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**Promoción y protección de todos los derechos humanos,
civiles, políticos, económicos, sociales y culturales,
incluido el derecho al desarrollo**

Informe del Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, Philip Alston*

Adición

Seguimiento de las recomendaciones a los países – Brasil**

Resumen

En el presente informe se analizan los progresos realizados por el Brasil en la aplicación de las recomendaciones formuladas por el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, tras su visita al país del 4 al 14 de noviembre de 2007 (A/HRC/11/2/Add.2). Durante su visita, el Relator Especial documentó numerosos asesinatos por policías de servicio y policías fuera de servicio que participaban en escuadrones de la muerte y milicias, asesinatos en las cárceles e impunidad generalizada.

El Gobierno merece un reconocimiento significativo por realizar varias reformas importantes desde 2007 para abordar esos problemas. Los ministerios federales han aprobado un conjunto de directrices de derechos humanos ("Programa Nacional de Direitos Humanos 3"), que comprenden algunas de las recomendaciones del Relator Especial, lo cual demuestra la determinación del Gobierno federal de incorporar los derechos humanos en el núcleo de la planificación del Estado y de colaborar provechosamente con los procedimientos especiales. Además, el Gobierno federal se ha comprometido expresamente a reducir las muertes derivadas de las actuaciones de la policía. Entre las medidas concretas adoptadas por los Gobiernos federal o estatales cabe mencionar el aumento de los sueldos de la policía, la investigación de las milicias, la detención de miembros de escuadrones de la muerte, la promoción de una presencia policial constante en algunas favelas y la creación de un grupo de trabajo en Río de Janeiro para hacer frente al hacinamiento en las cárceles,

* Documento presentado con retraso.

** El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo del resumen, se distribuye únicamente en el idioma en que se presentó.

una de las causas principales de violencia en las cárceles. En São Paulo, se ha formulado una propuesta importante que, si se aprobara, permitiría que un grupo especial de fiscales investigara los asesinatos perpetrados por la policía.

Sin embargo, no se ha adoptado ninguna medida concreta en relación con muchas de las demás recomendaciones del Relator Especial. De hecho, se siguen produciendo muchas ejecuciones extrajudiciales y el número de asesinatos perpetrados por la policía sigue siendo inaceptablemente alto. Los agentes de policía son responsables de ejecuciones ilegales de presuntos delincuentes, entre otros, mediante el uso excesivo de la fuerza o los asesinatos selectivos en operaciones policiales mal concebidas y contraproducentes. Las milicias y los escuadrones de la muerte siguen actuando con la participación de miembros y antiguos miembros de la policía y, en ocasiones, con conexiones con altos funcionarios y políticos. Por lo general, los ciudadanos, especialmente los que viven en las favelas, siguen estando a expensas de la violencia de las bandas, las milicias y la policía. Se procesa o condena a pocos responsables de tales actos de violencia, especialmente si se trata de agentes de policía. Además, las bandas campan a sus anchas en las cárceles, lo cual tiene como consecuencia violencia y muertes constantes en los centros penitenciarios de todo el país.

Anexo

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions

Follow-up to country recommendations – Brazil

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I. Methodology

1. In accordance with established practice, this follow-up report was prepared on the basis of all available information. The Special Rapporteur requested information from the Government and from other actors on the steps that had been taken to implement his recommendations. Information on the non-implementation of recommendations was also sought. In addition, information was sought on the current situation concerning extrajudicial executions in the country, and particularly on whether and how the situation had improved, deteriorated or remained static since the Special Rapporteur's visit. The Government of Brazil provided information to the Special Rapporteur, which he has reviewed closely and taken into full account in the preparation of this report. Extensive consultations were also undertaken with domestic and international civil society groups.

2. This follow-up report is an important component of one of the principal working methods of the Special Rapporteur – conducting country visits to investigate allegations of violations of the right to life. Country visits provide an opportunity to ascertain the facts on a first-hand basis, to analyze in detail the forms and causes of unlawful killings, and to engage in constructive dialogue with the country concerned. Following the visit, the Special Rapporteur prepares a detailed report on his findings, including recommendations directed at reducing unlawful killings and promoting accountability. Country visits can only achieve their full potential if governments give careful consideration to these recommendations. Accordingly, the Commission on Human Rights requested States to carefully examine recommendations and to report to the Special Rapporteur on actions taken on the recommendations (2004/37).

3. In order to assess the extent to which States had implemented recommendations, in 2006, the Special Rapporteur initiated follow-up reports on visits conducted. The first follow-up report (E/CN.4/2006/53/Add.2) concerned the recommendations made by his predecessor, Asma Jahangir, on her visits to Brazil, Honduras, Jamaica, and the Sudan. In 2008, a follow-up report (A/HRC/8/3/Add.3) was issued on the first two missions conducted by Special Rapporteur Philip Alston to Sri Lanka and Nigeria. In 2009, follow-up reports were issued on Guatemala (A/HRC/11/2/Add.7), and the Philippines (A/HRC/11/2/Add.8). The present report accompanies a follow-up report on the Central African Republic (A/HRC/14/24/Add.5).

4. The Special Rapporteur is especially grateful to Sarah Knuckey, as well as to Erika Sasson and Nishant Kumar, from the Project on Extrajudicial Executions at the Center for Human Rights and Global Justice, New York University School of Law, for their excellent assistance in the preparation of this report.

II. Introduction

5. The Special Rapporteur visited Brazil from 4 to 14 November 2007, and his final report was published on 23 March 2009. His report highlighted killings by the police, militias and death squads as well as killings committed in prisons.

6. In his original report, the Special Rapporteur documented the high rate of killings by police officers while they are on duty, and analysed the causes behind such behaviour. The Special Rapporteur also analysed the involvement of police officers in death squads and militias, which are especially prevalent in São Paulo, Rio de Janeiro and Pernambuco. These militias seek out neighbourhoods to control in order to extort money from citizens, and commit murder to maintain their territorial control. Citizens in certain parts of Brazil live in fear of police violence and militias just as much as they fear violence from drug-

trafficking gangs and criminals. The Special Rapporteur also examined deaths in prisons and the lack of necessary oversight and protection of persons in custody. Impunity for most killings was rampant because of deficiencies throughout the criminal justice system, including with respect to police investigations, forensic analysis, prosecutors' powers, the judiciary, witness protection, and ombudsman offices. The Special Rapporteur proposed a range of recommendations to address these issues.

7. The state and federal Governments have since made noteworthy improvements in certain areas. There have been new efforts towards community policing in some of the favelas in Rio de Janeiro, and the federal Government has promised increased salaries to improve security in anticipation of the World Cup in 2014 and the Olympic Games in 2016. The State of Rio de Janeiro also conducted in-depth investigations into militias, which brought the reality of the problem into sharp focus and led to the arrest of many militia members. There have been similar arrests in São Paulo as well as Pernambuco with respect to death squads.

8. Despite these improvements, some of the problems identified by the Special Rapporteur following his visit continue largely unabated. In particular, the numbers of killings by on-duty police officers remain at unacceptably high levels, with perpetrators continuing to enjoy impunity. From 2003 to 2009, police in Rio de Janeiro and São Paulo alone killed over 11,000 individuals, and the evidence suggests that many of these killings were unlawful. Gangs continue to dominate the prisons, with few meaningful reforms to address violence. Few measures were taken to improve the criminal justice system or accountability.

III. Extrajudicial executions by police

9. In his 2007 report, the Special Rapporteur concluded that the police forces in Brazil all too often contributed to the problem of extrajudicial executions, rather than its solution. He described two general types of police killings: (a) on-duty police using excessive force in a purported effort to combat crime; and (b) off-duty police forming criminal organizations that also engage in killings.

10. Most of these killings occur in favelas – slum areas of major cities where concentrated populations are grossly economically disadvantaged and largely left without any state services. Predictably, poverty and years of state neglect made favelas ripe for the unfettered growth of violent street crime and the formation of criminal organizations. Those organizations, in order to maintain control of favelas and continue their unlawful activities (extortion, drug and weapons trafficking), engage in extensive violence – mostly against the residents of favelas, but also against residents in other areas of the cities, and against police and other officials. Brazil's homicide rates have been notoriously high for years, and the victims are mostly young, male, black and poor. Between 1980 and 2002, the homicide rate (per 100,000 residents) nearly tripled – to a peak in 2002 of 30.4. The figures dropped in the following years, to 28.3 (2004), 27 (2005), and 25 (2006).¹

¹ The homicide rate in Rio de Janeiro was significantly higher. In 2007, it was 37.71 (per 100,000, or 6,122 homicides); in 2008 it was 34.5 (5,717), and in 2009 it was 34.36 (5,794). It is important to note that police killings are excluded from these Government figures, and thus the actual rate is even higher. In his report on his 2007 mission, the Special Rapporteur noted that the number of homicides in São Paulo fell from 12,638 in 2000, to 6,057 in 2006. Since his visit, the numbers have been 5,153 (2007), 4,621 (2008), and 4,778 (2009). In Pernambuco, homicides have fallen over the last few years, from 4,592 (2007), 4,531 (2008), to 4,012 (2009). See Pernambuco State Social Defense Secretariat, "Boletins Trimestrais," 2007, 2008, 2009. The Government credits the programme "Pacto

11. In this context, the police have an unenviable and daunting task in attempting to promote security. However, a background of extreme criminal violence does not authorize or justify unlawful killings by state officials.

A. Killings by on-duty police

12. In his 2007 report, the Special Rapporteur explained that on-duty police killings formed a significant proportion of all killings in Brazil.² At that time, the Special Rapporteur found that police were killing criminal suspects instead of investigating and arresting them, and that a high number of suspected criminals and bystanders were being killed during brief large-scale war-style police operations in favelas. His report addressed two central issues: the practice of registering police killings as “resistance” killings, and the policing methods adopted in favelas.

1. “Resistance” killings

13. One of the most significant issues at the time of the Special Rapporteur’s visit was the way in which police classified and registered killings. It is standard practice across Brazil for the police to label killings they commit as “resistance” killings.³ The classification indicates that a person was killed while committing the crime of resisting arrest or disobeying other lawful orders of police. It is intended to signify that the police used lawful (necessary and proportionate) lethal force against a suspect.

14. However, during his 2007 visit, the Special Rapporteur gathered strong evidence that many of these killings were, in fact, unlawful killings, and that the practical effect of the “resistance” classification was to prejudice and limit objective follow-up inquiries into killings by police. He recommended that reducing unlawful killings by the police must start with abolishing this classification, and that police killings should be registered in the same way as any other killings and thoroughly investigated.

15. The submission from the Government to the Special Rapporteur for this follow-up report states that the federal Government is committed to working with relevant institutions to “combat” the practice of classifying police killings in this manner, that reducing police killings was a “fundamental objective” of the Government, and indicated that it intended to conduct a performance review with the Rio de Janeiro Government of the police with regard to such cases.⁴ These are very welcome announcements.

16. In 2010, however, the police continue to register cases as “resistance” killings. In São Paulo, such cases have actually increased since 2007. Government statistics record 543 “resistance” cases in 2009, 397 in 2008, and 401 in 2007.⁵ In Rio de Janeiro, government numbers indicate a decrease from 1,330 resistance killings in 2007 to 1,048 in 2009. In an interview reported in January 2009, the State Security Secretary of Rio de Janeiro, José Beltrame stated that police killings fell from around 80 per month at the start of 2008, to 36

pela Vida”, in which the Government pledged to significantly improve security in the state through 138 different programmes in conjunction with civil society. See the Government of Pernambuco “Pacto Pela Vida” website, available at: <http://www.pactopelavida.pe.gov.br/pacto-pela-vida/>.

² A/HRC/11/2/Add.2, para. 9.

³ The terminology differs from region to region. In São Paulo, the term used is *resistência seguida de morte* (resistance followed by death). In Rio de Janeiro, the term is *autos de resistência* (acts of resistance).

⁴ Information provided by Brazil to the Special Rapporteur in the preparation of this follow-up report, paras. 34-35.

⁵ See São Paulo State Secretariat of Public Security, “Estatísticas trimestrais,” 2007, 2008, 2009.

in September 2008. He was quoted as saying, “There’s been a big fall – show that to Mr Alston.”⁶ While the dramatic recorded fall from January 2008 to August and September 2008 was a significant positive development, the monthly “resistance” rate jumped back up to the prior numbers in the following months. In October 2008, for example, there were 74 “resistance” deaths, in January 2009 there were 94, in June 2009 there were 107, and in January 2010 there were 77. In fact, after October 2008, the monthly rate never fell below 71 killings per month.

17. Some concerns have been expressed about the integrity of Rio de Janeiro Government statistics on resistance killings, and homicides more generally. Evidence suggests that incidents are being classified under different statistical categories in order to demonstrate a reduction in, for example, the homicide rate. Whether or not there has been an intentional manipulation of the statistics, the allegations highlight the need for independent statistics gathering. The Government should ensure that the statistics agency remains independent of the Security Secretariat, which currently oversees police statistics. An independent statistics agency should have access to police records in order to independently oversee the gathering of vital statistics regarding the police killings and the types of categorizations used to explain the incidents.

18. In the preparation of this report, the Special Rapporteur was provided with credible evidence that many of the reported “resistance” killings continued in fact to be unlawful killings covered up by the police. In one recent study, an examination of autopsy and police reports indicated that at least 51 “resistance” killings were in fact unlawful killings.⁷ In 17 of those cases, there was evidence of point blank shots to the head, contradicting the police claim that the victims had been killed in “shootouts”. The Special Rapporteur was provided evidence of the various methods by which police attempted to cover up their killings, including by disrupting crime scenes and taking deceased victims to hospital for “treatment”.⁸ The very disproportionate numbers of killings *by* and *of* police also suggest that claims of shootouts may often be false. In 2009, for example, Rio de Janeiro recorded 1,048 resistance killings, and 31 on-duty police killed. This is a ratio of 34:1, far greater than would normally be expected if police were shooting in self-defence in “confrontations” with armed criminals. The study provided to the Special Rapporteur compares police killings between Rio de Janeiro, São Paulo, South Africa, and the United States of America. Particularly concerning is comparative data on the number of police killings compared to the general homicide rate. According to this study, for every 100 homicides in 2008, the Rio de Janeiro police killed 19.89 people. The São Paulo police killed 8.46. The rates in South Africa (2.58) and the United States of America (2.62) were dramatically lower.⁹

2. Large-scale police operations in favelas

19. In 2007, the Special Rapporteur documented unlawful killings committed during brief large-scale police operations involving hundreds of police, armoured vehicles and attack helicopters “invading” favelas. These brief “war”-like operations, while

⁶ Stuart Grudgings and Rodrigo Viga Gaier, “Interview – Expanding Rio slums seen worsening crime risks”, Reuters, 12 January 2009.

⁷ Human Rights Watch, *Lethal Force: Police Violence and Public Security in Rio de Janeiro and São Paulo* (December 2009).

⁸ Idem.

⁹ Ibid., p. 33. Further cause for concern comes from a comparison of the number of arrests to that of police killings. In the United States of America, police arrested 37,751 people for every one person they killed. In Rio de Janeiro, the police arrested 23 people for every one person killed; in São Paulo, the rate was 348. Ibid., p. 34.

appropriately aimed at dismantling gang control of favelas and promoting security for residents, have proven to be both ineffective and counterproductive. Confiscations of drugs and arms and arrests of gang members are often minimal, and because police forces withdraw quickly, the gangs simply re-establish themselves and punish residents who were seen as helping the police. One of the best-known examples was the Complexo do Alemão operation in June 2007. Despite the use of over 1,400 police, the operation was a failure from a crime-control perspective, and resulted in the deaths of 19 people.¹⁰

20. The Special Rapporteur detailed in his original report the reasons for the failure of such operations, and recommended that the Government eschew large-scale “mega” operations in favour of a planned and sustained police presence, coordinated with the provision of social services.¹¹

21. Since the Special Rapporteur’s mission, the Rio de Janeiro Government has introduced Unidades de Polícia Pacificadora (UPPs, “Pacifying Police Units”) into a small number of favelas in the city of Rio de Janeiro. These units are a sustained police presence in each favela, and aim to re-take control from gangs, and promote security in the long term. The UPP experiment is currently under way in seven favelas.¹² The officers deployed are given special training, including human rights training, and increased salaries. The Rio de Janeiro Government plans to have some 3,500 police in 15 UPPs by the end of 2010, and intends to ultimately extend UPPs to 100 favelas, at a rate of at least 10 new favelas per year.

22. This new strategy is largely to be commended. Where it has been implemented, it represents a significant departure from the “war” approach of the brief, large-scale, violent operations. The UPP approach avoids the “shoot-out” scenarios that so often result from rapid, heavily armed police incursions into the favelas. According to information provided to the Special Rapporteur, for those favelas under UPPs, the Government has made real progress in preventing gangs from re-asserting their presence. There is also strong evidence to date of community support for the UPPs.¹³ Residents have reported that they feel safer, and that relationships with police have improved. In some areas, there have also been improvements to the provision of basic services.

23. Notwithstanding these positive developments, concerns have been expressed about the way in which the UPPs have been conducted. The government language used to describe UPPs is heavily laced with warlike terminology – they “invade” a favela, and maintain an “occupation”. Some civil society members expressed concerns that this policy will continue to criminalize favela residents who will be living under de facto militarized police control. There has been concern about harassment of residents, through increased searches and seizures, and heavy police control over the daily lives of residents, including by banning popular music concerts and funk dance parties. Some interlocutors also expressed concern that the promised social services, including those related to education, health, and sports activities, were slow to be implemented, and that residents’ associations were not always consulted on social projects. The Government must ensure that its retaking of favelas includes both improved security for residents, as well as the provision of basic

¹⁰ A/HRC/11/2/Add.2, paras. 27-29.

¹¹ Ibid., para. 78.

¹² The most recent to be “occupied” was Providência, in Rio de Janeiro’s city centre. “UPP arrives at Brazil’s oldest Favela,” UPP Repórter, 23 March 2010.

¹³ A 2010 poll by the Brazilian Institute of Social Research found that 93 per cent of people resident in UPP areas feel safer. According to that poll, 70 per cent of residents of communities without UPP would like to have UPP. Another study, by the Getúlio Vargas Foundation, indicated that 66 per cent of those surveyed in 2009 in the Santa Marta and Cidade de Deus favelas approved of the UPP. “UPP: I want one too!” UPP Repórter, 23 February 2010.

services that residents have for decades been denied. In addition, independent reviews of the UPPs should take place, to provide an unbiased account of their successes, and areas where improvement is needed.

24. It is also important to recognize that community policing and a sustained police presence in the favelas of Rio de Janeiro is the exception, rather than the norm. The UPPs are only in a small number of the roughly 1,000 favelas in Rio de Janeiro, and large-scale violent operations resulting in deaths continue in non-UPP favelas. For example, it has been reported that:

- A December 2008 operation in Favela Mare resulted in 4 deaths.
- A February 2009 operation in Coreia, Taquaral, Rebu and Vila Aliança favelas, involving 300 police, resulted in 9 deaths.
- A March 2009 operation in Aço, Salgueiro, and Duque de Caxias favelas led to 9 deaths.
- An April 2009 operation involving 100 officers led to 8 deaths in Santa Theresa and Estacio.
- A May 2009 operation in Manguinhos favela involving 170 officers resulted in 4 deaths, and one wounded officer.
- A June 2009 operation in Mare resulted in 7 deaths, including of 2 officers.
- A July 2009 operation in Mangueira involving 100 officers led to 4 deaths.
- An August 2009 operation in Morro do Juramento involving 80 officers, led to 9 deaths and 5 wounded police.
- A September 2009 operation in Morro do Juramento involving 50 police backed by a helicopter, led to 4 deaths, and the wounding of 2 news cameramen.
- A February 2010 operation in Jacarezinho led to 8 deaths, including that of 1 officer.

B. Killings by off-duty police

1. Militias and para-policing

25. As noted in the Special Rapporteur's previous report on Brazil, militias are groups composed of military and civil police, ex-police, firefighters, prison guards, and private citizens who attempt to "take over" geographical areas, and engage in extra-state "policing".¹⁴ These groups are responsible for extrajudicial executions and other violent crimes including torture and kidnapping. As with criminal gangs, their violence is largely compelled by efforts to exercise geographic control in order to make a profit by extorting "protection money" from communities and the provision of services such as illegal cable television, household gas and transportation.

26. Since the Rapporteur's visit, militias in Rio de Janeiro have been the subject of significant and much-needed attention. At the time of his visit in 2007, it was generally believed that militias were in control of roughly 92 favelas in Rio de Janeiro city. Following public outrage over the kidnapping and torture of three undercover journalists by

¹⁴ A/HRC/11/2/Add.2, para. 34.

a militia in May 2008,¹⁵ two militia members were arrested and the state Government set up a Parliamentary Commission of Inquiry to investigate militias in Rio de Janeiro.

27. Led by state deputy Marcelo Freixo, the Commission published a lengthy report in November 2008.¹⁶ It concluded that 171 areas in Rio de Janeiro were dominated by militias, nearly double the number previously thought to exist, and it was able to discover the identities of militia members, the communities under militia rule and the nature of profits engendered by militia activities. The Commission uncovered extensive evidence of official state involvement in militias, including election-related corruption, official membership in militias, and militias benefiting from the use of public resources (such as weapons and cars).

28. In response, the Government took a number of important steps. Two hundred suspected militia members were arrested, including a state deputy¹⁷ Certain militias, such as the Liga da Justiça (“Justice League”) were particularly hard hit. The Government also created a task force within the police to specifically investigate militias. According to information provided by interlocutors, this task force has kept up sustained pressure on key militias.

29. Given the extent of militia activity and control, these actions are important, but they constitute just the beginning. Militias continue to seek control of territory and of state politics, and remain a major threat to security in Rio de Janeiro. Many militias remain untouched, and recent examples of militia violence abound. In August 2009, seven residents of the Barbante favela were shot dead by members of a militia, and one victim was killed for refusing to pay the militia’s security “tax”.¹⁸ In the same month, a member of Governor Cabral’s personal security detail was arrested on charges of alleged participation in a militia that had recently murdered four people.¹⁹ In a raid on the Rio das Pedras militia, Brazilian authorities discovered the militia’s plans to assassinate state deputy Marcelo Freixo.²⁰

2. Death squads

30. Death squads, extermination groups, and vigilante groups are often formed by police along with others whose goal is to kill, generally for profit. These groups are also known to justify their actions as an extralegal “crime-fighting” tool.²¹

31. The Special Rapporteur’s report focused largely on death squads in Pernambuco. During his 2007 mission, he was provided with evidence that 70 per cent of homicides in Pernambuco were committed by death squads. Pernambuco has taken significant steps to address this problem. On 29 January 2009, the state Government announced that about 30 police operations carried out since late 2007 had resulted in some 400 people being

¹⁵ “Milícias: política do terror,” O Dia Online, 31 May 2008; Human Rights Watch, *World Report 2009 – Brazil* (January 2009)

¹⁶ Assembleia legislativa do Estado do Rio de Janeiro (ALERJ), *Relatório Final da Comissão Parlamentar de Inquérito destinada a investigar a ação de Milícias no âmbito do estado do Rio de Janeiro* (November 2008).

¹⁷ Amnesty International, *Report 2009: State of the World’s Human Rights* (Brazil) (May 2009).

¹⁸ Idem.

¹⁹ Blog da Segurança, “PM acusado de chacina cuidava de filho de Cabral,” O Dia Online, 25 August 2009; Human Rights Watch, *Lethal Force*, p. 50.

²⁰ “Grupo tramou assassinato de deputado,” O Dia Online, May 29, 2009 http://www2.amnesty.se/uaonnet.nsf/senastezope/495C62E518E8BEB2C12575CA00346135?opendo_cument; Human Rights Watch, *supra* note 10 at p.51.

²¹ A/HRC/11/2/Add.2, para. 38.

imprisoned for their participation in death squads.²² The scope of death squad activity is so expansive, however, that intensive investigations and arrests will need to continue for many years if it is to succeed.

32. Efforts to combat death squads have been met with violent resistance. Human rights activist and former city councilor Manoel Mattos had been active in denouncing deaths squads in Pernambuco and Paraíba for many years, and, following repeated threats on his life, was shot to death in his home on 24 January 2009.²³

33. For this report, the Special Rapporteur was also presented with evidence of significant death squad activity in São Paulo. According to the São Paulo Police Ombudsman, in 2008 there were 97 cases of suspected death squad killings, and 61 cases in 2009.²⁴ In January 2008, Colonel Jose Herminio Rodrigues was shot to death on the street after he began an investigation into death squads in northern São Paulo which appeared to involve over 50 military police.²⁵ In a positive step, 14 members of the military police were arrested in 2009 for links to 12 murders committed by the “Highlanders”, a death squad infamous for decapitating its victims.²⁶

34. In another positive move, the Government of Paraíba recently launched an investigation into a death squad allegedly responsible for some 300 murders over the last decade.²⁷ The group involved 30-40 active and retired police officers, from regular officers to a colonel and including corrections officers, who were operating on behalf of the jailed members of a drug trafficking gang. At the time of writing, none of the police officers has been arrested, although the investigation is ongoing.

3. Police salaries

35. In his report, the Special Rapporteur explained that police participation in organized criminal activity was at the extreme end of a spectrum of police activity that began with extortion and the taking of prohibited second jobs, generally in the security sector. Much of this activity was motivated by the poor pay that police received. It was also easy for police to take second jobs because of their shift structure, and the reluctance of commanders to discipline police for doing so. Consistent with this analysis, Rio de Janeiro’s Commission into militias specifically identified inadequate police salaries as a cause for police participation in militias.²⁸

36. Since the Special Rapporteur’s visit, the Brazilian Federal Government has taken some important steps to increase police salaries. In November 2009, President Lula stated that adequate pay was the key way to prevent officers from accepting bribes and engaging in other unlawful activity, and he announced a new career plan for the Federal District whereby the Government would hire 3,000 new officers and would promote 12,000 current

²² Pernambuco: Pacto Pela Vida, “Combate aos grupos de extermínio será intensificado em Pernambuco,” available on the Government of Pernambuco “Pacto Pela Vida” website, <http://www.pactopelavida.pe.gov.br>.

²³ Amnesty International, “Human Rights Activist Assassinated in Brazil,” 27 January 2009.

²⁴ Police Ombudsman of São Paulo, “Relatório Anual 2009,” available at: <http://www.ouvidoria-policia.sp.gov.br/pages/RelatAnual2009.htm>.

²⁵ U.S. Department of State, *2008 Human Rights Report: Brazil*; See also Human Rights Watch, *Lethal Force*, p. 44.

²⁶ Amnesty International, *Report 2009: State of the World’s Human Rights: Brazil* (May 2009); see also Human Rights Watch, *Lethal Force*, p. 45.

²⁷ “Brazil Death Squad Suspected of 300 Murders,” *Latin American Herald Tribune*, 7 January 2010.

²⁸ ALERJ, *supra* note 16, p. 40.

officers.²⁹ In anticipation of the World Cup in 2014 and the Olympic Games in 2016, President Lula also announced an increase in police salaries by providing for a Bolsa Copa (World Cup Grant) and a Bolsa Olímpica (Olympic Grant). For the Bolsa Copa, which will be paid to both firefighters and police in the lead up to the World Cup, the increase begins in 2010 with 550 reais, increasing in 2011 to 665 reais, in 2012 to 760 reais, in 2013 to 865 reais and finally to an extra 1,000 reais for 2014.³⁰ The Bolsa Olímpica will be fixed at 1,200 reais for all civil and military police. In order for any police officer to receive the grant, the officer must attend one training course per year.

37. However, the negative consequences of low police salaries also exist outside of Rio de Janeiro, independently of the upcoming sporting events. Brazilian police staged strikes in early 2010 in order to protest unequal salary differentials between Federal District police and military police nationwide.³¹ In February 2010, the police demanded a national minimum wage to ensure that police officers across the country receive pay increases.

38. As part of a strategy to improve the police forces through salary increases, professional police tactics and human rights training must also be on the agenda. The Olympic and World Cup Grants described above link increased salaries and advanced training to a minor extent. However, the training must be serious and of high quality in order to rectify the systematic use of excessive force. Interlocutors provided information to the effect that in Pernambuco, for example, training courses for military police officers in 2009 were deficient in a number of respects. The four-month course decreased from 1,246 hours in 2004 to only 800 hours in 2009. Classes were crowded, there was insufficient training on self-defence techniques and expert training with firearms, just three hours of training on the preservation of evidence at a crime scene, and no training on dealing with vulnerable groups in society.

39. The Special Rapporteur is not aware of any changes having been made to the policing shift structure.

IV. Killings in prisons

40. During his 2007 mission, the Special Rapporteur investigated killings in prisons, which generally take place during riots or gang-related inmate violence. In his report, he analysed in detail the reasons behind prison violence in Brazil. These include severe overcrowding and poor conditions, and especially the practice of giving responsibility for internal prison management to gangs or powerful prisoners. Tasks such as internal discipline and the distribution of food and medicine are generally left to inmates. Independent external oversight of prisons is minimal, and prisoners are afraid to report abuses. In all but a very small number of specially designed “neutral” prisons, prisoners are required by prison administration officials to pick a gang identity upon arrival.

41. In response to the resulting crisis, the Special Rapporteur made a number of recommendations, including that gang affiliations should not be forced upon new inmates; the number of neutral prisons should be increased; prison oversight should take place

²⁹ “Brazilian president: Paying good salaries to police is guarantee of tranquillity to society,” Xinhua News, 7 November 2009.

³⁰ Marianna Jungmann, “Rio Olympics: Lula Creates New Bolsa (Allowance) to Raise Police Salaries,” *BrazzilMag*, 22 January 2010.

³¹ Lourenço Canuto, “Brazilian Police March on the Streets and Threaten National Strike,” *BrazzilMag*, 3 February 2010; “Polícia Civil ameaça iniciar greve na véspera do carnaval,” *Nomomento.com*, 25 January 2010; see also PEC 300, Constitutional Amendment proposed by police officers, available at: <http://www.camara.gov.br/sileg/integras/610200.pdf>

regularly and be visible to inmates; prison authorities should reassert control of internal prison administration; inmate records should be recorded electronically; and overcrowding should be reduced by, for example, increasing the use of alternative sentences.

42. Since the Special Rapporteur's visit there have been some positive developments. The Government provided information on a new law that was passed in December 2009 to establish a new "Department of Monitoring and Oversight of the Penitentiary System." It is too early to judge the success of this new department, but its responsibilities are to monitor and report on prisons.³² In Rio de Janeiro, a task force was created to address overcrowding by reviewing inmates' sentences and status to determine whether any should or could be released.³³ Separately, in response to over 100 deaths in the Urso Branco Prison (Rondônia State) in October 2008, the Prosecutor General of Brazil petitioned the Supreme Court to order federal intervention in the prison. As of the writing of this report, the case was still pending. In Minas Gerais, a court ruled in favour of the families of 25 inmates killed by a fire arising from a gang dispute in 2007 and ordered the Government to pay damages.³⁴

43. The Special Rapporteur was not provided with any information to indicate that the authorities had taken steps to regain internal control of prisons from gangs, or to improve conditions. On the contrary, many riots and killings have taken place since the Special Rapporteur's visit. In 2008, the Ministry of Justice reported that 2,000 prisoners were involved in riots in the federal prison system. In January 2008, in a prison in Minas Gerais, eight prisoners died in a fire after a guard left his post with the only key, evidence either of gross negligence or complicity.³⁵ In October 2009 in João Pessoa, Paraíba state, prisoners protested the transfer of an inmate and set fire to their mattresses, starting a blaze in which 7 inmates died and 48 were injured.³⁶ In December 2009, in Rio Grande do Sul, three inmates burned to death when members of a rival gang entered their cell and set it alight and prevented their escape.³⁷ In another case in Rio Grande do Sul, gunmen broke into a prison and executed a specific inmate.³⁸ In early 2010, in Paraná, gang rivalry in a prison led to a riot that spanned more than a day, in which 1,200 prisoners (out of 1,600) participated. In that incident, three people burned to death and two died from physical attacks.³⁹ A few days later, in Bahia, rioters were demanding to be transferred to the capital and took a number of hostages, one of whom had been murdered by the time the riot ended 50 hours later.

44. The situation for inmates in Brazil is dire and requires immediate intervention.

V. Impunity

45. As explained by the Special Rapporteur in his report, the reality is that there is impunity for most homicides, especially those committed by police officers. Today, as in 2007, the vast majority of extrajudicial killings in Brazil do not result in arrests and convictions, due in large part to problems with police investigations and forensics,

³² Information provided by Brazil to the Special Rapporteur in the preparation of this follow-up report, paras. 57-58.

³³ Information provided by Brazil to the Special Rapporteur in the preparation of this follow-up report, paras. 65-66.

³⁴ U.S. Department of State, *2009 Human Rights Report: Brazil*

³⁵ U.S. Department of State, *2008 Human Rights Report: Brazil*

³⁶ Emma Rowley, "Seven convicts 'burn to death' in jail riot", Sky News Online, 24 October 2009.

³⁷ "Prison fight leaves 3 dead, 1 injured in Brazil," Latin American Herald Tribune, 15 December 2009.

³⁸ "Gunmen burst into Brazil prison, kill inmate," Latin American Herald Tribune, 31 August 2009.

³⁹ "Brazil prison riot leaves 5 dead," Latin American Herald Tribune, 16 January 2010.

impediments to the work of prosecutors, the judiciary and court processes, witness protection, and ombudsman offices.

A. Police investigations and forensic evidence

46. During his 2007 visit, the Special Rapporteur found that police investigations, especially of police killings, were often inadequate. No information has been provided to suggest that the situation has improved. On the contrary, interlocutors provided detailed evidence that investigations were delayed, that police investigation records often lacked basic evidence (including that of eyewitnesses, or forensic evidence from the crime scene), and police officers involved in shootings were often questioned in a perfunctory manner. Forensic evidence remained poor in many cases, and the forensic institutes have not been made independent from the police. Similarly, police internal affairs offices are not independent and are thus often unable to effectively investigate police killings. In this respect, the Special Rapporteur welcomes the government plan, described in the information provided by the Government for this follow-up report, to formulate proposals to improve internal affairs, including by making them more “professionalized, autonomous, and independent”, and to create a separate career track for internal affairs officers.⁴⁰

B. Public Prosecutor’s Office

47. During his mission the Special Rapporteur observed that the Public Prosecutor’s Office is a widely respected institution and that, where progress had been made against police impunity, prosecutors had often played a key role. However, their role in investigations, particularly important with respect to police killings, was impeded in practice because the Civil Police often did not notify prosecutors of crimes until after 30 days, and because of challenges to prosecutors legal power to conduct investigations. The Special Rapporteur recommended that the Civil Police consult with prosecutors from the start of a homicide investigation, that prosecutors conduct independent inquiries where police were implicated in a killing, and that the right of prosecutors to conduct their own investigations should be clarified and affirmed.

48. Today, the Civil Police continue to delay notification of police killings to prosecutors for 30 days, and sometimes even longer,⁴¹ seriously undermining the ability of prosecutors to gather important evidence. Disputes over the legal power of prosecutors to investigate are ongoing at the time of this report, although the Special Rapporteur welcomes comments by the Government that “today the majority of Court decisions favours” investigations by prosecutors.⁴²

49. There is currently no specialized prosecution unit dedicated to police killings in either Rio de Janeiro or São Paulo. Instead, police killings are assigned to prosecutors on a geographic basis, together with other killings.⁴³ In São Paulo, the State Prosecutor’s office has a Special Action Group of External Control of Police Activities (GECEP), which has a mandate for police oversight, but cannot currently cover police intentional killings, or any

⁴⁰ Information provided by Brazil to the Special Rapporteur in the preparation of this follow-up report, para. 39.

⁴¹ See, e.g., Human Rights Watch, *Lethal Force*, pp. 101-102.

⁴² Information provided by Brazil to the Special Rapporteur in the preparation of this follow-up report, para. 52.

⁴³ *Ibid.*, p. 102.

abuses by the military police.⁴⁴ The Special Rapporteur was informed that the Attorney-General for São Paulo has proposed that the GECEP be given the authority to investigate police killings, including “resistance killings” in the greater São Paulo region. This would be a key step in addressing police impunity for killings. It is important that the proposal be approved by the college of appellate-level prosecutors, and that it have the mandate to investigate off-duty police killings (including those by militias and death squads), and killings by both civil and military police. It is also essential that it be given the necessary resources and staff to function effectively.

C. Judiciary and court processes

50. The Special Rapporteur was provided with no information on relevant reforms to the overburdened judiciary.

51. His report noted that reforms to allow some cases involving human rights violations to be transferred from state to federal courts (and to be investigated by federal police) held promise. However, the general trend has been that cases have not been transferred. An application to transfer the case regarding the killing of Manoel Mattos, described above, was pending at the time of this report.

D. Witness protection

52. In his report, the Special Rapporteur noted the need for an effective witness protection programme in order to combat impunity. He observed that many witnesses feared police, militia, or gang reprisals, and thus refused to come forward.

53. Some reports have indicated that detainees have been permitted to leave detention in order to threaten or kill witnesses to their crimes.⁴⁵ In August 2008 in Pernambuco, indigenous leader Mozeni Araújo de Sá – a witness to two murders of Truká people – was shot to death in broad daylight.⁴⁶ Similarly, in March 2009, a military police officer was convicted for organizing a militia to kill seven people. Three months after the trial, four relatives of the main witness were reported missing.⁴⁷

54. The most significant witness protection programme in Brazil is the Programa de Assistência a Vítimas e a Testemunhas Ameaçadas (PROVITA). As the Special Rapporteur observed, PROVITA is a model for witness protection in many respects, but requires some improvements. The Special Rapporteur recommended that state governments provide adequate, timely and reliable funding and that they ensure the police cooperate in escorting witnesses to court. The Special Rapporteur also recommended that the federal Government conduct a study to determine the appropriateness of the use of non-governmental organizations (NGOs) as implementing partners for the programme.

55. To date, most state governments have disbursed fewer funds than the federal Government had committed to PROVITA, except São Paulo, Ceará and Espírito Santo, which maintain adequate funding levels. These funding deficiencies undermine the ability of NGOs to fulfil their mandates, and ensure protection for witnesses. The states have also been slow in setting up systematic relocation programmes, which further weakens the objectives of PROVITA.

⁴⁴ Ibid., p. 103.

⁴⁵ Amnesty International, “Brazilian politician at risk of assassination by militia groups” (4 June 2009).

⁴⁶ Amnesty International, *Report 2009: State of the World’s Human Rights* (Brazil) (May 2009).

⁴⁷ U.S. Department of State, *2009 Human Rights Report* (Brazil).

56. In Santa Catarina, the authorities have set up specialized training for police officers responsible for the protection of witnesses. These police squads have become an asset to PROVITA as they are actively concerned with issues of relocation, risk assessment, and protection at court appearances. In those states that do not have specialized protection police officers, the effect remains predictably poor. Police officers are unfamiliar with the needs of the programme, and are unable to carry out its mandate most effectively.

57. The federal Government has not pursued a national study to assess the viability of NGOs as implementing partners. In some regions of Brazil, the refusal by the federal Government to engage civil society in a meaningful discussion about the structural issues at the heart of PROVITA has led to NGO dissent. At least one NGO has unilaterally cut ties with PROVITA because the Government did not address its concerns.

E. Ombudsman offices

58. In his report, the Special Rapporteur recognized the important role for police ombudsman offices in contributing to police oversight, and he encouraged the Government to strengthen the institution through more resources, powers and independence.⁴⁸

59. Since the Special Rapporteur's visit, the São Paulo office has taken some important proactive measures to address police accountability. The office has started a project to quickly send information on suspected unlawful police killings to the Attorney-General, who forwards them to the relevant prosecutor. In this way, reporting delays by the Civil Police can be circumvented, and prosecutors' work can be focused on suspect cases. The office also makes data on police killings available on its website.

60. Generally, however, all police ombudsman offices continue to have restrictive mandates, independence and budgets. The Rio de Janeiro Police Ombudsman is still selected by the State Secretary for Security (who is also responsible for the police), and neither the Pernambuco or Rio de Janeiro offices appear to publicly disseminate data on police killings.

61. The Special Rapporteur notes the positive announcement in the information provided by the Government for this follow-up report that one of its strategic targets (within the PNDH-3 framework) is to "establish independent police ombudsman units" for the federal police departments.⁴⁹

VI. Conclusion

62. **Brazil has taken a number of very important steps to address unlawful killings since the Special Rapporteur's November 2007 visit. In particular, Rio de Janeiro's major inquiry into militias – which are often composed of police and have ties to officials – led to a comprehensive and wide-ranging report, as well as a number of arrests and prosecutions. Similarly, Pernambuco has made progress in investigating and arresting death squad members. In a small number of favelas in Rio de Janeiro, violent and counter-productive police operations have been replaced with a sustained police presence and the introduction of some basic services. Increases have also been made to some police officers' salaries, and the São Paulo Police Ombudsman has taken important steps to promote accountability for police.**

⁴⁸ A/HRC/11/2/Add.2, paras. 75, 90.

⁴⁹ Information provided by Brazil to the Special Rapporteur in the preparation of this follow-up report, para. 22.

63. The Special Rapporteur has been greatly encouraged by Brazil's willingness to receive Special Rapporteurs, to engage in dialogue with the international community, and its willingness to implement reforms to improve respect for human rights.

64. However, extrajudicial executions remain pervasive. Almost no steps have been taken to address the grave problem of on-duty police killings, or to reduce the high numbers of so-called "resistance" killings. Most of the killings are still never investigated in any meaningful way. And little action has been taken to reduce prison violence. Key reforms to address these problems are listed in the Appendix to this report.

Appendix

Summary of follow-up to each recommendation^a

A. Policing strategies

1. State Governors, Secretaries for Public Security, and Police Chiefs and Commanders should take the lead to make publicly clear that there will be zero tolerance for the use of excessive force and the execution of suspected criminals by police.

This recommendation has been partially implemented.

2. The state Government of Rio de Janeiro should eschew large-scale, or “mega”, operations in favour of systematic and planned progress in reasserting a sustained police presence and government authority in gang-controlled areas. Present policies are killing large numbers of people, alienating those whose support is needed for potential success, wasting precious resources, and failing to achieve the stated objectives. Designing policing strategies solely with electoral objectives in mind does a disservice to the police, the communities affected, and society at large.

This recommendation has been partially implemented.

3. The use of armoured vehicles should be monitored by equipping them with audio and visual recording equipment. The results should be regularly monitored in cooperation with community groups.

This recommendation has not been implemented.

4. In the longer term the Government should work towards abolishing the separate system of military police.

This recommendation has not been implemented, although it is presently being discussed by officials.

5. The federal Government should implement more effective measures to tie state funding to compliance with measures aimed at reducing the incidence of extrajudicial executions by police.

This recommendation has not been implemented.

B. Police involvement in organized crime

6. In each State, the State Secretariat for Public Security should establish a reliable specialized unit to investigate and prosecute police involvement in militias and extermination groups.

This recommendation has been partially implemented.

^a As contained in A/HRC/11/2/Add.2, paras. 77-100.

7. Off-duty police should under no circumstances be permitted to work for private security firms. To facilitate such changes:

- (a) Police should be paid significantly higher salaries;

This recommendation has been partially implemented.

(b) The shift structure of police work should be reformed so that police cannot regularly work for large blocks of time and then receive multiple days off.

This recommendation has not been implemented.

C. Police accountability

8. Systems for tracking the use of firearms should be established in all states, and where some procedures already exist, they must be improved and the Government must ensure they are followed. The weapon and the quantity of ammunition provided to each policeman should be recorded, and every bullet should systematically be accounted for. Every instance in which a police officer fires his or her weapon should be investigated by internal affairs and recorded in a database. This database should be accessible by police ombudsman offices and used by police chiefs and commanders to identify police in need of closer supervision.

This recommendation has not been implemented.

9. The current practice of classifying police killings as “acts of resistance” or “resistance followed by death” provides a carte blanche for police killing and must be abolished. Without prejudicing the outcome of criminal trials, such killings should be included in each state’s homicide statistics.

This recommendation has not been implemented.

10. The federal Secretariat for Human Rights should keep a detailed database of human rights violations by police.

This recommendation has been partially implemented.

11. The integrity of work by the internal affairs services of the police should be ensured by:

- (a) Establishing a separate career path for those working in internal affairs;
- (b) Establishing clear procedures and time limits for investigations;
- (c) Making all information regarding investigations and recommended disciplinary sanctions freely accessible to ombudsman offices.

This recommendation has not been implemented.

12. In cases involving police killings and other allegations of serious abuse, internal affairs services should publicly provide information on the status of individual cases, including the measures recommended to police chiefs and commanders.

This recommendation has not been implemented.

13. Police under investigation for crimes constituting extrajudicial executions should be removed from active duty.

This recommendation has been partially implemented.

14. Police ombudsman offices, as they exist in most states, should be reformed so as to be better able to provide external oversight:

(a) They should report directly to the state governor rather than to the state secretary of public security;

(b) They should be provided with the resources and legal powers necessary to reduce dependence on information from the internal affairs services of the police forces;

(c) They should issue regular public reports providing accessible information on patterns of police abuse and on the effectiveness of disciplinary and criminal proceedings. This information should be compiled so as to enable meaningful comparisons across time and geographical areas;

(d) In order for them to provide more reliable information on the strengths and weaknesses of existing policing strategies in terms of both respecting and protecting rights, they should be provided with the resources to conduct or commission surveys on citizen experiences with crime and the police.

This recommendation has not been implemented.

D. Forensic evidence

15. The routine failure of police to preserve crime scenes must end; should problems persist, the Public Prosecutor's Office should use its authority to exercise external control of the police so as to ensure the integrity of its prosecutions.

This recommendation has not been implemented.

16. Hospitals should be required to report to police precincts and police internal affairs all cases where the police bring a deceased criminal suspect to hospital.

This recommendation has not been implemented.

17. State Institutes of Forensic Medicine should be made fully independent from public security secretariats, and expert staff should receive employment guarantees that ensure the impartiality of their investigations. Additional resources and technical training should also be provided.

This recommendation has not been implemented.

E. Witness protection

18. In many respects, the existing witness protection programmes constitute a model, but reforms are also needed:

(a) State governments should provide adequate, timely, and reliable funding;

This recommendation has been partially implemented.

(b) State governments should ensure that police cooperate in escorting witnesses to court appearances in a safe and non-threatening manner;

This recommendation has been partially implemented.

(c) The federal Government should conduct a study on whether there are ways to protect witnesses who are unwilling to comply with the current programmes' strict requirements, and on whether the use of NGOs as implementing partners should be phased out or restructured.

This recommendation has not been implemented.

F. Public prosecutors

19. The involvement of the Public Prosecutor's Office in building criminal cases must be strengthened:

(a) State governments should ensure that the Civil Police notify public prosecutors at the outset of investigations so that prosecutors can provide timely guidance on what evidence must be gathered in order to obtain a conviction;

This recommendation has not been implemented.

(b) The legal authority of public prosecutors to independently gather evidence admissible in court should be unequivocally affirmed;

This recommendation has not been implemented.

(c) Public prosecutors should routinely conduct their own investigations into the lawfulness of killings by the police.

This recommendation has been partially implemented.

G. Judiciary and legal framework

20. The period of prescription (statutory period of limitation) for intentional crimes against life should be abolished.

This recommendation has not been implemented.

21. Recognizing that permitting persons convicted of murder by a trial court to remain free while their appeal is ongoing facilitates the intimidation of witnesses and fosters a sense of impunity, judges should give careful consideration to alternative interpretations of the norm guaranteeing the "presumption of innocence" found in foreign and international jurisprudence.

This recommendation has not been implemented.

22. The National Council of Justice and other appropriate bodies should take measures to ensure that:

(a) In making docket management decisions, judges do not put off dealing with cases involving killings by powerful actors, including the police, or prioritize civil above criminal cases;

(b) Judges of penal execution conduct prison inspections pursuant to a written protocol which requires private interviews with prisoners randomly selected by the judge.

This recommendation has not been implemented.

H. Prisons

23. While avoiding steps that would further endanger inmates, the Government should take steps to end gang-control of prisons, including:

(a) All practices that encourage or require new prison inmates to choose a gang affiliation should be discontinued. Inmates should be able to identify as “neutral” and be placed in truly neutral prisons;

This recommendation has not been implemented.

(b) Mobile phones should be eliminated from prisons through the more rigorous use of metal detectors and through the installation of technology that blocks mobile phone signals;

This recommendation has not been implemented.

(c) Prison authorities should reassert day-to-day control of internal prison administration so that prison guards, not inmates, are responsible for internal discipline;

This recommendation has not been implemented.

(d) All inmates’ benefits and location in the prison system should be recorded electronically, and prisoners moved from one type of detention to another when they are so entitled. Inmates and judges of penal execution should be able to access the digital record of prisoner entitlements;

This recommendation has not been implemented.

(e) Overcrowding should be reduced through more use of alternative sentences, open prison regimes, and the construction of new prisons.

This recommendation has been partially implemented.

24. The Government should ensure that this report is disseminated widely to officials at all levels. The federal Secretariat for Human Rights should take responsibility for monitoring the progress of the implementation of these recommendations.

This recommendation has been partially implemented.
