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Brazil

A country of contrasts that manages to punish those guilty of crimes against journalists. Why?

By Clarinha Glock

For the Brazilian people justice is generally slow or lacking. Throughout the years there has been a growing number of complaints about the buying of sentences and impunity, especially in the case of white-collar offenses (those committed by people on the highest socio-economic levels). In addition, the much-talked-about corruption scandals and the different punishments for the rich and the poor (the latter more often ending up behind bars) contribute to further discrediting the system. But some progress has to be acknowledged. Recently joint operations of the Federal Police and federal and state public prosecutors offices gave rise to hope – ministers, bankers, politicians and businessmen have been charged, and in some cases sent to prison, for offenses against the public patrimony through their participation in organized crime or corruption. At least the media have reported on more cases than they did last year.

It is in this context that the Inter American Press Association (IAPA) since 2000 has been following the legal proceedings in 22 cases of the murder of Brazilian journalists while doing their job. Some even occurred in the mid-1990s. These journalists were killed after exposing crimes and other unlawful behavior in their communities. In the last eight years a total of 33 persons charged with the murder of these journalists were convicted, but at least 23 suspects remain free and some cases continue to be unsolved.

The cultural, economic, political and structural differences between the north and the south across the length and breadth of a 3.3 million square miles nation with a total population of 183.9 million means that each state is regarded almost as a different country within Brazil. In the criminal area public prosecutors and judges complain that the existing legislation offers innumerable possibilities to delay acting, something that enables the accused to postpone being convicted, that is when they do not avoid any punishment whatsoever.

Nevertheless, the list of convictions in cases of murder of journalists in Brazil is longer than those in Colombia and Mexico. Jurist Luiz Flávio Gomes, secretary general of the Pan-American Criminal Policy Institute, says that one factor helping this situation is the autonomy of the police in criminal investigations. Gomes, a professor of criminal law in such universities as Buenos Aires' Austral and the Campo Grande in Brazil, stresses that if the same deaths had been caused by organized police groups, as occurs in the countries where murders of journalists are much more frequent, the evaluation would be very negative.

In many cases of journalists murdered in Brazil there are indeed police involved, but in general they are hired by politicians as hitmen or they act alone. For example, it was a police officer that shot journalist Manoel Leal de Oliveira, murdered on January 14, 1988 in Itabuna, Bahia state. The mastermind of the crime was never officially identified, but the suspicion is that local politicians were responsible. Also members of the police are those who shot and killed Domingos Sávio Brandão, founder, owner and executive editor of the newspaper *Folha do Estado* and of the radio station *Radio Cidade* in Cuiabá, Mato Grosso state.

Gomes points out another determining factor for legal proceedings being more prevalent in Brazil – the independence of the judiciary is quite comprehensive compared to various countries in Latin America. He gives some examples of this. “In Colombia, the judiciary fears organized groups and drug traffickers; in Nicaragua, where almost all the judges are appointed, the interference is very strong.” Gomes says that if the investigator manages to come to a good conclusion the Public Prosecutor’s Office has the tools with which to act. “That is why Brazil judges and convicts more. It is not a perfect model, but it works,” he declares.

“There is no doubt that meting out punishment for crimes against journalists in Colombia has always been difficult because of the corruption of officials or the participation of those in the illicit drug trade, paramilitaries or FARC guerrillas. It is a country that does not have the social peace that Brazil has,” says retired judge Wálter Fanganiello Maierovitch, president and founder of the Giovanni Falcone Brazilian Institute of Criminal Science. “We note that ten justices of the Supreme Court of Colombia were assassinated by order of the Medellín drug cartel boss, Pablo Escobar,” Maierovitch declares. He adds that in Mexico a large number of the journalists murdered were also victims of drug cartels.

In the case of Tim Lopes, a reporter with *TV Globo* television channel murdered by drug dealers in a Rio de Janeiro shantytown while doing an undercover report, is different, the judge says. “Lopes went to a place controlled by criminals, unlike in other countries where newsrooms are invaded by drug traffickers,” he adds. “Not even in the north or northeast of Brazil, where journalists are murdered, are there insurgency movements as in Mexico.” There is, however, a cultural aspect of strong authoritarianism in Brazil which arises when influential people, generally politicians, order the execution of anyone opposing their interests. In such cases it can be difficult to identify the instigators.

There are exceptions. “Here people fight against corruption,” admits prosecutor João Alves da Silva Neto, head of the Public Prosecutors Regional Office in Eunápolis, Bahia, who was involved in the case of radio reporter Ronaldo Santana de Araújo, murdered in October 1997. “The corrupt are united and protect each other,” says Silva Neto, who is determined to bring the former Eunápolis mayor, accused of having committed the crime, to trial.

Public prosecutor Joana D'Arc Calmon Tristão Guzansky of the Vitória, Espírito Santo, Oral Court, took part in the proceedings in which brought to trial were the mastermind and accomplices in the murder of gossip columnist Maria Nilce Magalhães and believes that changes are happening. "There are cases in which trial is under way within a year," she says. For her, this slow progress mirrors the country's politics. "We went from dictatorship to democracy, where people and media are earning more money and prosecutors and judges are now appointed by competition, without the need to get an A or a B," she adds.

Judge César de Souza Lima, who presides over the 1st Criminal and Civil Court of Amambai and Coronel Sapucaia, two cities on the Brazilian border with Paraguay, achieved the following – he convicted the former mayor of Coronel Sapucaia, Eurico Mariano, and sentenced him, to 17 years and nine months in prison for the April 2004 murder of journalist Samuel Román in Mato Grosso do Sul.

The murder would have gone unpunished if it were not for a decisive factor, in Lima's view – no sooner had the murder been committed than the Mato Grosso do Sul State Security Agency sent a team from the capital to investigate the crime that had occurred inland, instead of leaving the matter in the hands of the local police. "That was the difference," the judge declares. "They also transferred a suspect to the capital to give testimony."

The report on the proceedings, which took up 12 volumes of 250 pages each, is now being reviewed by the Federal Supreme Court and the High Court of Justice – the top tribunals – because the former mayor appealed sentence. Lima is aware that if it had not been for the joint work of the police and Public Prosecutor's Office the murder would have gone unpunished. This is due to the fact that the region is conducive to crimes by order – Coronel Sapucaia, where the murder occurred, is regarded as the third most violent city in the country in regard to homicides. Being located on the Brazil-Paraguay border it makes it easy for criminals to flee abroad. It has only one police chief and three officers for investigations. It has no clerk to take notes of testimony in the initial inquiries – the police officer has to put aside other duties in order to do this work or complete his shift. The Criminal Court where Lima works has only two judges, each having 3,000 cases to deal with. "When I have a trial by jury it is difficult for me to hold a hearing in another case," he says.

These problems, which are mirrored in many parts of Brazil, contribute to crimes going unpunished. Mechanisms such as the defense calling witnesses from another state far from Manaus take up time and delay proceedings. "When testimony is finally obtained, sometimes after a year, the person says that he or she was never at the place and one cannot say anything or accuse the defense attorney of an attempt at delay," Lima laments. That is not to mention occasions when the crime occurred in 1999, for example, and it now being 2006 when the proceedings are continuing at the stage in which the police are trying to locate witnesses.

“The judiciary does not work without the police, if the process contains incomplete expert reports and tests when the case comes to court the evidence is inadmissible and two or three years already having gone by there is no way to recover it,” Lima explains. “For this reason, if there is no security chief or governor to concern himself with having the process speeded up, especially when the accused has more financial resources, the crime remains unsolved.”

Judge Walter Fanganiello Maierovitch points out another obstacle in Brazil – convictions are pronounced but the decisions are overturned. He attributes this to the current system of trial by jury. Despite being an ideal system of the people’s participation, it comes down to a “yes” or “no” vote without the need to say why, and as members of the jury may be ignorant about the subject and the causes complicated it often happens that contradictions occur and the sentences are appealed. “In Europe, where people’s participation is on the increase, there is the advisement of professional judges and the members of the jury must show the reason for conviction,” Maierovitch says. The problem is that if resolution of the cases is delayed and they end up overturning or reducing sentence after five or six years the witnesses no longer remember the details and the call for resolution loses force.

For Judge César de Souza Lima what is fundamental is society’s demand that crimes be solved. Shortly after the murder of Tim Lopes the Brazilian Association of Investigative Reporting (Abraji in its Portuguese acronym) was founded, precisely with the objective of investigating, bringing pressure to bear and alerting the authorities to cases of threats and attacks on the press. Already such organizations as the Bahia Press Association, National Newspaper Association, National Federation of Journalists, as well as such international organizations as the Inter American Press Association, Reporters Without Border and the Committee to Protect Journalists, were always stressing the need for the crimes to be solved. “When there one or more organizations or the people themselves demanding it, it is almost impossible to forget a case,” Lima comments. “I think that is part of democracy.”

Factors that lead to a greater number of convictions in Brazil (according to the judges and prosecutors interviewed):

- pressure applied by the people and national and international entities for openness and resolution of the cases.
- absence of a direct connection between the crimes and organized groups, as happens in Colombia and Mexico, where there is an open conflict with the police.
- greater independence of the judiciary.
- rapid action by the state governments and Public Security Agencies in deciding that investigations into the cases be put in the hands of the police in the capital cities (when the crimes are committed inland).
- joint work by the police and the public prosecutors’ office.

Amendment of laws can contribute to a reduction of impunity

Some specialists believe the changes proposed in the Law 11,689/08 of June 2008 will help to accelerate legal proceedings and convictions in homicide cases. This law amends contents of the Code of Criminal Proceedings (Decree-Law 3,689 of October 3, 1941).

Public prosecutor João Augusto Veras Gadelha of Mato Grosso welcomes the law, which envisions holding just one session to hear oral testimony and submissions in the cases of crimes described as against life. The case then passes to the court of trial by jury. Until then various hearings are held separately.

Judge César de Souza Lima, presiding over the 1st Criminal and Civil Court of Amambai and Coronel Sapucaia in Mato Grosso do Sul, sees as positive the amendment that enables a trial to be held even if the accused is at large, without need to interrupt the proceedings. He also points out the fact that in cases of sentences of more than 20 years' imprisonment the defense no longer enjoys the automatic right to call for a new jury, as happened before. From now on he or she will have to prove error or irregularity for the sentence to be overturned.

There are no official figures on convictions

There are no official statistics to show if the number of convictions in the justice system is on the increase in Brazil in general, but rather there are only partial figures that vary from region to region. And when they exist another problem is that sometimes fewer police actions are reported than actually exist, which undermines confidence in the analysis.

In São Paulo, for example, "not without reason it is usual for there to be a collective feeling that the crimes have increased and become more violent, despite which they are not punished," says an article published in 2008 by Professor Sérgio Adomo, head of the Center for the Study of Violence at the University of São Paulo (NEV/USP), and researcher and doctor in sociology Wânia Pasinato.

The two are coordinating a study on criminal impunity in the city of São Paulo during the period 1991 to 1997. Their work consists of analyzing the crimes in their police, judicial and final stages with pronouncement of sentence. Evaluation of the first phase has already concluded. Of the 344,767 police reports made in 16 precincts, including violent crimes (homicide, robbery followed by death, rape and drug trafficking) and non-violent ones (theft and drug usage) only 5.48% led to preliminary police investigation.

"The most surprising result to date consists in verifying the little readiness of the police to investigate crimes whose perpetrators are unknown," the article's authors said. Not knowing who the perpetrators are is present in 93.3% of the cases of

violent crimes and in 94.93% of non-violent crimes, according to the figures gathered. According to Adomo and Pasinato police investigatory routines appear to be “habitually and bureaucratically conforming to inquiries into crimes by already known assailants.” Such routines, according to their point of view, stops them from confronting the increase in organized crime and violations of human rights and thus contributes to impunity.

In Rio de Janeiro the situation is not very different. In addition to the difficulty in obtaining information a report on information about robberies and homicides between 2000 and 2004 showed that the proportion of proceedings or investigations that lead to convictions in relation to the total of cases concluded is relatively low, around 20% of the total. “The majority of the investigations do not even get to trial, which means an enormous waste of time and resources on the part of the system,” says a report produced by José Inácio Cano Gestoso of the Cândido Mendes University in 2005.

As for the performance of the judiciary, Professor Maria Teresa Sadek, research director of the Brazilian Center for Judicial Studies and Research, stresses that there is a big internal difference between one state and another regarding the number of prosecutors in relation to the population and the number of legal proceedings under way. “Certainly in the south and southeast, which are more developed, the situation is different,” she says. But there is no systemization of the data – they are computed in each one of the state prosecutors offices. She admits that since the Constitution of 1988 the Public Prosecutor’s Office has taken on a different profile.

This change in profile was noted by the news media. Whether due to greater political will or pressure applied by the press, the number of staff of the Federal Police Department (DPF) in conjunction with the federal and state public prosecutors offices increased, with the consequent demand for prison sentences for politicians, businessmen, drug traffickers and police officers involved.

Up to October 2008 the DPF carried out 181 operations, resulting in 1,949 arrests (including of involved government officials and federal police officers). The actions range from the removal of immigrants from the streets through the breaking up of gangs of bank robbers and drug dealers, conducting border patrols and battling online child pornography. Throughout 2007 188 operations had been carried out, resulting in 2,876 arrests. This total was more than the 167 operations in 2006 (with 2,673 arrests), the 67 operations (with 1,407 arrests) in 2005 and the 58 operations (with 928 arrests) in 2003/2004.

Not all these operations have the same impact and the fact of getting to even the powerful is not always a guarantee of punishment. The so-called Operation Satiagraha, carried out in July 2008, was the result of four years of investigation and sent to prison banker Daniel Dantas, former São Paulo mayor Celso Pitta and mega-businessman Naji Nahas on charges of embezzlement of public funds and financial offenses (money-laundering, currency dealings and tax evasion, among others).

The operation unleashed a big debate in Brazil on the legality of using wiretaps in the investigations and provoked a dispute within the Federal Police itself, to the point that at one time the news broadcasts turned their attention away from the imprisonment of Dantas, Pitta and Nahas to refer to the resignation of the police chief in charge of the case. Within the judiciary there was another controversy – in the space of just three days banker Daniel Dantas was arrested on a warrant issued by a São Paulo federal judge but then released thanks to a motion of habeas corpus granted by the Federal Supreme Court chief justice. This difference of powers that enables a prisoner of greater financial or political clout to enjoy privileges makes people wonder if there really exists a will to punish the guilty, despite the efforts of some sectors.

At least as regards corruption the Brazilian people do not hold out much hope. The 2008 report of the NGO International Transparency shows that the incidence of Brazilians' perception of corruption is 3.5 on a scale of 0 (most corrupt) to 10 (least corrupt). Brazil occupied the 72nd place among 180 countries. This represents a relative increase of 0.2 points in relation to the 3.3 obtained in the previous survey, which had placed Brazil in 70th place. In 2001 and 2002 it obtained a 4 in the ranking. The figure dropped to 3.9 in 2003 and 2004 and to 3.3 last year.

Retired appeals judge Vladimir Passos de Freitas, president of the Brazilian Institute of Administration of the Justice System, says that there are no surveys on punishments meted out to those involved in corruption in the country. "Only the states of Rio Grande do Sul and São Paulo have specialized courts to battle corruption," Freitas explains. "The greater the specialization, the more effective it is."

Freitas has no doubt, however, that there has been a general increase in convictions in the country. "There is a doctoral thesis of the 1980s in which the author states that not even 0.5% of cases get to a good conclusion. not even to determine whether the accused was acquitted or convicted," he notes. Although the White-Collar Crime Law is old – it dates from 1986 – the cases were difficult to resolve. Change happened, he believes, with the creation of the Specialized Courts for Economic Crimes (which include, for example, money-laundering) about five years ago. In addition, judges began to take courses given by the Federal Revenue Administration, the Central Bank and the Council on Control of Financial Activities (COAF – an agency of the Finance Ministry). Some even managed to specialize abroad to get themselves up to date regarding case law rulings. "Money-laundering is the last link in a chain that includes corruption, drug trafficking and other offenses," Freitas says.

Less optimistic is federal judge Roberto Wanderley Nogueira of the 1st Federal Court of Pernambuco. "I do not see a pattern of effective conduct," he says. "On the contrary, the deficit is impressive given the accumulation of pending cases." He considers that there is an effort to more fully expose in the news media some emblematic or straightforward cases, but that it is still a long way from what an

egalitarian society wants. "When they are arrested these persons do not use the possibility of a reduction of sentence through provision of data, there is not a single known case in which the whole plan has been ruined and they then prefer to give up their freedom," he declares. The result is a society without control of its public and private entities. "Anyone who requires the services of the judiciary understands what I am talking about."

According to Nogueira justice is worth more for the moral authority of some agents than for the current organization chart and structure. "It begins with the standing of the judge, who can be bought – the independent ones cannot legitimately aspire to promotion." In his opinion the crisis stems from the top ranks of the judiciary. "If we attack the interests of the powerful the risk is run of destroying the work achieved at the top, regardless of how good it is."

The fact that there is a larger number of convictions of the accused in cases of the murder of journalists is, in Nogueira's opinion, accidental, maybe being related to the pressure of the press and the people affected or to the fact that such cases do not involve significant risk. "When the one accused of killing a journalist is an influential person it is very different," he says. "All legal actions taken with grandeur against offenders of rank in Brazil only have a selective reach. Some scapegoats are chosen to look good in front of the community but the reality regarding the system is the same as that in the colonial era."

Federal Police operations

Source: <http://www.dpf.gov.br/> (see in News Agency)

2003/2004

Total of operations: 58

Total of arrests: 926

2005

Total of operations: 67

Total of arrests: 1,407

2006

Total of operations: 167

Total of arrests: 2,673

2007

Total of operations: 188

Total of arrests: 2,876

2008 (up to October 29, 2008)

Total of operations: 181

Total of arrests: 1,949

See statistical data of the Federal Criminal Courts Specializing in Processing and Indictment in Crimes of Money-Laundering, Rights or Values