the uniformed civil guards and their unification with these state armies under the aegis of the military

with constitutions that do not establish qualifications, there are actually civil police chiefs who are military police.

⁵¹ See Ministry of Justice, *Jornada de Debates sobre Violência e Criminalidade*. Meeting on 28 September 1993, Brasília, stenographic notes, cc 45.

⁵² Clovis Ramalhete, "Desmilitarizar a polícia," *Jornal do Brasil* (31 August 1993).

after 1967 was motivated by the dictatorship's strategy for confronting dissidence. Similarly, the 'April package' imposed by dictator General Ernesto Geisel, in 1977 transferred jurisdiction over common crimes committed by police, which had been the responsibility of military police since the beginning of the dictatorship, to state military justices. Neither of the two decisions had anything to do with public security policy or the fight against crime. What was at issue was the security of the State and the leaders of the dictatorship.

Besides being permanently militarized, street patrolling and the preservation of public order continue to rely on the protection of the special Court of Justice for the state military police. With the return to democracy, just as during the military regime, this form of justice obviously

served to protect military police engaged in criminal actions, which were encouraged and rewarded. In several state governments this remained true even after the return to direct elections. Despite the honesty of magistrate civil judges and military trial judges in São Paulo, Minas Gerais, and Rio Grande do Sul and the dedication of prosecutors (all of them civilians with careers in the state justice departments) in seeking convictions, the internal administration of military justice and its deficiencies make it almost impossible for the prosecution to pursue more than a few cases involving violence. The Military Code and the Military Criminal Procedure Code are concerned with military operations crimes within the armed forces themselves and are not equipped to review civil crimes committed regularly in the course of policing. The corporate limitation of military justice inherent in military police investigations and the two tribunals (hearing and trial courts) combine with technical legal flaws to exacerbate judicial failure.

Military police investigations (IPMs) suffer from the same weakness as civilian judicial investigations; they are conducted within the battalion by police who are generally limited in their legal training and with practically no modern resources for technical criminal investigation or forensic medicine. IPMs often declare deaths perpetrated by military police to be justifiable homicides, without regard to the circumstances in which they were committed. It is rare for IPMs to succeed in identifying common police practices in alleged confrontations: people are often shot as they are fleeing from the police or fired at repeatedly in deliberate executions. Victims are

then carried to the hospital in order to give the appearance that the police are providing assistance, when in reality the investigation is being obstructed.

In addition to these institutional and technical limitations in the face of growing violent crime, police operations and the number of police have increased, exacerbating the weak functioning of the state military police system: the number of concluded prosecutions decreases as the volume of cases increases. Although there is no transparency in military police justice, it seems that the pattern established at the end of 1992 continues to prevail, despite some initiatives seeking improvement: at that time 14,000 pending cases were distributed among four courts with one prosecutor each, or one prosecutor for every 3,500 indictments. Charges less serious than homicide, like aggravated assault, are regularly dropped due to the State's failure to exercise its prosecutorial responsibility. Meanwhile, prosecutions drag on for many years during which the accused police continue in

normal service, eligible to receive positive work evaluations, promotions, and decorations.⁵³

Whereas the civil police responsible in the case of the asphyxiation of eighteen detainees in São Paulo's 42nd precinct have already been tried and one convicted, the IPM remains seemingly incapable of trying the military police responsible; the trial of those responsible for the Carandiru massacre in February 1992 were in 1995 still in the deposition and testimony phase, despite the 111 deaths. Moreover, the commanding officers responsible for this criminal act have not even been removed from their command duties; even after all this time, no officer has received any type of sanction or been dismissed from the military police.

This situation was neither accidental nor the result of a lack of resources: it was intentional, as was noted in 1993 by Human Rights Watch/Americas and the Núcleo de Estudos da Violência.⁵⁴ Military justice is much more diligent in pursuing crimes against the military chain of command, such as breaks in discipline or corruption which represent a threat to the military as an institution, than violent crimes against the physical integrity of citizens. This military justice system, in which the Military Police investigates and judges its own members (albeit with the participation of magisterial judges and members of the Justice Department) for civil crimes in policing, constitutes an incentive for arbitrariness and must be changed. Preventive policing and street patrols carried out by military police are civilian functions and, as in all democracies, crimes committed in the course of their performance should fall under civilian jurisdiction, so that the civilian government has full control over the military police.

A bill restoring civilian judicial jurisdiction, sponsored by Deputy Hélio Bicudo and supported by President Fernando Henrique Cardoso, was approved with some restrictions (it is limited to homicides and investigations continue to be the responsibility of the IPMs) in the Chamber of Deputies and passed through some

⁵³ A human rights group in the Northeast conducted a study of military police crimes tried between 1970 and 1991 and found that only 8% resulted in convictions; a similar study in São Paulo showed that only 5 of the cases resulted in convictions. US Government, *Country Report on Human Rights Practices for 1994*, Report submitted to the Committee on Foreign Relations, United States Senate, and the Committee on Foreign Relations, House of Representatives, by the Department of State (Washington: US Government Publishing Office, 1995).

⁵⁴ Human Rights Watch/America and the Núcleo de Estudos da Violência, *Mortes e tortura em São Paulo e no Rio de Janeiro nos últimos cinco anos, 1987–1992* (São Paulo: NEV/USP, 1993). The report was the result of the research of Paul Chevigny, New York University School of Law, at the invitation of NEV/USP.

commissions of the Federal Senate. Unfortunately, when the Itamar Franco government proposed a series of measures to combat violence, it did not introduce a proposal corresponding to the Bicudo bill, and there are indications that the military ministers conveyed specific misgivings or disagreement with it. To meet the full requirements of democracy, street patrols ought to be demilitarized and the special court for policing crimes immediately eliminated. Thus, for reasons that go beyond pressing efficiency needs, the organization of the Brazilian military and civilian police needs to be completely restructured.

The Federal Police

At the federal level the Federal Police, an essential instrument for the investigation of federal crimes, have performed many functions in corruption investigations and in combating human rights violations. Created twenty-six years ago, the force has only 5,000 people working as agents, police chiefs, registrars, experts, and technicians; including administrative personnel it has around 7,000 employees. Their salaries are degrading, the agents are concentrated in Brasília and the large capitals, and many employees are corrupt. In São Paulo Federal Police personnel barely exceed 1,000 employees, including 70 chiefs of police who can be responsible for more than 30 investigations at a time. Because of these deficiencies, close to 30,000 investigations, ranging from welfare fraud and drug trafficking to parliamentary corruption, remain unresolved, often well past the statute of limitations, which aggravates impunity.⁵⁵ Furthermore, the borders are completely unguarded, with many posts having only two agents. Contraband, especially arms and drugs, flows freely, aggravating the endemic violence. A serious policy of controlling contraband weapons, the circulation of arms, and drug trafficking can be implemented only with difficulty unless the federal government is endowed with effective instruments, like a Federal Police with better resources.

Organized Crime and Militarization

Advances in the rule of law notwithstanding, by 1994 the growth of violence and crime, together with the already serious human rights violations, led authorities to a growing militarization of the fight against violence. The results of the military occupation of the city of Rio de Janeiro were quite limited, to say the least, and clearly show the ineffectiveness of this approach. The mistake is not only logistical in nature but lies in the very conception of the military approach.

The stereotype of modern urban societies as the locus of violence assumes that urban violence has increased in an uninterrupted manner since the formation of big cities, but this is not true. In reality, the increasing monopoly of physical violence and self-control that city dwellers progressively imposed led to a growing 'pacification' of urban space. If crime levels are taken as an indicator of violence, it is clear that there was a decline between the mid-nineteenth and mid-twentieth

⁵⁵ Jorge Vasconcellos and Ricardo Miranda, "Falta tudo na Polícia Federal," *Jornada do Brasil* (8 May 1994).

centuries: only around the 1960s did violence and crime begin to increase, with crime becoming more violent after the 1980s.

Despite the violence, the crime, and the serious human rights violations, there is no 'civil war' going on in Brazil that necessitates a growing militarization with the intervention of the armed forces, as occurred in the city of Rio de Janeiro. The notion of warfare is misleading because the conflicts occur within society, where its members and social groups—especially in societies with poor distributions of income—live in a constant succession of antagonistic situations. Democracy allows society to coexist with conflict, thanks to the respect for the rules of the game defined by the constitutional commitment to human, civil, and political rights as much as social and economic rights: militarized combat of organized crime is not compatible with a democratic organization of society. No pacification in a society is complete. The police killing, the violence of crime, the massacres, the dragnets, and the drug war are not episodes in a civil war nor a return to the state of nature. They are the consequences of conflicts and State policies continually reproduced by relations of power through institutions and social inequalities in an extremely authoritarian society.

This is not a situation of two or more armed factions or organizations that attack each other or oppose the State. Rather, those who disrespect the law and resort to illegal violence come from many social groups, and often criminals and State officials act in collusion. Brazil is not a country in civil war. National security is not threatened by the social war. Yet the rhetoric of civil war lends itself to societies that are extremely hierarchicized and devastated by racism and by the dehumanization of the poor.

The militarized vision of public security that motivated the military occupation of the hills and slums of Rio de Janeiro at the end of 1994 has deep and diffuse roots. The issue of organized crime, especially drug trafficking, is not military: the alleged 'parallel State' in Rio's slums and in other parts of the country does not have anything to do with 'liberated territories.' The current situation of disregard for the law is consolidated and perpetuated only because of the collusion among organized crime, public employees, businessmen, and State agents, as the Rio de Janeiro Justice Department inquiry into the Vígário Geral massacre made clear.⁵⁶

Organized crime, drug traffickers, and the illegal lottery are still active in the slums, even after the disastrous military operations, because public security agents tolerate (or manage) their illicit activities, and consumers among the elites ensure a market. The inhabitants of the Rio slums were abandoned to such a degree by public security agents and the State that the side of the police engaged in vice and

⁵⁶ On massacres and extralegal executions in São Paulo, see João Benedito de Azevedo Marques, Angela Aparecida Lopes Degang, Jairo Gonçalves da Fonseca, *Execuções sumárias de menores em São Paulo* (Departamento Editorial: OAB-SP, 1993).

illegal repression is almost the only one they recognize. The traffickers in the hills—in reality only small-time intermediaries for the real traffickers who live in the city—distribute a few crumbs from their bosses' enormous profits, offering miserable jobs and

protection to slum dwellers. In this context it is not surprising that they are revered as benefactors.

The occupation of Rio de Janeiro in 1994 was an operation of dubious effectiveness for the fight against organized crime—if, in fact, the authorities involved seriously considered this objective at all. The operation aggravated the suffering and resentment of honest workers, upset the already difficult existence of honorable families, women, and the elderly, who were held suspect merely for living in the hills—and who at no time were considered in the logistics of the battles against crime. Flagrant violations of constitutional rights were perpetrated: entire populations were cordoned off and subjected to illegal identity control, inspections of children, invasions of homes, and detentions, imprisonments, and interrogations in military installations. There were denunciations and reports of torture which resulted in military investigations that ignored those examinations of the *corpus delicti*, carried out by military experts, that confirmed the torture.⁵⁷ There is one case of a disappearance of a public employee during one of the military operations, dating back to 26 November 1994, that still has not been clarified.⁵⁸

Despite all these errors, the military operation in Rio de Janeiro was extended through 1995, even though every time the army left the hills the situation remained unchanged. The traffickers, and organized crime in general, continued to arm themselves because the operation did not effectively supervise and control the weapons trade or repress the flow of contraband, nor did it establish control over the arms used by State agents. The declared intention of the government and military command, ‘to clean the area,’ is not likely to succeed in the absence of improved living conditions and broader citizenship for the relevant populations.

This criticism of the military operations and the mistake, in our view, of the federal government and the government of the state of Rio de Janeiro in prolonging, with minor modifications, an agreement of dubious constitutional legitimacy does not seek to advocate inaction on the part of the federal government, or even of the armed forces. It is intolerable for the rule of law and for democratic government that large portions of national territory are controlled by organized crime, as occurs in several shantytowns and neighborhoods and along state borders. But it is also

⁵⁷ Sérgio Torres, “Moradores afirmam ter sofrido tortura,” *Folha de S. Paulo* (29 November 1994); Fernando Molica, “Departamentos detalham suportar tortura,” *Folha de S. Paulo* (19 January 1995), 1–17; “Procuradora pede nova apuração de supostar torturas,” *Folha de S. Paulo* (8 March 1995), 1–10. See also P.S. Pinheiro, “Tráfico não é guerrilha,” *Jornal do Brasil* (4 October 1995), 11.

unacceptable for a civilian government under democracy to deploy armed forces for a crime-fighting campaign using the tactics of former antiguerrilla operations. In some way, this indirect military intervention in the state of Rio de Janeiro carries with it disturbing new forms of militarization of civil public security issues. It aggravates the ongoing influence of the armed forces already evident in the continued subordination of security forces to the military and the special court for state military legal administration. Strictly formal democracy requires that the civilian government exercise its full power in the definition and the operation of security policy.

2. The Judicial System and the Justice Department

The effective operation of the judiciary, like that of the police, is determined by practices far removed from legal codes.⁵⁹ These practices are linked to the hierarchical and discriminatory character of interpersonal relationships in Brazilian society in which, unlike other democratic societies where the rule of law applies equally to the ruling classes, 'nonelites' do not exercise control over elites. Consequently, there is an extremely unfavorable perception of the legal system which is reflected in the frequency with which the population resorts to the police power. According to PNAD, judicial intervention in 1991 occurred preponderantly in conflicts over subsistence pensions (73.4%), labor issues (66.6%), and in land possession (51.3%). But with respect to conflicts between neighbors (85%) and criminal problems (72%) the percentage of individuals who did not seek assistance from the legal system was quite high.⁶⁰ In the aggregate, only 33% of the people involved in some type of conflict sought a legal solution to their problems.⁶¹ Thus, it is not surprising that according to opinion research published by Datafolha on 12 March 1994, 35% of Brazilians considered the judiciary 'average,' 25% labeled it 'awful or terrible,' and only 25% deemed it 'excellent or good.'⁶²

The 1988 Constitution guaranteed administrative and judicial autonomy and independence, but serious structural problems hindered the functioning of the

⁵⁸ Elio Gaspari, "Procura-se Rufino, um brasileiro," *O Estado de S. Paulo* (12 March 1995), A18.

⁵⁹ Roberto Kant de Lima, *A polícia da cidade do Rio de Janeiro* (Rio de Janeiro: Polícia Militar do Rio de Janeiro, 1994).

⁶⁰ See PNAD 1990.

⁶¹ Maria Teresa Sadek and Rogério Bastos Arantes, "A crise do judiciário e a visão dos juizes," *Revista da USP*, 21, March-April-May 1994, 39.

⁶² *Idem*, *ibidem*, 36, 39.

system. A survey carried out by the Institute of Economic, Social, and Political Studies of São Paulo (IDESP), based on interviews with 20% of judges in five states—São Paulo, Rio Grande do Sul, Paraná, Goiás, and Pernambuco—and 41 Federal Justices, 570 interviews in all, considered the obstacles to good judicial operation. The list of problems deemed most relevant indicates the principal factors behind the structural crisis that affects judicial functioning: lack of material

resources, excessive formalization of procedures, insufficient number of judges and jurisdictions, outdated legislation, and an elevated number of litigants.

In 1990 there were only 5,164 judges in Brazil. Precisely in those states where impunity is most flagrant—especially in rural conflicts and violent deaths in general—the ratio between the number of judges and the size of the population is the lowest: in the state of Alagoas, one judge for 44,000 people; in Pernambuco, one judge for every 40,228 people; in Maranhão, one for every 39,383; in Bahia, one for every 38,774.⁶³ Thus, whereas in Brazil there is on average a judge for every 29,542 inhabitants, in Germany the ratio is one judge for every 3,448 inhabitants, in Italy, one per 7,692, and in France one per 7,142.⁶⁴

In this respect Brazil follows the typical pattern of developing countries, which allocate a greater proportion of human resources to the police to the detriment of the judiciary. Ridiculous budgets are assigned to the judiciary: the Federal Supreme Court received 0.22% of the federal budget in 1995, despite having heard 19,000 cases in 1992. In developing countries the proportion of judges and judicial personnel allocated to criminal justice is extremely slender, in 1986 reaching 2% of the total personnel for criminal justice as against 76% of police officers (in developed countries, the proportions were 8% and 76%). The establishment and maintenance of a solid judicial system requires meaningful investment in a comprehensive education system, which the governing classes never implemented. The deficiencies in education are reflected, for example, in the strategies for fighting crime. It is not surprising that lawyers' lack of preparation and insufficient training for judges are among the obstacles noted in the above mentioned judges' survey.⁶⁵

Another aspect of the crisis of the judiciary, noted by Maria Teresa Sadek, is the large discrepancy between the volume of cases that are brought to trial and the number that are resolved in court. In all of Brazil 4,209,623 prosecutions were brought before a magistrate judge in 1990 and only 2,434,842, or 57.5%, were resolved in that same period. This extremely low level reflects the output of the

⁶³ See P.S. Pinheiro, "Democracia, derechos humanos y desarrollo económico y social: Obstáculos y resistencias. El caso de Brasil," paper, Santiago de Chile, Centro de Derechos Humanos de las Naciones Unidas, Seminario Latino Americano de Expertos, 1991.

⁶⁴ Sadek and Arantes, op. cit. n. 61, 31.

⁶⁵ "The Cost of Criminal Justice," *Trends* (UNCJIN), Crime and Justice Letter, special issue, November 1991. Further evidence for this point is that in every state there is a large percentage of vacant judgeships that are not being filled. The national average of empty positions is 26%; this percentage reaches 50% in some states. See Sadek and Arantes, op. cit. n. 61, 39.

judiciary in the most recent years, even though several changes brought about by the 1988 Constitution have very slowly taken effect. And since the number of prosecutions that are initiated tends to increase, so does the accumulated discrepancy.⁶⁶ Due to this accumulation of prosecutions, many judgments are not carried out within the procedural time limits and the charges are therefore dismissed. In this fashion, crimes enjoy impunity and some judges who are corrupt or controlled by local interests intentionally allow some charges to lapse.⁶⁷ According to a recent study by sociologist Sérgio Adorno, from the Center for the Study of Violence, University of São Paulo, there is marked racial bias in sentencing: punishments are much harsher for nonwhite offenders than for whites. In rural areas, where the judiciary, like the Civil and Military Police, is more subordinated to the influence of local landowners, especially in cases involving union militants and Indians,⁶⁸ local police investigations are less rigorous, prosecutors are less likely to open an investigation, and judges, often linked to local elites, find excuses to delay trials in cases involving gunmen hired by landowners to eliminate squatters or labor activists. In Manaus, the failure of the police to produce proof leads judicial authorities to take no action in 80% of the crimes against life that ought to be submitted to a popular jury. In the state of Pernambuco, among the existing 176 judiciary districts, 73 do not have judges.

Witnesses, prosecutors, judges, lawyers, and human rights activists are frequent victims of intimidation, including death threats. These threats are not restricted to rural areas in the North and Northeast, where the intimidation of judges, prosecutors, and even the police is common practice: in São Paulo the Military prosecutors Marco Antonio Ferreira Lima and Stella Kuhlman received threats aimed at interrupting criminal investigations of military police; another prosecutor, Eliana Passareli, investigating corruption cases, was also threatened. In Rio de Janeiro judges and the Justice Department prosecutor investigating police links to organized crime received death threats. Numerous judges and prosecutors are on death threat lists and live under the protection of the Federal Police. In the state of Acre, as in many other districts in the North and Northeast, there is often a judge but no

⁶⁶ Sadek and Arantes, *op. cit.* n. 61, 39.

⁶⁷ US Department of State, *op. cit.* n. 53.

⁶⁸ Sérgio Adorno, "Crime, justiça penal e desigualdade jurídica: As mortes que se contam no tribunal do júri" *Revista da USP* 21, March-April-May 1994, 132–51.

prosecutor or vice-versa.⁶⁹ The public defender system, mandated by the Constitution and supported by the state district attorneys, is weak even though there are about 300,000 lawyers in the country. A third of the lawyers are concentrated in the state of São Paulo, where 3.1 million trials take place.⁷⁰

With the 1988 Constitution, the Public Prosecutor's Office in every state was able to increase its autonomy and extend its jurisdiction. In many states public prosecutors and attorney generals have commenced action in defense of citizenship involving several aspects of human rights. In the most developed states, like São Paulo, specialized departments were created to address abuses to specific groups, like children and adolescents, or to cover collective rights, such as the environment. In the state of Rio de Janeiro the Public Prosecutor's Office plays a leading role, along with some judges, in the investigations of organized crime corruption, exposing the links between the illegal lottery and the police and political officials. In states experiencing rural conflicts many prosecutors have investigated assaults with weapons and, asserting autonomy from the local oligarchies, filed charges against them. Throughout the country, despite the scarcity of personnel and disposable resources, each state's Public Prosecutor's Office has provided auxiliary assistance to police investigations involving serious human rights violations, often at the request of NGOs.

Significant improvements occurred in the structure of the federal Attorney General's office as a result of the powers and the autonomy guaranteed by the 1988 Constitution. These developments owed a great deal to the Attorney General of the Republic, Aristides Junqueira, and the Deputy Attorney General, Álvaro Ribeiro da Costa, who placed strong emphasis on the investigation of gross human rights violations. Although the Constitution provides for federal jurisdiction over human rights crimes, there is still no enabling legislation. Federal prosecutors have acted on several fronts against human rights violations, probably for the first time in the country's history. They have intervened in all homicide cases resulting from rural conflicts. They claim jurisdiction over the investigations by invoking an infraction of the international convention protecting workers' freedom to organize, since these crimes are directed at union organizers and their supporters. Crimes against children and adolescents motivated numerous initiatives in conjunction with the state justice departments. The Ministry of Justice revitalized the Federal Council

⁶⁹ See US Department of State, *op. cit.* n. 53, and Alison Sutton, *Slavery in Brazil* (London: Anti-Slavery International, 1994).

for the Defense of the Rights of the Individual (CDDPH in Brasília), promoting the formation of special investigatory commissions that relocated to several states, such as São Paulo, Rio de Janeiro, and Alagoas, in cases of massacres or police crimes. An ombudsman specifically charged with dealing with human rights violations was created in every state.

3. Prisons

While the police and the judiciary were only slightly affected by the reforms in these thirteen years of civilian government, another crucial institution for confronting impunity in Brazil, the penitentiary system, suffers from deficiencies that have accumulated for decades. In Brazil prison and illegal detention, despite all the clearly defined restrictions in the 1988 Constitution, continue to be crudely used against the majority of the poor nonwhite working population. The rules are followed only to the benefit of those who have some parcel of power or wealth, generally whites—but abuses are common even among those sectors. The indiscriminate manner with which detention and imprisonment are carried out in our country constitutes a deliberate and continuous disrespect, despite democracy, for constitutional precepts and the international human rights laws that apply domestically.

The biggest grievance of prisoners throughout the country, leaving aside, of course, the very fact of imprisonment, is the lack of legal assistance. The immense majority, 98% according to the national census,⁷¹ do not have the resources to contract private lawyers and so depend on the state public defenders, who for the most part have scarce resources, or lawyers named by judges. Postconviction, legal assistance is practically nonexistent, despite state prosecutors' efforts to improve this service, and prisoners without resources are abandoned to their fate. Prisoners' expectations for returning to their lives of freedom are based almost exclusively on their individual possibilities. The penitentiary census shows that, for every five prisoners, only two plan futures based on family. They complain of solitude, of suppression of affective life, and absence of permanent family ties.⁷² Thus, prison in Brazil is an inefficient institution, suffering from poorly administered resources and dominated by corruption; it is useless for the social reinsertion of inmates or the security of the population. In view of the weakness of police investigations, judicial shortcomings, and the lack of prison administration, large

⁷⁰ Brazil, Foreign Ministry, "Relatório inicial," op. cit. n. 23.

⁷¹ Analyzed in Dimenstein, op. cit. n. 2.

sectors of the prisoner population could be serving alternative sentences of community service with much greater possibilities for reintegration. Prison is fundamentally an institution for repression of 'nonelite' delinquents.

By contrast, organized crime is not a target of systematic repression by the State, which does not have any well-defined policy or any detention facilities for bosses and members of organized crime syndicates.

III. Civil Society, NGOs, and Raising Awareness of Rights

It is clear that no government policies and institutional reforms will have much chance for success without the mobilization and organization of NGOs. In this context the World Conference on Human Rights in Vienna, 1993, recognized "the important role played by nongovernmental organizations in the promotion of human rights and humanitarian activities on the national, regional, and international levels. The International Conference on Human Rights recognizes the value of the contribution of these organizations in raising public awareness of human rights issues, educational activities, training and research in this area, and in the promotion and protection of human rights and fundamental liberties."⁷³

The human rights movement has had a decisive role in what Alice Henkin, of the Aspen Institute's Justice and Society Program, calls the 'power to embarrass' states and societies: issuing condemnations and writing reports, pressuring for the definition of standards and the adoption of conventions, fighting for ratifications and the elimination of troops. Ultimately, they call attention to the need to incorporate the norms of international human rights law in the everyday practice of Brazilian democracy. Even though recourse to the international legal system for protection of rights may be limited, to the extent that they become more numerous and specialized, the international bodies for human rights investigation always have the 'power to embarrass'⁷⁴ governments that commit violations precisely because the primary responsibility for the adoption of norms continues to fall to national States. No government wishes to suffer the exposure of systematic human rights violations by agencies under its authority or its failure to fulfill obligations to which it has agreed.

⁷² See Maria Soares de Camargo, "As prisões no Brasil," *Boletim NEV* 1, 1994.

⁷³ Art. 38, Vienna Declaration, cit., Alves, op. cit. n. 3, 159–60.

⁷⁴ See Helga Ole Bergesen, "The Power to Embarrass," paper, World Congress of the International Political Science Association, Rio de Janeiro, August 1982, cit. Alves, op. cit. n. 3, 44.

The new constitutional system opened up space for new movements and organizations defending the rights of women, blacks, Indians, rural workers, and groups with differing sexual orientation. These emerging movements were able to introduce new dynamism to social movements. They confronted the limitations of political parties and unions, as well as the narrow concerns of interest groups, to assume the new agendas dictated by human rights.⁷⁵ NGOs experienced substantial development after the return to democracy. A 1988 study showed that the NGO sector was composed of 1,208 organizations (among which 100 dealt solely with human rights)⁷⁶ located in 378 cities, with 85% created in the last 15 years.⁷⁷ Despite this vitality, the activities of human rights groups, although present in many parts of the country,⁷⁸ are still fragmented and localized: these NGOs can complement but cannot substitute for political society. The overwhelming majority of the Brazilian population do not participate in formal organizations within civil society: This goes for NGOs as well as labor unions and associations. According to a PNAD study, only 18% of the Brazilian population eighteen or over were affiliated with a labor union or an employees association in 1988.

Human rights NGOs face a special difficulty in that the poorest populations frequently do not recognize human rights as their own rights. This constraint, combined with high levels of acceptance of the illegal practices of State agents—who commit arbitrary acts in the name of ‘protecting’ these populations—results in a generalized acquiescence, such that although these populations are the most frequent victims of violence, they distance themselves

⁷⁵ Stavenhagen, op. cit. n. 31.

⁷⁶ John W. Garrison II, “A ECO-92 e o florescimento das ONGs brasileiras,” *Desenvolvimento de Base* (Grassroots Development), 1, 1993, 2–11.

⁷⁷ Rubem Cesar Fernandes, *Privado porém público* (Rio de Janeiro: Relume Dumará, 1994). This study, based on NGO directories, put the number at 1,010, with 12.87% connected to human rights, too conservative an estimate. If we consider only those NGOs affiliated with the National Human Rights Movement, there are about 1,041 grassroots entities, with 857 created in the fifteen years before 1992. See Garrison, op. cit. n. 76.

⁷⁸ There is a concentration of 53% of these organizations in the Southeast region, most of which have a national focus. The second largest concentration is in the Northeast, where 27% are located. These NGOs engage in numerous activities, including support for grassroots movements and popular organizations. Many are linked to rural and urban labor unions.

from the marginalized and criminals.⁷⁹ But this acquiescence is neither monolithic nor fixed. Surveys done following the massacre in Carandiru, São Paulo, in 1992 show disapproval rates of more than half the population: this tendency was confirmed following the Candelária massacre.⁸⁰

⁷⁹ Pinheiro et al., *Poverty, Marginalization*, op. cit., n. 31; Teresa Caldeira, "City of Walls: Crime, Segregation, and Citizenship in São Paulo," PhD dissertation in Anthropology (University of California, Berkeley), 1992.

⁸⁰ See Nancy Cardia, *Direitos humanos: Ausência e exclusão moral. Princípios de justiça e paz* (São Paulo: Comissão Justiça e Paz, .

Institutions remain relatively autonomous from society when they should be the target of careful scrutiny and innovative reform through democratic mechanisms. The reforms can benefit from all the knowledge that can be gained about popular attitudes. But governments cannot remain immobilized with the excuse of cultural moorings or the popular or middle-class imaginary. The State, in addition to the duty of enforcing respect for human rights, has a pedagogic role to play in the promotion of human rights through education.

Perspectives

Human rights violations will be reduced if the current federal administration expands the process of reforming law enforcement institutions, as well as the legislation sketched out by the Itamar Franco government, and if it continues to honor its responsibilities to the international community. Fernando Henrique Cardoso's administration has shown many signs of commitment to making the promotion of fundamental guarantees and human rights a reality. This engagement by the federal government could contribute to the mobilization of state administrations as well as the Judiciary, the Justice Department, and the Legislature for the promotion of human rights. Society expects that the current government's apparent support for a foreign policy of public disclosure in the area of human rights—as demonstrated by the creation of the Department of Human Rights and Social Issues in the Foreign Affairs Ministry—will be extended domestically by concrete actions and urgent institutional reforms.

We should recognize that the Cardoso administration has in many instances demonstrated its commitment to the promotion of human rights and its willingness to combat the generalized impunity for serious violations of these rights. In response to the authoritarian past, the administration has recommended legislation sponsored by José Gregori, Minister of Justice Nelson Jobim's chief of staff, which was elaborated after extensive debate within the government and civil society. This bill contemplates the recognition of the deaths of the disappeared and establishes a fact-finding commission, which will be able to create conditions for the investigation of assassinations committed by State agents. In an Independence Day ceremony in 1995 the President made a clear reference to human rights violations after the return to democracy and the need to punish them: "I believe that we have serious violations, investigations that still have not reached their conclusions, in Carandiru, Candelária, Vigário Geral, the youths disappeared from Acari and, more recently, in Corumbiara. And we need to have instruments that allow exemplary punishment."

On this same occasion the President announced his desire to prepare a National Human Rights Plan, to be developed in consultation with civil society, putting in practice one of the recommendations of the Program of Action of the 1993 Vienna World Human Rights Conference. The Human Rights National Plan was launched in May 1996 and a National Secretariat on Human Rights was established in May 1997, under the responsibility of José Gregori.

Several ensuing government initiatives considered the issues of slave labor, violence against children and adolescents, child prostitution, torture, and discrimination against the black community. The National Council for the Defense of the Rights of the Individual in the Ministry of Justice has been deeply involved, although the reform proposal to broaden its jurisdiction and enhance its representativeness of civil society is still unrealized. In the area of legislative proposals the federal government and Minister Nelson Jobim have taken supportive positions toward Hélio Bicudo's bill which returns jurisdiction over the common crimes of military police to the civilian judiciary, and they promise to consolidate, in collaboration with the legislative branch, various bills under consideration that would regulate the criminalization of torture.

Will these policies have the effect of ending the serious human rights violations that persist in the democratic period? Obviously, no magical outcome is expected. But the State's recognition of the grammar of human rights unleashes a new dynamic in the fight against the authoritarianism that survives within democracy, creating better conditions for citizens and for civil society's movements to advance criticisms, expand mobilization, pressure government leaders for change, and to demand punishment for crimes, improvements in the judiciary, and greater democratic control over government. The commitment of government leaders to human rights contributes to the growth of citizenship and to the expansion of democracy for which human rights violations, commonplace in Brazil for centuries, become intolerable.

Organized crime and systematic violence undermine the values of citizenship and the rule of law. The tolerance by many authorities, who without concern watch the arming of the population, the failure to repress organized crime, the hospitable attitude toward this crime (such as the illegal lottery), and the collusion between politics and crime, should be shattered by the democratic State through full utilization of the legal instruments of the rule of law and the urgent improvement of the judiciary.

When we evaluate the situation of human rights in Brazilian society, we should ask if we are in a uniquely bad situation or if we are part of an international trend. If we consider systemic lethal violence and place ourselves among the twelve largest industrial democracies (where Brazil

is located), the Brazilian situation is one of a country that still has not fully implemented the rule of law. But if we look back and compare previous decades with the present moment, it is clear that popular mobilization within civil society and political participation were more limited and State institutions more precarious in the past. Human rights were not recognized and transparency was minimal. Despite systematic violence and increased economic privatization, the return to democratic organization has paved the way for a more effective fight by society for the rule of law. But just as democratic consolidation deepens with institutional and legislative reform, full human rights guarantees can only be realized if the human rights movement knows how to remain linked to popular aspirations. Formal democracy is not sufficient: in many developed countries government systems for human rights protection that we have barely begun to achieve are already showing signs of inadequacy in the face of contemporary challenges (new forms of racism, migrations, drug trafficking, organized crime). We should not lose sight of the need to articulate the struggles for institutional reforms and for national and international systems of protection, with increasing attention to the claims of populations whose access to citizenship traditionally has been barred. Without the realization of the social, economic, and cultural rights of the populations in need, civil and political rights will always be incomplete and threatened and serious human rights violations will continue to worsen in the new democracies.