

BRAZIL

Candelária and Vigário Geral

Justice at a snail's pace

In the summer of 1993 Brazil was shocked by two horrific massacres carried out by military police in the city of Rio de Janeiro: the killing of seven street children and one young adult outside the Candelária church in July; and the killing of 21 residents of the *favela* (shanty town) of Vigário Geral in August. Although these cases have become landmarks in the fight against impunity in Brazil, resulting so far in the rare conviction of three military policemen (two in the Candelária case and one in the Vigário Geral case), Amnesty International is concerned that they also expose serious flaws in the manner of investigating and prosecuting human rights violations. The organization is also alarmed that, despite the public outcry over the massacres, the government of the state of Rio de Janeiro continues to tolerate an increasing number of killings of civilians by military police.

CANDELÁRIA¹

Three trials have so far been held in the Candelária case, resulting in the conviction of two military policemen on 30 April 1996 and 28 November 1996 respectively, and the acquittal of two military policemen and one civilian on 10 December 1996. One more military policeman accused of involvement remains to be tried. Amnesty International has welcomed these victories in the fight against impunity, represented by the convictions of Marcos Vinícius Borges Emanuel and Nelson Oliveira Cunha, to 309 years imprisonment (reduced on appeal to 89 years) and 261 years imprisonment (subject to automatic appeal²) respectively. However, Amnesty International is concerned that at the trial of Nelson Oliveira Cunha, important evidence may not have been made available to the court, and that, as a result, other military policemen who may have been involved in the massacre might never be brought to justice.

From the initiation of investigations into the Candelária massacre, survivors reported the involvement of two cars and up to eight participants in the massacre. However, in their confessions, both Marcos Vinícius Borges Emanuel and Nelson Oliveira Cunha claim that only one car and four military policemen – including one who has since died

¹The first trial in the Candelária case is covered in detail in *Brazil: The Candelária trial - a small wedge in the fortress of impunity*, AI Index: AMR 19/20/96, July 1996.

²Nelson Oliveira Cunha's appeal date is set for 18 June 1997.

- were involved. Their story exonerates five other men implicated in the massacre: the three since acquitted, and two military policemen who were arrested in April 1996 and released without charge in May 1996.

Key witness

Although several eye-witnesses came forward after the massacre, by the time the first Candelária case came to court only one was still prepared to testify: Wagner dos Santos³, who was 22 years old at the time of the massacre, and was taken off in a car, shot, and left for dead during the massacre. He suffered a further attempt on his life in December 1995, when he was shot, and again left for dead, in what appeared to be an attempt to prevent him from testifying. After pressure from national human rights activists and Amnesty International, the federal government took responsibility for moving Wagner dos Santos to another country for his own safety. The authorities failed to provide the other witnesses - all of them street children - with protection appropriate to their needs, and they drifted back on to the streets. One of them, Fabio Gomes de Azevedo, nicknamed 'Barão', became a victim of Rio de Janeiro's aggressive policing policy shortly before the second Candelária trial when, on 22 November 1996, he was shot dead by police in a dawn drugs raid.

Nine people in total have been implicated in the Candelária massacre

Military Policeman Marcos Vinícius Borges Emanuel. Confessed to involvement in the massacre. Tried and sentenced to 309 years imprisonment on 29 April 1996, reduced on 26 June 1996 to 89 years imprisonment.

Military Policeman Nelson Oliveira dos Santos Cunha. Sentenced to 261 years imprisonment on 29 November 1996.

Acquitted on 10 December 1996:

Two military policemen and one civilian

Still to be tried:

One military policeman - indicted after confessing to involvement in the massacre and remains in detention.

Released without charge on 10 May 1996:

Two military policeman. One of them has been identified by Wagner dos Santos as having shot him in the face during the massacre. Ballistic tests on a gun found on 12 April 1996 in his godfather's house showed that it may have been used in the massacre.

Killed in 1994:

One military policeman, nicknamed *Seixa Feira 13*, (Friday 13th) - the three military policemen who have confessed to involvement in the massacre place the burden of responsibility on him.

³The case of Wagner dos Santos is detailed in *Brazil: The Candelária Massacre and Wagner dos Santos*, AI Index: AMR 19/11/95, July 1995, and *Brazil: Witness Protection: Wagner dos Santos*, AI Index: AMR 19/24/95, October 1995.

Wagner dos Santos' testimony was crucial in securing the conviction of Marcos Vinícius Borges Emanuel.⁴ However, at the trial of Nelson Oliveira Cunha his evidence was in direct contradiction with the confession of the defendant. Nelson Oliveira Cunha claimed that it had been he who shot Wagner dos Santos during the massacre. However, Wagner dos Santos had identified another military policeman as having shot him. Ballistic tests on a gun found at the house of this military policeman's godfather showed that it may have been used during the massacre. Nevertheless, he was one of the two military policemen released without charge in May 1996.

Surprisingly, the prosecution lawyers accepted the defendant's version of events, arguing that Wagner dos Santos, their own key witness, was confused in what he remembered. The ballistic evidence implicating the military policeman identified by Wagner dos Santos was not mentioned in court. Furthermore, Colonel Brum, a police officer involved in the initial investigations, but subsequently suspended, testified that it was quite possible that a second car had been involved, but that this line of investigation had never been completed.

Feeling that his evidence was not being taken seriously, and that he was being used in a cover-up, Wagner dos Santos announced that he would not testify in the following trial.⁵ On his way out of the country he told *O Dia* newspaper, 'I was shot and I told what I saw. But I was used.'⁶ When asked what he would do if he ever witnessed another crime in Brazil, he said, 'I'll blindfold myself.'⁷

The combination of Wagner dos Santos' courage in persisting in testifying, and of efforts on the part of local human rights groups, and subsequently of the federal government, to provide witness protection, secured a rare blow to impunity in Brazil. However, Amnesty International is concerned at allegations that evidence implicating

⁴Amnesty International sent two observers to the first of the trials: Sir Ronald Wilson, ex-Justice of the Higher Court of Australia, and an Amnesty International researcher.

⁵Despite his disillusion with the judicial process, Wagner dos Santos' activity as a witness did have a positive outcome on a personal level: he was recognised on television by a sister that he had not seen for 15 years. As a result he was reunited with his three sisters - the four siblings had been split up and sent to separate orphanages when Wagner dos Santos was seven years old.

⁶'*Eu levei tiro e contei o que vi. Mas fui usado.*'

⁷'*Eu boto uma venda nos olhos.*'

other police officers has been ignored in what appears to be a cover-up agreed between the police officers involved, which would allow some of those responsible for the massacre to avoid being brought to justice.

None of the survivors of the Candelária massacre has yet received any compensation from the Brazilian authorities.

VIGÁRIO GERAL

In August 1993, 21 people were killed when a group of hooded and heavily armed men attacked the *favela* of Vigário Geral, Rio de Janeiro. For two hours they shot indiscriminately at local residents. Among the dead were seven men playing cards in a bar and eight members of a family, including a 15-year old girl, killed in their home. The attack was reportedly carried out in revenge for the killing, two days earlier, of four military police officers who were allegedly murdered by drug traffickers based in the *favela*. Following official investigations, charges were brought against 33 military policemen.

Many of the details of the Vigário Geral massacre were revealed during court hearings which took place in June and July 1995. Evidence produced in July's court hearings appeared to confirm that the killing was a police operation. Thirty-three people, most of them military policemen, allegedly participated in the killings. Two of these policemen have since died - possibly killed to prevent them from giving evidence.

Vigário 1 and Vigário 2

In an attempt to exonerate themselves, 17 of the police officers in preventive detention secretly taped co-detainees' statements in which they admitted responsibility for the killings and gave details of the operation. In February 1996, the 17 policemen who had recorded the tapes were conditionally released pending trial. The tapes also named a number of other people, not yet charged, as having been involved. As a result, 17 more military policemen were arrested.

Following the revelation of the secret tapes a second investigation was opened, dividing the Vigário Geral case into two legal processes in which a total of 47 policemen are still to be tried. Of the 33 policemen charged in the Vigário 1 process, two are dead, 15 are at liberty pending trial, one has gone into hiding, 12 are detained, and one has been convicted. 17 policemen were charged and detained in the Vigário 2 process on the basis of secretly taped statements.

In October 1996 the bodies of the victims of the massacre were exhumed. Originally, they were simply to have been moved in order to make room for new bodies (a standard practice in many Brazilian cemeteries, whereby remains of poor people who have not paid for permanent sites are moved after three years). However, as the first three bodies were exhumed, loose bullets were found in two of the coffins – indicating that the original autopsies had failed to remove all the bullets and submit them for ballistic testing. The judge in charge of the case ordered the exhumation of all the bodies, and this took place in the presence of an independent forensic pathologist. Eleven more bullets were found – making a total of fourteen that had not been removed during the original investigation.

Threats against lawyers, witnesses and activists

In June 1994, a community centre, the *Casa da Paz*, was set up in the house in which eight members of one family were shot dead in the course of the Vigário Geral massacre. From the *Casa da Paz* the relatives of those killed in the massacre have lobbying for compensation and for those responsible for the massacre to be brought to justice. However, the members of the *Casa da Paz* have been repeatedly harassed and threatened by armed police and the community centre has been raided⁸. The former administrator, Caio Ferraz, who was awarded the government's human rights prize on 10 December

⁸ See Amnesty International's *Urgent Action* 248/95, AMR 19/25/95, 1 November 1995, and *Urgent Action* 28/96, AMR 19/05/96, 2 February 1996 and update AMR 19/07/96, 5 March 1996.

1995, left the *favela* with his family the same month after they received repeated death threats.

During the first six months of 1995 there was concern for the safety of two public prosecutors working on the Vigário Geral case, Mauricio Assayag and José Muiños Piñeiro, and of Judge Maria Lucia Capiberibe, all from the *II Tribunal do Júri*, Second Criminal Court, of Rio de Janeiro, after they began to receive death threats.⁹ Threats have also been made against Colonel Brum, the police officer originally in charge of the investigations.

The trial

A first jury trial in the Vigário Geral case was scheduled for 16 April 1997, to try the 17 accused who were pleading innocent. Amnesty International sent a delegate, Dr. Edgardo Carvalho, to observe the trial. Dr. Carvalho is a Uruguayan lawyer and lecturer in law at Montevideo University.

Shortly after the trial began, both defence and prosecution lawyers called for a postponement of the trial, after results of ballistic tests on bullets removed from the coffins matched a bullet with a gun belonging to one of the policemen exonerated according to the evidence in the tapes. This new ballistic report calls into question the version of events contained in the secretly taped statements, undermining the defence strategy. Lawyers were given five days to examine the ballistic reports. The Amnesty International delegate, Dr. Edgardo Carvalho, expressed amazement that a document of such importance should appear at the last minute, telling the press, 'How can a document like this be appended to the case on the day of the trial? It's frustrating.'¹⁰

Following the suspension of the trial on 16 April, the judge ordered the re-detention of three of the military policeman: the policeman implicated by the new ballistic report, and two other policemen. One of them had been photographed smiling. Another had been witnessed making threatening gestures to the witnesses. This last policeman went into hiding after hearing that he was to be detained. Furthermore, one of the Vigário Geral relatives recognised him as being one of the men who had shot her brother during the massacre [see below].

⁹See Amnesty International's *Urgent Action 167/95*, AMR 19/13/95, 10 July 1995.

¹⁰'*Como um documento desses é anexado ao processo no dia do julgamento? Estou frustrado.*'

Of the 17 policemen, only one was prepared to stand trial on 24 April 1997. He pleaded not guilty. After a four-day trial, Paulo Roberto Alvarenga, 38, was convicted of 21 homicides and four attempted homicides and sentenced to 449 years and eight months imprisonment. This sentence is subject to automatic appeal.

At the time of writing this document, no dates had been set for further trials.

The Vigário Geral families

The families of those who died in the Vigário Geral massacre felt particularly at risk of threats and physical harm during the tense days of the trial - especially those relatives testifying in court. The families' lawyer called for federal protection for one of the witnesses who asked to testify at the last minute, after she recognised one of the military policemen as one of the men who killed her brother during the massacre when she saw him in court on 16 April 1997. The news that a new identification had been made was leaked to the press, putting the witness at risk following the policeman's evasion of arrest. Federal Police provided protection for this witness during the trial. However, this protection was withdrawn once the trial was over, even though the policeman in question remains at liberty.

The families greeted the conviction of Paulo Roberto Alvarenga as a victory for justice. Rita Inácio da Silva, the widow of Luis Cláudio Feliciano, who died in the massacre, said 'It's the first trial in a series. Because of this just result, we feel more confident about the rest.'¹¹

Despite promises from the government of Rio de Janeiro that they would be compensated, none of the relatives - many of whom have lost an important family wage-earner - has yet received any money from the authorities.

AMNESTY INTERNATIONAL'S CONCERNS

¹¹ *'É o primeiro julgamento de uma série. Pelo resultado justo, a gente fica mais confiante para os demais.'*

The Candelária and Vigário Geral massacres highlighted a culture of almost universal disregard for the protection of human rights in Brazil, a disregard which has persisted since the years of military dictatorship (1964 – 1985). This disregard has been reinforced by systematic impunity throughout Brazil for members of the security forces carrying out human rights violations. In recent years this impunity has been exacerbated by a spiralling crime rate, which is used by the police as a justification for carrying out torture and extrajudicial executions. Human rights organizations campaigning against violations are often accused of being ‘*defensores de bandidos*’, ‘defenders of criminals’.

Over the years Amnesty International has recommended a series of reforms to the Brazilian authorities which address persistent human rights violations in Brazil and the root causes of impunity that lie behind them. In May 1996 the organization welcomed the launch of a Brazilian National Program for Human Rights which sets out a comprehensive program to increase human rights protection and promotion in Brazil, and which takes into account many of Amnesty International’s concerns.

However, Amnesty International is dismayed that, despite the national and international attention given to the Candelária and Vigário Geral massacres, killings of civilians by Rio de Janeiro police have increased.¹² Although some of the increase can be attributed to confrontations with heavily armed drugs gangs, Amnesty International regularly receives reports of unarmed civilians who have been killed in circumstances suggesting extrajudicial execution.

The organization calls upon the appropriate Rio de Janeiro authorities to ensure that international human rights standards are respected in the state of Rio de Janeiro. Of particular relevance are the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, the UN Code of Conduct for Law Enforcement Officials, and the **United Nations Basic Principles on the Use of Force or Firearms by Law Enforcement Officials**.

The Candelária and Vigário Geral massacres highlight the urgent need for reform in line with these international standards, especially in the following areas:

¹²See *Brazil: The Candelária trial: a small wedge in the fortress of impunity*, AI Index AMR 19/20/96, July 1996.

- ◆ Witness protection: although Amnesty International has welcomed the setting up in several states of pilot witness protection programs, including in Rio de Janeiro, these programs are heavily dependent on the work of non-governmental organizations and volunteers. Furthermore, plans for a federal witness protection program have been withdrawn. Amnesty International is concerned that the authorities at state and federal level should set targets for assuming full responsibility for the protection of witnesses.
- ◆ Investigations: the discovery of bullets that had failed to be removed during autopsies of Vigário Geral victims illustrate the serious shortcomings in the quality of investigations of human rights violations. Amnesty International has called for the investigation procedures for lethal shootings, torture and ill-treatment by agents of the state to be reviewed and reformed as a matter of urgency. All human rights violations should be investigated by a force other than that directly implicated. Furthermore, measures to ensure the independence of forensic services should be established.
- ◆ Prosecution of human rights violations: because they had been acting off-duty, the military policemen accused in the Candelária and Vigário Geral cases were submitted to civilian jurisdiction. However, only since last year has jurisdiction for the prosecution of intentional homicide by on-duty military policemen been transferred to civilian courts, although the crimes continue to be investigated by the military police themselves. A wide range of human rights violations practised by military police continue to fall under military jurisdiction. All human rights violations committed by military police should be investigated independently and prosecuted in civilian courts.
- ◆ Compensation: nearly four years have passed since the Candelária and Vigário Geral massacres, yet not one of the survivors or relatives of massacre victims has received any state compensation. The state has a duty to provide appropriate reparation and compensation to the victims of human rights violations and their families.

APPENDIX

Names of people killed in the Candelária and Vigário Geral massacres

Candelária, 23 July 1993

Paulo Roberto de Oliveira, 11
Anderson Thome Pereira, 13
Marcelo Candido de Jesus, 14
Valderino Miguel de Almeida, 14
“Gambazinho”, 17
“Nogento”, 17
Paulo José da Silva, 18
Marcos Antonio Alves da Silva, 20

Vigário Geral, 29-30 August 1993

Adalberto de Souza, 40, rail worker
Amarildo Bahiense, 31, unemployed
print worker
Cleber Alves Marro, 24, print worker
Clodoaldo Pereira, 23, food processing
worker
Edmilson José da Costa, 23, mechanic
Fabio Pinheiro lau, 18, porter
Guaraci de Oliveira Rodrigues, 33,
nursing auxiliary
Helio de Souza Santos, 38, unemployed
Joacir Medeiros, 60, bar owner
José dos Santos, 47, locksmith
Luis Cláudio Feliciano, 28, metal
worker
Paulo Roberto dos Santos Ferreira, 44,
bus driver
Paulo Cesar Gomes, 35, furniture
restorer

The Santos family

Gilberto Cardoso dos Santos, 61, retired
Jane da Silva Santos, 56, housewife
Lúcia Silva Santos, 34, seamstress
Lucinete Silva Santos, 27, dentist's
receptionist
Lucinete Silva Santos, 26, metal worker
Luciano Silva Santos, 24, print worker
Rubia Santos, 18, print worker
Luciene Santos, 15, student