

## **Security Sector Reform in Brazil**

### *Introduction/Background*

Brazil was under military rule between 1964 and 1985. This period was marked by concentrated and arbitrary power in the executive, in where the state's security structures used violence as the primary means of conflict management. Although the transition to civilian rule occurred under norms that pertained to the authoritarian period, the first constitution in 1985, followed by the 1988 Constitution, allowed Brazil to undertake reforms aimed at creating an accountable and democratic state. The creation of the Ministry of Defense in 1999 was a notable reform and significant loss to the political role and influence of the military, and a good example of Brazil's attempts to reform its security institutions. While the relationship between the state and civil society have slowly progressed, and there have restructuring attempts to the state's institutions, Brazil's public security sector continues to face many challenges and is in dire need of fundamental reform. However, while there have been some attempts to reform aspects of the security apparatus, there has yet to be a meaningful and coherent evaluation and restructuring of the security sector in Brazil.

### *Military Reform*

Although the military ceded political control in 1985, the armed forces have managed to maintain their influence and authority. The pact, corporatist outcome that resulted with the transfer of power to civilian rule, allowed the Brazilian military to retain some important institutional privileges such a prominent presence in the National Security Council (CSN) and the National Information Service (SNI) until recently. One example of the continued importance and power of the Brazilian forces is that Brazil remains the only Latin American country that has a strategic defense plan, which centers on controlling the Amazon (the world's largest natural reserve and the foremost fresh water reserve). The SIVAM (*Sistema de Vigilância da Amazonia*-Amazonian Surveillance System), a joint system of radar and intervention forces designed to combat drug trafficking and monitor the spillover of the Colombian civil war into Brazilian territory, is a prime illustration of the continued role and relevance of the military.<sup>1</sup>

Additionally, the military was able to preserve its legal basis for intervention in internal security matters. As with all previous Brazilian constitutions, the Constitution of 1988, under article 142 charges the armed forces with not only the "defense of the country, but also the maintenance of law, order and the defense of constitutional institutions."<sup>2</sup> A result of the continued prerogative to safeguard internal security, the military police has been kept under total military control.

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<sup>1</sup> Kenkel, 2002, p. 20

<sup>2</sup> Zaverucha, 2002

Although for almost two decades, internal involvement has been limited; the armed forces are now being placed in the forefront of carrying out an ambitious social development agenda.<sup>3</sup> Since President Lula da Silva's inauguration, his left-wing government has increasingly been looking to the 185,000 members of the military to perform tasks related to social development (such as maintaining internal order, build roads, distribute food to the poor...). An American expert on Latin American militaries has noted that Lula da Silva "made a lot of promises, and the military are one of the few resources he has available."<sup>4</sup> For example, some of the increased tasks of the military include allowing poor children to use the sports facilities at military bases, or the use of army drill instructors to train Brazilian athletes.<sup>5</sup>

Although in the democratic period, the President remains the Commander-In-Chief of the Armed Forces and generally there has been effective control of the armed forces, in the past few years there have also been disputes between the civilian government and the soldiers. In 2000, when President Cardoso tried to fire the Commander of the Army, General Gleuber, 155 generals from all over the country gathered in Brasilia without the presence of the Minister of Defense. Cardoso soon after that reversed his decision to fire Gleuber.<sup>6</sup> In October 2004, when Defense Minister José Viegas demanded the resignation of army head Gen. Francisco Albuquerque, following the issuance of an unsigned release by the army press office justifying the use of repression under the military regime. Viegas presented Lula with a "he goes or I go" ultimatum and the president accepted his Defense Minister's resignation.<sup>7</sup> The new Defense Minister immediately adopted a conciliatory posture toward the military. Overall however, Brazil demonstrates an example of a case of much-lessened presence of the military in the political scene and of the acceptance, by the military, of a new pattern of civilian-military relations. The Brazilian Armed Forces have even contributed troops to UN peacekeeping missions such as in the Middle East, Mozambique, Angola, East Timor and most recently Haiti, demonstrating their substantial reform and modernization.<sup>8</sup> Nevertheless, the military continues to play an important role in Brazil, and yield continued influence and strength.

#### *Ministry of Defense and Intelligence Reforms*

There are two events, which stand out in Brazil's process of military reform since the end of the dictatorship. These are the adoption of the 1988 Constitution and more importantly, the creation of the Ministry of Defense in 1999. Brazil did not have a unified defense policy until 1996, when President Fernando Henrique

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<sup>3</sup> Rohter, 2003

<sup>4</sup> Rohter, 2003

<sup>5</sup> *ibid*

<sup>6</sup> Zaverucha, 2002

<sup>7</sup> Political Risks Service, 2004, p. 36

<sup>8</sup> US DOS, 2005a

Cardoso issued the National Defense Policy, or *Política de Defesa Nacional* (PDN). The PDN established a set of directives that include the country's participation in the creation of a just and equitable international order based on international law, the amplification of Brazil's presence in international decision-making bodies, nuclear and conventional disarmament, and participation in UN peacekeeping operations. Prior to the creation of the Ministry of Defense, each branch service Ministry developed its own independent doctrine and strategy. Military prerogatives during this period, included six Ministerial Cabinet posts occupied by active-duty officers: the three service branch Ministries, the military cabinet or household (*Casa Militar*), the Armed Forces General Staff (*Estado-Maior das Forças Armadas—EMFA*) and eventually the National Intelligence Service (*Serviço Nacional de Inteligência—SNI*)<sup>9</sup>. The creation of newly civilian-led Ministry of Defense was an initiative driven by President Cardoso, and took many years until it was finally created, to the dissatisfaction of some senior military officers.<sup>10</sup> Recently, a Division of the National Defense Policy (*Divisão de Política de Defesa Nacional—DPDN*) began a revision of the national defense policy, seeking to replace the 1996 PDN document with a more implementable and comprehensive version.<sup>11</sup>

Like the creation of the MOD, it also took considerable time from the transition to civilian government in 1985 for reform to occur in the area of intelligence. Indeed, it was only in 1999 that the ABIN (Brazilian Intelligence Agency) was created to replace the authoritarian regime's National Intelligence Service (SNI). The Brazilian Congress played an important role in the establishment of the ABIN, and in theory, the legislation does provide a clear legal basis for civilian control of intelligence. However, in 2001 an investigation led to the discovery of an army intelligence unit working secretly spying on civilians, focusing on political, economic, business and social espionage in every region of Brazil.<sup>12</sup> Mainly, groups such as Brazil's Landless Rural Workers Movement (MST) were targeted.

### *Public Security*

There appears to be a public security crisis in Brazil, marked by an increase in crime rates since the 1980s, and characterized by the fact that violence is the main cause of death in the past two decades.<sup>13</sup> In March 2002, a national survey found public security to be the second main concern of Brazilian voters.<sup>14</sup> As a means of tackling this violence, often stemming in economic crime, Brazil has been actively involved in a disarmament campaign through the Disarmament Statute of 2003. This

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<sup>9</sup> Kenkel, 2005

<sup>10</sup> Martins and Zirker, 2000, p. 111

<sup>11</sup> Kenkel, 2005, p. 94

<sup>12</sup> Zaverucha 2002

<sup>13</sup> Costa, 2002

<sup>14</sup> *ibid*

campaign has not only focused on tighter gun-ownership restrictions but has also encouraged programs encouraging citizens in possession of a firearm to deliver the weapon to the federal police and receive a cash reward.<sup>15</sup> At the end of October 2005, voters in Brazil overwhelmingly rejected a referendum that would have banned the domestic sale of small arms and ammunition. Brazil has one of the highest rates of gun-related homicides in the world—with over 100 people a day being shot in 2003<sup>16</sup>, and supporters of the ban believed that such measures would reduce deaths arising out of personal conflicts between ordinary citizens.<sup>17</sup> Despite that Brazil already has some of the world's tightest gun restrictions and rigorous registration procedures, a culture of gun violence still exists and an estimated 17 million guns are in circulation.<sup>18</sup> Some experts believe that the referendum was defeated due to the reduced credibility of the presidential administration, which is currently caught in a corruption scandal. Voters may have used the gun referendum as an opportunity to express disapproval of President Lula da Silva, the forcefully pushed for the passage of the referendum to what has been noted as the first instance of a nation putting a gun-ban to a popular vote.<sup>19</sup> However, others believe that the referendum was defeated because Brazilians do not believe in the efficiency of public security institutions, nor do they trust police officers, and hence, being able to own a gun provides a sense of safety.

### *Police Reform*

The institutions of the criminal justice system in Brazil that enforce the law fall under the sphere of the 26 states and the federal district. The state police force is in turn divided into the uniformed military police, responsible for “the preservation of public order”, and the civil police in charge of investigating crimes.<sup>20</sup> The military police remains attached to national military structures, including the military courts. These two police forces have distinct institutional histories, which also reflect the patterns of police misconduct, and the specific limitation of oversight mechanisms.<sup>21</sup> A UN Special Rapporteur, upon a country visit to Brazil, noted that police violence against civilians was widespread and military police officers were committing the majority of killings.<sup>22</sup> The division of labor and professional rivalry are just two of the factors that complicate establishing a single disciplinary and oversight institution.<sup>23</sup> The Brazilian police have been constantly criticized for

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<sup>15</sup> Logan, 2005

<sup>16</sup> *ibid*

<sup>17</sup> Morton, 2005

<sup>18</sup> *ibid*

<sup>19</sup> Morton, 2005

<sup>20</sup> Macaulay, 2002a

<sup>21</sup> *ibid*, p. 7

<sup>22</sup> US DOS, 2005b

<sup>23</sup> Macaulay, 2002a, p. 10.

persistent gross human rights violations and for the high level of impunity granted to them. Police inefficiency and lack of trust have been noted as key factors contributing to the public security crisis. The police who are poorly trained and paid, and lack an effective system of accountability, do not inspire trust in citizens.<sup>24</sup> In fact, in many states, the police are seen as part of the crime problem prompting the need for a reform to the police system.<sup>25</sup> The police have been implicated in killings for hire and death squad executions of suspected criminals, ‘undesirables’, indigenous people, and labor activists.<sup>26</sup> Law enforcement officers have continuously used torture, and have generally enjoyed widespread immunity. The issues of law and order are of very high public concern in Brazil and the government has tried to address it. Although Lula’s administration proposed a new national policy for public security, which aimed at improving policing standards and human rights, these measures to combat high levels of urban crime have continued to result in increasing human rights violations.<sup>27</sup> Institutions such as the National Secretary for Human Rights for example, in 2003 established a commission to investigate death squad involvement by the police.<sup>28</sup> Although in some states, notably in Sao Paulo “police advisory councils” have been set up, in general, there is very little non-governmental oversight of the police.<sup>29</sup>

The UNDP Bureau for Crisis Prevention & Recovery (BCPR) Unit has several programs aimed at reforming the police. These include:

- support in formulating policies for the reduction of violent crime and the number of arms;
- support for developing a national plan for reform of security sector and the development of a citizen security plan;
- support to build a national model and a standard national curriculum for police; and the strengthening the ombudsmen service in order to improve police-community relations.<sup>30</sup>

Other donors include the Ford Foundation, which has a police reform program committed to strengthening that nation’s criminal justice system.<sup>31</sup>

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<sup>24</sup> Costa, 2002

<sup>25</sup> *ibid*

<sup>26</sup> US DOS, 2005b

<sup>27</sup> Amnesty International, 2003

<sup>28</sup> US DOS, 2005b

<sup>29</sup> Macaulay, 2002a

<sup>30</sup> UNDP, 2005

<sup>31</sup> Reardon, 2005

*Judicial and Penal Reform*

Although Brazil's Constitution provides for an independent judiciary, the reality is that it has been plagued with inefficiencies, particularly at the state level, and subject to political and economic influences.<sup>32</sup> There is low public faith in the criminal justice institutions.<sup>33</sup> The judiciary remains the least supervised of the three branches of government.<sup>34</sup> It has been noted that the nature of Brazilian politics has proven to be an obstacle to create a comprehensive strategy for judicial reform. Judicial reform (or lack thereof) is shaped by the nature of the Brazilian political system and the weak party system that exists.<sup>35</sup> Furthermore, perhaps one the most important single factor blocking attempts at reform is the federal structure of government in Brazil. As the institutions and operations of the criminal justice system—police, prosecution services, courts and prisons—are the responsibility of the states, which have often fallen under the influence of powerful local elites and their interests.<sup>36</sup>

There have been attempts to reform the Ministry of Justice, but the constant reappointment of ministers and policy switches by the incumbent president has hindered such reforms.<sup>37</sup> As it has been pointed out “successive ad hoc reforms efforts do not reflect a harmonious and coherent project and end up creating new sources of instability in the judicial apparatus”.<sup>38</sup> Although specialized committees have been appointed to oversee judicial reform, they have often been ‘captured’ by special interest groups.<sup>39</sup> Even legislative reforms that harshened punishments or that rendered sentences more rigorous have not resulted in lower crime rates.<sup>40</sup> Brazil has the largest absolute number of detainees in Latin America: 235,460 by June 2002.<sup>41</sup> Prison conditions are often characterized as poor or extremely harsh and life threatening. Severe overcrowding in prisons and police detention- centers remains a problem despite efforts to build new penitentiaries.<sup>42</sup> Judicial reform is one of the main priorities of the new Minister of Justice, who assumed office in January 2003. In December 2004, a constitutional amendment came into force with a wide array of judicial reforms. It aims to streamline procedures in the Supreme Federal Court and some lower courts, strengthens human rights protections, introduces structural and professional court reforms, and creates oversight councils

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<sup>32</sup> US DOS, 2005b

<sup>33</sup> Macaulay, 2002b

<sup>34</sup> Rolim, 2004, p. 175

<sup>35</sup> *ibid*

<sup>36</sup> Macaulay, 2002b

<sup>37</sup> *ibid*, p. 14

<sup>38</sup> Rolim, 2004, p. 175

<sup>39</sup> Macaulay, 2002b

<sup>40</sup> Rolim, 2004

<sup>41</sup> US DOS, 2005b

<sup>42</sup> *ibid*

to hear complaints and issues sanctions against judges and public prosecutors at the state and federal levels.<sup>43</sup>

*Parliamentary oversight of Security Forces*

Following a period of intense interest and substantive interventions in defense policy prior to the *ditadura*, the Brazilian Parliament today plays at best a very limited role in both the public debate and policymaking on defense and security issues. More specifically through committees and subcommittees, there have been attempts to oversee the change and reform of the armed forces for instance, however, the Brazilian Parliament has generally shown a lack of interest and expertise in military affairs.<sup>44</sup> The Chamber of Deputies (lower house) possessed a Committee on National Defense and the Senate a Committee on National Security, but both houses have now merged these into a Committee on External Relations and Defense. Expertise within Parliament is also limited to a very small number of legislators. Even observers from the military establishment criticize the lack of expertise and interest originating from Brazilian lawmakers.<sup>45</sup> According to an analyst of civil-military relations, “despite the publication of the PDN (National Defense Policy) and the creation of the Ministry of Defense, the participation of civilians in the definition of national strategic priorities has been nil.”<sup>46</sup> Furthermore, it has been noted that these committees in charge of overseeing the actions and performance of the security sector institutions have often been made up of individuals that are sympathetic to the armed forces.<sup>47</sup> Since congressional initiatives depend on cooperative collective actions, and considering that the Brazilian party system is weakly institutionalized, establishing the democratic control over the security sector has proved to be a difficult task.<sup>48</sup> Wendy Hunter, an expert on Brazilian civil-military relations, explains that often this is due to incentive structures in the political system that serve to dissuade law-makers from intervening in military issues due to high patronage costs and low electoral returns.<sup>49</sup> As another prominent scholar on Brazilian politics has noted the Brazilian “federal government suffers fundamentally from a lack of accumulated capacity and interest in the operational details of law and order agencies”.<sup>50</sup> Furthermore, she notes that governmental polices in the area of criminal justice for example, tend to be “generic and often a shopping list of disparate ideas, not underpinned by clear criteria of evaluation criteria,” reflecting that there appears not to be a consistent policy to address

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<sup>43</sup> Brazilian Ministry of Justice

<sup>44</sup> Huluban, 2002

<sup>45</sup> Kenkel, 2005, p. 82

<sup>46</sup> Kenkel, 2005, p. 20

<sup>47</sup> Huluban, 2002

<sup>48</sup> *ibid*

<sup>49</sup> Kenkel, 2005

<sup>50</sup> Macaulay, 2002, p. 23

security issues in Brazil. If anything, the reforms that the armed forces have undergone (through the enactment of the National Defense Policy in 1996 or the establishment of a civilian Minister of Defense in 2001), reflect the democratic but corporatist control of the security sector by the incumbent president. As it has been observed there has been a “growing capability and willingness on the part of the [Brazilian] Executive to direct [the] armed forces... coupled with the increased disinterest of the legislative branch.”<sup>51</sup>

*Conclusion: An overview of Brazil's SSR process*

Brazil is South America's biggest and most influential country and it continues to pursue the recognition of one of the world's economic giants. The government faces the enormous challenge of continuing with economic advancement, but is also under pressure to redress what some say is one of the world's most unfair distributions of wealth. Democratization has allowed different presidential administrations to tackle some of the unbecoming security institutions and practices. However, the Congress, political parties, and other civilian institutions have failed to gain expertise in defense and security matters, thus leaving the military with more autonomy.<sup>52</sup> The armed forces, despite losing some important prerogatives since the end of the dictatorship, seek to mark their continued presence (and importance) in Brazil, at least in the area of external defense as exemplified by the SIVAM project. They also continue to hold sizable resources (such as land in various regions in Brazil), which make them attractive partakers of the current government's social agenda plans. Furthermore, although Brazil is the recipient to many international donors, with agencies such as DFID contributing to Brazil with good governance programs, and JICA with human-security related projects, however, there does not seem to be external aid solely focussing on security sector reforms.<sup>53</sup> Even agencies such as USAID, who often fund SSR programs, do not appear to be involved in the restructuring of Brazil's security apparatus.<sup>54</sup> Perhaps the most recent, significant, and coordinated efforts by the current Brazilian government has been activities aimed at reducing crime, and creating a safer country. The gun-ban referendum was an important measure that allowed all citizens of the country to address at least in part, their security concerns. However, factors such as fear, politics, and lobbying by pro-gun groups, combined with a current police system that is characterized by corruption and inefficiency, all worked against the passing of the referendum. Ad-hoc solutions, such as the judicial reform plan undertaken by Lula's government, in order to work, need to be part of a concerted effort to address the inefficiencies of the security system as a 'whole', in order to continue the democratic and developmental advances that Brazil has undertaken since 1985.

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<sup>51</sup> Huluban, 2002

<sup>52</sup> Castro, 2002

<sup>53</sup> Prime Minister of Japan, 2005

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<sup>54</sup> USAID, 2005

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