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# **Civilian Oversight of the Police in Brazil: the case of the ombudsman's offices**

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**September, 2002**

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## Introduction

The creation of Police Ombudsman's Offices in Brazil as a form of civilian oversight of the police is a recent phenomenon and an important milestone, opening the way for participation by civil society through institutions that are independent of corporatist police force interests and in defense of civil rights whenever the latter are threatened by police misconduct.

Police Ombudsman's Offices from five States of Brazil were the object of the research whose results are presented herein<sup>2</sup>: São Paulo, created in 1995; Pará in 1996; Minas Gerais in 1997; and Rio de Janeiro and Rio Grande do Sul, both in 1999.

The overall research objectives were the following:

- Describe and evaluate routines, procedures, activities, and action strategies in the selected Police Ombudsman's Offices;
- Determine the degree of satisfaction of citizens who had lodged complaints against the police, in light of the work performed by the Police Ombudsman's Offices;
- Determine how police officers targeted by complaints view the process to which they were submitted;
- Learn how both the general public and police officers assess the work conducted by the Police Ombudsman's Offices;
- Compare experiences of civilian oversight of police in Brazil with those of other countries;
- Propose a new model for civilian oversight of the police that contributes to democratic law enforcement policies, with a significant impact on oversight of illegal and/or irregular conduct in law enforcement agencies, especially in relation to illegal use of force.

The five above-mentioned Police Ombudsman's Offices were visited from November 2000 to July 2001 for at least one week each. During the visits, the researchers observed work routines, interviewed employees, and gathered all types of materials.

In order to determine the degree of satisfaction among citizens who had lodged complaints against the police, in light of the work done by the Police Ombudsman's Offices, the goal was to submit questionnaires to 200 complainants each in São Paulo and Rio de Janeiro. In addition, in order to evaluate how the accused police officers assessed the process to which they were submitted, the goal was also to submit questionnaires to 200 police officers each in São Paulo and Rio de Janeiro. Numerous obstacles, basically related to the difficulty in locating both the complainants and the accused and their refusal to grant interviews ended up significantly reducing the respective sample sizes.

By the end of the research, 34 complainants in Rio and 54 in São Paulo had been interviewed by telephone, with the questionnaires filled out. As for police officers, questionnaires were submitted in person to 20 civil police officers and 15 military police officers in Rio de Janeiro. In São Paulo, one military police officer was interviewed in person and 22 answered the questionnaire sent by mail. No civil police officers were interviewed in

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<sup>2</sup> This report is the result of the Project entitled *Civilian oversight of the police: the brazilian case*, which was carried out from October 2000 to April 2002, with the support of Ford Foundation. The research team was composed of Julita Lemgruber (coordinator), Ignacio Cano (consultant), Ana Paula Miranda and Sonia Travassos (research assistants), Dorian Borges (statistician) and Dolores Rodrigues (administrative support). Túlio Kahn coordinated the research team in Sao Paulo and Leonarda Musumeci joined the team during the drafting stage of the report.

the State of São Paulo because we were unable to obtain cooperation from the São Paulo State Civil Police in locating the accused police officers.

In order to understand how both the general public and police officers view the work conducted by the Police Ombudsman's Offices, 20 interviews were conducted with key informants in each of the five States, and 14 focus groups were conducted in Rio de Janeiro: 8 with community residents and 6 with civil and military police officers.

This Executive Summary report follows the same order as the full report to be published in November in book format, as mentioned previously. Obviously each of the chapters is covered in condensed form in this Executive Summary.

Chapter 1 seeks to understand the historical background of police forces in our country, shedding light on their problems and dilemmas.

Chapter 2 discusses the Internal Affairs Offices of both the Civil and Military Police, from the perspective of members of the IA Offices themselves and that of civil and military police officers in the various States, heard in interviews and focus groups.

Chapter 3 analyzes the Police Ombudsman's Offices in Brazil based on the field work conducted in the five Police Ombudsman's Offices and the quantitative data obtained from their reports.

Chapter 4 discusses the view of police officers towards the Police Ombudsman's Offices, based on material from interviews and focus groups. Chapter 5 contains the views of both civilian complainants and accused police officers concerning the work of the Police Ombudsman's Offices.

The material from interviews with community leaders in the five States and the data from the focus groups held in Rio de Janeiro with community residents and leaders are the subject of Chapter 6, focusing on perceptions concerning the police forces and Police Ombudsman's Offices.

The last Chapter provides conclusions and discusses a proposal for a new Police Ombudsman's model for Brazil.

## Chapter 1 **Brazil's (Un)controlled Police**

The tension between use of force and respect for individual and collective rights is at the very basis of police institutions, has been present since such institutions have existed, and is manifested in different ways in police institutions in all democratic societies. This makes both internal and civilian oversight mechanisms indispensable anywhere in the world. Such mechanisms must be able to make the two conflicting poles merge, thereby guaranteeing restraint, legality, and legitimacy in the use of police force.

Spreading throughout Europe from the early 20th century onward, modern police forces emerged in a context of expanding civil rights, as an alternative to both the private use of force and social conflict intervention (sporadic and nearly always truculent) by armies. The development of modern police forces reflected the consolidation of rule of law in the West, translating into new types of institutional arrangements a broad design aimed at producing internal peace and public security by peaceful, impersonal, and continuous means, strictly accountable to the legal order. However, the materialization of this proposal never failed to be problematic, even in countries where liberal political culture and the defense of individual civil liberties were most deeply rooted in the last 200 years. The border between the legitimate and abusive use of force; the conflict between legality and "efficacy" in police action; the social selectivity of coercion versus universal rights; and the proximity between (and possible promiscuity of) police and crime are some of the issues which have been confronted daily in police forces throughout the "civilized" world.

Therefore we should not take an idealized or static model as the point of departure for the functioning of police institutions in contemporary democracies. The famous question, “Who watches the watchmen?” – or: how does society oversee the agents authorized to use force to maintain law and order? – remains current everywhere, and *the answers are still being formulated*, based on continuously renewed social perceptions and demands.

However, this does not mean to underrate the severity of problems in countries like Brazil, which have undergone long periods of authoritarian rule in their recent history. Despite political transition, democratic order and culture have still not fully taken root, and police violence and corruption assume alarming proportions as measured against any civilized parameter. The issue is merely to highlight that oversight of the police is an integral part of conquering and consolidating democracy. We thus have much to learn from the experiences, successes, and errors of countries that began this process long before and that are still struggling to maintain and improve it.

This is the backdrop for our analysis, as follows, focusing on the main problems in Brazilian police forces and the main difficulties for operating current police oversight and control mechanisms in the country.

### **1.1 - Problems and distortions in Brazilian police forces**

We could make an endless list of the deficiencies and problems now characterizing a major portion, if not all, of Brazil’s police forces. We highlight only the most obvious, beginning with the limited investment in technology and human resources, resulting in a chronically low investigative and crime-solving capability, even for the most serious crimes. For example, Soares (1996) described how more than 90% of the homicides recorded in the city of Rio de Janeiro during the year 1992 had failed to result in legal proceedings as of June 1994. The inquiries were either still under way or had been dropped due to lack of evidence as to the perpetrator’s identity. In other words, the vast majority of homicides go unpunished after an average of two years.<sup>3</sup>

Another example of the low investment in police forces is the poor quality of the data they produce. When data do exist, they are usually fragmented and used individually by police officers; only in recent years have very embryonic efforts been made to use such data to plan and evaluate police work itself.

Another serious problem in Brazil is the division of policing between two different police forces, the Civil and Military Police, with the former in charge of investigating crimes and the latter in charge of overt and preventive policing. This jurisdictional split hinders a more global perspective in planning law enforcement activities in such a way as to include the entire cycle ranging from prevention to investigation to arresting suspects. The two institutions duplicate efforts, activities, and resources (databases, communications systems, etc.). They frequently engage in turf wars, struggling with each other over space and competing to take credit for results. Their organizational cultures are very distinct and their relationship is generally marked by distrust, if not open hostility.

In addition, there is a deep chasm between the senior executive officers and the rank and file *within* each of the two forces – between ranking officers and foot soldiers in the Military Police; between precinct commanders and rank-and-file “cops” in the Civil Police. This undermines internal cohesion, impedes career advancement from the lower echelons to the top of the hierarchy, and means in practice that there are *two* separate forces with their own respective cultures *inside* each of the larger forces.

Oversight of the police by Police Ombudsmen was not planned to deal with the inefficiency of institutions or with their organizational flaws, but only with complaints against

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<sup>3</sup> Strictly speaking, the time elapsed varied from a year and a half for homicides recorded in December 1992 to two and a half years for those recorded in January that same year.

misconduct and crimes committed by members of the police. However, the two problems are closely related, and as we will see later on, one of the main limitations to the prevailing Brazilian oversight model is its dependency on what are known to be biased and ineffective internal affairs mechanisms in the police forces themselves.

Police violence and corruption are the two most frequent complaints lodged with the Police Ombudsman's Offices. Violence is defined here as both the abusive and especially lethal use of force during interventions by the police, as well as the use of torture to extract confessions during inquiries or to ensure control over inmates.

Torture, a historical blight on the Brazilian police, is regularly and insistently denounced in reports by human rights groups. Although by their very nature the cases reported represent a tiny portion of what actually occurs daily in our precinct jails and prisons, the United Nations Rapporteur on Torture, visiting the country in 2001, reported that the practice is endemic in the Brazilian criminal justice system.

Torture was first classified as a crime in Brazil under a law passed in 1997. However, five years later the number of actual convictions for this crime is still negligible. Prosecutors continue to use other charges like "involuntary injury", which carry lighter penalties.

Another characteristic form of violence in our police forces is the excessive use of force, as reflected in the extremely high death rate during police activities in various parts of the country. According to a survey commissioned by the Rio de Janeiro State Legislature in 1996, in just three and a half years and in the city of Rio alone, the police killed no fewer than 991 persons.<sup>4</sup> In 1995, the Rio de Janeiro police killed nearly as many civilians in the city alone as all the United States police forces combined during that same year (CANO, 1997). Other indicators of the excessive use of force in the same survey are the following: approximately 10% of the cases of manslaughter in the city were committed by police officers;<sup>5</sup> for each police officer killed in alleged "confrontations", there were over 10 deaths of civilian "suspects"; three times more "suspects" were killed than wounded, when in any armed conflict one would always expect there to be more wounded than dead.

These data reinforce the idea that many police interventions, especially in the *favelas* or slums, do not aim to merely arrest suspects, but to eliminate them outright. In the majority of these cases there are no independent witnesses to confirm the police version. In addition, the forensic medical data from autopsies, which were also reviewed in this survey, confirmed the widespread use of excessive force and summary executions: 46% of the bodies contained four or more gunshot wounds; 61% had at least one gunshot wound in the head; 65% had been shot at least once in the back; one third had other injuries in addition to gunshot wounds; and 40% of the victims had been shot point-blank, at close range, the clearest sign of execution.

According to the subsequent phase of the above-mentioned study, conducted in the *Auditoria da Justiça Militar* (Military Court), in nearly all of these cases the charges were dropped at the prosecutor's request, even when there was clear evidence of summary execution of victims. The few cases in which the prosecutor initially offered an indictment were subsequently acquitted in trial, at the request of the prosecutor himself (CANO, 1999).

In addition to torture and excessive use of force, another serious problem in Brazilian police forces is corruption. Although corruption is present to various degrees in all types of institutions, it is the trademark of our police forces. This is due partially to the degrading salaries earned by police officers in most States of Brazil, often supplemented either by illegally providing off-duty private security services or by means of irregular activities while on duty. Widespread tolerance by police forces towards such kinds of "wage bonuses" and

<sup>4</sup> This figure includes both suspects, bystanders or accidental victims, and unclassified individuals but not police officers killed during such operations.

<sup>5</sup> This figure includes the total number of individuals killed by police officers, regardless of whether the incidents were subject to punishment, that is, without differentiating between cases involving self-defense or those that could be characterized as executions or murders.

even the direct agency of such practices by members of the upper police echelons show that corruption is far from a mere sporadic misconduct to be written off as dishonesty by this or that officer. It is a widespread, deeply rooted phenomenon, as much as torture or excessive use of force, and likewise tends to rely on the protective blanket of the police forces themselves.

Corruption can be expressed as demanding money or undue advantages, which is normally referred to as *extortion* -, or as the “sale of freedom” and ways of sparing individuals from application of the law in exchange for a certain sum of money. Such “exchanges” are even more difficult to detect than extortion, since they constitute “victimless crimes”, besides generally involving active complicity by the “beneficiaries”.

The various consequences of such violence and corruption in Brazilian police forces includes the weak legitimacy of the country’s law enforcement agencies, which the population views with distrust and discredit.

Finally, to complete this picture, we could not fail to mention the direct collusion of sectors of the police in such criminal activities as drug trafficking, illegal sale of weapons, robbery, kidnapping, and numerous other crimes.

## **1.2 - Police: a mirror for society?**

Several different explanations have been proposed in attempts to understand the causes of the situation outlined above. One explanation, which is even proposed by progressive members of the police forces themselves, ascribes the irregular activity of Brazilian police forces to the military regime under which the country lived for 21 years (1964-1985). According to this explanation, direct subordination of the Military Police to the Army, the prevalence of the national security doctrine, and mobilization of both police forces (military and civil) for political repression in a context of suspended civil rights left deep marks which have still not been overcome in the logic, organization, and practices of Brazilian law enforcement agencies.

Note that until the late 1960s, Brazil’s Military Police consisted of task forces that never left the barracks to conduct any of the typical police-and-patrol activities. The 1967 Constitution began to provide the Military Police with more of a proper police-type identity, defining “overt uniformed policing” as the exclusive jurisdiction of the State Military Police forces and prohibiting State Governors from maintaining other uniformed police forces.

Police investigation and intelligence was also subordinated to Army intelligence agencies, obviously focused much more on national security than public security. Standard teaching and training in the Military Police, which had long been militarized, began to emphasize the “internal enemy” figure, promoting an authoritarian view of social problems, justifying “wartime” violence against individual and group suspects, besides contributing nothing to real progress in techniques to control common crime. Meanwhile, the Civil Police, although formally prohibited from conducting overt crime surveillance activities, “shifted its entire effort precisely in this direction, although under a wide variety of labels”, thereby de-prioritizing its basic attributions as a judiciary and investigative police force (SILVA, 1990: 179-83).

According to the above view, a major portion of the serious problems currently plaguing Brazilian police forces – ranging from ineffective crime control to violation of rights, torture, and undue use of force, besides conflicting relations between the Military Police and the Civil Police – thus result from delay and deviation in the development of policing roles during both the long military dictatorship and the still-incomplete transition to democracy.

There is no doubt that the most proximate origin of the current problems in our law enforcement agencies can be located in the historical situation just described. However, to

identify such problems merely as “vestiges” of the recent authoritarian regime contradicts historical evidence of the much older and deeper roots of arbitrary police discretion in Brazil, besides failing to explain why 17 years after the demise of the military regime, both the structure and culture of the law enforcement agencies inherited from that regime remain virtually unaltered.

Another explanatory approach, based on historical research into the formation of Brazilian police forces since the colonial period, have underlined the fact that these institutions in Brazil have *always* been conceived as instruments for security of both the state and the ruling classes rather than the citizenry as a whole (see, for example, HOLLOWAY, 1997; PAIXÃO, 1988).<sup>6</sup> Traversing all types of political regimes – absolute and constitutional monarchy, dictatorship, and Republican democracy –, Brazilian law enforcement agencies have always functioned according to a “parallel arbitrary regime” or “separate code of conduct”, enjoying extralegal powers and a wide margin of autonomy, regardless of the prevailing formal legal framework (PINHEIRO, 1991).<sup>7</sup> None of the political transitions in our history – even those involving relevant changes in other sectors – have substantially affected the continuity of this “parallel power”, whose basic function has been to maintain not *public order* in the modern sense of the term, but hierarchical order, founded on the deep economic and power inequalities that have characterized Brazil’s social formation throughout the country’s history. This explains the persistence of police forces as an “arbitrary regime”, even under democratic Constitutions, and their extraordinary ability to resistance attempts at oversight and institutional reform. This consequently explains the constant presence and virtually constant impunity of torture, excessive violence, abuse of authority, extra-judicial executions, violation of legal rights, racism, corruption, and coercion throughout the history of Brazilian police forces.

According to Roberto Kant de Lima (1995), the persistence of extralegal police powers in Brazil results from the need to mediate between a formally egalitarian judicial and political order and the hierarchical values prevailing in Brazilian society. In other words, these powers constitute the vehicle for “unequal application of the law”, capable of allowing for the coexistence of a democratic legal framework, formally guaranteeing universal rights, and the denial, in practice, of the same universal rights in daily concepts and interactions.

The above observations could lead us to the pessimistic conclusion that there is very little to be done in the specific area of civilian oversight of the police, and that in the long term only a profound social and cultural transformation would be capable of opening the way for real democracy-building in Brazil, and consequently for the eradication of the “parallel police power” in force since our early history. However, as we attempted to highlight in the opening section to this chapter, the two processes – oversight of the police and democracy-building – developed together in countries in which rule of law began to be implemented two centuries ago and continue to move together even where a liberal democratic culture is widely disseminated.

The discussion on internal monitoring and civilian oversight of the police has now gained perhaps unprecedented importance in Brazil, sparked by both society’s growing demands for “real democracy” and the perceived bankruptcy of old public security policies in the face of new facets of urban crime. In this sense, it is also crucial to gain a better understanding of the current structure of our police forces, the existing mechanisms for internal monitoring and civilian oversight, and the obstacles to the functioning of such mechanisms.

<sup>6</sup> HOLLOWAY, Thomas H. (1997). *Polícia no Rio de Janeiro – Repressão e resistência numa cidade do século XIX*. Rio de Janeiro, Fundação Getúlio Vargas.

<sup>7</sup> PINHEIRO, Paulo Sérgio, “Autoritarismo e transição”. *Revista USP*, March-May 1991, pp. 45-56.

### 1.3 - An institutional view of the Brazilian police

As mentioned above, policing activities are conducted at the State level by two police forces, one military and the other civil, with different attributions, defined by paragraphs 4, 5, and 6 of article 144 of the 1988 Constitution. The Military Police is the uniformed police force, responsible for overt policing and maintaining public order, in addition to still being defined as an “Army auxiliary and reserve force”.

The Military Police is organized internally according to the Brazilian Army model, with two “hierarchical circles” – officers and soldiers – in which the ranks (for officers) or so-called grades (for soldiers) are arranged in a total of 14 hierarchical levels:

Ranking Officers	Petty Officers	Upper Rank and File Soldiers (Sub-Lieutenants and Sergeants)	Lower Rank and File Soldiers (Corporals and Privates)
Colonel	Captain	Sub-Lieutenant	Corporal
Lieutenant Colonel	First Lieutenant	First Sergeant	Private (1st, 2nd, and 3rd Class)
Major	Second Lieutenant	Second Sergeant	
		Third Sergeant	

A set of Military Police symbols and rituals serve as a sort of internal control in the sense of fostering assimilation of authority, *esprit de corps*, and hierarchy or chain of command.<sup>8</sup> The military model definitely provides a backbone for this police force that is lacking in the Civil Police, as we will see, and to a certain extent guarantees the subordination of external police conduct to instructions from their superior command, meaning that Military Police conduct can vary considerably, for better or for worse, from one State to another, from one State Administration to another, or even from one MP battalion to another in the same city.

But there are also numerous possibilities for a distorted flip side in a structure literally copied from military hierarchy when it comes to providing daily law enforcement services. The highly bureaucratic and centralized decision-making processes lead to losses in efficacy not only for daily police work but also for formal internal control mechanisms.

The regulations provide severe punishment for even minor slip-ups inside the force itself, over-emphasizing hierarchy and conformity to rituals, while they are extremely lax in the control of public police activity. Since many of the numerous disciplinary rules bear no relation to (and often directly conflict with) routine police work on the streets, and since middle-level officers, who are responsible for internal affairs, do not participate in activities outside the barracks, the public police work ends up as “un-policed”, haphazardly amateurish and informal, oriented by the common sense of the individual police themselves. The space for daily interaction between the police and citizens, which is extremely capillarized, thus remains “invisible”, prone to all sorts of private interpretations and negotiations, the worst products of which, as we know, are arbitrary violence, abuse of power, and corruption (see MUNIZ, 1999 and MUSUMECI, coord., 2000).<sup>9</sup>

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The Civil Police have Constitutional attributions as a judiciary police, preparing inquiries and investigating crimes (except for military crimes), aimed at establishing a causal

<sup>8</sup> See in MUNIZ (1999) a detailed ethnographic study of these symbols and rituals.

<sup>9</sup> MUSUMECI, Leonarda (coord.). *Reforma do Estado e proteção social: os setores de saúde e segurança públicas no Rio de Janeiro – Parte III, Segurança Pública*. Final research report. Rio de Janeiro, IE/UFRJ-MARE-CAPE-S-CNPq, 2000. [available at <http://www.ucamcese.com.br>].



nexus between the crime, the circumstances, the perpetrator(s), and the accomplice(s). Theoretically, these attributions do not include meting out justice, but only gathering information to allow the criminal justice system to do its work. According to the Brazilian Penal Code, criminal proceedings can only begin when the Public Prosecutor's Office files charges, but such proceedings are preceded by a police inquiry conducted by the Civil Police, the results of which may or may not be received as evidence in the subsequent court investigation. The purpose of this stage is to gather evidence which may be used to orient the prosecutor's indictment of the criminal or suspect.

However, in practice, as demonstrated by several authors (for example, LEMGRUBER, 1985; LIMA, 1995; SOUZA, 1998), the work of the Civil Police is far from being limited to a preliminary fact-finding stage, and customarily includes "crime-solving" by means of an informal "justice-without-trial" system functioning in the police precincts themselves. Even when the police is exercising its Constitutional prerogatives, its initial charges of an alleged crime have a decisive influence on the course subsequently taken by the case, determining such key elements as the choice of whether (and where) to enter the occurrence, whether or not to indict the suspect, and even the way the interrogation is conducted and the records are drafted to submit to the prosecutor. It is not difficult to imagine how various social filters are operating at all these levels, nor need we say that this vast arbitrary leeway provides an open field for all manner of discretion, violence, blackmail, and coercion.

Torture and intimidation, commonplace practices in police inquiries, are equally encouraged by the Brazilian criminal justice system, with its inquisitorial matrix and its central focus on the defendant's confession.

Like the Military Police, the Civil Police is structured in two "hierarchical circles", in this case consisting of *delegados* (precinct commanders) and the so-called "*tiragem*" (or rank-and-file "cops"), with different points of entry into the police career. The traditional watershed between the two has been the requirement that precinct commanders have a law degree, with all the attending significance ascribed to higher education in Brazil in terms of social status. Currently this criterion may not be quite as decisive as it used to be, since in some States many police detectives and notaries also study law. But the chasm remains and is particularly manifested in the levels of schooling officially required (see table below), the huge wage difference, the difference in status inside the force, and in the opposition between bureaucratic work and investigative work, reflecting distinct institutional and professional cultures.<sup>10</sup>

University degree	Secondary school diploma	Primary school diploma
Precinct Commander	Inspector	Police Photographer
Medical Examiner	Police Notary	Police Telecom Operator
Police Physician	Dactyloscopist	Autopsy Technician
Criminal Examiner	Clerk	Police Jail Guard
Police Telecom Engineer	Detective	Police Driver
	Police Pilot	Autopsy Aide
	Police Nurse Technician	Janitor
	Police Lab Technician	
	Police Telecom Technician	

Each precinct is headed by a precinct commander and may include one or more assistant precinct officers, each of whom heads a "judiciary team", consisting of an inspector, a detective, a notary, an investigative team, and an operational group, with the precinct

<sup>10</sup> This table of ranks or job positions and corresponding educational requirements is based on information from the Rio de Janeiro Civil Police in 1999. During that same year in this same force, a precinct commander's salary was 3.3 times that of a criminal examiner or medical examiner, 4.5 times that of a police inspector or notary, and 5.6 times that of a detective or clerk. Since each of these job positions is divided into "classes", the ratio between salaries refers to the first class for that given position (see MUSUMECI, coord., 2000).

personnel also including drivers, jail guards (if the particular precinct has a jail), janitors, and other assistants. The overall Civil Police infrastructure also normally includes the agencies responsible for identification, criminology, and forensic medical examination, in addition to precincts specializing in certain types of crimes or serving specific groups.

Lacking the same level of standardization as the military model, the institutional arrangements in the Civil Police can vary considerably from one State to the other, but the overall description above is valid for all States of Brazil.

Contrary to the Military Police, decision-making initiative and autonomy by front-line police officers (investigators) is explicitly encouraged in the Civil Police. In this case, one of the main problems in controlling, planning, and evaluating the efficacy of police work results from the excess autonomy in different sectors of the force and the lack of a backbone linking the fragmented structure of the various precincts.

Formally demarcated by laws and administrative rules, police work in both forces, military and civil, is also based, as discussed above, on informal institutional cultures that define the set of practices by which discretionary power is exercised in daily situations. In addition, relations between these police forces and other sectors of government are permeated by group networks with diverse interests, whose members have their own views and values concerning the role of police forces, making the functioning of internal control and civilian oversight mechanisms extremely complex, as analyzed in the following chapter.

## Chapter 2

### **Internal Control: Police Internal Affairs Offices**

In general both the Military Police and Civil Police forces in Brazil have a specific internal control agency called the *Corregedoria*, or Internal Affairs Office, responsible for investigating crimes and administrative violations involving police officers and, depending on the case, recommending penalties and/or referring the case to the Public Prosecutor's Office. The Internal Affairs Offices are subordinated to the chain of command of their respective police civils.

Complaints reach the respective Internal Affairs Offices either directly from a complainant (victims themselves, relatives, or friends), through internal investigative procedures submitted by MP officials and precinct commanders, or from external agencies like the Public Prosecutor's Office, Police Ombudsman's Office, Citizens' Complaint Hotline (*Disque-Denúncia*), or the media.

According to the police officers we interviewed, priority in the investigation of complaints is determined by the seriousness of the incident (whether it constitutes a crime, and if so, what kind), the alleged perpetrator, the rank of the accused police officer, and the degree of injury to the victim. Investigations follow a standard sequence: once the complaint is received by Internal Affairs, the case is referred to the police unit where the accused party is stationed, where the following procedures are conducted: a preliminary inquiry, generally a secret investigation, aimed at determining the veracity of the complaint; an administrative probe; and the investigation proper whenever there is preliminary evidence of a crime. The results of these procedures are then referred back to the Internal Affairs Office. If the factual substance of the complaint is not confirmed, the case is dismissed.

Note that the investigative work is the responsibility of the police units where the accused police officers themselves work – a situation obviously not indifferent to the course and results of the investigation.<sup>11</sup> According to the IA officers themselves that we

<sup>11</sup> However, in the Military Police forces in Rio de Janeiro and São Paulo, investigation of complaints involving more serious offenses is performed by the Internal Affairs Office itself, and only the less serious cases are referred down to the lower police units.

interviewed, this kind of procedural decentralization reduces the autonomy of internal control and occasionally leads to disagreement between Internal Affairs and the respective police unit commanders, be they responsible for the investigation and/or application of penalties.

In both the Military Police and the Civil Police, disciplinary offenses are classified as minor, medium, and serious, with the following penalties, according to the seriousness of the case: in the Military Police they include warning, censure, detention, administrative (disciplinary) imprisonment, and discharge from the police force; in the Civil Police they include warning, censure, fine, suspension, simple discharge, aggravated or dishonorable discharge, and cancellation of pension and retirement benefits.<sup>12</sup> Although not included as formal penalties, transfers from one police civil, watch, beat, or position to another is also commonly used by both police forces as a means of informal punishment.

Penalties applicable to police officers accused at the administrative or disciplinary level are concomitant with, and independent of, those applied at the criminal level. The former are applied by the police civil itself and the latter by either the common courts or military court, depending on the crime.

Different-ranking police officers disagree as to the influence of rank on the severity of penalties. Higher-ranking Military Police officers and Civil Police precinct commanders both contend that ranking officers and the rank-and-file are punished with the same rigor. The Military Police even claim that punishment is more severe for higher-ranking than lower-ranking members of the force, because their responsibility is greater and they are thus expected to set an example.

Meanwhile, military police privates and lower-ranking civil police we heard in Rio de Janeiro contend that investigative and punitive procedures related to alleged misconduct treat the “rank-and-file” and “top brass” differently, consistently punishing the rank-and-file more severely, a claim held up by our study.

In relation to military police disciplinary regulations, both higher and lower-ranking members of the force were unanimous in identifying flaws and injustices, resulting mainly from the absurd rigor with which minor internal offenses are punished and the unconstitutionality of the procedures adopted.

Meanwhile, in the Civil Police, criticism of administrative penalties comes mainly from the lower ranks, who agree unanimously that investigative and punitive procedures are extremely unfair. They contend that rank-and-file “cops” are punished severely and summarily, even before their own case is heard, and that a single complaint is sufficient for a policeman to be denied a promotion. According to the rank-and-file, the rigor with which they are treated often verges on illegality, and the opportunity for accused members of the force to make their case heard varies according to rank. In other words, they claim, there is a clear corporatist bias in the investigations, since the procedures are always conducted by the *delegados* or precinct commanders.

Finally, it is important to emphasize that in the case of crimes, as opposed to internal administrative violations, punishment is determined by the courts. In the case of the Military Police, all crimes committed, whether on or off duty, are still tried (and have been since 1969) by the military courts, except homicide, which has been tried by the civil court system since 1996, under Act 9.299.

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Based on interviews and focus groups, we identified extensive variation in the emphasis placed on the two roles exercised by the Internal Affairs Offices: repression (investigation and punishment for acts of misconduct committed by members of the force)

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<sup>12</sup> Administrative (disciplinary) imprisonment was eliminated from the Civil Police by the 1988 Constitution 1988.

and correction-prevention (monitoring and retraining of police officers to prevent new incidents of misconduct from occurring).

The reason is not clear for the different emphasis in the two police forces: it may be related to the differences in the daily duties and institutional cultures, with the disciplinary aspect prevailing in the Military Police and the penal aspect in the Civil Police. At any rate, most assessments by internal affairs officers, precinct commanders, and ranking military police officers interviewed in the study focused primarily on the investigative and punitive aspect, with little indication of the preventive/corrective role that could theoretically be played by Internal Affairs Offices.

Much was also said about the lack of internal and external autonomy and whether an independent career might be appropriate for performing internal affairs work. The issue raises considerable controversy: there is a certain consensus that since such agencies are subordinated to general police civil chain of command and thus to the respective Departments of Public Security and Governors, they are excessively subject to political interference at the State level and thus lack the autonomy needed to conduct their work impartially.

In general, the internal affairs officers we interviewed identified the following serious problems in the work of the Internal Affairs Offices: excessive caseload, lack of properly qualified staff, high staff turnover (hampering the continuity of investigations), lack of equipment (weapons, tape recorders, video cameras, cameras, etc.), insufficient floor space, various types of operational difficulties, and also the “brotherhood” or “closed-ranks” relations that can exist between investigators and accused members of the force.

Finally, among the various obstacles to the work of the Internal Affairs Offices, police officers we interviewed emphasized the difficulty in assembling investigation teams. Members of the force generally have unfavorable opinions of Internal Affairs, which they see as a den of “turncoats” and “snitches” who point the finger and squeal on their fellow officers, or as a dead end for those who “don’t have what it takes” or “don’t have the guts” to tackle “real police work”, preferring to do desk work as “suits” or “pencil-pushers”. Internal Affairs can also be seen as a place for “lousy cops”, who are incompetent to investigate common criminals and make their claim to fame as “hangmen” by hounding the rest of the force.

## Chapter 3

### **Civilian Oversight: the *Ouvidorias de Polícia* or Police Ombudsman’s Offices**

#### **3.1. The Role of the Public Prosecutor’s Office**

The 1988 Brazilian Constitution greatly expanded the jurisdiction of the Public Prosecutor’s Office. Among the specific functions included in this expanded role is the exercise of civilian oversight of the police (article 129, paragraph VII), as defined by complementary legislation which includes monitoring all stages of police work, examination of all documents and proceedings related to inquiries, and complaints involving torture, crimes, misconduct, and human rights violations.

The *external* natural of oversight is guaranteed by the fact that the Public Prosecutor’s Office has its own staff structure, midway between the executive and judiciary branches but not subordinated to either – which provides it with a margin of independence and authority equivalent to or even greater than that of many of the international civilian oversight mechanisms described previously. In principle, the Public Prosecutor’s oversight of the police involves not only reactive functions, that is, formulation and legal referral of complaints, but

also proactive functions, involving ongoing follow-up and evaluation of police activity. Such broad attributions and authority make the Public Prosecutor's Office the most important legally established agency for civilian oversight of the police in Brazil.

However, in practice these broad *de jure* attributions have never been exercised *de facto*, except in isolated cases, represented by activist "cells" within some State Public Prosecutor's Offices, who focus specific efforts on reducing police violence and misconduct.<sup>13</sup> Compared to their incisive work as "guardians of the law" in other sectors of public administration – especially monitoring and exposing cases of corruption – thus far the performance of the Public Prosecutor's Office in police oversight and combating human rights violations has fallen far short of the role reserved for it by the 1988 Constitution. Members of the Public Prosecutor's Office themselves confirm this trend: in a survey conducted in 1997, more than half of the prosecutors interviewed classified the police oversight work of the Federal Public Prosecutor's Office as "poor" or "awful", and another 33% considered it "average" (CASTILHO & SADEK, *apud* MACAULAY, 2002). According to a study conducted a year before in the State of São Paulo, 28% of the local prosecutors classified their own police oversight work as "poor" or "awful" and 41% as merely "average" (IDESP, 1996)

However, as indicated by Macaulay (2002), some changes can already be observed in the stance taken by the Public Prosecutor's Office, due not only to insistent complaints of torture from Brazilian and international agencies and the illegalities and closed-ranks corporatism practiced by the Brazilian police forces, but also by the creation of Police Ombudsman's Offices in the last decade as new oversight agencies which in a sense emerged to fill the vacuum left by the Public Prosecutor's Office when it hesitated to fully exercise its Constitutional role.

### 3.2 The Police Ombudsman's Offices in Brazil

The Police Ombudsman's Offices in Brazil are designed to receive citizens' complaints concerning arbitrary and/or illegal acts committed by the police and to refer complaints to the Police Internal Affairs Offices for investigation, subsequently monitoring the work performed by the latter.

The first Police Ombudsman's Office in Brazil was created in 1995 in the State of São Paulo. There are currently nine Police Ombudsman's Offices in Brazil, six of which are affiliated with and officially recognized as such by the National Forum of Police Ombudsmen, which drafted basic guidelines for the creation of Police Ombudsman's Offices in the country. Our study focused on Ombudsman's Offices in five States: São Paulo, created in 1995, as mentioned above; Pará, created the following year; Minas Gerais, in 1997; and Rio de Janeiro and Rio Grande do Sul, both in 1999.<sup>14</sup>

For the purposes of this study, we chose the Ombudsman's Offices with the best conditions for analysis, since they were the oldest and had thus accumulated the most experience and had produced data allowing for evaluation and comparison, and especially because they fit within the guidelines of the National Forum of Police Ombudsmen. Membership in the Forum, founded in June 1999 under a decree issued by the President of Brazil, consists of the country's Police Ombudsmen, as the name indicates. Its task is to offer

<sup>13</sup> According to Macaulay (2002), the Military Police forces in the States of Minas Gerais, Bahia, and Goiás are examples of such specific work in police control, unlike the majority of the equivalent agencies in other States.

<sup>14</sup> The only Police Ombudsman's Office affiliated with the National Forum that was not evaluated was that of Rio Grande do Norte. The other existing Police Ombudsman's Offices are those of Bahia, Ceará, and Pernambuco. The State of Paraná has a General Ombudsman's Office which receives complaints against all government agencies, including the police.

suggestions to improve the police forces and to orient and facilitate the creation of new Ombudsman's Offices.

In August 1999, the National Forum of Police Ombudsmen passed a set of general recommendations for the creation of Police Ombudsman's Offices<sup>15</sup>. The Police Ombudsmen are thus expected to enjoy autonomy and independence, that is, they are not hierarchically subordinated to the police forces. The laws and/or decrees creating the Ombudsman's Offices are designed to safeguard the Police Ombudsmen's mandate and to provide them with staff, their own headquarters, and a sufficient budget to perform their work.

In addition, according to the recommendations, the Police Ombudsman should be a representative of organized civil society and committed to human rights; he/she should be able to submit periodic reports involving accountability and recommendations aimed at improving police institutions. All Ombudsman's Offices should have an Advisory Board, and Police Ombudsmen should have full exercise of their political rights and should not have any link or affiliation with any police force or be active, reserve, or retired members thereof.

The laws creating the various Ombudsman's Offices analyzed herein are consistent with these recommendations. However, as we will demonstrate next, in practice there is a major gap between the letter of the law and the daily work of the Ombudsman's Offices.

The five Ombudsman's Offices included in this study were visited from November 2000 to July 2001 for at least one week each. During the visits, work routines were observed, staff members were interviewed, and all types of materials were collected.

### **3.2.1 Staff selection and profile**

Generally speaking, the Ombudsman's Office staff consists basically of the Police Ombudsman, two police advisors, one from the Civil Police and the other from the Military Police, who assist the Police Ombudsmen in contacts with the police, expediting procedures; legal advisors who generally examine the inquiry reports conducted by the Internal Affairs Offices; and advisors in the fields of psychology and social work who assist with more complicated cases and expedite various measures. In addition, the Ombudsman's Offices have receptionists who deal directly with complainants, and some States have information technology and press advisors. The five Ombudsman's Offices included in this study had from 15 to 20 employees each at the time the study was performed.

All staff members of the Police Ombudsman's Offices are invited to occupy their positions. There are no public admissions exams, which in other areas of civil service in Brazil normally requires degrees and resumé reviews. In general the Police Ombudsmen rely on employees originally allotted to other government agencies who are requisitioned to work in the Ombudsman's Office.

The State Governor names the Police Ombudsman, either from a list of three names submitted to him by the State Council for Human Rights (consisting of professionals from various fields and which exist in some States of Brazil), or at his own personal discretion. The fact that Police Ombudsmen are named by the Governor can obviously limit their independence and autonomy, a situation partially offset by the fact that they serve terms, generally set at two years by law.

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<sup>15</sup> *Guia Prático de Funcionamento de uma Ouvidoria de Polícia* [Handbook for the Functioning of a Police Ombudsman's Office], Ministry of Justice, Secretariat for Human Rights, National Forum of Police Ombudsmen, Imprensa Oficial [Government Printing Office], Brasília, s.d.

### 3.2.2 Work routine

There is no kind of training for Ombudsman's Office staff in Brazil. Ranging from the Police Ombudsman down to interns, the staff all attempt to implement informal work routines which they deem most appropriate for the daily problems they encounter. Such spontaneously created work routines rarely emerge from any kind of consensus among staff members. Rather, they frequently result from individual solutions that are generally not shared with the group.

When citizens come to the Police Ombudsman's Office to lodge complaints, they generally meet a receptionist who is expected to determine whether the case falls under the office's jurisdiction.

A major portion of the complaints are reported to the Ombudsman's Office by telephone, in which case the operator also attempts to verify whether the complaint falls under the office's purview.

Having confirmed that the complaint refers to one or more members of the police force, a complainant who has shown up in person at the Ombudsman's Office is referred to one of the attendants. Citizens who report their complaints by telephone are assisted by operators in charge of recording the complaint.

Once the complaint form has been filled out, it is sent to the respective Police Internal Affairs Office for the appropriate investigation. There is no legal time frame or deadline by which Internal Affairs is required to respond to the Ombudsman's Office. In some cases the Police Ombudsmen also forward copies of the records to the Public Prosecutor's Office.

Having received the response from Internal Affairs, the Ombudsman's Office legal advisors are in charge of analyzing the material, sometimes assisted by the police advisors. The legal advisors, together with the Police Ombudsman, may or may not accept the results of the IA investigation, based on their appraisal of its pertinence.

When the Ombudsman's Office feels that the IA investigation has been conducted with the necessary rigor it may agree to dismiss a complaint as *unsubstantiated*, to the extent that no basis has been found for it.

The Ombudsman's Office may request further investigation if it feels that the procedures have been insufficient to shed light on the complaint. In general the Internal Affairs Office formally accepts such a request, which does not mean that it actually goes on to conduct further in-depth investigation. If, even after additional investigation, the Police Ombudsman and his advisors are still not convinced that the complaint is unsubstantiated, the complaint is simply classified as *not confirmed*.

When a complaint is confirmed, the Ombudsman's Office can close its handling of the complaint and classify it as *confirmed*, proceeding to monitor subsequent developments of the confirmation until the penalties are applied by the Civil Police or Military Police or action is taken by the Public Prosecutor's Office.

Note that at any moment in the proceedings, the Ombudsman's Office may call on the Public Prosecutor's Office if it is not satisfied with the investigation conducted by the Internal Affairs Office.

Finally, one of the problems in routine procedures by the Police Ombudsman's Office relates to the issue of confidentiality and recording/filing of complaints, since all staff members generally have access to in-coming and out-going documents. Obviously they themselves produce some of these documents in their routine work, but there are also documents exchanged between Police Ombudsmen and senior executives of public agencies, like the memorandums and briefs that Police Ombudsmen and their advisors send to the

police civils, Internal Affairs Office, and Public Prosecutor's Office, as well as those received by the Ombudsman's Office, all in full reach of staff members.

### 3.2.3 Relations between the Police Ombudsman's Office and other agencies

The relationship between the Ombudsman's Offices and the Civil and Military Police is marked by tension and conflict. The Ombudsman's Offices generally accuse the Internal Affairs Offices of stonewalling and glossing over investigations in order to safeguard the name of police institutions. The Internal Affairs Offices, in turn, accuse the Ombudsman's Offices of referring complaints with no probable cause which they frequently claim are the result of attempts at revenge against police officers.

According to some interviewees, the Internal Affairs Offices changed their work approach after the Ombudsman's Offices were created, attempting to speed up their response to complaints, which is still slow due to the large caseload, but which nevertheless demonstrates some measure of goodwill.

In addition, trust between the Governor and Police Ombudsman is crucial to the proper functioning of the Ombudsman's Office. Thus, one problem has been when the Police Ombudsman remains in office beyond the term of the Governor by whom he was named. Particularly when the incoming Governor is from a different political party, a feeling of insecurity tends to take hold of the Police Ombudsman and staff. Since Police Ombudsmen have their own terms to serve, unless they choose to resign, the new Governor is basically forced to at least tolerate them. In such cases, if the Governor does not want to pay the political price of tackling the Ombudsman's Office head on, he can, as one Ombudsman put it, "slowly choke the agency to death". In other words, less budget money for wages and equipment.

### 3.2.4 Criticism and suggestions

According to Police Ombudsmen and staff members we interviewed, a short list of the main problems faced by the Ombudsman's Offices are related to the **lack** of:

- the Office's own headquarters, with easy access, independent from the respective Departments of Public Security;
- financial and administrative autonomy (for example, the Office's own budget);
- own staff, with a wage and career plan;
- staff training;
- own investigative team;
- Ombudsman's Office representatives stationed in various locations around the State;
- and
- permanent equipment (specifically computers) and software.

In addition, to become more effective the Ombudsman's Offices **should**:

- streamline the bureaucracy in their procedures and routines;
- avoid anonymous complaints, encouraging complainants to identify themselves;
- streamline the processing of complaints;
- screen complaints to avoid referring those lacking a basis or probable cause for investigation;
- take greater care with confidentiality and recording/filing of complaints;
- make the Ombudsman's Office more visible to the community;
- make the Ombudsman's Office more visible to the police force;



- maintain contact with citizens who lodge complaints, informing them as to the stage and results of investigations;
- encourage the creation of witness protection programs;
- hold public hearings to receive complaints, especially in low-income communities;
- maintain a website to publicize activities by the Ombudsman's Office and receive complaints;
- give greater visibility to praise received by police officers;
- establish closer contact with the Internal Affairs Offices, seeking to improve them;
- create a legal basis for holding the Internal Affairs Offices to deadlines;
- strengthen media relations to publicize the work done by the Office; and
- act jointly with the police forces, proposing changes, etc..

### **3.3 – Statistical Reports by Ombudsman's Offices**

As mentioned previously, the legislation creating Ombudsman's Offices in Brazil provides that they submit quarterly reports on their activities, but the heterogeneous information produced by the five Ombudsman's Offices has hindered any kind of comparative analysis.

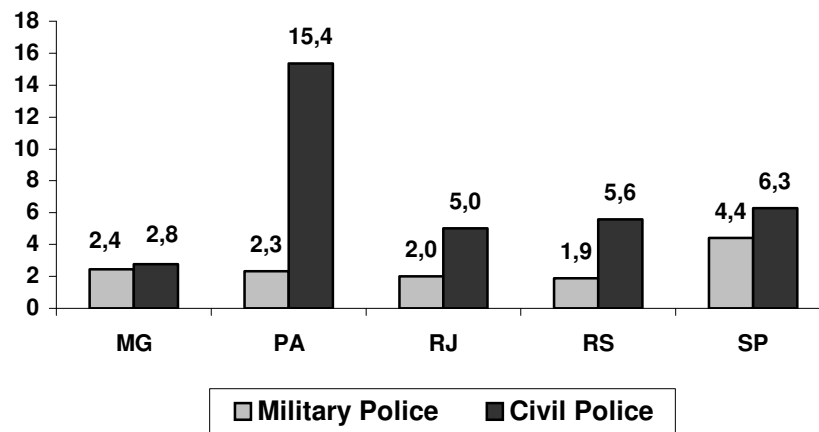
In addition, the data in the five States are not produced at regular intervals or on the same schedule. Another problem is the lack of common guidelines for recording, processing, and classifying data, meaning that data vary not only from State to State, but also whenever a new Police Ombudsman takes office in the same State, changing the relative weight ascribed to specific types of information.

The following tables and graphs focus on the main data that are available at all five Police Ombudsman's Offices, and thus allow for some comparison. Note that all the complete tables with data broken down by categories will be available in the full research report in book form.

#### **3.3.1 – Complaints filed against the two police forces**

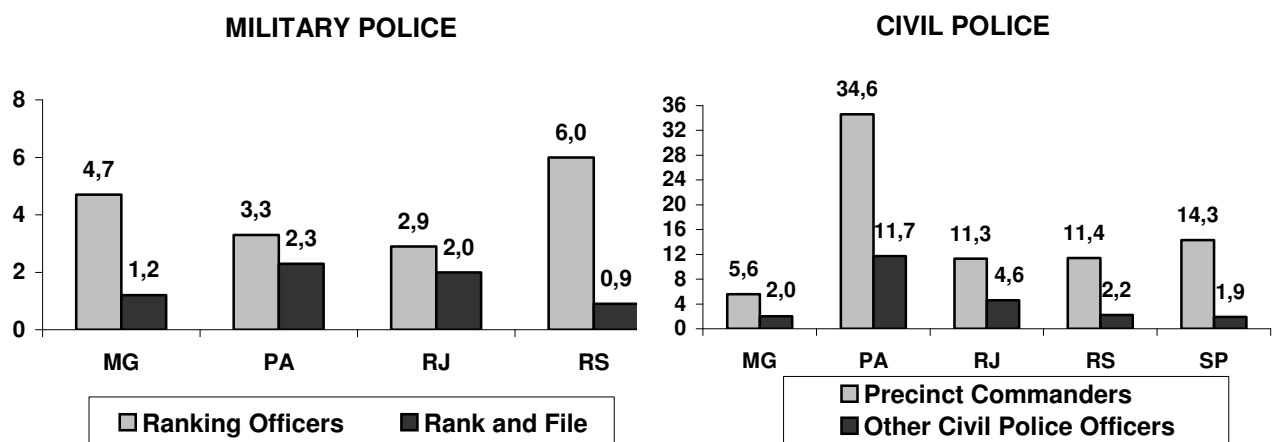
The first important aspect in the Ombudsman's Office data is the proportion of the various types of complaints in the different police forces in each State. Since the reports cover different periods, varying from 14 to 48 months, we focus here on the average number of complaints per month in order to make the information comparable. Even so, the analysis is biased because the reports fail to inform the monthly variation in the number of police officers in each force, and give only the size of the total force at any given moment. This can distort the comparison considerably, depending on the amount of variation in each police force and in each State during the period in which the complaints were filed. The following data are thus approximate and subject to revision. Still, they allow an initial overview of how the complaints received by the Police Ombudsman's Offices are distributed between the two forces, the Military and Civil Police, in the five States.

In proportion to its total force, the Civil Police receives more complaints than the Military Police. In all five States, the average monthly number of complaints per one thousand police officers is higher in the Civil Police than in the Military Police. In the State of Pará this difference is huge (15.4 complaints per thousand Civil police as compared to 2.3 per thousand military police), while in the State of Minas Gerais the difference is less: 2.8 as compared to 2.4 (Graph 1). In fact, the rate of complaints against Civil police received by the Police Ombudsman's Office in Pará is the highest of either of the two police forces in any of the five States. With only 18% of the total police force in that State, the Civil Police in Pará receive 59% of the complaints, mostly for abuse of police authority, assault, torture, and threats, as discussed later.

**Graph 1 – Mean number of complaints per month per 1,000 police officers**

Source: *Relatórios das Ouvidorias de Polícia*: Minas Gerais: Sept. 1998 to July 1999 and Jan.-Mar. 2000 (14 months); Pará: July 1997 to Dec. 2000 (42 months); Rio de Janeiro: Mar. 1999 to Mar. 2002 (37 months); Rio Grande do Sul: Aug. 1999 to Oct. 2001 (27 months); São Paulo: Jan. 1998 to Dec. 2001 (48 months).

Another important observation is that the senior and ranking officers in the police forces receive proportionally more complaints than the rank and file. As shown in Graph 2, in four of the five States the rate of complaints against ranking officers in the Military Police is higher than that against the rank and file (there is no information available by rank for the Military Police in São Paulo). In all five States the rate of complaints against precinct commanders is higher than against other civil police officers (inspectors, detectives, notaries, etc.). The difference is particularly sharp in the State of Rio Grande do Sul, where complaints against ranking officers in the Military Police are six times as frequent as against the rank and file, and the same ratio also holds in the Civil Police, comparing precinct commanders with rank and file “cops” (Graph 2). However, precinct commanders in the State of Pará are far and away the record-holders for complaints, with an average of 34.6 per one thousand officers, a far higher rate than for any other rank in either of the two police forces in any of the five States.

**Graph 2. Mean number of complaints/month per 1,000 police officers, by rank or position**

Source: *Relatórios das Ouvidorias de Polícia*: Minas Gerais: Sept. 1998 to July 1999 and Jan.-Mar. 2000 (14 months); Pará: July 1997 to Dec. 2000 (42 months); Rio de Janeiro: Mar. 1999 to Mar. 2002 (37 months); Rio Grande do Sul: Aug. 1999 to Oct. 2001 (27 months); São Paulo: Jan. 1998 to Dec. 2001 (48 months).

### 3.3.2 – Types of complaints

The following table was organized to provide a general idea of the types of complaints filed with the Police Ombudsman's Offices, related indistinctly to both forces or to one or the other in particular, according to the nature of the complaints. We have grouped the various types of complaints into some broader categories, like *police violence* (including threats, assault, torture, assault with the intent to commit murder, and murder) and *corruption* (including bribery, illicit enrichment, larceny by fraud, extortion, embezzlement, peculation, and prevarication). The other classificatory criteria are explained in the caption to Table 1.

**Table 1. – Distribution of complaints against military and civil police, received by Police Ombudsman's Offices, by type of complaint (%)\***

MILITARY AND CIVIL POLICE					
	MG	PA	RJ	RS	SP
Abuse of Authority	55.8	34.1	10.0	27.4	10.6
Police Violence	15.2	32.1	24.3	22.7	25.6
Corruption	6.7	10.2	29.9	6.9	13.0
Disciplinary Violation	2.6	0.0	0.0	2.7	14.6
Quality of Service	7.7	0.1	18.8	3.4	18.8
Collusion with Crime	0.5	0.0	4.1	2.2	3.6
Other	11.5	23.5	12.9	34.7	13.7
Praise**	0.1	0.0	2.1	0.1	2.3
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

(\*) **Complaints included in each category:**

Abuse of Authority: Abuse of authority / Breaking and entering

Police Violence: Assault / Torture / Murder / Manslaughter / Threat

Corruption: Taking bribes / Illicit enrichment / Larceny by fraud / Swindling / Extortion / Embezzlement / Peculation / Prevarication

Quality of Service: Lack of policing / Negligence / Quality of treatment / Request to intervene in drug trafficking

Collusion with Crime: Motor vehicle robbery and theft / Freight robbery / Drug and weapons trafficking

Disciplinary violation: Disciplinary violation

Other: This category includes a wide variety of alleged police misconduct, including covering up for crime, usury, sexual harassment, various misdemeanors, facilitating escape by prison inmates or jail detainees, forging documents, possession and/or use of illicit drugs, theft, and numerous others.

(\*\*) Some Police Ombudsman's Offices tabulate praise for police action in the same database with complaints.

**Source:** *Relatórios das Ouvidorias de Polícia:* Minas Gerais: Sept. 1998 to July 1999 and Jan.-Mar. 2000 (complaints); Pará: July 1997 to Dec. 2000 (complaints); Rio de Janeiro: Mar. 1999 to Mar. 2002 (number of accused police officers); Rio Grande do Sul: Aug. 1999 to Oct. 2001 (accused police officers); São Paulo: Jan. 1998 to Dec. 2001 (accused police officers).

Based on Table 1, we note some clusters, corresponding to the most numerous categories of complaints and that account for over half of the complaints in each State: *abuse of police authority* in Minas Gerais; *abuse of authority* and *police violence* in Pará; *corruption* and *police violence* in Rio de Janeiro; *other complaints* and *abuse of authority* in Rio Grande do Sul; and *police violence*, *quality of service*, and *disciplinary violations* in São Paulo.

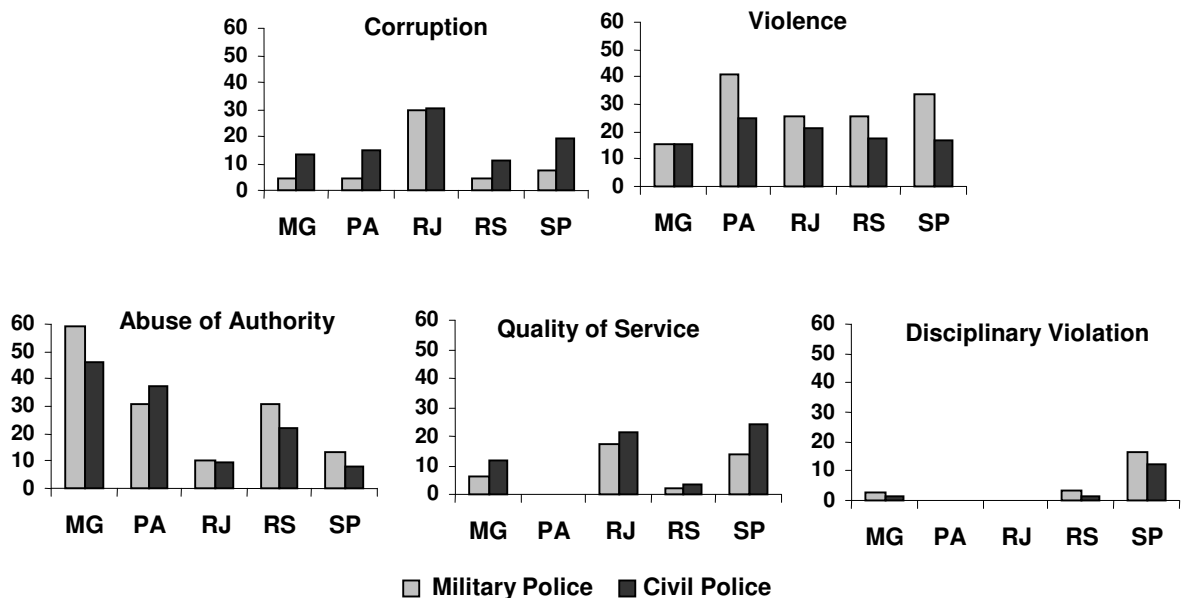
It is essential to emphasize that the distribution of types of complaints depends on a series of factors, and that although this distribution suggests trends in police conduct in the various States, it should be viewed with some caution. In addition to reflecting only a tiny portion of daily police misconduct, this distribution is influenced by a number of factors, including the predominant way in which complaints are handled, which, as we will see in section 3.4.4, varies greatly from one State to another. For example, in Minas Gerais, 97% of complaints are filed in person at the Police Ombudsman's Office by victims and witnesses, in other words, by complainants who identify themselves, unlike Rio de Janeiro, where 80% of complaints are reported by telephone and 76% are anonymous. This difference could at least partially explain the greater proportion of complaints involving violence and corruption in Rio, since confidentiality is an important protective barrier for complainants thus favors the reporting of more serious offenses.

Another important factor may be the different media exposure for different types of violations committed by police officers, influencing local citizens to report one type of misconduct more than others.

Therefore, like any other statistics based on complaints, these figures should be used with caution, always recalling that the universe they cover is that of the facts made visible by the initiative of individuals willing to file complaints, and that such willingness is influenced by numerous objective and subjective factors which can also vary over space and time.

Graph 3 provides a better picture of the relative weight of different types of complaints against the two police forces filed at the State Police Ombudsman's Offices. Note that the proportion of complaints involving *corruption* and targeting both police forces is higher in Rio de Janeiro than in the other four States. Note also that Rio is the only State in which cases of corruption have virtually the same weight in the total number of complaints against the two police forces. In the other four States, alleged corruption is involved in a much larger proportion of complaints against the Civil Police than against the Military Police.<sup>16</sup>

**Graph 3. Types of complaints as % of total complaints against military and civil police at Police Ombudsman's Offices**



Source: *Relatórios das Ouvidorias de Polícia*: Minas Gerais: Sept. 1998 to July 1999 and Jan.-Mar. 2000 (complaints); Pará: July 1997 to Dec. 2000; (complaints); Rio de Janeiro: Mar. 1999 to Mar. 2002 (complaints); Rio Grande do Sul: Aug. 1999 to Oct. 2001 (number of accused police officers); São Paulo: Jan. 1998 to Dec. 2001 (accused police officers).

Complaints of *police violence* are particularly frequent in the State of Pará, especially against military police, with a much higher percentage than in the other four Police Ombudsman's Offices, even higher than the percentage of complaints of violence filed at the Police Ombudsman's Office in São Paulo, which includes (as mentioned previously) all civilians killed by military police, regardless of the source of information. Note that in all five States, police violence accounts for over 15% of all complaints against both police forces, and that except for Minas Gerais, the proportion referring to the Military Police is higher than that of the Civil Police.

*Abuse of police authority* also accounts for a large share of the complaints against both police forces in the State of Minas Gerais, but this proportion is also quite high in Pará

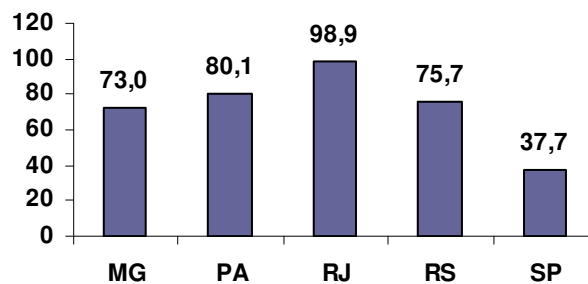
<sup>16</sup> Complaints of extortion are the most frequent among all complaints of *corruption* filed against military police in Rio de Janeiro. In the case of the Rio de Janeiro State Civil Police, in addition to extortion, complaints of corruption also include an almost equal proportion of prevarication, in other words, illicit use of the police officer's position for personal gain.

(especially against Civil police) and in Rio Grande do Sul (especially against military police). Meanwhile, problems involving *quality of police services*, especially those provided by Civil police, appear to be more frequent in São Paulo and Rio de Janeiro than in the other three States, whereas *disciplinary violations* only appear to be more frequent in the State of São Paulo as a share of all complaints filed with the Police Ombudsman's Offices.

### 3.3.3 – Investigation and punishment

Only part of the complaints received by Police Ombudsman's Offices are referred to Internal Affairs to proceed to investigations and to apply relevant penalties. In principle this results in preliminary screening of complaints by the Ombudsman's Office itself, which screens out complaints without probable cause for investigation. Yet the wide variation in cases referred to Internal Affairs in the different States indicate that other factors are at play: while in Rio de Janeiro nearly all complaints are referred to Internal Affairs, in São Paulo only 37.7% are referred. In the other States more than 70% of the complaints received by the Ombudsman's Office are referred to Internal Affairs Offices (Graph 4)

**Graph 4. Complaints referred to Internal Affairs Offices as % of all complaints received by Police Ombudsman's Offices**



**Source:** *Relatórios das Ouvidorias de Polícia:* Minas Gerais: Sept. 1998 to July 1999 and Jan.-Mar. 2000 (complaints); Pará: Jan.-Dec. 2000 (complaints); Rio de Janeiro: Mar. 1999 to Mar. 2002 (number of accused police officers); Rio Grande do Sul: Aug. 1999 to Oct. 2001 (accused police officers); São Paulo: Jan. 1998 to Dec. 2001 (accused police officers).

Of all the complaints referred, those that result in investigative procedures at Internal Affairs also vary considerably from one State to another and between the two police forces (Table 2). The highest percentage is in São Paulo, where 30% of the complaints referred to Internal Affairs in the two police forces result in an investigation, and the lowest rate (of the three States that provide this information) is in Rio de Janeiro, with only 12.9% of cases resulting in inquiries. Comparing the percentages between the Military Police and the Civil Police, there is a higher percentage of inquiries in the Military Police: twice as high in Rio de Janeiro and Pará, and four times as high in the State of São Paulo.

**Table 2. Investigation and punishment of police officers based on complaints referred by Police Ombudsman's Offices to Police Internal Affairs Offices**

		Complaints referred to Internal Affairs		Investigations		Punishment	
		Number	%	Number	%	Number	%
Minas Gerais	Military Police	ND	-	ND	-	ND	-
	Civil Police	ND	-	ND	-	ND	-
	<b>Total</b>	<b>1,070</b>	<b>100.0</b>	<b>ND</b>	<b>-</b>	<b>141</b>	<b>13.2</b>
Pará	Military Police	162	100.0	34	21.0	48	29.6
	Civil Police	200	100.0	56	28.0	23	11.5
	<b>Total</b>	<b>362</b>	<b>100.0</b>	<b>90</b>	<b>24.</b>	<b>71</b>	<b>19.6</b>
Rio de Janeiro	Military Police	ND	-	ND	-	ND	-
	Civil Police	ND	-	ND	-	ND	-
	<b>Total</b>	<b>4,563</b>	<b>100.0</b>	<b>588</b>	<b>12.9</b>	<b>337</b>	<b>7.4</b>
Rio Grande do Sul	Military Police	ND	-	ND	-	ND	-
	Civil Police	ND	-	ND	-	ND	-
	<b>Total</b>	<b>1,547</b>	<b>100.0</b>	<b>ND</b>	<b>-</b>	<b>306</b>	<b>19.8</b>
São Paulo	Military Police	3,960	100.0	1,966	49.6	1,826	46.1
	Civil Police	4,409	100.0	552	12.5	352	8.0
	<b>Total</b>	<b>8,369</b>	<b>100.0</b>	<b>2,518</b>	<b>30.1</b>	<b>2,178</b>	<b>26.0</b>

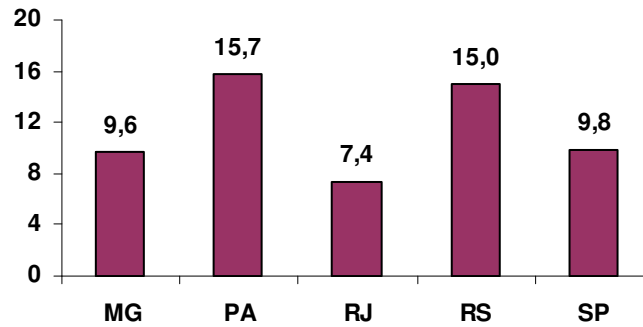
Source: *Relatórios das Ouvidorias de Polícia*: Minas Gerais: Sept. 1998 to July 1999 and Jan.-Mar. 2000 (complaints); Pará: Jan.-Dec. 2000 (complaints); Rio de Janeiro: Mar. 1999 to Mar. 2002 (accused police officers); Rio Grande do Sul: Aug. 1999 to Oct. 2001 (number of accused police officers); São Paulo: Jan. 1998 to Dec. 2001 (accused police officers).

However, even more important is the percentage of complaints leading to punishment. Unfortunately, the comparison of punishment rates between the different States is hampered by the fact that the concept of “punishment” is not always the same. For example, the States of Rio Grande do Sul, Pará, and São Paulo tabulate as punishment any indictment of the accused or any complaint filed by the Public Prosecutor’s Office. Such use of the term is highly debatable, since it violates the principle of presumption of innocence and classifies any investigative procedure as a punishment in itself. In addition, it fails to inform as to the actual outcome of the case, since the prosecutor may end up not bringing formal charges, or the court may not convict the defendant. On the other hand, the Police Ombudsman’s Office in Rio de Janeiro does not tabulate opening an investigation as punishment, but it does include *flagrante delicto* arrests.

To the extent that these data are comparable, one notes that military police in two States are punished more frequently than Civil police: in São Paulo, nearly half of the complaints referred by the Ombudsman’s Office to Internal Affairs in the Military Police result in punishment; in Pará, the same occurs with nearly 30% of complaints. Meanwhile, of all complaints referred to Internal Affairs in the Civil Police, only 8% lead to punishment in São Paulo and 11.5% in Pará. In other words, in these States, Civil police are punished much less frequently than military police, a clear sign that as an institution the Civil Police contributes more to impunity for crimes and violations committed by police officers.

As shown in Graph 5, focusing on all complaints received by the Ombudsman’s Offices, the highest aggregate punishment rate for both forces is only 15.7% (in Pará) and the lowest is just slightly over 7% (in the State of Rio de Janeiro). In other words: 85 to 93% of the complaints filed at five Ombudsman’s Offices against military and Civil police do *not* result in any type of punishment for the accused.

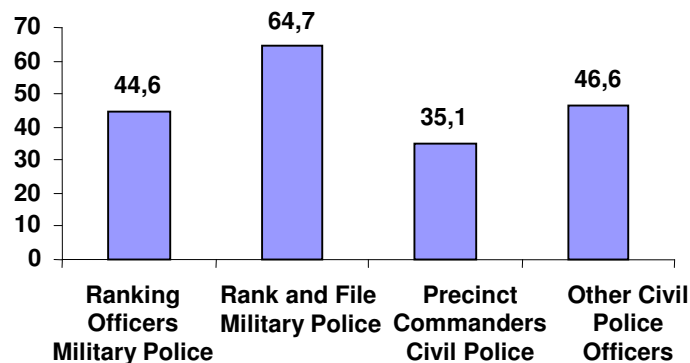
**Graph 5. Complaints resulting in punishment as % of all complaints received by Police Ombudsman's Offices**



Source: *Relatórios das Ouvidorias de Polícia*: Minas Gerais: Sept. 1998 to July 1999 and Jan.-Mar. 2000 (complaints); Pará: Jan.- Dec. 2000 (complaints); Rio de Janeiro: Mar. 1999 to Mar. 2002 (number of accused police officers); Rio Grande do Sul: Aug. 1999 to Oct. 2001 (accused police officers); São Paulo: Jan. 1998 to Dec. 2001 (accused police officers).

Another relevant piece of information, but which is only available for the State de São Paulo, is the incidence of punishment by rank or job position. Graph 6 shows a clear bias in at least that State in favor of higher-ranking officials both in the Military and Civil Police. This appears to confirm the grievances heard during the study, including those voiced by members of the police themselves, especially from the rank and file, that disciplinary mechanisms target primarily the lower ranks and not the senior officers of the two forces, thus guaranteeing greater impunity for precinct commanders and ranking military police officers (see Chapter 2).

**Graph 6. State of São Paulo: members of civil and military police who received punishment, as % of all police investigated, by rank or position**



Source: Relatório da Ouvidoria de Polícia do Estado de São Paulo, 1998-2001

### 3.3.4 – Complainants

As mentioned previously and shown in more detail in Table 3 and Graph 7, the way complaints are received by the Ombudsman's Offices varies considerably between States. At one end is Rio de Janeiro, with 82% of the complaints reported by telephone.<sup>17</sup> At the other is Minas Gerais, where nearly all complaints are filed in person at the Police Ombudsman's

<sup>17</sup> Note that in Rio de Janeiro, 64% of the penalties for police officers from March 1999 to March 2002 resulted from anonymous complaints reported by telephone.

Office by victims or witnesses.<sup>18</sup> Consequently, there is also a wide variation in the degree of anonymity and availability of information for providing an overall profile of complainants.

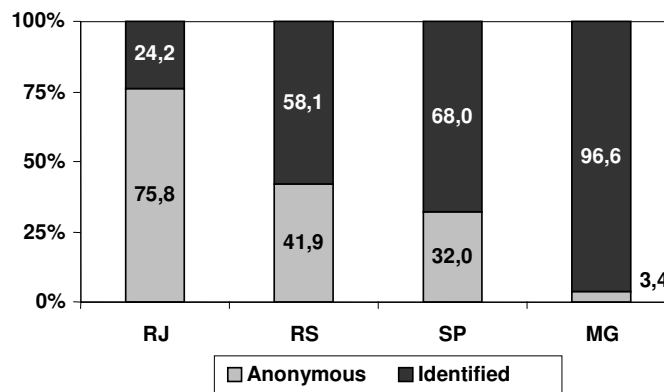
**Table 3. Complaints lodged with Police Ombudsman's Office, by means of reporting**

	Telephone		In person		Letter		Other*		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%
Minas Gerais	44	4.3	824	79.7	67	6.4	99	9.6	1034	100.0
Rio de Janeiro	1630	82.0	278	14.0	80	4.0	-	-	1988	100.0
Rio Grande do Sul	669	43.2	546	35.3	232	15.0	100	6.5	1547	100.0
São Paulo	7812	62.7	748	6.0	1265	10.2	2636	21.2	12461	100.0

(\*) Complaints received by e-mail or fax or gathered from the media.

Source: *Relatórios das Ouvidorias de Polícia*: Minas Gerais: Sept. 1998 to July 1999 and Jan.-Mar 2000; Rio de Janeiro: Mar. 1999 to Mar. 2002; Rio Grande do Sul: Aug. 1999 to Oct. 2001; São Paulo: Jan. 1998 to Dec. 2001.

**Graph 7. Anonymous and identified complaints lodged with Police Ombudsman's Offices (%)**



Source: *Relatórios das Ouvidorias de Polícia*: Minas Gerais: Sept. 1998 to July 1999 and Jan.-Mar. 2000; Rio de Janeiro: Mar. 1999 to Mar. 2002; Rio Grande do Sul: Aug. 1999 to Oct. 2001; São Paulo: Jan. 1998 to Dec. 2001.

### 3.3.5 – Police officers killed feloniously and civilians killed by the police

In addition to data on complaints, complainants, and accused police officers, reports by the Police Ombudsman's Offices in São Paulo, Rio de Janeiro, and Rio Grande do Sul provide year-by-year figures on the number of police officers murdered and the number of civilians killed by military police. These data are essential parameters for assessing levels of police violence and the risk to which police officers in charge of overt policing are exposed in each State.

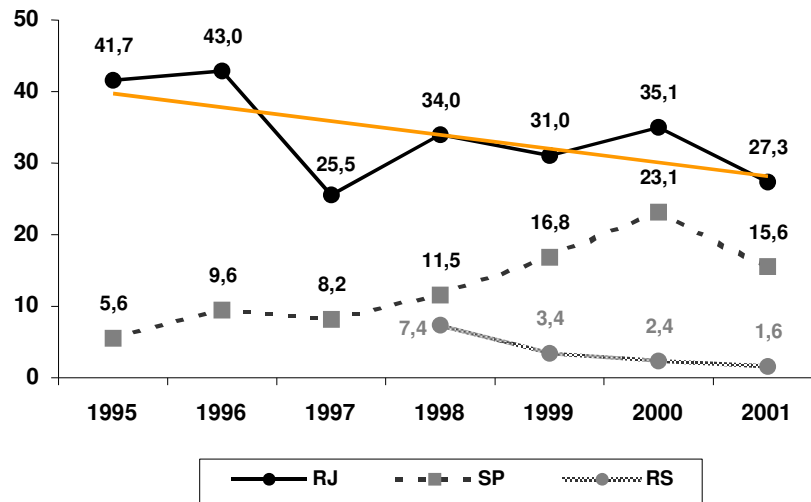
In Rio de Janeiro, the number of police officers killed feloniously per ten thousand military police has varied considerably, but there was an overall downward trend from 1995 to 2001. In São Paulo, except for the last year in the series, the rates increased over this same period, particularly due to the increase in off-duty deaths. Meanwhile, Rio Grande do Sul has shown considerably lower rates than in Rio and São Paulo and a downward trend in recent years (Graph 12).<sup>19</sup> In Rio and São Paulo, time off duty poses the highest risk for the police, probably due to provision of private security services and/or the fact that many police officers live in violent areas. In some cases one cannot rule out the hypothesis of revenge and executions related to police racketeering and other criminal activity.

<sup>18</sup> Reports by the Police Ombudsman's Office in the State of Pará do not quantify the complaints according to the means by which they are reported. Staff members interviewed in this study estimated that more than 99% of complainants identified themselves and also stated that most of the complaints are filed in person at the Police Ombudsman's Office.

<sup>19</sup> There is also information on the absolute numbers of military police from São Paulo and Rio de Janeiro who were killed feloniously on and off duty from 1995 to 2001; the State of Rio Grande do Sul only has the figures available for total deaths, and beginning in 1998.



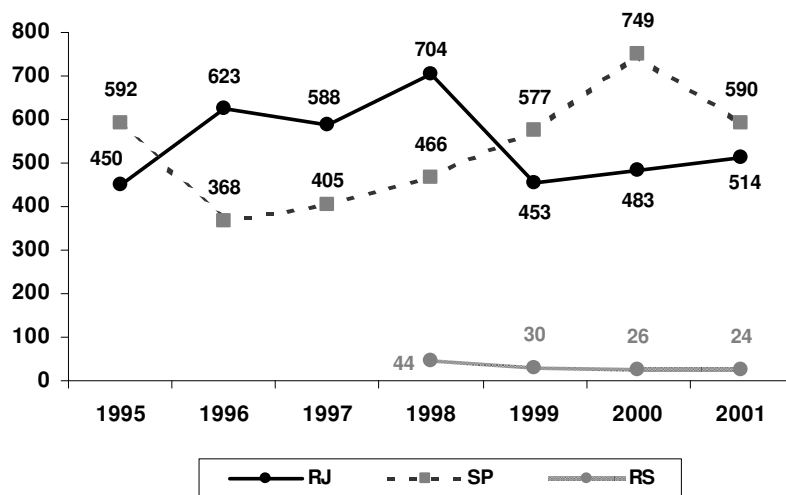
**Graph 12. Number of police officers killed feloniously per 10,000 military police in the States of Rio de Janeiro, São Paulo, and Rio Grande do Sul, 1995-2001**



Sources: *Relatórios das Ouvidorias de Polícia*, São Paulo (1996-2001) and Rio Grande do Sul (1998-2001); Rio de Janeiro State Military Police/PM 2

The number of civilians killed by military police is also extremely high in both Rio de Janeiro and São Paulo, with hundreds of victims per year. In Rio, deaths started to increase in 1995 and dropped off sharply in 1999, returning to the initial levels of some 450 per year. This drop was related to the end of “promotion for bravery” for police officers involved in lethal “confrontations”, a policy practiced by the Marcello Alencar Administration, and the adoption of a new law enforcement policy in the first year of Governor Garotinho’s Administration. However, civilian deaths began to increase again in 2000, related to the abandonment of the principal guidelines in that policy, but still remained well below the peak figure of 704 recorded in 1998. In São Paulo there was an increase from 1996 to 2000, followed by a sharp drop in 2001. Meanwhile, the absolute numbers of civilians killed by military police in the State of Rio Grande do Sul have been much lower than in Rio de Janeiro and São Paulo, in addition to displaying a downward trend during the same period (Graph 13).

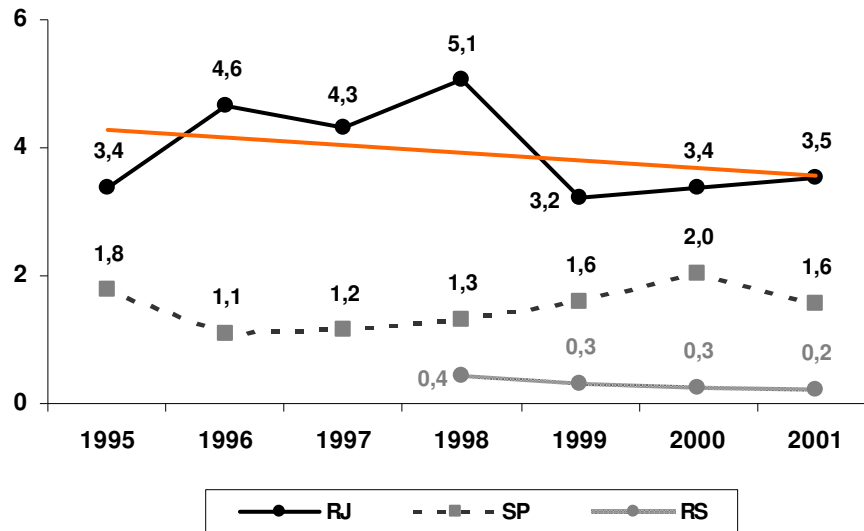
**Graph 13. Number of civilians killed by Military Police in the States of Rio de Janeiro, São Paulo, and Rio Grande do Sul, 1995-2001**



Sources: *Relatórios das Ouvidorias de Polícia*, São Paulo (1996-2001) and Rio Grande do Sul (1998-2001); Rio de Janeiro State Military Police/PM 2

Rather than absolute figures, if we consider the civilian death rates caused by military police per one hundred thousand inhabitants, we note that lethal police action is much more frequent in Rio de Janeiro than in São Paulo, and that lethal military police action in Rio Grande do Sul is relatively much less common than in the other two States (Graph 14).

**Graph 14. Civilians killed by Military Police in the States of Rio de Janeiro, São Paulo, and Rio Grande do Sul, per 100,000 inhabitants, 1995/2001**



Sources: *Relatórios das Ouvidorias de Polícia*, São Paulo (1996-2001) and Rio Grande do Sul (1998-2001); Rio de Janeiro State Military Police/PM 2

## Chapter 4

### The Police Ombudsman's Offices as viewed by members of the police forces

#### 4.1. The Police Ombudsman's Offices as viewed by members of Internal Affairs

We interviewed both the Chief of Internal Affairs, as well as Internal Affairs staff members, from the Military Police and Civil Police in all five States.

Relations between the Military Police Internal Affairs Offices and the Police Ombudsman's Offices were generally viewed as positive, based on the ability of the Ombudsman's Offices to help facilitate contact between the community and the police. However, the Ombudsman's Offices were criticized for being unfamiliar with operations in both Internal Affairs and the police forces, and a closer link was suggested in the work done by the two agencies. At any rate, the Ombudsman's Offices were also seen as helping expedite investigations and maintaining pressure to punish offending police officers.

Some Chief Internal Affairs Officers were concerned about the work of the Ombudsman's Offices, claiming that the latter should take more care when receiving complaints in order to avoid the risk of "*denuncismo*" ("filing complaints for complaining's sake"), or setting off a "wave of complaints". It was suggested that the methodology used to tabulate complaints be revised, based on the claim that all complaints lodged are entered indiscriminately into the statistics, without any screening.

Civil Police Internal Affairs staff members voiced a wide range of opinions concerning the Police Ombudsman's Offices. Although some acknowledged the importance of the Ombudsman's Offices, others complained that the Ombudsman's Office is just one more government agency, a source of "cushy jobs".

Reports by the Ombudsman's Offices were considered a potentially useful instrument in the diagnosis of police work, in the words of Military Police Internal Affairs Officers. However, they demanded more in-depth analyses and greater recognition for the investigative work done by Internal Affairs.

Some Civil Police Internal Affairs Chief Officers stated that the reports by the Ombudsman's Offices are technically well-organized and well-drafted, while highlighting that many of the data in the reports actually come from the Internal Affairs Office or the police forces and that the Police Ombudsman's Offices fail to give due credit for the work done by them.

There was a lack of consensus among Internal Affairs Chief Officers from both the Military and Civil Police as to the possibility of the Ombudsman's Offices investigating complaints on their own. Opinions diverged greatly. Some are not against this possibility and even consider it beneficial, while others clearly state that the Police Ombudsman's Offices would clearly be overstepping their role by engaging directly in investigations.

## **4.2 Police Ombudsman's Offices viewed by members of the Military Police**

The view that members of the Military Police have of the Police Ombudsman's Offices, presented in this section, is based on interviews and focus groups. We interviewed battalion commanders in the five States who in principle were in charge of MP units targeted by numerous complaints lodged with the Police Ombudsman's Offices. We also conducted four focus groups with members of the Military Police in Rio de Janeiro, two with privates and two with different-ranking reserve officers.

### **4.2.1 What the MP battalion commanders say**

The majority of the battalion commanders interviewed in the five State were not very clear about the functioning of the Police Ombudsman's Offices and complained of difficulty in obtaining more relevant information, including an overall profile of the complaints. They heavily criticized anonymous complaints due to the alleged risk of their being motivated by personal revenge. They also warned of the risk of leaking information to the media, which could jeopardize the police officer's career.

Police Ombudsman's Offices were viewed as a sphere for mediation between the community and members of the police force, serving as a channel for people to express their dissatisfaction with the quality of the services they pay for (as taxpayers). However, the military police we interviewed felt that lack of knowledge about police work jeopardizes the ability of Ombudsman's Office staff to evaluate the problems faced by the police.

One suggestion was that the Police Ombudsman's Offices should have a presence within police institutions, maintaining closer contact with law enforcement agencies, explaining and publicizing their work. Some stated that changes had occurred in the investigation and punishment of members of the force after the Police Ombudsman's Offices had been created.

Most of the MP battalion commanders we interviewed stated that the Police Ombudsman's Offices should not conduct investigations, because they would lose the impartiality and distance needed to evaluate the investigative work performed by both the battalions themselves and Internal Affairs.

#### **4.2.2 What the ranking officers say**

Although many ranking Military Police officers were not clear about the mission of the Police Ombudsman's Office, they generally defined it as a new public security agency acting as a police oversight mechanism closer to the population, but which still lacks greater visibility.

All of the reserve officers were against the idea of the Police Ombudsman's Office having its own investigative staff and felt that the Office should restrict its activity to receiving complaints, which should only be investigated by Internal Affairs.

#### **4.2.3 What the privates say**

The limited number of privates who showed any knowledge of the Police Ombudsman's Office stated that it was a "a agency of repression against police force members". Only one stated that he felt a Police Ombudsman's Office should exist, but so long as it "brought justice". In general the privates were highly skeptical and discouraged over what they viewed as the "injustices" they suffered.

Some privates stated that the Police Ombudsman's Office should investigate complaints against ranking officers and soldiers alike, acting independently and guaranteeing due process. According to them, when a complaint is referred to Internal Affairs, the Police Ombudsman's Office should demand an investigation of everyone, without protecting ranking officers.

Some mentioned the need for greater visibility in the work of the Police Ombudsman's Office to counteract its image as an agency that only serves to punish, when in reality it could be used to defend police force members, even though the majority were skeptical about the possibility of the Ombudsman's Office being able to help them.

This skepticism is also related to their obligation to report to their superiors, for example, when a private decides to lodge a complaint at the Police Ombudsman's Office and can end up being harassed as a result.

Some also pointed out that since the Police Ombudsman's Office was created there has been a change in the investigation of alleged misconduct, since more pressure has been brought to bear on Internal Affairs to process cases.

### **4.3 The Police Ombudsman's Offices as viewed by members of the Civil Police**

We interviewed *delegados* or precinct commanders in the five States, generally from precincts that had been targeted by numerous complaints. In Rio de Janeiro, focus groups were also held with precinct commanders and detectives, as mentioned previously.

#### **4.3.1 What the precinct commanders say**

The prevailing opinion among the precinct commanders we interviewed is that the Police Ombudsman's Offices receive unsubstantiated complaints against police officers. They consider Internal Affairs more favorable to police officers than the Ombudsman's Office because the IA *esprit de corps* helps defend police officers from outside attacks.

Among the precinct commanders participating in focus groups in Rio de Janeiro, the immediate reaction to the question about the importance of the Police Ombudsman's Office was, "It serves no purpose. It's just to fabricate jobs, to serve as a political bandwagon." Next, however, they reconsidered their negative appraisal by stating that they were referring to the

Police Ombudsman's Office as it operates today, that is, linked to the Department of Public Security.

#### **4.3.2 What the detectives say**

The detectives, who were also heard in focus groups in Rio de Janeiro, showed widespread unfamiliarity with the Police Ombudsman's Office. Even those who had heard of the Police Ombudsman's Office had no idea how it operated. Some got the Police Ombudsman's Office confused with the Citizens' Complaint Hotline (*Disque-Denúncia*). They had the impression that the Ombudsman's Office did not serve to receive and investigate complaints, but to provide statistics to the State government and media.

According to them, poor screening of complaints, or the failure to distinguish between valid and malicious complaints, would tend to expose members of the force to unfair prosecution and harassment.

## **Chapter 5**

### **The Police Ombudsman's Offices according to complainants and accused police officers**

#### **5.1. Accused police officers**

As mentioned previously, we interviewed 57 police officers against whom complaints had been lodged at the Police Ombudsman's Offices in São Paulo and Rio de Janeiro. They included 20 civil police and 15 military police from Rio de Janeiro and 22 military police from São Paulo. The civil police were inspectors, investigators, and police notaries. The military police were corporals, sergeants, lieutenants, and one captain.

The difficulties encountered in interviewing members of the police, despite formal support from senior officers in the two police forces in the State of Rio de Janeiro and the Military Police in São Paulo, provide a good example of police resistance to civilian oversight. The limited number of police interviewed and the multiple biases in the selection process leading to this sample suggest that the results should be viewed as exploratory.

Presented here is a summary of the results that may be found in the full report to be published in book format.

Only one police officer reported that he was still under investigation, while the rest either reported that the investigation had been concluded or did not know how to respond. Time for processing a complaint varied from one week to two and a half years, and the average time was six months.

A total of 10 police reported having been punished as a result of complaints. In half the cases, punishment consisted of disciplinary imprisonment for two to 20 days. Censure, suspension, or guard duty in a prison facility were other penalties. Among those who had been punished, only one considered the punishment fair, while the others considered it either unfair or extremely unfair.

When asked to evaluate the investigation, slightly over half responded. Among these, opinions varied: 16 praised the investigation and 11 criticized it. At the end, 17 were dissatisfied with the final result of the complaint, but 11 reported they were satisfied.

As expected, one factor that influenced their appraisal of the investigation was its outcome, that is, whether or not they had been punished as a result. Among those who had not been punished, the majority praised the investigation, while the majority of those who had been punished criticized it. There was thus a very close relationship between their appraisal of

the process (procedural justice) and the outcome (final justice). Likewise, the police force members who were satisfied with the outcome tended to be satisfied with the investigation, while those who were dissatisfied with the outcome tended to criticize the investigation.

Responding to an open question about the most common forms of misconduct in the police, the most frequent answers related to corruption and extortion, that is, financially motivated crimes. Physical assault and excessive use of force (stray bullets) appeared in third place. As for what they considered the most serious forms of misconduct, the answers indicated extortion, collusion to commit crime, and corruption. Homicide only appeared in third or fourth place, and assault was almost never mentioned. These data thus appear to confirm the hypothesis that members of the force see the most serious form of misconduct as anything that involves “switching to the other side” and engaging in crime for monetary gain, and as relatively less serious the unjustified and excessive use of force against the population, even though the consequences of the latter may be more severe. One can thus readily conclude that such police officers are internalizing the values of their respective police forces and their disciplinary codes, which often prioritize protection of the internal institutional order over protection of the citizenry.

The vast majority of these accused police officers were already familiar with the Police Ombudsman’s Office, stating that they had already heard of it before having a complaint lodged against them. However, curiously, the most common way of learning about the Police Ombudsman’s Office was precisely through the media rather than through their own police force.

When asked to define the purpose of the Police Ombudsman’s Office, the most common answer was that it is an agency that receives and solves complaints.

A total of 4 police (two from Rio and two from São Paulo) had already lodged complaints themselves at the Police Ombudsman’s Office. In addition, 4 policemen from São Paulo reported knowing other members of the force who had done the same. Although the number is small, this indicates that at least a few members of the force see the Police Ombudsman’s Office as an institution capable of not only punishing police officers but also benefiting them in some way.

However, the majority appear to have a negative impression of the institution. Asked about the image police officers have of the Police Ombudsman’s Office, 31 members responded with critical comments, as compared to only 13 with positive or neutral remarks. The criticism focused mainly on their perception of the Ombudsman’s Office as an institution whose objective is to harass policemen, whether fairly or unfairly, as well as the way it conducts its investigations. Among other allegations, members of the force claim that the Ombudsman’s Office does not adequately screen cases, does not investigate, does not listen to the police officer’s side (only that of accusers), and that it spares the ranking officers. Interestingly, many members of the force are implicitly demanding a broader jurisdiction for the Police Ombudsman’s Office in the sense of *increasing its investigative capability* in order to at least conduct preliminary inquiries and improve case screening.

Curiously, only one officer reported that he had been aware or informed of the Police Ombudsman’s Office work during the investigation to which he had been submitted. Thus, much of the police criticism for the work of the Ombudsman’s Office does not appear to be based on a very precise notion of its actual role.

At any rate, the majority of the police view the Ombudsman’s Office as an institution designed to harass members of the force, that is, as a threat to all police, not just bad police officers. Internal Affairs is also viewed in a negative light, but not to the extent of the Ombudsman’s Office. In short, much of the hostility towards the Ombudsman’s Office appears to result from the fact that it is conceived to exercise external control over the force, which increases distrust on the part of police officers.

Surprisingly, however, when asked about the possible impact of the Ombudsman’s Office on police conduct, the majority reported that there had been positive changes.

Suggestions for improvements in the Police Ombudsman's Office vary, but basically focus on improving the quality of investigations (by screening, etc.) and the possibility of stronger guarantees of due process for the accused officer, who should have the right to be heard. Again, the police officers are implicitly requesting greater investigative capability for the Ombudsman's Office. Several members of the force requested greater visibility for the institution, thus agreeing with civilian complainants on this point.

## 5.2 Complainants

As mentioned previously, 88 telephone interviews were held, 34 in Rio de Janeiro and 54 in São Paulo, with individuals who had lodged complaints with the Police Ombudsman's Offices.

Given that the study was limited to individuals with telephones and who disclosed their identity, there was an unavoidable selection bias favoring those of higher social status. Comparing the profile of these telephone interviews with all complaints lodged at Ombudsman's Offices, we observed clear differences. Individuals interviewed by phone were mostly over 35 years of age, while the overall age profile of complainants in São Paulo was much younger. Even more important was that most complainants had only primary or secondary schooling, while nearly half of the telephone interviewees had a university education.

Complaints lodged at the Police Ombudsman's Offices were of various types. One-fourth referred to abuse of police authority and another fourth to poor service. The rest varied, from lack of policing to police assault and torture. Comparing the phone interview sample to the overall set of complaints received by the Ombudsman's Offices in Rio and São Paulo, among the phone interviews there was a higher proportion of complaints related to abuse of police authority and poor service, while extortion was much less common than in the overall sample, and there were virtually no complaints of more serious incidents like homicides.

In the telephone interview sub-sample, in more than two-thirds of the cases the complainant was also the victim. In the other cases the complainant was frequently a close relative (son, etc.). In most cases the complaint had been reported by phone, while one third had been filed in person. The proportion of complaints filed in person in this sub-sample was thus clearly higher than the overall average for complaints at the Ombudsman's Offices in Rio (14%) and São Paulo (6%).

Thus, our telephone interviews represent a sub-set of complainants that are older and have more schooling, who report complaints related to relatively less serious police misconduct, and who are more willing to lodge their complaints in person. It thus stands to reason that they are less afraid of being identified or suffering reprisals. All of this should be taken into consideration when interpreting the results.

The small sub-sample size and the interview selection biases suggest that the results should be interpreted as exploratory.

When interviewees were asked to define the Police Ombudsman's Office, the majority stated that it is an external agency for police oversight and control that receives complaints against members of the police. However, some complainants thought that the Police Ombudsman's Office was an internal police agency. Thus, the notion that the Police Ombudsman's Office is an external or civilian oversight and control institution, which is a central characteristic in its identity and its reason for being, has still not been assimilated by the population as a whole or even by all of its users.

Approximately one-third of the individuals reported having learned of the Police Ombudsman's Office through the media, while another third had been informed by law enforcement authorities or agents. Personal referrals from friends or relatives provide the third most common source.

Nearly half of the interviewees had already lodged a complaint about the incident at other levels, basically at the local precinct. In other words, for at least a major portion of citizens lodging complaints, the Police Ombudsman's Office is one further institution rather than the only level at which they file complaints. In principle, one might think that the vast majority of individuals only file their complaints at the Police Ombudsman's Office, an agency capable of guaranteeing confidentiality. However, the data fail to confirm this hypothesis, and at least in the relatively less serious cases, many people turn to the Police Ombudsman's Office after having first lodged their complaints elsewhere, presumably in vain. Still, when asked why they had chosen to file the complaint at the Police Ombudsman's Office, the majority responded that they considered it the agency responsible for this type of complaint or that they expected greater case-resolving capacity than at other agencies. Only a few interviewees mentioned the need for protection or confidentiality as a fundamental reason for turning to the Police Ombudsman's Office.

However, some 24 interviewees reported feeling afraid, and 10 stated that they were very afraid. Some 23 individuals even reported having suffered threats or reprisals as a consequence of the complaint.

After the complaint, 27 of the 88 individuals contacted the Police Ombudsman's Office for information about progress with the case, and 29 were contacted by the Police Ombudsman's Office for this purpose. Less than half of the total had any kind of contact with the office after lodging the complaint. Thus, the majority of the individuals were unaware of what had happened with their complaint. In other words, the *Police Ombudsman's Offices are not succeeding in providing feedback to citizens lodging complaints*, reflecting a serious limitation to the service and establishing a certain degree of disappointment with the institution. Individuals who were contacted by the Police Ombudsman's Office do in fact express a more positive opinion of the institution than those who never received any feedback.

Explanations provided by the Police Ombudsman's Office were considered clear by the majority of those we interviewed by telephone, while a minority found them confusing. Among those who had been informed about the outcome of their case, 4 stated that this feedback had come in a matter of days, 8 in a matter of months, and 5 in a matter of years. Only 8 people reported having been informed that their complaint had resulted in the punishment of a police officer.

*More than two-thirds of citizens who had lodged complaints expressed dissatisfaction over the outcome.* The majority were also skeptical about possible changes in police conduct as a result of their complaint,.

The telephone interviewees gave a score of 0 to 10 for work performed by the Police Ombudsman's Office, relating to the treatment received from the staff and the agency's efficiency in relation to their complaint. The average score for treatment by the staff was quite positive. However the average score for the Office's overall work and the specific outcome of their complaint indicated disapproval. In other words, people who turn to the Ombudsman's Office feel well-treated, but *they do not see their complaint producing any practical effects*.

In general, complainants stated that the work of the Police Ombudsman's Office was *below their expectations*. A total of 13 citizens stated that the institution's performance had surpassed their expectations, as compared to 47 who reported the opposite.

In short, there is a certain sense of disappointment with the institution. Suggestions for improvements varied, but they focused mainly on *improving feedback and communications with complainants, improving investigations, and increasing the agency's case-resolving capacity*.

When asked directly whether the Police Ombudsman's Office should have its own investigators, the majority responded affirmatively. The vast majority *support the idea that the Police Ombudsman's Office should have investigators* in order to conduct its own direct inquiry into complaints.



## Chapter 6

### **Perceptions by the population at large concerning police forces and the Police Ombudsman's Offices**

#### **6.1. Focus groups in Rio de Janeiro**

##### **6.1.1 Residents and leaders from low-income neighborhoods**

Four focus groups were held with residents and community leaders from low-income areas (two from each group), and a total of 30 citizens were heard.

The overall view of leaders and residents is that government is absent from the communities and that policing is not provided regularly to these areas. In their view, the police treat different areas of the city distinctly, pointing out that some neighborhoods are benefited by regular policing. As a result, they feel unsafe in their own homes and neighborhoods and report that the police are violent, disrespectful, arrogant, and arbitrary in low-income communities.

They insist that there is a fine line between the police and criminals. They express great fear towards both police and the drug traffic, although they admit that the drug traffickers show more respect for the community than the police.

A closer relationship between the community and the police was also considered essential for developing mutual trust.

They claim that both police violence and violence by the drug traffic are related to such social problems as lack of jobs, education, and health care. Low police wages were also cited as a factor in police misconduct, along with inadequate police selection and training.

The need for follow-up of police work, a kind of constant supervision, was an issue they emphasized, to the point of stating that "criminals" exercise better group control than the police. They insisted that impunity must be curbed and bad police officers punished.

The most serious police offenses they identified were homicide, participation in death squads, extortion, illegal sale of weapons, robbery, racial profiling in traffic stops, breaking and entering, and abuse of authority.

The most frequent offenses cited were assault, homicide, racism, and poor service.

They were not clear about the role of the Police Ombudsman's Office, which they sometimes got mixed up with the Citizens' Complaint Hotline. There was consensus that the Police Ombudsman's Office should work independently and provide visibility for its work in order to establish a relationship of trust with the community, which generally does not believe in the police and is afraid to lodge complaints. Finally, they failed to see any change in police conduct following the creation of the Police Ombudsman's Office.

##### **6.1.2 Middle-class residents and leaders**

Four middle-class focus groups were also held, two with residents and two with community leaders. A total of 24 middle-class citizens were heard.

Even while conceding that police conduct has improved as compared to the past, they state that it is still inadequate. Although they grant that there are exceptions, these middle-class citizens felt that the police are generally poorly prepared, leaving the community feeling unprotected and distrustful of the police.

There were complaints about the poor qualifications of police officers and what the focus group participants considered inappropriate behavior, like police officers "making out with girlfriends" while on duty. They also reported that police behavior varies considerably from one neighborhood to another and according to the time of year, time of day, and group or public being served.

They stated that police officers themselves do not feel supported by the police force, and that they are frequently under the threat of transfers and losses in promotions. Many middle-class focus group participants referred to low police wages and a few went so far as to say that police misconduct has economic roots.

The most serious offenses cited were homicide, physical and verbal violence, collusion with the drug traffic, extortion, corruption, and kidnapping. The most common offenses cited were negligence, extortion, and corruption.

As for measures to curb misconduct, the middle-class focus groups mentioned the need for more respect for the police-force chain of command, better wages, better training, and greater provision for expelling bad police.

Both residents and leaders stated that they were unfamiliar with the investigative procedures used in relation to police misconduct. Some had heard of the Internal Affairs Office, but they did not know how it operated. Despite their unfamiliarity, middle-class focus group participants displayed distrust towards the efficacy of internal controls, on the grounds that with IA the police themselves investigate other members of the force. In general they perceived Internal Affairs as police corporatism or “closing of ranks”.

There was also widespread unfamiliarity with the Police Ombudsman’s Office among middle-class residents and leaders. Although a few focus group participants had heard of the Ombudsman Office, neither residents nor leaders were clear about its operations or jurisdiction. They also complained about the limited media visibility for the role of the Police Ombudsman’s Office.

Asked about measures that could be taken to improve control over police misconduct, all middle-class focus group participants mentioned the need for greater participation by various segments of civil society in police oversight and control. They also stressed the need for greater government commitment to the Police Ombudsman’s Office.

They stated that the Police Ombudsman’s Office must not be left at the mercy of political whims under this or that State Administration and suggested that Police Ombudsmen be elected. They displayed great concern over the safety of individuals reporting complaints of police misconduct. In this sense, they felt that members of the police force should not be allowed to work in the Police Ombudsman’s Office. In addition, they felt that investigations should be more open and transparent to allow for greater oversight by the community at large.

## **6.2 Interviews with community leaders in other States**

Community leaders were interviewed in the five States covered by this study.

Generally speaking, the feeling was that police/community relations are extremely unsatisfactory because the police take an authoritarian stance and fail to establish rapport with residents. Many reported that they fear the police more than the “bandits” or “criminals”.

Community leaders reported that police work differs according to the citizen’s social class, and they viewed violence as the prime characteristic of police relations with youth. Meanwhile, some opinions reflected a clear acceptance of violence against “criminals”. The interviews also indicated that the police fail to do any investigative work, concentrating only on repression.

Community leaders in all five States mentioned the need to develop work to integrate police forces and civil society, creating channels for community leaders and the police to discuss their needs, exchange information, and prepare projects in collaboration.

Participants stated that although the community leader’s role is to promote integration between the community and the police, they lack the legal and political conditions to do so. Despite fear of reprisals, they believe that community leaders have the duty to expose illegal activity by the police and/or criminals.

There was no clear agreement in any of the five States about the roles and jurisdictions of the Internal Affairs and Police Ombudsman's Offices, and there was widespread skepticism towards the efficacy of police oversight and control agencies.

## **Conclusions**

Based on the research results discussed above, one easily perceives that there is a long way to go for the Brazilian Police Ombudsman's Offices to actually become an instrument for citizens' defense and participation by civil society in police oversight.

The first obstacle is the traditional resistance of Brazilian police forces to any kind of civilian oversight and control, as expressed by police distrust towards the Police Ombudsman's Offices and the difficulties encountered by our researchers in obtaining interviews and establishing a dialogue with police officers on these issues. In both the internal monitoring agencies and other sectors of the Military Police and the Civil Police there is still a prevailing adherence to the "police-investigate-police" model, in other words, the notion that external agents unfamiliar with police force problems cannot evaluate or judge police behavior, much less interfere in the underlying values of daily police work.

In addition, police officers, community leaders, and complainants displayed great unfamiliarity with the work and even the existence of the Police Ombudsman's Offices. Many had never even heard of the Ombudsman's Office before participating in the study. Those who were aware they existed often knew nothing about the objectives or work procedures. Among community leaders and even among citizens who had filed complaints, several were convinced that the Police Ombudsman's Office is part of the police force structure itself and is subordinated to its chain of command – denoting limited perception of the differences between internal control and civilian oversight. This lack of familiarity highlights the urgent need to develop more aggressive strategies to publicize and explain the work of the Police Ombudsman's Offices to both the civilian population and the police as one way to reduce mutual distrust and resistance.

The institutionalization of the Police Ombudsman's Office is a process that is still under way and which faces a number of difficulties, greater in some States of Brazil than in others, but in all cases falling far short of expectations and goals, considering the current magnitude of police violence and corruption in the country. Generally speaking, the State governments that created these agencies have failed to guarantee minimum operational conditions, like their own headquarters and staff, budget autonomy, and sufficient independence to adequately serve their police oversight role. For example, staff turnover in various Police Ombudsman's Offices is a heavy obstacle to developing teamwork and thus continuity, consistency, and efficacy.

In addition to improving operational conditions in the Police Ombudsman's Offices, which are still extremely precarious, there is also an urgent need to restructure, de-bureaucratize, and streamline their daily schedules and procedures. Another serious problem is the way complaints are processed, specifically in terms of guaranteeing confidentiality. Complaints for which accusers are identified are entered into the computer system in some Internal Affairs Offices and the names become accessible to police officers. It is therefore crucial that people who file complaints be clearly informed about the level of confidentiality on which they can actually rely before deciding whether they wish to identify themselves. Ideally there would be a minimum of anonymous complaints, which can cause a number of problems. However, in the Brazilian context, where most citizens avoid lodging complaints for fear of reprisal (and not without reason), anonymous complaints are often the only way of obtaining collaboration from the civilian population to curb police abuse.

Greater care in the initial screening of complaints was a demand expressed by the police interviewed in this study, particularly those working in Internal Affairs in their respective police forces – not only to reduce the risk of false complaints unfairly jeopardizing the reputation of some police officers, but also for the police monitoring agencies not to be flooded with unsubstantiated complaints that are impossible to investigate, as occurs presently.

The field visits emphasized that the current structure of Police Ombudsman's Offices in Brazil has failed to allow real progress in the following three essential areas: (a) communications with the civilian population, aimed at expanding knowledge of civilian oversight agencies and encouraging well-substantiated complaints with the accuser's identity included; (b) communications with the police, also aimed at clarifying the objectives of civilian oversight and diminishing distrust and resistance; and (c) more careful treatment of the complaints received in order to increase the effectiveness and efficacy of investigations. While the first two depend essentially on input of human and material resources, the latter also requires expanding the very margin of independence and authority in the Police Ombudsman's Office, that is, increasing the Ombudsman's Office's investigative capacity, at least in the initial screening of complaints lodged by the community. We will focus further on this issue later in this report.

### **Evaluating the impact of the Police Ombudsman's Offices**

A requirement for evaluating the effect of the Police Ombudsman's Offices using indicators in the different States would be to first standardize the work routines and categories used to classify complaints, procedures, and outcomes. Even maintaining the necessary flexibility to cover the various local realities, it is essential to seek maximum convergence in these routines and classifications. Otherwise, comparison becomes practically impossible and evaluation of impact (which can only be done by comparison) loses its substance. It is also essential to develop objective instruments and clear criteria for measuring the work of the Police Ombudsman's Offices.

There is a vast debate in the international literature on how to evaluate the performance of civilian oversight agencies similar to the *Ouvidorias de Polícia* or Police Ombudsman's Offices in Brazil (see PEREZ, 1994; WALKER, 1998; BRERETON, 2000; HERZOG, 2000). Even in other countries where such oversight and control is already more institutionalized, the task is far from trivial, given the methodological difficulties in comparing different agencies working in different ways and in distinct local contexts.

Even so, there is an effort to establish certain basic parameters for comparison and evaluation. Brereton (2000), for example, proposes that police oversight agencies be evaluated according to their success with the following:

- (a) improving the investigation of complaints lodged against police officers;
- (b) causing actual changes in police practices and behavior;
- (c) providing satisfaction to citizens lodging complaints; and
- (d) keeping the oversight work from producing harmful impacts on the operational efficacy of the police force and the morale of its members.

However, the author himself identifies various obstacles to a consistent evaluation based on the above parameters. First, measuring the capacity to *improve the investigation of complaints against police officers* runs up against the fact that oversight agencies do not tabulate either complaints or the outcomes of investigations in the same way. In addition, substantiation of complaints is affected by the way the initial screening is performed, with

different types of complaints producing different levels of substantiation. Even where operational conditions are less precarious than in the Brazilian Police Ombudsman's Offices, there thus tends to be an overall problem with comparability, which hinders the assessment of each agency's relative efficacy.

But the fact that the problem exists does not mean that it cannot be overcome or ameliorated. In Brazil, where there is a National Forum of Police Ombudsmen whose responsibilities include establishing parameters for work by the State Police Ombudsman's Offices, it would be perfectly possible to reduce the existing degree of discrepancy between the criteria used for data classification and processing. A good example is that of murders committed by military police in São Paulo. As mentioned previously, the Police Ombudsman's Office in that State tabulates under the same item the homicide complaints it receives directly and those obtained through the media or from the local Military Police force. No other Police Ombudsman's Office adopts this criterion, pointing to the obvious need to separately tabulate the homicides in São Paulo that are lodged directly with Office and those identified through other sources. Nor would it be very difficult to standardize the definition of *punishment* – which varies considerably from State to State, as mentioned before –, or at least to specify the numbers corresponding to each type of “punishment”, based on a defined set of alternatives to be discussed and agreed upon in the National Forum of Police Ombudsmen. Minor changes could thus mean major advances in the possibilities for comparative evaluation of the impact of these oversight agencies on the investigation of police misconduct reported by the population.

As for the second parameter suggested by Brereton (2000) – the capacity of civilian oversight agencies to cause *actual changes in police practices and conduct* – the obstacles to establishing measurable indicators are no less relevant, since this item ranges from the performance of Police Ombudsman's Offices in the identification and curbing of police misconduct to the capacity to cause changes in institutional policies, procedures, and cultures in law enforcement agencies. The main problem here is to isolate the specific impact of the work done by the Police Ombudsman's Offices from the numerous variables that may be at the origin of observed changes. For example, in Rio de Janeiro, from 1999 to 2000, the number of civilians killed by the police decreased considerably (see Chapter 3), as an obvious consequence of redirecting law enforcement policy at the beginning of a new State government administration. This redirecting included the creation of the local Police Ombudsman's Office, but also other measures with the same objective of reducing violence in the police forces. There was no way to measure the single effect of any of these measures on the results. Meanwhile, São Paulo provides a counter-example: although the São Paulo Police Ombudsman's Office succeeded in introducing several unquestionably important changes, like a mandatory course on Human Rights at the Civil Police Academy and the adoption of full-body silhouettes for firing range training in this same police force, the number of deaths caused by the police has remained extremely high in that State. Since the majority of killings by the police are the responsibility of the Military Police, the changes had no impact on these figures.

According to authors who have analyzed the efficacy of civilian oversight agencies in other countries, the capacity to cause actual changes in police practice and behavior is directly related to the scope of the work such agencies perform: the more restricted their monitoring of individual cases, the less they are able to have an overall influence on daily patterns of police activity. Organizations that monitor the investigation process as a whole, that observe behavioral models, that discuss management and organizational problems, and that analyze policies and procedures from a broader perspective have a better chance of success in inducing deep structural changes, capable of preventing and not merely punishing police misconduct. As Herzog puts it (2000), to reduce violence, corruption, and other ills in the police depends on the capacity of civilian oversight agencies to deal not only with the “bad apples”, but with the barrel containing them. In other words, their activity is very limited if it

is based on the old belief that bad police “spoil” the good, and that it suffices to isolate the “rotten” fruit to ensure the “health” of the entire force. Rarely are problems in this area of a merely individual nature. They nearly always stem from factors rooted in the very structure and culture of the police, and they continue to replicate themselves in other ways, even when there are clear signals that individual misconduct will be monitored and punished.

In the case of the Brazilian Police Ombudsman’s Offices, these considerations indicate the need to expand the scope of civilian oversight of the police, which is still essentially focused on the “bad apples”. While continuing to identify and punish individual police crimes and misconduct – since anticipated impunity is definitely still a factor that refuels violence and corruption in police forces – it is also essential for Police Ombudsman’s Offices to concentrate on broader monitoring of police institutions and formulating solutions to their structural problems. We will return to this issue later.

As for measuring the third indicator recommended by Brereton (2000) – the degree of satisfaction among citizens who lodge complaints – the author points to methodological difficulties that are very similar to those we encountered in our study. Surveys in various countries have faced the problem of selection bias, that is, the limited number of citizens who are willing to give interviews and thus the fact that statistical samples are not fully representative – not to mention the weak comparability among the results of studies conducted at different times and in different places and the multiple biases involved in assembling such “samples”. It was thus no exception to the rule when we attempted to measure satisfaction among citizens who had filed complaints against the police in the five States: as mentioned above, in Rio de Janeiro and São Paulo, the originally planned sample of 400 complainants was eventually reduced to just 88. The outcomes of complaints are also no exception: both here in Brazil and in other countries, to the extent that one can trust the samples, research indicates widespread dissatisfaction among individuals filing complaints with civilian oversight agencies, although the reasons for this dissatisfaction may vary considerably from one country to another.

In the Brazilian case, one source of disappointment appears to be the Police Ombudsman’s Offices’ limited capacity to provide feedback on the processing and outcome of complaints. Most citizens have no further contact with the institution after initially filing their complaint. Added to this is the lack of concrete results in most of the cases, due to the low investigative capacity of the Internal Affairs Offices, and one gets a picture that is hardly conducive to a positive appraisal of external oversight by “users”. It is true that one of the reasons many users fail to return to the Police Ombudsman’s Offices may be the fact that they only want to be *heard*, to voice a grievance, without necessarily being worried about how the complaint is dealt with subsequently. Yet this is precisely why it may be important to always ask people who turn to the agency what their expectations are towards the Police Ombudsman’s Office, while informing them of its work objectives.

According to Brereton’s fourth and final criterion, civilian oversight of the police *should not produce harmful impacts on the operational efficacy of the police force and the morale of its members*. Here, even the direct applicability of this criterion in the Brazilian case may raise doubts, since historically the “operational efficacy” of our police forces has been associated with the absence of controls and the production of results without regard for the legality of the means – for example, confessions extracted under torture or summary execution of “bandits” or “criminals”. In addition, police “morale” in Brazil is still more heavily oriented towards corporatist “ethics” like “closing ranks”, the “code of the badge”, etc., than obtaining public recognition, community trust, or prestige outside the police force. Therefore, it is highly improbable that a true deepening of civilian oversight mechanisms will leave intact the prevailing parameters for measuring “operational efficacy” and evaluating the “morale” of police forces. On the contrary, it is the change in these parameters itself that poses the greatest challenge for real transformation of police practices in Brazil, which refers us back to Brereton’s second principle and the need for the Police Ombudsman’s Offices not

only to become involved in monitoring specific cases of misconduct but also in the gigantic effort at reformulating the structures and cultures of our law enforcement agencies.

One can certainly state that the work of the Brazilian Police Ombudsman's Offices is still far from producing any *harmful effect* on police activities, which continue to follow their historical pattern, without any perceptible influence, for better or for worse, by the work performed by new external oversight mechanisms. As for police morale, the majority of the police officers targeted by complaints filed at the Ombudsman's Offices (at least those who agree to be interviewed) expressed great dissatisfaction and particularly felt that the results of the investigations had been extremely unfair. Knowing that the way Internal Affairs Offices and other internal control departments in both police forces conduct investigations and apply penalties is partial and unfair, it is essential that the Police Ombudsman's Offices also strive to monitor and improve these agencies. Otherwise, Ombudsmen will be labeled once and for all as arbitrary "persecutors" of police officers.

### **Proposing a new model**

All the comments thus far indicate that there is a long way to go to make the Brazilian Police Ombudsman's Offices more efficient and to construct instruments capable of measuring the impact of their action. However, based on the evaluation that was feasible in this research, several serious problems already demand urgent action in order for us to make any real progress with civilian oversight of policing in Brazil.

First, Police Ombudsman's Offices should take a more proactive and less reactive stance, working not only to repress, but also to prevent misconduct. It is thus essential for the Ombudsman's Offices to assume their role in auditing and monitoring the police forces, which is only possible if they have access to all the relevant police data. The Ombudsman's Offices should be able to at least consult any and all databases, whether computerized or not, as well as files, records, cases, disciplinary forms, and other sources containing information on police conduct.

Only unfettered access to such information will allow Police Ombudsman's Offices to perform their true monitoring work, as in the case of the Special Counsel for the County of Los Angeles and Monitor of the Los Angeles County Sheriff's Department in the United States. The LA Special Counsel has the password to all the computerized data in the Los Angeles police, and thus monitors not individual cases of misconduct by individual police officers, but patterns in police behavior in given urban areas, recommending action strategies to correct errors and redirect policies in the County Sheriff's Department. Based on this work, the Los Angeles police adopted more rigorous procedures for recording incidents involving use of force by any of its police officers, allowing for greater control of such incidents and substantially decreasing cases of police violence.

In Brazil, for example, Police Ombudsman's Offices can already publish periodic lists of police battalions and precincts that receive more complaints and analyze the investigative procedures adopted in such cases, in order to conduct a much broader evaluation of the environment that generates such misconduct and recommend guidelines for preventive work, and not merely individual punishment for the offending police officers.

Another important aspect should be included in these final remarks. Many staff members in the Police Ombudsman's Offices support the idea that they should have their own investigation team to at least be able to investigate more serious cases or perform better screening of incoming complaints. This is how civilian oversight of the police works in many countries. In some, for example Northern Ireland, it is the Police Ombudsman who investigates all complaints against police officers. Both this Police Ombudsman's Office and the equivalent agency in South Africa, known as the Independent Complaints Directorate, even have police power, that is, to order the arrest of any police officer accused of illegal

activity, in addition to wielding authority to define the punishment and to demand that it be applied by the respective police force.

The point is not to defend such broad powers for the Brazilian Police Ombudsman's Offices at this stage. Still, the capacity to conduct their own investigations – parallel or as alternatives to those conducted by Internal Affairs – is a fundamental requirement for overcoming the “closing of ranks” that still prevails in internal police monitoring agencies: comparing information and results, preventing negligence and inertia in these agencies from continuing to feed impunity, autonomous investigations conducted by Police Ombudsman's Offices would certainly increase the efficacy of *both* forms of police control in Brazil. The demand by police officers and Internal Affairs Offices themselves for more rigorous screening of complaints also implicitly points to providing Ombudsman's Offices with investigative teams capable of at least conducting preliminary inquiries into complaints lodged by the community.

Until deeper changes are made in the current profile of Brazilian Police Ombudsman's Offices, it is important to strengthen Internal Affairs Offices and improve the links between civilian oversight and internal monitoring. Many of the police officers interviewed in this study admitted that Internal Affairs Offices suffer not only from a lack of material resources and qualified personnel, but also from a lack of autonomy to effectively and impartially investigate complaints against members of the force itself. To overcome such problems, it is proposed for example that Internal Affairs Offices no longer be subordinated to the internal chain of corporatist police force command, but be linked directly to the Department of Public Security, which provides better wages, job stability, and other incentives capable of attracting the best police officers. Despite arguments to the contrary, the interviews also mentioned the creation of a specific career path for internal affairs work.

Finally, it is indispensable to change the Disciplinary Regulations now prevailing in the Brazilian Military Police. The concept of discipline is totally obsolete – or as one person put it, “medieval” –, undermining all efforts to establish actual control over military police activity. Military Police regulations are not only unconstitutional in many respects, but continue to be organized according to a rigid military model, completely out of step with policing activity in democratic societies and counterproductive to the task of controlling such activity. Lax in their punishment of more serious misconduct, negligent in defining standards and limits for the use of police force, totally deficient in the standardization of specific policing techniques, these regulations nevertheless punish (and with absurd harshness) various kinds of offenses of dubious importance, like wearing long hair, raising one's voice, questioning one's hierarchical superior, and the like. Punishment for such “violations” can put a member of the Military Police behind bars for up to 30 days and is used most frequently against buck privates at the whim of their superiors. Such punishment is often unfair, arbitrary, and excessive,<sup>20</sup> doing more to “brutalize” police than to train them to deal with the community in a civilized way, to exercise restraint in the use of force, and to respect citizens' rights. It is crucial for the Police Ombudsman's Offices to engage in this discussion, resuming the proposal already submitted by the National Forum of Police Ombudsmen to urgently reform the Disciplinary Regulations of the Brazilian Military Police forces.

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<sup>20</sup> From March 1999 to March 2000 the Police Ombudsman's Office in the State of Rio de Janeiro received several complaints by police officers against their superiors, some filed in person, involving obviously arbitrary acts.



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