

NAVIGATING IN UNCHARTED WATERS

Human Rights Advocacy in Brazil's "New Democracy"

The work of the Center for the Study of Violence suggests that it is possible, within a democratic context, to criticize sitting government while building positive partnerships between civil society and the state.



BY PAULO SERGIO PINHEIRO

Geraldina Canuto, widow of João Canuto, ex-president of Brazil's Rural Workers Union of Rio Maria, at her husband's grave. He was killed in 1985 in a conflict over land rights. His murderer have not been prosecuted.

Almost two decades after the wave of political transitions to "democracy" in South America, the effective protection of human rights continues to be an unfulfilled promise. Political regimes that are considered democratic because constitutional government has been restored and leaders compete freely in open elections are nevertheless marked by authoritarian legacies that remain embedded in state practices. Instead of democratic consolidation, there is authoritarian continuity.

This paradox is perhaps most dramatically evident: in Brazil. The advent of democracy in 1985, which brought an end to 21 years of military rule, did not bring about an end to state-sponsored violence; on the contrary, in the context of an explosion of common crime as well as ongoing social conflicts over land and other issues, state agents continue to en-

gage in gross human rights violations. Despite, the fact that Brazil is the world's eighth largest economy, it is one of the most unequal countries in Latin America, a situation which clearly feeds what has become an epidemic of violence and victimization concentrated among the poor majority. It has an annual homicide rate of 25 per 100,000 inhabitants, far outstripping the other seven of the world's largest economies in terms of violence. The United States, the most violent of the Group of Seven (G-7) countries, has an annual homicide rate of 11 per 100,000 inhabitants. In 1997 alone, there were over 40,000 homicides in Brazil out of a total population of 156 million. Most victims were poor, young and black.

In effect, democratic governance in Brazil has proven unable to reform or empower state institutions to protect the rights of citizens. No longer does the government simply ignore gross human rights violations, as it did during the period of populist democracy (1946-64), nor does it engage directly in such violations, as it did during the military dictatorship (1964-85). On the contrary, the federal government has begun

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to play an important role in building mechanisms of accountability for human rights crimes. But in many instances state institutions, rather than safeguarding the rule of law, have in fact contributed to undermining it through the use of banal and brutal and lethal tactics to deal with violence. Indeed, the police generally tend to see the rule of law as an obstacle through the use of effective guarantee of public security, and they and other institutions of the criminal justice system tend to act as border guards protecting the elites from the poor. Besides torture, which is almost routine, the summary execution of suspected criminals by the police is a virtual epidemic. In 1999 in the metropolis of São Paulo alone, the military police killed 380 civilians in on-duty incidents – most of which were summary executions – and 197 in off-duty incidents. There was a similar total number of victims in Rio that same year, and in other states the number are smaller but the pattern is the same. Compared with other democratic countries (not including those experiencing internal warfare), Brazil has the highest rate of lethal police violence. Other types of violence involving vigilantism, death squads, *justiceiros* – gunmen who kill criminal suspects and "undesirables" like street children – and gang violence have soared in the periphery of Brazil's main urban centers, often with the direct participation and/or complicity of the military and civilian police.

In addition, access to justice for the poor is practically nonexistent. The judiciary is not perceived as a body that protects the rights of the underprivileged classes, but rather as an institution responsible for the criminalization and repression of the lower classes. Throughout the country, impunity is virtually assured for those who commit offenses; against poor victims; who are considered to be "undesirable" or "subhuman". For example, seven years after the killing of 111 inmates in the Carandiru Prison in São Paulo following an inmate uprising, not one of the more than 100 military police indicted has been prosecuted.

In effect, while there have certainly been dramatic changes in the Brazilian polity in the 15 years since the end of the military dictatorship, the protection and promotion of human rights continues to be one of the principal challenges facing civil society. This situation has presented tremendous challenges for human rights organizations, forcing them to find new ways of conceptualizing human rights and defining new strategies appropriate for these changed circum-

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stances to create effective and viable mechanisms for the protection of human rights, particularly of the poorest.

An organization that has been at the forefront of the effort to address these new challenges in human rights advocacy is the

Center for the Study of Violence (NEVIUSP) at the University of São Paulo¹. The first academic program linking human rights activism and human rights research, the Center began to work in 1987, just two years after the return to democracy. Navigating in uncharted waters, the Center began with a clear sense of the problems that needed to be addressed but had no well-defined research project or plan of action. The work of research was defined in relation to the concrete problems facing Brazil's new democracy: the absence of the rule of law and the inaccessibility of the justice system, for non-elites; structural racism and racial discrimination; and the lack of accountability for government officials implicated in human rights abuses and other crimes. Brazilian democracy was confronted from the beginning by socially rooted authoritarianism – a combination of elements in Brazil's political culture, values and ideology which have survived (and most probably preceded) military dictatorship and which are expressed in everyday life. These authoritarian attitudes, expressed both in the private and public spheres, include subtle hierarchies in social relations, racial discrimination, forced labor and the acquiescence, to arbitrary power, as well as lawless state practices, such as police killings, torture, inhumane, prison conditions, the killing of street children, and impunity.

The Center began investigating these illegal practices, documenting them in reports, carrying out fact-finding missions, and receiving complaints of human rights abuses from the citizenry. It broke new ground in human rights research, pioneering sociological investigation and adapted and refined criteria to measure the arbitrary use of lethal force by state agents. This was critical in raising awareness of the lawless official violence that plagued Brazil after the return to democracy, and helped identify serious shortcomings in the performance of the judiciary, as well as the ways in which impunity undermines establishment of the rule of law². For example, an investigation into the criminal justice system in São Paulo led by professor Sérgio Adorno, a leading specialist on the Brazilian judiciary and one of the founding members of the Center, documented that black defendants tended to receive harsher sentences than white defendants for the same crimes, effectively

demonstrating a pattern of racial bias in sentencing practices. The Center has also done extensive research on urban lynchings of suspected criminals, which occur primarily in large cities like São Paulo, Rio and Bahia, a popular response to growing crime and the perceived failings of the criminal justice system. Over time, the Center effectively linked one of the most daunting problems facing contemporary Brazil - a pattern of endemic violence rooted in authoritarian legacies that carried over from the dictatorship into the new democracy - to the most fundamental question of the state's monopoly of physical violence in new democracies. How can we establish more democratic state practices and accountability for state actions, while simultaneously aiming for internal pacification and control over private violence?³

After 13 years of publicly questioning the practices and motives of state, authorities, the Center has established a reputation, as a serious; and rigorous research institute. It has launched a number of projects in different arenas, and perhaps the most significant: impact of the Center's work has been within the academic profession itself. Violence and gross human rights violation were not important: fields of social science inquiry, and the Center's work has contributed to consolidating a research agenda based on these issues. For example, the study of police anti policing - once confined to the law schools and police academics - is now carried out by social scientists and human rights researchers, with academic seminars, university courses anti dissertations addressing this issue.

The Center has also made a concerted effort to recruit and train young researchers, offering them fellowships, integrating them into different research programs, and encouraging an integration between research and human rights activism. This has assured the Center's vitality, and helped build a solid network of a new generation of researchers, sensitized to human rights concerns. The Center has further advanced the integration between research and activist agendas by hosting the Teotonio Vilela Commission, a human rights organization founded in 1983 by Senator Severo Gomes, an extraordinary humanist and defender of the rights of the Yanomami people.



A policeman in Rio de Janeiro detains a boy. Police violence against street child is endemic in Brazil.

After more than a decade of work, the Center's researchers became aware that civil society can challenge and contest state power, but that only in a democratic state can a democratic civil society thrive, and only a democratic civil society can effectively preserve a democratic state⁴. In other words, in this new context of democratic transition, human rights organizations like the Center faced challenges that went beyond the simple documentation and denunciation of human rights abuses. The important role played by social movements in the resistance to military rule helped bring down

authoritarian regimes, but today democratic consolidation requires building new linkages between the spheres of society and political institutions⁵.

As the Center refined its diagnosis of the problems facing Brazil's new democracy, its members, began to feel the need to intervene in the problems studied and to develop new strategies to confront them. In particular, it sought to establish an ongoing dialogue with the federal and state government on issues of public security, which was facilitated by the Center's reputation for rigorous research as well as the fact that it is affiliated with the prestigious University of São Paulo, a public institution. The Center's reports, which evaluate and critique federal and state security policies, has made it a key player in policy debates and discussions on these issues. Despite our outspoken criticism of the police and policing practices, police chiefs have come to the Center to discuss their program and policies, as have federal justice ministers and state, secretaries of public security and of justice.

The Center broke new ground in September 1995, when the government: of President Fernando Henrique Cardoso asked it to prepare a draft document for the National Human Rights Plan. The draft, prepared with the active participation of more than 300 Brazilian human rights organizations, consists of more than 260 proposals in the area of civil and political rights. The plan reflects full awareness that for endemic violence to be completely controlled, the "structural violence" of poverty, hunger anti unemployment must be tackled. But in terms of immediate

action, the Plan aims to fully construct the rule of law in Brazil. During its four years of existence, most of the Plan's proposals have been implemented, and it has become, a point of reference for the mobilization and organization of civil society – often in partnership with state, agencies - to protect and promote human rights. In effect, human rights has become "official" government policy, giving civil society new tools in its struggle for justice and full democracy.

Important pieces of legislation have been introduced, including the criminalization of torture; civil-court jurisdiction over crimes committed by military police; automatic federal jurisdiction for human rights crimes (which is still pending final approval by Congress); civil jurisdiction, with citizen juries, for homicides committed by military police; and making the possession of illegal weapons a crime. Witness and victim, protection programs have also been launched, and other difficult issues, such as racial discrimination and the struggle against forced and child labor, have been placed on the public agenda in ways they had not been before. In 1997, the Cardoso government created the National Secretariat for Human Rights, whose date was to implement: the Human Rights Plan, and José Gregori, a former president of the São Paulo Justice and Peace Commission, during the 1970's and a recognized leader of the struggle for human rights during the military dictatorship, was named its president.

But despite the important changes resulting from the Program, judicial authorities still fail to successfully prosecute recent violations despite overwhelming evidence. The criminal justice system has neglected to investigate and prosecute the numerous cases of rural violence. Efforts to prosecute military officers involved in police killings and massacres, despite convictions in some cases, also suffered setbacks. The number of prison deaths continues to be extraordinarily high.

This points to a key problem: There are structural obstacles that the Brazilian government must overcome to guarantee the implementation of the Plan. Despite the progress made with the Human Rights Plan, democracy has yet to promote full accountability for state agents implicated in rights violations. The most important first step continues to be, institutional reforms, for instance of the judiciary. Establishing the rule of law is crucial both for democratic governance and for the-protection, of citizens' rights in Bra-

New legislation criminalizes torture, and allows cases of homicide involving military police to be heard by civil courts and citizen juries

sil⁶. A positive sign is the National Plan for Public Security launched by the federal government in June 2000 to address the problems of urban violence, organized crime, massacres and gun control, building on several provisions of the to effectively combat them. One of the most innovative efforts in this regard is a pilot project, launched this past May with support of the UN High Commissioner for Human Rights and the United Nations Development Program (UNDP), to create Human Development: "Observatories" and Human Development: "Radars" in metropolitan regions, small towns and rural areas in Brazil. The Observatories and Radars consist of local civil society organizations in partnership with other institutions. Their main function will be to monitor human rights, with a special focus on the right to life and liberty, and socio-economics rights, including rights to health, food, education and work. The aim is to facilitate citizen participation in the oversight of government agencies and practices, to encourage civil society to voice its concerns and needs, and to incorporate different views points into the agendas of governments and corporations. Eventually, the goal is to replicate this model on a larger scale, branching out into a nationwide network of Observatories and Radars.

Another innovative, strategy developed by the Center to create greater human rights awareness in society has been a concerted effort to develop a relationship with the print and electronic media. Building on years of cultivating media contacts and sensitizing journalists and media outlet owners to human rights issues, today the Center is able to convey the findings; of its research and disseminate its viewpoints to a broad audience on a regular basis. For example, in conjunction with TV Globo network, which reaches 80% of Brazilian *households*, the Center organized a week-long seminar in 1997 entitled "São Paulo Without Fear" that was broadcast on national primetime television. Specialists from around the world participated in debates about a variety of issues relating to violence, security issues and policing. They discussed the epidemic of violence in urban Brazil, criticized specific government policies concerning police reform, community policing and juvenile delinquency, and put forth concrete proposals for policies that addressed security concerns from a human, rights perspective. The willingness of Brazilian television to go beyond sensationalistic reporting on human rights violations and engage

academic experts and civic groups dealing with these issues has clearly helped legitimize the work of promoting human rights.

The seminar created an opportunity for the Center to network with the business community, and in 1998 the São Paulo Institute Against Violence was established with support of the São Paulo State Federations of Industry and Commerce. In conjunction with the Center, the São Paulo Institute is currently implementing a "Crime Stoppers" program with the Secretariat of Public Security of the State Government of São Paulo. The program, funded by business federations, consists of an open telephone line to receive complaints and information about crime (including organized crime) and an intelligence unit has also been established to evaluate the information received in order to design effective anti-crime strategies.

There is an ongoing exchange between academic experts and business leaders to design projects and proposals capable of mobilizing government cooperation and civil society mobilization.

Over the last 13 years, the Center has demonstrated that it is possible to develop innovative academic projects from within a university setting that contribute to public debates over public policy and, in some instances, decisively shape the contents of those policies from a human rights perspective. There was no pre-existing institutional model for the Center to follow, nor were there precedents to guide its development. Only after a period of trial and error did we establish a sound methodology for human rights research and activism, which in turn has become the basis for innovative efforts to bridge the gap between state and society and build a more just and democratic Brazil.

With these efforts, the Center has successfully gone beyond the extremely healthy "power to embarrass" as a strategy for changing state human rights policies and practices. Without renouncing its autonomy, the Center has learned to work with state agencies and institutions to propose alternative policies and strategies for the protection and promotion of human rights. In hard-won moral authority, built on many years of rigorous and thorough research, has allowed the Center to move beyond its initial programs to devise new



and innovative projects for human rights promotion and protection, though it has by no means renounced the "mobilization of shame" against governments and the dominant class as an effective tool for denouncing human rights violations; when they occur. The Center is a vivid example of the fact that it is possible, within a democratic context, to regularly criticize the ruling class and sitting governments while continuing to build positive partnerships between civil society and the state.

A survey carried out by the Center in late 1999 in ten capital cities throughout Brazil shows that society clearly prefers the law to vigilante justice, and that the majority oppose torture and police brutality⁷. According to the poll, the majority also accepts the legitimacy of strikes and peaceful social protest. These results suggest that despite the authoritarian legacies inherited from our past - and very low rates of preference for democracy registered by other important surveys such as the Latino Barometer - there is a democratic sensibility within the population⁸. Even more surprisingly, 58% of those surveyed were aware of the National Human Rights Plan, and most thought its goal was to protect the rights of the people - not the cliché that human rights protect only criminals. The Center has struggled to develop successful strategies to promote and protect human rights. We are fully aware that we have a long way to go. But in the midst of the profound inequality and endemic violence that continues to plague our country, these are hopeful signs.

NOTES

Navigating in Uncharted Waters: Human Rights Advocacy in Brazil's "New Democracy"

1. The Center, based at the University of São Paulo (USP), is an independent, nonprofit organization dedicated to human rights research. It has received the support of a variety of public and private sources, both nationally and internationally as well as UN funding for specific projects. The Center may be reached by email at: NEV@edu.usp.br.
2. The Center promoted and contributed to the first report on police abuse after the end of dictatorship. *Police Abuses in Brazil* (New York: Americas Watch, 1987)
3. See Norbert Elias, "Violence and Civilization: The State Monopoly of Physical Violence and its Infringement", in John Keane, ed., *Civil Society and The State* (London, Verso, 1988); John Keane, *Reflections on Violence* (London, Verso, 1996); and John Keane *Civil Society* (Cambridge, Polity Press, 1998)
4. Dick Messner, "Organizaciones no-gubernamentales: Nueva esperanza y actores sobrestimados. Proceso de búsqueda en América Latina y experiencias en países industrializados", in Peter Hengstenberg, Karl Kohut and Gunther Maihold, eds., *Sociedad Civil en América Latina: Representación de intereses y gobernabilidad* (Caracas, Editorial Nueva Sociedad, 1999) p. 448-449
5. Juan Carlos Portantiero, "La sociedad civil en América Latina: Entre autonomía y centralización", in Hengstenberg, Kohut and Maihold, p. 37-38
6. Paulo Sérgio Pinheiro, "Democratic Governance, Violence, and (un)Rule of Law", *Daedalus*, Vol. 129 No.2 (Spring 2000) pp. 119-143.
7. Nancy Cardia "Pesquisa sobre atitudes, normas culturais e valores em relação à violência em 10 capitais brasileiras" Ministério da Justiça, Secretaria de Estado de Direitos Humanos, 1999.
8. Just 18% of Brazilians claimed to be satisfied with the functioning of democracy in their country during the 1999-2000 period, and the 39 % said they preferred democracy to any other form of government. "*Latino Barometer Survey*", *Folha de São Paulo* (São Paulo), May 14, 2000 p.A-23;