

# **BEHIND BARS IN BRAZIL**

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## PREFACE

In the decade since Human Rights Watch first examined prison conditions in Brazil, the inmate population has increased at a rapid pace. Beside exacerbating prison overcrowding—a problem that Human Rights Watch originally documented during its 1988 mission to the country—the fast growth of the inmate population has coincided with years of flagrant prison abuses. Thus, our first Brazil prisons report was succeeded by a 1989 newsletter that focused on conditions in a notorious São Paulo jail, followed by a 1992 report on a massive prison massacre in São Paulo. Our annual summary of global human rights conditions, moreover, has consistently condemned Brazil for severe prison overcrowding, horrendous conditions of detention, and summary executions of inmates.

Human Rights Watch's sustained attention to conditions of confinement in Brazil reflects our sense that the mistreatment of prisoners is one of the country's most serious and chronic human rights violations. Despite a few encouraging changes over the years that we have monitored prison conditions in Brazil, the overall picture has been grim. In 1997, in particular, a dramatic series of riots, hostage-taking episodes, and killings in penal facilities across the country forcefully confirmed to us the need for continued international monitoring of Brazil's treatment of prisoners.

The present report is the most comprehensive and detailed review of conditions of detention in Brazil that Human Rights Watch has undertaken to date. Indeed, it is the fruit of the most exhaustive prisons research that the organization has conducted in any country. The conclusions in this report are based on an examination of penal facilities in Brasília and in the states of Amazonas, Ceará, Minas Gerais, Paraíba, Rio Grande do Norte, Rio Grande do Sul, and São Paulo. Although our main focus was on prisons, we also visited a number of jails and police lockups, particularly since, given prison overcrowding, prisoners often spend years in such facilities.

In all, from September 1997 through March 1998, Human Rights Watch researchers visited some forty prisons, jails, and police lockups, interviewing hundreds of prisoners while also meeting with prison authorities, prison staff, members of the Prison Ministry (Pastoral Carcerária, a branch of the Catholic Church that provides assistance to prisoners), judges, lawyers, prosecutors, legislators, academics, and representatives of nongovernmental organizations. Among others, we met with the heads of several state prison systems (in most states, the secretary of justice), the president of the national human rights commission, the author of the final report of the São Paulo Legislative Assembly's Parliamentary Commission of Inquiry into the São Paulo prison system, the national coordinator of

the Catholic Church's Prison Ministry, the police ombudsman for the state of São Paulo, and the president of the São Paulo prison guards union.

Although where directly relevant this report touches on general deficiencies in the criminal justice system, it does not purport to be a comprehensive evaluation of the administration of justice in Brazil. Human Rights Watch has, in several previous reports, documented and analyzed the other serious human rights abuses that plague the Brazilian justice system, focusing principally on the issue of police violence.<sup>1</sup> The situation of inmates described in this report is, it should be emphasized, an integral part of this larger system. The lives of Brazil's prisoners are directly affected by the decisions of, among others, the country's police, judges, public defenders, and prosecutors. Therefore, although prison reform is clearly needed, a comprehensive approach to reform—one that integrates human rights concerns into all levels of the justice system—is likely to be more effective than a piecemeal one. Given the advantages of such an approach, Human Rights Watch was encouraged by the Brazilian government's 1996 promulgation of a national human rights plan. It is our hope that this report will support the effort to implement the human rights goals articulated in that plan.

### **Context**

Brazil's prison woes represent the logical consequence of two decades of soaring crime rates, mounting public pressure to “get tough” on crime, and continuing neglect by policy makers. The 1997 wave of inmate riots, though sparked by recent events, had its roots in a confluence of historical factors.

The 1964 coup d'etat that ended the rule of President João Goulart was the first in a series of coups in South America that ushered in the region's two decades of authoritarian rule. In Brazil, as elsewhere in the region, the military regime was characterized by grave and systematic human rights violations, including forced disappearances, political killings, and the routine practice of torture on political detainees. In the late 1970s, the military began a top-down process of *abertura*, or opening; a turning point in this process was the passage of a 1979 amnesty law that exonerated those who committed human rights abuses, provided for the release of many political prisoners, and allowed numerous exiled dissidents to return. In the

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<sup>1</sup>See, for example, Human Rights Watch, *Police Brutality in Urban Brazil* (New York: Human Rights Watch, 1997).

years that followed, the military government refused to accede to increasing popular demands for an immediate return to democracy, instead controlling a gradual transition in which Brazilians were permitted to choose a president through indirect elections in 1985 and to elect constituents to draft a new constitution in 1988. In 1989, in the first direct presidential balloting in nearly thirty years, Brazilians elected Fernando Collor de Mello in a close runoff with leftist candidate Luís Inácio “Lula” da Silva. Three years later, demonstrating the strength of their newly created democratic institutions, Brazilians impeached Collor because of his administration’s rampant corruption.

The transition to democratic rule ensured that opponents of the military regime, many of them the sons and daughters of middle-class Brazilians, were no longer subject to massive human rights violations. Instead, much as in the period prior to the 1964 coup, criminal suspects, the landless, darker-skinned and poorer Brazilians, and others on the margins of mainstream society once again became the principal victims of official violence. As the targets of state abuse came less and less from affluent and established segments of Brazilian society, public support for human rights declined. This shift coincided with the continuing rise in violent crime, explained below, that has plagued Brazil over the past two decades. For many today, the defense of human rights has become synonymous with the defense of *bandidagem*, or criminality.

The serious economic troubles that buffeted Latin America beginning with the petroleum shocks of the 1970s and debt crisis of the 1980s did not pass lightly over Brazil. In the wake of the Brazilian economic “miracle”—the years of continuous double-digit growth that marked the late 1960s—Brazil’s economy slowed in the 1970s and came to a virtual halt in the 1980s. From 1980 to 1993, according to the World Bank, Brazil’s annual growth rate averaged just 1.5 percent. At the same time, the gap between rich and poor, already wide, grew steadily. An increasingly large number of those mired in poverty turned to crime, often violent crime. In the state of Rio de Janeiro, where Brazil’s crime epidemic is most visible, the number of homicides tripled during the years of recession and economic stagnation, soaring from 2,826 homicides in 1980 to 8,408 in 1994.<sup>2</sup> In parallel

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<sup>2</sup>Alba Zaluar, “The Drug Trade, Crime and Policies of Repression in Brazil,” *Dialectical Anthropology*, vol. 20, 1995, p. 96.

fashion, the homicide rate in the state of São Paulo soared from 14.62 per 100,000 in 1981 to 44.89 per 100,000 in 1995.<sup>3</sup>

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<sup>3</sup>Túlio Kahn, "Índice de Criminalidade," *Revista do Ilanud*, No. 2, 1997.

Another cause of criminality in Brazil has been the growth of the international market for cocaine, which has produced corresponding surges in incarceration for trafficking and related offenses.<sup>4</sup> Although there are no reliable measures, by all accounts the drug trade in Brazil is a multimillion-dollar business, and a growing one. In 1994, the Drug Division of Brazil's Federal Police seized 11.8 metric tons of cocaine, a seven-fold increase over the 1.7 tons captured in 1989.<sup>5</sup>

The crime epidemic has fueled public support for the enactment of harsher criminal laws. The most prominent example of recent legislative initiatives spurred by public concern over crime is the Law of Heinous Crimes (*Lei de Crimes Hediondos*), passed on July 25, 1990, in response to a rash of kidnappings. The law augmented the sentences imposed for a series of crimes, including kidnapping and drug trafficking, rendering those arrested for such crimes ineligible for pretrial release. Experts differ as to the deterrent effect of this law, but there is little doubt that it has done much to increase the size of the inmate population, particularly of those detained pretrial in police stations and jails.

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<sup>4</sup>Brazil functions primarily as a transit country: cocaine produced in Colombia, Bolivia, and Peru enters Brazil by land, air, and river; it is then shipped from major transportation hubs such as Rio de Janeiro and São Paulo to consumer markets in Europe and the United States. There is also an important internal market for cocaine, largely among the urban middle and upper classes and tourists.

<sup>5</sup>United States Department of State, Bureau for International Narcotics and Law Enforcement Affairs, "International Narcotics Control Strategy Report," March 1995, p. 73.

As this example suggests, crime control policies in Brazil are often influenced more by the immediate political stakes than by any criminological analysis of their efficacy. Indeed, many state authorities (particularly those responsible for crime control) have gained election and continued popularity by championing policies that are aggressively anti-crime, and often anti-criminal suspect. Besides legislative efforts, recent policing trends have also spurred increases in the inmate population. In the months preceding Rio de Janeiro's 1994 gubernatorial elections, for example, the government launched Operation Rio, a series of joint military-police actions to battle drug traffickers in the city's *favelas*, or shantytowns. The decision to bring in the military was widely celebrated in the media and by the leading candidates, including Rio's current governor, Marcello Alencar. One consequence of the massive arrests that characterized Operation Rio was a significant short-term increase in the chronic overcrowding of Rio's police lockups and prisons. Many of those arrested were detained for the thirty days allowed under the terms of the Law of Heinous Crimes.<sup>6</sup>

In 1994, and again in October 1998, Brazilians elected Fernando Henrique Cardoso to the presidency. The election of Cardoso, a sociologist by training who went into exile during the military dictatorship, raised hopes for improvement in Brazil's human rights record. Indeed, his administration has openly acknowledged many of Brazil's serious human rights problems, including its prisons crisis. As this report describes, however, much of Brazil's penal policy is decided at the state, not the federal, level. And regrettably, in those areas in which the federal government is active, Cardoso's administration has not lived up to the expectations that accompanied his election.

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<sup>6</sup>As we wrote in "Brazil: Fighting Violence with Violence: Human Rights Abuse and Criminality in Rio de Janeiro," *A Human Rights Watch Short Report*, Vol. 8, No. 2(B), January 1996, p. 19:

Under Brazilian law (Law No. 7.960/89 and Law No. 8.072/90), a judge may order a person's preventive detention for up to thirty days if there are "*fundadas razões*"—the rough equivalent of probable cause in Anglo-American law—concerning the person's participation in one of several enumerated crimes, including drug trafficking. According to the terms of the law, such detention is justified only when necessary to assist the conduct of an official police investigation . . . . In practice, however, during Operation Rio persons were detained for thirty days even though no criminal investigations were opened.



**Methodology and the Question of Access**

This report is one of a series of reports published by Human Rights Watch that describe conditions in prisons worldwide. Besides Brazil, we have investigated and reported on prison conditions in Czechoslovakia (prior to its division into two states), Egypt, Hong Kong, India, Indonesia, Israel and the Occupied Territories, Jamaica, Japan, Mexico, Poland, Romania, South Africa, the former Soviet Union, Spain, Turkey, the United Kingdom, the United States (including a separate short report published on Puerto Rico), Venezuela, and Zaire. We have also published a comprehensive report, the *Human Rights Watch Global Report on Prisons*, that covers prison conditions in such additional countries as China, Cuba, and Peru. In this report, as in all of our previous prison reports, we assess the government's practices according to the guidelines set forth in the United Nations Standard Minimum Rules for the Treatment of Prisoners, as well as the relevant provisions of international human rights treaties to which the country is a party.

In the interests of accuracy and objectivity, Human Rights Watch strongly prefers to base its reporting on first-hand observation of prison conditions and direct interviews with prisoners and corrections officials, although we have devised an alternative research methodology for use in countries whose authorities bar access to outside monitoring. Normally, in conducting prison investigations, Human Rights Watch follows a self-imposed set of rules: investigators undertake visits only when they, not the authorities, can choose the institutions to be visited; when they can be confident that they will be allowed to talk privately with inmates of their choice; and when they can gain access to the entire facility to be examined. These rules ensure that investigators are not shown "model" prisons, "model" prisoners, or the most presentable parts of the facilities under investigation. If entry on these terms is denied, Human Rights Watch reports abuses based on interviews with former prisoners, prisoners on furlough, relatives of inmates, lawyers, prison experts, and prison staff, as well as on documentary evidence.

In Latin America, fortunately, our researchers are normally granted generous access to the penal facilities of their choice. Most Latin American countries have commendably open policies with regard to outside monitoring of prison conditions, with only a few states such as Cuba and Peru remaining hostile to such scrutiny. Indeed, it is perhaps the relative openness of the region's prison systems—not only to human rights organizations but also to humanitarian, religious, and community groups—that stands out as their most notable virtue.

Brazil, with its democratic political structure and official government support for human rights, would appear to present a favorable environment for human rights monitoring. We found, nonetheless, that gaining access to the country's prisons and police lockups was surprisingly difficult. Our researchers

faced obstructions ranging from overt denials of access to, more frequently, unnecessary and time-consuming procedural hurdles. Negotiating the terms and conditions of access required countless faxes, dozens of phone calls, and long hours in meetings with state authorities—time that might have been more profitably spent observing conditions in the prisons. Moreover, on several occasions our researchers were left with the distinct impression that the sole point of some of these procedural hurdles was to slow our research. Hindering our access in this way rather than simply denying us entry to the prisons does, of course, allow officials to continue to maintain a facade of sympathy for human rights concerns.

To some extent, we acknowledge, our difficulties in obtaining access were a consequence of Brazil's federal system of governance and, in particular, its system of state control of penal matters. Unlike certain other countries whose prison conditions Human Rights Watch monitors, Brazil does not have a centralized prison authority with the power to grant requests for access and facilitate visits. Rather than a national prison system, each state manages its own set of prisons, jails, and police lockups. Moreover, as this report will describe, responsibility for and oversight of penal matters is divided among a variety of state actors that, individually or collectively, enjoy discretion with regard to granting access. Conducting a national survey of conditions therefore required us to contact a whole host of government authorities from whom our requests for cooperation elicited a considerable diversity of responses. Some authorities took pains to ensure the success of our prison visits; others failed even to respond to our phone calls, or were openly antagonistic. Possibilities for any given visit, moreover, often rested on the cooperation of the authorities directly in charge of the institution: that is, the prison director and guards. In one São Paulo police lockup, for example, the commander refused to allow us to speak to prisoners, responding to the judicial order we showed him by insisting, "I don't care if the President of the Republic personally authorized your visit, I'm the one in charge here!"<sup>7</sup>

In the end, of all of the states whose penal systems we attempted to investigate, only three—Amazonas, Brasília and Rio Grande do Norte—were entirely open to monitoring. The minister of justice of the state of Amazonas, in particular, was extremely receptive to our interest in the prisons under his jurisdiction and

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<sup>7</sup>Human Rights Watch interview, Darci Sassi, sixteenth police precinct, São Paulo, November 19, 1997.

unfailingly helpful in ensuring our free and unconstrained access to examine conditions and meet privately with prisoners. On the other side of the spectrum, the state of Rio de Janeiro wholly barred our entry; indeed, the prison authorities there never even acknowledged our phone calls and faxes.

Perhaps the most dismaying denial of access occurred at Roger prison in Paraíba state. In the months prior to our visit there, a total of eleven prisoners died in three separate incidents, the most bloody of which involved the brutal torture of several prisoners before they were killed. Having met with the coroner who examined the bodies of the dead inmates, we were anxious to interview the surviving eyewitnesses to these killings. When we arrived at Roger prison, however, we encountered three local public defenders—lawyers charged with providing free legal assistance to prisoners—who wanted to block our entry.<sup>8</sup> In particular, they did not want us to be allowed to speak privately with prisoners, regardless of whether the prisoners themselves wanted to speak with us.

Unbeknownst to us, the previous day the public defenders had filed a five-page motion in state court for a “preventive habeas corpus” to bar our prisoner interviews. Describing these interviews as “interrogations,” the motion purported to protect the prisoners’ right to counsel. Before we had the opportunity to enter the prison, a judicial order arrived granting the motion. The order stated, however, that prisoners had the right to the assistance of a public defender during our interviews, not that a public defender *had* to be present. Accordingly, prisoners could, if they preferred, waive their right to counsel and choose to have private interviews with us. Despite the order’s clear wording, the prison authorities, following the lead of the public defenders, did not permit this possibility, but instead interpreted the order as *requiring* the public defenders to be present during all of our prisoner interviews. Because, as described above, confidentiality is a basic rule of our inmate interviews, we were forced to leave the prison without speaking to numerous eyewitnesses to the killings.<sup>9</sup> (Fortunately, we had already interviewed prisoner eyewitnesses who had previously been transferred to a different prison.)

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<sup>8</sup>We should note, however, that the head of the local public defender’s office, who was present during part of this incident, told us that the most vocal of the three public defenders had in fact been suspended from his duties as of one month previously. In other words, he was not acting in any official capacity. Human Rights Watch interview, Gilberto Sarmiento, Roger prison, João Pessoa, Paraíba, December 11, 1997.

<sup>9</sup>Four months after we were barred, researchers from Amnesty International who were attempting to visit Roger prison met with a similar denial of access. Given the number of deaths that have occurred there in the past year, the authorities’ consistent refusal to permit outside monitoring is extremely troubling.

Despite obstacles such as these, Human Rights Watch gathered the bulk of the information contained in this report during detailed inspections of the country's prisons, jails, and police lockups—of which we saw a total of some forty facilities—and extensive interviews with prisoners. We spent a day at nearly every prison and jail we visited, and several hours at every police lockup. During our visits, we normally viewed the entire facility, including punishment cells and other segregation areas, the infirmary, the kitchen, the recreation areas, the bathrooms, and, of course, the prisoners' living quarters. Some of our discussions with prisoners were conducted in informal groups, as we walked with prisoners through the cell blocks, but a great many of them were one-on-one interviews held outside of anyone else's hearing.

Finally, numerous documentary sources provided additional information on Brazil's prison policies, rules and conditions. Such sources included the national prison census, relevant newspaper articles, case materials from the prosecution of abusive police and prison guards, coroners' reports, academic commentaries on Brazil's prison laws, and abundant written materials provided by the National Prison Ministry.<sup>10</sup>

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<sup>10</sup>The following sources were of particular note: Ministério da Justiça, Conselho Nacional de Política Criminal e Penitenciária, *Censo penitenciário de 1995* (Brasília: Conselho Nacional de Política Criminal e Penitenciária, 1997); Conferência Nacional dos Bispos do Brasil, *A fraternidade e os encarcerados: Cristo liberta de todas as prisões* (São Paulo: Editora Salesiana Dom Bosco, 1997); Deputado Wagner Lino, *Relatório Final da Comissão Parlamentar de Inquérito sobre os Estabelecimentos Prisionais do Estado de São Paulo* (São Paulo: Assembléia Legislativa do Estado de São Paulo, 1996); and Julio Fabbrini Mirabete, *Execução penal: comentários a Lei Nº 7.210, de 11-7-84* (São Paulo: Atlas, 1997).

**International Human Rights Standards Governing the Treatment of Prisoners**

The chief international and regional human rights documents binding on Brazil clearly affirm that human rights extend to persons who are incarcerated. The International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the American Convention on Human Rights, all of which Brazil has ratified, all prohibit torture and cruel, inhuman, or degrading treatment or punishment, without exception or derogation.<sup>11</sup> Both the ICCPR and the American Convention require that “the reform and social readaptation of prisoners” be an “essential aim” of imprisonment.<sup>12</sup> They also mandate that “[a]ll persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”<sup>13</sup>

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<sup>11</sup>The Brazilian Constitution similarly provides, “No one shall be subject to torture or inhuman or degrading treatment.” Brazilian Constitution, art 5, sec. 3.

<sup>12</sup>American Convention, art.5(6); *accord* ICCPR, art. 10(3) (“The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.”).

<sup>13</sup>American Convention, art. 5(2); *accord* ICCPR, art. 10(1) (“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”).

Several additional international documents flesh out the human rights of persons deprived of liberty, providing guidance as to how governments may comply with their obligations under international law. The most comprehensive such guidelines are the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the Economic and Social Council in 1957. Other relevant documents include the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, adopted by the General Assembly in 1988, and the Basic Principles for the Treatment of Prisoners, adopted by the General Assembly in 1990. It is worth noting that although these instruments are not treaties, they provide authoritative interpretations as to the practical content of binding treaty standards.<sup>14</sup>

These documents reaffirm the tenet that prisoners retain fundamental human rights. As the most recent of these documents, the Basic Principles, declares:

Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.<sup>15</sup>

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<sup>14</sup>See, for example, the U.N. Human Rights Committee's decision in *Mukong v. Cameroon*, in which it cites various violations of the Standard Minimum Rules in ruling that the complainant was subject to cruel, inhuman and degrading treatment. *Mukong v. Cameroon* (No. 458/1991) (August 10, 1994), U.N. Doc. CCPR/C/51/D/458/1991.

<sup>15</sup>Body of Principles, art. 5.

Endorsing this philosophy in 1992, the United Nations Human Rights Committee explained that states have “a positive obligation toward persons who are particularly vulnerable because of their status as persons deprived of liberty” and stated:

[N]ot only may persons deprived of their liberty not be subjected to [torture or other cruel, inhuman or degrading treatment or punishment], including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the [ICCPR], subject to the restrictions that are unavoidable in a closed environment.<sup>16</sup>

Significantly, the Human Rights Committee has also stressed that the obligation to treat persons deprived of their liberty with dignity and humanity is a fundamental and universally applicable rule, not contingent on the material resources available to the state party.<sup>17</sup>

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<sup>16</sup>U.N. Human Rights Committee, General Comment 21, paragraph 3. The Human Rights Committee, a body of experts established under the ICCPR, provides authoritative interpretations of the ICCPR through the periodic issuance of General Comments.

<sup>17</sup>*Ibid.*, paragraph 4; *see also Mukong v. Cameroon* (No. 458/1991) (August 10, 1994), U.N. Doc. CCPR/C/51/D/458/1991 (stating that minimum requirements regarding floor space, sanitary facilities, provision of food, etc., must be observed, “even if economic or budgetary considerations may make compliance with these obligations difficult”).





## I. SUMMARY AND RECOMMENDATIONS

By any measure, the Brazilian penal system is enormous. Brazil incarcerates more people than any other country in Latin America (indeed, it has more prison staff than most countries have prisoners); it operates the largest single prison in the region; even its annual escape numbers run into the thousands. Unfortunately, the defects of this huge and unwieldy system are of corresponding proportions. Human rights abuses are committed daily in Brazil's penal facilities, and they affect many thousands of people. The causes of this situation are varied and complex, but certain critical factors can be identified. Among them, perhaps most importantly, is the sense that the victims of abuse—prison inmates and, therefore, criminals—are not worthy of public concern.

Given Brazil's high rate of violent crime, public apathy toward prison abuses is unsurprising. Prisoners come almost exclusively from the poor, uneducated, and politically powerless margins of society. To confine them in humane conditions is a costly proposition. Yet the default solution—to confine them in conditions of extreme overcrowding, where medical care is lacking and physical abuse is common—is also expensive, exacting a high cost in ruined lives, in blatant disrespect for the law, and in recidivism. Moreover, the penal system's defects are in great part due to an absence of political will to remedy them, rather than a shortage of funds. Some of the most extreme cruelties visited upon Brazilian inmates, such as summary executions by military police, can in no way be attributed to meager public resources. At present, in light of the dire state of the current system, it is critical that state prison and police authorities—with the support of state legislators, prosecutors, and relevant federal officials—begin to institute a panoply of much-needed reforms.

Although conditions vary significantly from state to state and from institution to institution, conditions of confinement in Brazil are very often appalling. Many penal facilities hold two to five times more inmates than they were designed for. In some facilities, the overcrowding has reached inhuman levels, with inmates jammed together in a tight crowd. The densely packed cells and dormitories in these places offer such sights as prisoners tied to windows to lessen the demand for floor space, and prisoners being forced to sleep on top of hole-in-the-floor toilets.

In most prisons, the distribution of living space is relatively unregulated, so that the burden of overcrowding falls disproportionately on certain prisoners. In general, prisoners who are poorer, weaker, and less powerful tend to live in correspondingly less habitable accommodations. Typically, the disciplinary and holding cells—which are as likely to hold prisoners needing protection from other

prisoners as they are to hold those being punished—are the most cramped and uncomfortable areas. Conditions in the security cells on the fifth floor of pavilion five of São Paulo's Casa de Detenção are particularly miserable. On both days that Human Rights Watch visited this area, we found eight prisoners crammed into each single-person cell, and a few cells holding ten. The air in these gloomy chambers was thick with carbon dioxide and body odor. Deprived of sunlight and exercise, the approximately 350 inmates held in this area were rarely allowed outside of their cells; indeed, other prisoners universally referred to them as the “yellow ones.”

While certain prisons are crowded far beyond their capacities, the most overcrowded penal facilities in Brazil are generally the police lockups. Rather than being used as places of short-term detention for newly arrested criminal suspects, as they are supposed to be, police lockups in many states hold inmates for long periods, even years. In states where the prison authorities are able to limit the transfer of additional inmates from lockups to the prisons, the police end up being left in charge of a significant proportion of the inmate population. Indeed, in the most extreme cases—São Paulo and Minas Gerais—the police have become a de facto prison authority, supplementing or nearly replacing the conventional prison system. The state of São Paulo has taken important steps to remedy this situation in recent months by opening several new prisons, yet as of late October 1998 over 32,000 inmates remained in police hands. By restricting the transfer of prisoners from police lockups into the prison system, state prison authorities are to a significant extent abdicating their function.

The long-term detention of prisoners in police lockups aggravates the serious problem of police torture, endemic to Brazil. In the course of our research, Human Rights Watch interviewed scores of prisoners who credibly described being tortured in police precincts. Inmates were typically stripped naked, hung from a “parrot's perch,” and subjected to beatings, electrical shocks, and near-drownings. Many detainees remained for long periods in the precincts where they suffered the abuse, enduring continuing contact with their torturers. The state of Rio Grande do Sul, where criminal suspects are immediately transferred out of police custody, is a salutary exception in this regard.

The lack of health care is another issue of serious concern. Potentially lethal diseases such as tuberculosis and HIV/AIDS have reached epidemic levels among Brazilian inmates. Given prisoners' many connections to the community outside the prisons, and their eventual return to this community, the unchecked spread of disease among inmates represents a serious public health risk. Although Brazil's national prison law mandates that prisoners have access to various types of assistance, including medical care, legal aid, and social services, none of these benefits are provided to the extent contemplated under the terms of the law, nor is

medical care—the most basic and necessary of the three services—available at even minimally adequate levels to many prisoners. In most facilities, qualified medical staff are few and medicines are difficult to obtain. The situation is particularly bad in police lockups, where severely ill and even dying prisoners may remain crowded together with other inmates.

Another serious problem is inmate-on-inmate violence. In the most dangerous prisons, powerful inmates kill others with impunity, while even in relatively secure prisons extortion and other lesser forms of mistreatment are common. A number of factors combine to cause such abuses, among them, the prisons' harsh conditions, lack of effective supervision, abundance of weapons, lack of activities, and, perhaps most importantly, the lack of inmate classification. Indeed, violent recidivists and persons held for first-time petty offenses often share the same cell in Brazil. The Dr. João Chaves Penitentiary, in Natal, Rio Grande do Norte—where ten prisoners were killed between March 1997 and February 1998—presents a particularly chilling example of this problem. Another gruesome episode was the May 1998 gang clash at the Professor Barreto Campelo Prison, in Pernambuco, which left at least twenty-two inmates dead. Unfortunately, because the national prison census ceased to compile statistics on inmate killings after 1994, the overall levels of inmate-on-inmate brutality are unknown.

Even more shocking from a human rights perspective is the frequent official violence visited upon Brazilian inmates. The most egregious instances of brutality—including summary executions of prisoners—have been committed by the civil and military police. Both civil and military police were implicated in the 1989 suffocation deaths of eighteen prisoners in a São Paulo police lockup, while military police alone effected the 1992 Carandiru massacre, killing a total of 111 inmates. Military police were also implicated in the July 1997 slaughter of eight prisoners in João Pessoa, Paraíba; the December 1997 killings of seven escaped prisoners near Fortaleza, Ceará; and the February 1998 killings of at least six escaped prisoners in Natal, Rio Grande do Norte. Much more frequent—even chronic—are instances of abuse that fall short of killing but that sometimes rise to the level of torture. On countless occasions, members of the civil and military police have beaten inmates in the wake of riots and escape attempts. Given that the record of many states' police in conducting their regular policing duties is severely blemished by brutality, corruption, and related abuses, it is not surprising that their history of dealing with inmates is similarly flawed.

Encouraging these acts of violence is the persistent impunity that prevails for officials guilty of them. At every stage of the criminal process—from investigation to prosecution to judgment to appeal—the scales are heavily weighted in favor of the perpetrator of abuse. Indeed, very few incidents of physical abuse of

prisoners, including even the most egregious cases of torture, are ever investigated. Only killings of inmates—whose dead bodies are difficult to ignore—appear to merit investigation and prosecution, and even then the conviction and subsequent incarceration of the guilty parties are exceedingly rare. In other words, public prosecutors and other justice officials share much of the blame for the high levels of official violence that prisoners face.

Under the national prison law, all convicted inmates in Brazil are required to work; educational and training opportunities are supposed to be available; and inmates should be offered reasonable possibilities of recreation. Despite the law's clear mandate, only a minority of Brazilian prisoners are offered the opportunity to work. Because prisoners who work are eligible for sentence reductions, and thus earlier release from prison, the paucity of available work contributes to prison overcrowding. Educational and training opportunities are also scarce, giving prisoners few constructive outlets for their energies. In some prisons, and particularly in police lockups, even recreation is limited.

On the positive side of the balance, Brazilian penal facilities normally offer generous visiting policies, allowing prisoners regular face-to-face visits with their family and friends, and even conjugal visits. Not all facilities, however, are equally commendable in this regard, and certain systemic abuses can also be identified. The primary obstacle to inmates' visits is the humiliating treatment of visitors, who may be subject to poorly regulated strip searches and even, according to some inmates' allegations, invasive vaginal searches.

Women inmates are generally spared some of the worst aspects of the men's prisons—enjoying greater access to work opportunities, suffering less custodial violence, and being provided with greater material support—but they also bear special burdens. Most notably, women in many states face discrimination with regard to conjugal visiting rights. While male prisoners tend to be freely granted such visits, with little or no control exercised by state authorities, women prisoners are sometimes denied them or allowed them only under extremely tight restrictions.

In addition, despite the Brazilian constitutional requirement that women prisoners be permitted to keep their nursing babies during the entire lactation period, women confined in some penal facilities lose their infants immediately after delivering them. Human Rights Watch interviewed two mothers who had given birth less than a month and a half before our visits: both of them had seen their babies only once in that period.

### **Recommendations**

Human Rights Watch welcomes the Brazilian federal government's recent attention to the problems and deficiencies of its penal facilities but urges both

federal and state authorities to take more decisive measures for improving the dire conditions of the country's prisons, jails and police lockups. In our view, plans to build more facilities—which appear to be the primary focus of the current reform effort—are not only unlikely to be of sufficient scope to satisfy the pressing demand for detention space but will do nothing toward remedying the other serious defects of the penal system, such as the chronic and appalling problem of custodial violence. If the penal system is to be reformed in any meaningful way, the responsible authorities will have to institute wide-ranging changes.

Human Rights Watch therefore urges state and federal authorities to adopt the following reforms (some of which are already being implemented in various jurisdictions).

*Control Police and Guard Brutality*

- Public prosecutors should promptly and vigorously investigate allegations of abuse of inmates by military and civil police forces. In cases in which abuses are found, criminal prosecutions against the perpetrators should be instituted and aggressively pursued. The practice of impunity for abuses against prisoners must be ended. While investigations are ongoing, police and guards accused of homicide or other serious abuses should at a minimum be placed on unarmed duty.
- State authorities should revise procedures for investigating abuses against prisoners, allowing the investigative and evidence-gathering authorities (such as coroner's offices) greater independence from the police authorities.
- Only qualified civilian personnel should be employed in the prisons. States that rely upon civil and military police to staff the prisons should hire and train a professional corps of guards. In general, initial guard training should be expanded, and regular update training should be provided as well.
- State prison and police authorities should train police and guards regarding Brazilian and international norms mandating the humane treatment of prisoners and should caution them that officers engaging in unauthorized disciplinary sanctions, corrupt practices, or other abuses will be punished accordingly.

*Reduce Overcrowding*

- The National Congress should expand the possibilities of pretrial release by amending existing laws that bar it.
- Every state should establish the full panoply of open and semi-open penal facilities envisioned in the national prison law. Judges of penal execution, charged with supervising inmates' term of incarceration, should closely monitor inmates' eligibility for transfer to these less restrictive environments, ensuring that inmates are transferred there at the proper times.
- Judges should overcome their reluctance to sentence criminal offenders to such alternatives to prison as community service. Those offenders who pose a limited risk to society—including, in particular, prisoners convicted of nonviolent crimes—should be considered as appropriate candidates for the application of alternative sanctions.

*Limit Police Lockups to Short-Term Detention of Criminal Suspects*

- As is the practice in the state of Rio Grande do Sul, police lockups should only be used for the short-term detention of newly arrested criminal suspects. As soon as possible, but within a few days at most, inmates should be transferred out of police hands into public jails under the authority of state justice secretariats. At present, the police and prison authorities in every state where lockups are improperly relied upon for medium- and long-term detention should draft a plan as to how this goal is to be achieved, outlining a workable solution that can be fully implemented within a period of no more than two years. Government officials in Minas Gerais and São Paulo should adopt and implement such plans as a matter of top priority.

*Ameliorate Harsh Physical Conditions and Improve the Provision of Care*

- State prison and police authorities should renovate the physical infrastructure of penal facilities that have fallen into disrepair. The Porto Alegre Central Prison, in Rio Grande do Sul, the João Chaves Penitentiary in Natal, Rio Grande do Norte, and the Raimundo Vidal Pessoa Penitentiary in Manaus, Amazonas, should, in particular, be either renovated or demolished. In São Paulo, the Secretariat of Penal Administration should follow through on its stated plans to close down the Casa de Detenção and replace it with several smaller facilities. The

federal government should provide financial assistance to states to help fund these efforts.

- State prison and police authorities should ensure that all prisoners are provided basic necessities including mattresses and bedding, sufficient food and drinking water, and necessary sanitary supplies.
- State prison and police authorities should take immediate steps to correct the severe deficiencies in the provision of medical care to prisoners, by hiring more doctors and providing each penal facility with the necessary stock of basic medical supplies. Particular attention should be given to addressing the epidemic of HIV/AIDS among the prison population.
- Prisoners with contagious diseases should be segregated from healthy prisoners and given appropriate medical treatment.
- State prison and police authorities should seriously consider granting compassionate release to prisoners in the advanced stages of AIDS and other terminal illnesses. Rapid and efficient methods of identifying and processing such prisoners should be established so that they do not die in prison.
- State prison and police authorities should expand their provision of legal assistance to prisoners.

#### *Prevent Inmate-on-Inmate Abuses*

- State prison authorities should establish rational systems of classification in the prisons, so that nonviolent prisoners are separated from their more dangerous fellows and, as much as possible, placed in appropriate minimum security facilities.
- State prison and police authorities should hire sufficient numbers of guards to ensure the effective supervisions of inmates under their charge. To help secure and retain qualified personnel, and to avoid corruption, these guards should be offered salaries commensurate with the risks and responsibilities of supervising prisoners.
- Prisoners should never be assigned internal security responsibilities or be placed in positions of power over each other, even informally.

- State prison and police authorities should separate sentenced and unsentenced prisoners. Indeed, no sentenced prisoners should be held in pretrial detention facilities, particularly not in police lockups.

*Facilitate Prisoners' Contacts with Family and Friends*

- The National Congress should amend the national prison law to institute a uniform national policy covering intrusive searches of visitors, particularly strip searches and vaginal searches. Such a policy should carefully balance the need for prison security against visitors' rights to privacy and humane treatment, including appropriate safeguards against arbitrary, unnecessary, or discriminatory searches. Whenever possible less intrusive methods of searching visitors such as metal detectors should be employed.
- State authorities should formulate and enforce uniform conjugal visiting policies that do not discriminate against women prisoners, either as written or as applied.

*Encourage Rehabilitation and Provide Inmates with Meaningful Activities*

- State prison authorities should expand the number of work opportunities available in the prisons. In particular, they should strive to create jobs and training programs that equip prisoners with useful skills, in order to facilitate their employment upon release, and their successful reintegration into society.
- Educational opportunities in the prisons should also be expanded.
- State prison and police authorities should ensure that all prisoners are allowed at least one hour daily of outdoor exercise. In particular, prisoners held in holding and isolation cells should be guaranteed sufficient recreational opportunities. While steps should be taken to limit prisoners' stays in all police lockups, special care should be taken to ensure that prisoners are rapidly transferred out of lockups lacking outdoor exercise facilities.

*Facilitate the Monitoring of Conditions and Treatment*

- More judges of penal execution should be created, and existing vacancies should be filled. Regular national and regional meetings of judges of penal execution should be held to facilitate the exchange of information regarding prison conditions and the treatment of prisoners.



Representatives of the National Council on Criminal and Penitentiary Policy (NCCPP) should also attend such meetings.

- Judges should abide by the national prison law's requirement that they inspect the penal facilities within their jurisdiction on a monthly basis. In making such visits, they should speak individually with prisoners and lower-level prison staff outside the presence of the prison authorities. They should take particular care to speak privately with prisoners held in punishment cells and other isolation areas. Other monitoring mechanisms described in the national prison law, such as NCCPP, should also expand their programs of prison inspections.
- State legislatures should establish civilian review boards and police ombudspersons (*ouvidorias*), such as the one that exists in São Paulo, to oversee the police and review complaints of police abuse. These institutions should be provided with sufficient personnel and material support to allow them to perform their duties effectively. They should also be given full subpoena power, as well as full access to penal facilities and police stations, to allow them to conduct exhaustive investigations of abuse. Similar bodies should be established to monitor and report on prison abuses.
- To facilitate a greater understanding of women prisoners' situation and needs, the National Council on Criminal and Penitentiary Policy should ensure that the next national prison census disaggregates its information by gender. For example, statistics on the types of crimes committed should be provided separately with regard to men and women prisoners.
- The national prison census should include information on the number of prisoners killed while incarcerated, as it did in 1994 but failed to do in 1995. These numbers should be further disaggregated to indicate how many inmates were killed by prison guards and police and how many were killed by other inmates.
- National and state authorities should cooperate fully with the Inter-American Commission on Human Rights, assuming, in particular, full responsibility to remedy the human rights violations found by that body.
- State prison and police authorities should grant representatives of human rights and other nongovernmental organizations regular access to all penal

facilities and allow them to speak privately with inmates. The work of the Prison Ministry, in particular, should be encouraged. State prison and police officials, as well as federal officials from the Penitentiary Department and the National Council on Criminal and Penitentiary Policy, should meet regularly with representatives of such groups to hear their views on prison deficiencies.

## II. AN OVERVIEW OF THE PENAL SYSTEM

With some 170,000 inmates spread among some 512 prisons, thousands of police lockups, and numerous other facilities,<sup>18</sup> Brazil administers one of the ten largest penal systems in the world.<sup>19</sup> Its rate of incarceration—that is, its prisoner-to-population ratio—is relatively moderate, however. At roughly 108 inmates per 100,000 inhabitants, Brazil incarcerates fewer people per capita than many other countries in the region, and far fewer than the United States.<sup>20</sup>

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<sup>18</sup>Prison Ministry, “Current Situation of Prisoners in Brazil,” June 1998, p. 1.

<sup>19</sup>Only eleven countries—the United States, China, Russia, Brazil, India, Iran, Mexico, Rwanda, South Africa, Thailand and Ukraine—are known to confine over 100,000 prisoners. (The first three countries on this list, in fact, each incarcerate more than a million people.) It is difficult, however, to obtain precise and accurate information on prisoner numbers in certain countries; Cuba is one example.

<sup>20</sup>The incarceration rates in Chile, Colombia, Mexico, Venezuela and the United States as of 1997 were, respectively, 173, 110, 108, 113 and 645 inmates per 100,000 inhabitants.

### **National Legal Standards**

The Brazilian constitution contains explicit guarantees for the protection of the inmate population, among them the injunction that “[p]risoners’ physical and moral integrity shall be respected.”<sup>21</sup> Certain state constitutions have similar provisions. The constitution of the state of São Paulo provides, for example, that “state prison legislation will guarantee respect for the United Nations Standard Minimum Rules for the Treatment of Prisoners [and] the [right to] defense in cases of disciplinary infractions.”<sup>22</sup>

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<sup>21</sup>Constitution of Brazil, art. 5, sec. XLIX (translation by Human Rights Watch). Echoing these concerns, the Brazilian Penal Code states that prisoners “retain all rights, except those that are not included because of the loss of liberty,” and that the authorities are under “the obligation to respect [prisoners’] physical and moral integrity.” Penal Code, art. 38 (translation by Human Rights Watch).

<sup>22</sup>São Paulo Constitution, art. 143, sec. 4 (on prison policy) (translation by Human Rights Watch).

The most detailed statement of Brazil's prison rules—or at least of its aspirations for the prison system—can be found in the Law of the Execution of Sentences (Lei de Execução Penal, hereinafter the “national prison law”). Adopted in 1984, the national prison law is an extremely modern piece of legislation; it evidences a healthy respect for prisoners' human rights and contains numerous provisions mandating individualized treatment, protecting inmates' substantive and procedural rights, and guaranteeing them medical, legal, educational, social, religious and material assistance. Viewed as a whole, the focus of the law is not punishment but instead the “resocialization of the convicted person.”<sup>23</sup> Besides its concern for humanizing the prison system, it also invites judges to rely on alternative sanctions to prisons such as fines, community service, and suspended sentences.

An even more obviously aspirational document is the Minimum Rules of the Treatment of Prisoners in Brazil (Regras Mínimas para o Tratamento do Preso no Brasil), which dates from 1994.<sup>24</sup> Consisting of sixty-five articles, the rules cover such topics as classification, food, medical care, discipline, prisoners' contact with the outside world, education, work, and voting rights. They are largely modeled after the U.N. Standard Minimum Rules and are officially described as an “essential guide for all those who work in prison administration.”<sup>25</sup>

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<sup>23</sup>Mirabete, *Execução Penal*, p. 34 (translation by Human Rights Watch). In its first article, the law articulates the goal of facilitating “the harmonious social integration” of prisoners. Lei do Execução Penal, art. 1 (translation by Human Rights Watch).

<sup>24</sup>Conselho Nacional de Política Criminal e Penitenciária, Resolução No. 14, de 11 de novembro de 1994.

<sup>25</sup>Ministry of Justice, Conselho Nacional de Política Criminal e Penitenciária,

**Penal Facilities**

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*Regras mínimas para o tratamento do preso no Brasil* (Brasília: Conselho Nacional de Política Criminal e Penitenciária, 1995), p. 9 (quoting Minister of Justice Nelson Azevedo Jobim) (translation by Human Rights Watch).

Brazil's inmate population is distributed among several categories of facilities, including penitentiaries and prisons (*penitenciárias* and *presídios*), jails (*cadeias públicas* and *cadeiões*), houses of detention (*casas de detenção*), and police precinct lockups (*distritos policiais* or *delegacias*).<sup>26</sup> The national prison law mandates that various categories of facilities be identifiable by specific characteristics and hold specific kinds of prisoners. In practice, however, these categories are much more malleable and interchangeable than the law suggests.

In theory, a prisoner's route through the penal system should follow a predictable course: Upon arrest, the criminal suspect should be brought to a police lockup for booking and initial detention. Within a few days, if he is not released, he should be transferred to a jail or house of detention to await trial and sentencing. If convicted, he should be transferred to a facility specifically for convicted prisoners.

He might spend his first weeks or months after conviction in an observation center, where a corps of trained personnel study his behavior and attitudes—interviewing him, giving him personality and “criminological” exams, and obtaining a host of information about him—in order to select the prison or other penal facility that is best equipped to reform his criminal tendencies.

Under the national prison law, facilities for convicted prisoners fall into three basic categories: closed facilities, i.e., prisons; semi-open facilities, which include agricultural and industrial colonies; and open facilities, i.e., half-way houses. A convicted prisoner would be transferred to one of these facilities in accordance with his length of sentence, type of crime, perceived dangerousness, and other characteristics. If he begins his sentence in a prison, however, he should normally be transferred to a less restrictive type of facility before he serves out his

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<sup>26</sup>Not all of these types of facilities are enumerated in Brazil's national prison law, but they are all nonetheless fairly common. Other less common penal facilities that are mentioned in the prison law include the agricultural or industrial colony (*colônia agrícola ou industrial*), the observation center (*centro de observação*); the half-way house (*casa do albergado*), and the custodial and psychiatric hospital (*hospital de custódia e tratamento psiquiátrica*).

term, allowing him to become accustomed to greater freedom—and, ideally, to gain useful skills—prior to his release into society.

As this report will describe, the reality in Brazil is far removed from the law's prescriptions. To begin with, the country's penal system lacks the physical infrastructure needed to ensure compliance with the law. In many states, for example, half-way houses simply do not exist; elsewhere, they lack sufficient capacity to cope with inmate numbers.<sup>27</sup> Agricultural colonies are similarly rare. In fact, as will be described at greater length below, there are not even nearly enough prison spaces to handle the number of incoming inmates, forcing many convicted prisoners to remain for years in police lockups.

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<sup>27</sup>1995 Prison Census, table XXI, p. 46.



Brazil's penal facilities are spread all around the country but are more concentrated in and around urban areas and in heavily populated regions. São Paulo, Brazil's most populous state (which encompasses the city of São Paulo, its largest city), has by far the largest inmate population. Indeed, São Paulo alone holds some 40 percent of the country's prisoners, a larger inmate population than found in most Latin American countries.<sup>28</sup> Other states with significant inmate populations include, in descending order of magnitude, Rio de Janeiro, Minas Gerais, Rio Grande do Sul, Paraná, and Paraíba.

Eight of Brazil's twenty-six states, in contrast, each confine fewer than a thousand prisoners. Included among them are several states with the lowest rates of incarceration; in other words, their small prison populations not only reflect their small number of inhabitants but also that they imprison a relatively small proportion of people. Alagoas, for example, had an incarceration rate of 17.8 prisoners per 100,000 population in 1995—the lowest rate in Brazil—so that it confined only 478 people, even though it ranks in the middle among Brazilian states in terms of total population.<sup>29</sup>

### **Responsible Authorities**

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<sup>28</sup>Equally notable is São Paulo's high rate of incarceration—some 199 inmates per 100,000 inhabitants—which is above that of most countries in the region.

<sup>29</sup>1995 Prison Census, table I, p. 17.

Brazil does not, in fact, have one penal system but many. Like the United States and other federal countries, though unlike most Latin American countries, Brazil's prisons, jails and police lockups are administered by its state governments.<sup>30</sup> That is, each of the twenty-six state governments, as well as the government of the Federal District, manages a separate set of penal facilities with a distinct organizational structure, independent policies and, in some instances, a supplementary prison law.<sup>31</sup> The independence that states enjoy in setting penal policy is reflected in the wide variation among states in such diverse matters as their levels of prison overcrowding, monthly costs per inmate, and guards' salaries.<sup>32</sup>

The structure of state penal systems does not follow a rigid model. Most commonly, the state executive branch, which is headed by the state governor, manages the prison system via its secretariat of justice, while its secretariat of public security, the organ in charge of the police, is generally in control of police lockups. (Facilities nominally called jails (*cadeias públicas* or *cadeiões*), may fall under either secretariat.<sup>33</sup>) There are many exceptions to this general rule, however. In

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<sup>30</sup>The vast majority of countries in the Western Hemisphere—including Bolivia, Chile, Colombia, Peru, and Venezuela—have centralized prison systems under the authority of the Ministry of Justice or, less commonly, the Ministry of the Interior. Argentina, Brazil, Canada, Mexico, and the United States are notable exceptions to the prevailing model.

The Brazilian and U.S. penal systems are not precisely parallel in structure, however. Brazil relies upon a national criminal code, so that every state applies the same substantive criminal law, whereas each state in the United States has its own criminal code. Besides the broad spectrum of state crimes, the United States has also criminalized certain activities under its federal law; it thus maintains a federal prison system, in addition to the separate prison systems of each of the fifty states, to hold prisoners convicted of these crimes.

<sup>31</sup>The Brazilian constitution allows states to adopt their own supplementary prison legislation, but very few states have done so. Constitution of Brazil, art. 24, sec. 2. Minas Gerais, which adopted a state prison law in 1994, is one of the exceptions. Lei Estadual n. 11.404, de 25 de janeiro de 1994. We were informed by prison authorities in Paraíba that a similar law was passed in that state in 1988, but they were unable to provide us a copy of it. Human Rights Watch interview, Adalberto Targino, Secretário da Cidadania e Justiça, João Pessoa, Paraíba, December 9, 1997. In the state of Rio Grande do Sul, in southern Brazil, a set of administrative regulations governing the prisons was issued in 1992. Regimento da Disciplina Prisional do Estado do Rio Grande do Sul, December 12, 1992.

<sup>32</sup>See 1995 Prison Census, tables XVIII, XXII, and XVIII, pp. 42-48.

<sup>33</sup>According to the national prison law, jails are supposed to be run by state prison

the state of São Paulo, most notably, the prison system has its own secretariat, as recommended in the national prison law.<sup>34</sup> In Amazonas state, in contrast, both prisons and police lockups were until recently under the control of the Secretariat of Public Security.

### **The role of judges**

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authorities for the detention of prisoners awaiting trial. Lei de Execução Penal, art. 102. Yet state public security secretariats also commonly describe certain facilities under their jurisdiction as jails, particularly the larger ones. In the state of São Paulo, for example, most of the penal facilities located outside of the capital, which are administered by the public security secretariat, are called jails. Yet for the sake of simplicity, except where greater specificity is required, this report will generally refer to facilities under the control of the state prison system as prisons, and facilities under the control of the state public security secretariat as police lockups.

<sup>34</sup>Lei de Execução Penal, art. 73.

Under the national prison law, judicial responsibilities with regard to prisoners do not end at sentencing. To the contrary, judges have a central obligation to conduct prisoners through the various stages of the penal system. Among their duties are evaluating and ruling upon inmates' requests for transfer to less restrictive prison settings (e.g. from closed to semi-open facilities) or simply to other prisons; authorizing furloughs, early releases, and suspended sentences; and converting one type of sentence to another.<sup>35</sup>

As with their executive branch structures, states enjoy a degree of freedom in establishing their systems of judicial supervision of prisoners, resulting in some variation from state to state. Many states have established a specialized post called the judge of penal execution (*juiz da vara de execução penal* or *juiz da vara de execuções criminais*) to focus specifically on prisoners, either full-time or as a part of his workload. São Paulo, with its enormous inmate population, has a substantial number of these judges. In areas without such specialized positions, the judge who sentenced the prisoner remains responsible for handling his case during his time in prison. Pretrial detainees are normally supervised by the judge presiding over their criminal cases, but at least one state, São Paulo, has established the post of the judicial police monitor (*juiz corregedor da policia*) to supervise prisoners held in facilities under the control of the public security secretariat.

#### **The federal role**

State authority over prisons does not mean that the federal government is entirely absent from the field. Within the Ministry of Justice are two federal agencies concerned with prison policy, the Penitentiary Department (Departamento Penitenciário) and the National Council on Criminal and Penitentiary Policy (Conselho Nacional de Política Criminal e Penitenciária). These two groups, which until recently shared a common president, have different areas of interest: the former is primarily charged with practical matters such as the funding of new prison construction, while the latter focuses on guiding policy at the intellectual level.

One important contribution of the National Council is the research and publication of the national prison census. Based on surveys collected from state prison authorities, the census contains useful information and statistics on prisoners, prison staff, incarceration costs, and the state of the prison infrastructure in Brazil. It is updated every two years. The most recent one was released to the press in

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<sup>35</sup>Lei de Execução Penal, art. 66.

early 1998 but otherwise has not yet been made public. The National Council also recommends draft legislation on prison and related issues to remedy problems such as overcrowding.

### **Monitoring of Treatment and Conditions**

The Standard Minimum Rules emphasize the need for independent and objective monitoring of penal facilities.<sup>36</sup> A great many prison abuses occur because prisons are closed institutions subject to little outside scrutiny. Such abuses are much less likely when officials know that outsiders will be inspecting their facilities and that abuses will be denounced. Regular access to penal facilities by outside monitors—from judges to national and international human rights groups to legislative commissions—can thus play an immensely positive role in preventing or minimizing human rights abuses.

#### **Monitoring under the national prison law**

The national prison law signals recognition of this point by establishing various mechanisms for the outside monitoring of penal facilities. In all, six groups are assigned prison monitoring functions under the law: the judges of penal execution, the National Council on Criminal and Penitentiary Policy, the Penitentiary Department, public prosecutors (Ministério Público), local prison councils (Conselho Penitenciário), and local community councils (Conselho da Comunidade).<sup>37</sup> Three among these—judges, prosecutors, and local community councils—are supposed to inspect the penal facilities within their jurisdiction on a monthly basis, while the remaining bodies have more loosely defined monitoring duties.

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<sup>36</sup>Standard Minimum Rules, rule 55; Penal Reform International, *Making Standards Work* (The Hague: Penal Reform International, 1995), pp. 161-65.

<sup>37</sup>Lei de Execução Penal, art. 64, sec. VIII; art. 66, sec. VII; art. 68, para. único; art. 70, sec. II; art. 72, sec. 11; art. 81, sec. 1.

Despite the apparent profusion of responsible authorities, many of the penal facilities we visited had not received a visit from *any* of these groups in months, or even years.<sup>38</sup> In facilities that had received the occasional visit, we rarely found prisoners who could remember seeing or speaking with an outside monitor. To a large extent, the lack of effective monitoring, particularly on the part of judges and prosecutors, is due to their insufficient numbers. In all of Minas Gerais—a state with over 12,000 prisoners—there are only two courts of penal execution: the principal one, in the capital, has only one judge and three prosecutors.<sup>39</sup>

In part, the failure of outside monitoring mechanisms reflects other unachieved aspirations of the national prison law. For example, the local community councils envisioned under the law—conceived as a meaningful method of encouraging community contact and involvement with prisoners—mostly do not exist.<sup>40</sup> The National Council occasionally conducts prison inspections—it made

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<sup>38</sup>The Women's Penitentiary in São Paulo—which, with its nearly 400 inmates, is the largest women's facility in the country—presents a good example of the problem. We noted from the visitors' logbooks that no judicial inspections had occurred between September 1992 and January 1997, while there were three such visits in 1997. During roughly the same period, between October 1991 and May 1996, not a single prosecutor had visited, and there was no indication of visits from other monitoring bodies. (In addition to the logbooks, the director verbally confirmed these dates with us.) Human Rights Watch interview, Penitenciária Feminina, São Paulo, November 25, 1997.

<sup>39</sup>Comissão Parlamentar de Inquérito para, no prazo de 120 dias, Apurar Diversas Denúncias que Envolvem o Sistema Penitenciário do Estado, *Relatório Final* (Belo Horizonte, Minas Gerais: Assembléia Legislativa do Estado de Minas Gerais, 1997), p. 29 (hereinafter "Minas Gerais 1997 CPI report").

<sup>40</sup>Human Rights Watch interview, coordinator, Conselho Nacional de Política Criminal e Penitenciária, Brasília, December 18, 1997. The example of Minas Gerais is instructive:

[T]he Community Council is not showing the results that legislators hoped for . . . In almost all of the districts, they do not even exist. According to the Judge of Penal Execution in Belo Horizonte, that council does not function because "in a city the size of Belo Horizonte, it would require a great deal of effort, in the first place, as we're dealing with an area that no one, with rare exceptions, is interested in . . . Our society discriminates against convicts . . ."

Minas Gerais 1997 CPI report, p. 35.

approximately eight such inspections in 1997 and at least fifteen in 1998, as of this writing<sup>41</sup>—as do the other monitoring bodies, but given the large number of penal facilities in the country, these visits have a negligible impact.

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<sup>41</sup>The council reportedly announced that in April through June 1998 it would be inspecting all of Brazil's prisons. "Ministério vê injustiça," *Folha de S. Paulo*, March 17, 1998. Because of resource constraints, these plans were scaled back considerably. Prisons in three states—Amazonas, Amapá, and Roraima—were visited as part of the national tour of inspection, while earlier in the year the council visited seven prisons in the state of Pará. All four of these states have small inmate populations (in fact, Roraima had only 203 prisoners in the whole state as of May 1998). The council released a report based on these inspections in July 1997.

Judges appear to be the most effective of these monitoring mechanisms. For one thing, they enjoy significantly greater power than the other bodies to put a stop to abuses, being specifically authorized to “interdict, in all or in part, any penal establishment that is functioning under inadequate conditions or infringing the provisions of [the national prison law].”<sup>42</sup> Although some judges are all too indifferent to the plight of inmates under their supervision, others have been commendably active in trying to improve prison conditions.

A positive example of such judicial activism is a magistrate in Porto Alegre, Rio Grande do Sul, who has issued orders to limit prison overcrowding, grant conjugal visits to women prisoners (visits that male prisoners had long been granted), and protect the physical integrity of threatened inmates (one such measure was to separate prisoners convicted of rape, who are often attacked and even killed by other prisoners, from the rest of the inmate population).<sup>43</sup> A judge in Brasília, similarly, received national media attention in 1997 for daring to release prisoners

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<sup>42</sup>Lei de Execução Penal, art. 66, para. VIII (translation by Human Rights Watch). Judges do on occasion exercise their power to close down facilities. A couple of the worst São Paulo jails were closed, as were two wings of the Boa Vista public jail in the state of Roraima.

<sup>43</sup>Human Rights Watch interview, Judge Marco Antônio Scarpini, Porto Alegre, Rio Grande do Sul, December 1, 1997.



from inhumanly crowded police lockups.<sup>44</sup> He later told Human Rights Watch that his efforts to improve the lot of prisoners were poorly received, both publicly and privately, and that he was scorned as the “bandits’ best friend.”<sup>45</sup>

Yet judicial efforts to improve detention conditions are not always effective. A Rio de Janeiro judge, for example, once ordered the state government to empty out an overcrowded police lockup holding thirty-four prisoners in three jail cells. The judge threatened to impose a daily fine of \$11,600 reais (about U.S. \$10,600) if the state did not comply with his order within fifteen days. Responding to the ruling, Rio de Janeiro’s governor, Marcello Alencar, stated that the judgment would be ignored: “Legal standards are one thing, reality is another. To comply with [the national prison law] the police would be unable to arrest anybody. Let’s be realistic.”<sup>46</sup>

#### **Legislative monitoring**

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<sup>44</sup>See, e.g., Ricardo Amorim and Fabiana Melo, “Superlotação faz juiz libertar presos no DF,” *Folha de S. Paulo*, August 23, 1997.

<sup>45</sup>Human Rights Watch interview, Judge George Lopes Leite, Brasília, December 19, 1997.

<sup>46</sup>“Juiz manda esvaziar a carceragem de delegacia,” *O Globo* (Rio de Janeiro), July 4, 1997.

Prison conditions are also monitored by certain state and federal legislative bodies, including official human rights commissions. At the federal level, the human rights commission of the legislative assembly has inspected a number of prisons in the states of Mato Grosso, Goiás, Espírito Santo, Paraíba, Rio de Janeiro and Rio Grande do Norte in the last few years, incorporating a critical analysis of the country's prison situation into its annual report.<sup>47</sup> Among state bodies, the work of the legislative human rights commission of Rio Grande do Sul is particularly notable; its annual report contains an extensive chapter on prison conditions with numerous reform recommendations.<sup>48</sup>

The frequency of prison riots, escapes, hostage-taking incidents, and other violent occurrences in recent years, encouraging the public perception of a prisons crisis, has inspired ad hoc legislative investigations of the problem. These investigations have resulted in several critical reports, such as the 1992 legislative report on the Carandiru prison massacre, the 1993 report of the Parliamentary Commission of Investigation of the National Prison System, the 1996 report of the

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<sup>47</sup>Human Rights Watch interview, Pedro Wilson Guimarães, president of the Human Rights Commission of the Legislative Assembly, Brasília, December 18, 1997.

<sup>48</sup>Comissão de Cidadania e Direitos Humanos, Assembléia Legislativa, Rio Grande do Sul, *Relatório Azul: Garantias e Violações dos Direitos Humanos no Rio Grande do Sul, 1996* (Porto Alegre, Rio Grande do Sul: Assembléia Legislativa, 1997), pp. 154, 183-218, 382-84.

Parliamentary Commission of Investigation of the Prisons of the State of São Paulo, and the 1997 report of a parliamentary commission of investigation in Minas Gerais.<sup>49</sup> Some of these reports have had an important impact in improving abusive situations.

#### **Ombudsmen**

A very small number of jurisdictions have established ombudsmen to monitor and report on the treatment of inmates held in prisons or police lockups. These include the ombudsman for police in the state of São Paulo and the state prison ombudsman in Pernambuco. The São Paulo police ombudsman, in particular, has proven to be a vigorous and effective advocate, dedicated to eliminating impunity for police abuses.

#### **Independent organizations**

The primary outside organization involved in prison monitoring is the Catholic Prison Ministry of the National Conference of Bishops of Brazil (CNBB). With priests and other volunteers based all over the country, the Prison Ministry provides religious assistance to inmates while also monitoring conditions and treatment. Representatives of the Prison Ministry, because they have gained inmates' trust, often serve as negotiators during prison rebellions.

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<sup>49</sup>Relatório Final da Comissão Parlamentar de Inquérito Constituída com a Finalidade de Apurar os Fatos Ocorridos no Pavilhão 9 da Casa de Detenção de São Paulo, no dia 2 de outubro de 1992; "Relatório da Comissão Parlamentar de Inquérito - CPI sobre o Sistema Penitenciário Nacional," in *Revista do Conselho Nacional de Política Criminal e Penitenciária*, Vol. 1, No. 4, July/Dec. 1994, p. 11; Deputado Wagner Lino, *Relatório Final da Comissão Parlamentar de Inquérito sobre os Estabelecimentos Prisionais do Estado de São Paulo* (São Paulo: Assembléia Legislativa do Estado de São Paulo, 1996); Minas Gerais 1997 CPI report.

Although the national prison law guarantees inmates the right to religious assistance, the Prison Ministry is not always granted full prison access. Various state prison and police authorities have denied the ministry entry to all or some of their penal facilities or to specific areas of facilities, such as punishment cells. In São Paulo, for example, where the Secretariat of Public Security has given the ministry full authorization to visit all jails and police lockups under its power, the prison authorities have been less open. At times, the ministry has been denied access to prisoners in punishment cells, in its view because the authorities are “afraid we will find proof of torture and go public with it.”<sup>50</sup> (Indeed, the Prison Ministry has long served as a key source of information on prison conditions in Brazil, relied upon by the Inter-American Commission on Human Rights and numerous legislative bodies, among others.)

Culminating its prison reform efforts, in 1997 the Prison Ministry organized a “fraternal campaign” aimed at awakening the public conscience to the plight of Brazilian inmates, collaborating with public officials to remedy conditions, and encouraging the use of alternative sanctions.<sup>51</sup> An important aspect of this campaign was its focus on the critical problem of public indifference to prison abuses.

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<sup>50</sup>Catholic Prison Ministry, “Current Situation of Prisoners in Brazil,” June 1998, p. 6.

<sup>51</sup>See Conferência Nacional dos Bispos do Brasil, *A fraternidade e os encarcerados: Cristo liberta de todas as prisões* (São Paulo: Editora Salesiana Dom Bosco, 1997), pp. 13-16.

Another important monitoring body is the Bar Association of Brazil (Ordem dos Advogados do Brasil). Besides organizing the provision of pro bono legal assistance to prisoners, often in the form of intensive group visits (*mutirão*) by lawyers, the association has been active in drawing attention to prison abuses. The association was among the first to report on the Carandiru prison massacre, for example, using its power and prestige to advocate for a full and impartial investigation of the event. More recently, it called for the prosecution of the police officers who killed eight inmates at Roger prison in João Pessoa, Paraíba.<sup>52</sup>

Finally, Brazil has many local human rights groups that monitor prison conditions, although their success in obtaining access to prisons is mixed.

#### **International monitoring**

The Inter-American Commission on Human Rights, a branch of the Organization of American States that is charged with promoting and protecting human rights in the region, has monitored prison conditions in Brazil for nearly three decades. It accepted its first complaint regarding the country's prisons in 1970 and has, since that time, adjudicated a number of prominent cases involving the abuse of inmates, including the forty-second precinct case in 1989 and the 1992 Carandiru case (see discussion below).

In addition to its adjudicative function, the commission occasionally makes on-site visits to countries in order to obtain first-hand information on alleged abuses. For many years, Brazil refused to allow the commission to conduct such a visit within its territory, despite repeated requests.<sup>53</sup> Based on information received

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<sup>52</sup>Adelson Barbosa, "OAB pede nomes de acusados de massacre," *Folha de S. Paulo*, August 21, 1997.

<sup>53</sup>Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Brazil* (Washington, D.C.: Organization of American States, 1994), Chapter XI, p. 6.

from the Prison Ministry and other sources, the commission nonetheless continued to report on prison abuses. In 1995, in a welcome display of openness, the Brazilian government finally agreed to host an on-site visit, which took place in December of that year. The results of the visit were published in a 1997 report that included a chapter on conditions of detention.<sup>54</sup>

### **The Inmate Population**

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<sup>54</sup>Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Brazil* (Washington, D.C.: Organization of American States, 1997).

As is true everywhere, the inmate population in Brazil is largely young, poor, male, and uneducated. Prison surveys indicate that over half of all inmates are under age thirty; 95 percent are poor, 95 percent are male, and two-thirds have less than an eighth-grade education (some 12 percent of them are illiterate).<sup>55</sup> Because of their poverty and marginal social backgrounds, they and their families have scant political power, which translates into little ability to garner the necessary political support to put an end to prison abuses.

Inmates' most common crime is robbery, with some 35 percent of inmates being held on or convicted of robbery charges; other common crimes are theft, homicide, and drug trafficking.<sup>56</sup> Of the states for which information on race is available, it appears that the racial makeup of the prison population does not differ very significantly from that of the country as a whole, except that blacks are overrepresented: roughly half of all prisoners are white, while 17 percent are black and 30 percent are of mixed origins (*mulato*).<sup>57</sup> Only about a thousand foreigners are held, including prisoners from Bolivia, Nigeria, Uruguay, South Africa, and Argentina.

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<sup>55</sup>1995 Prison Census, table IX, p. 29; 1994 Prison Census, pp. 37, 43-44, 63.

<sup>56</sup>1995 Prison Census, tables XII and XIII, pp. 33-34.

<sup>57</sup>"Perfil dos presos no Brasil," *Folha de S. Paulo*, March 20, 1998 (based on 1997 Prison Census); see also ILANUD, "Sistema penitenciário: mudanças de perfil dos anos 50 aos 90," *Revista do ILANUD*, No. 6 (1997), pp. 12-14 (noting that, according to 1991 census figures, blacks made up 3.6 percent of the resident population of São Paulo but 16 percent of the prison population).

### **III. OVERCROWDING, ALTERNATIVE SANCTIONS, AND PRISON CONSTRUCTION**

Severe overcrowding is perhaps the most basic, and most chronic, problem plaguing Brazil's penal system. Over a decade ago, national prison authorities estimated that the country's prisons needed an additional 50,934 spaces to accommodate the existing inmate population.<sup>58</sup> Since then, despite some recent efforts to handle the problem, the disparity between available capacity and actual inmate numbers has only worsened. By 1997, with the growth in inmate numbers, the deficit in prison capacity was officially estimated at 96,010.<sup>59</sup> In other words, for every space that exists in the prisons, there are 2.3 prisoners to lay claim to it.

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<sup>58</sup>Ministério da Justiça, Departamento Penitenciário Nacional, Estimativa do "Déficit" de Vagas do Sistema Penitenciário do Brasil, December 1987.

<sup>59</sup>1997 Prison Census.



True prison capacity is difficult to estimate objectively and, as a result, capacity figures are notoriously easy to manipulate,<sup>60</sup> but there is no doubt that almost all of Brazil's penal facilities are woefully overpopulated. As every prison administrator is well aware, crowded prisons are dangerous ones: heightened inmate tensions lead to prisoner-on-prisoner violence, escape attempts, and attacks on guards. Unsurprisingly, a substantial proportion of the incidents of rioting, hunger striking and other forms of protest occurring in the country's penal facilities is directly attributable to overcrowding. In many instances, particularly in the state of São Paulo, inmates have rioted simply to demand that they be transferred to a less crowded facility, typically wanting to leave a cramped police lockup for a more spacious prison.

If numbers from recent years are any indication, Brazil's inmate population will continue to increase and, most probably, to outstrip the expansion in prison capacity. The deficit in available capacity grew 27 percent between 1995 and 1997, as the total capacity of the prisons increased by only 8.1 percent during that period.<sup>61</sup>

### Unserviced Sentences

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<sup>60</sup>Although some countries have established national standards on the topic, there are no universally accepted objective standards setting out the amount of space necessary per inmate. Existing international standards, such as the Standard Minimum Rules, simply mandate that prisoners be provided sufficient space to meet the requirements of health and human dignity. Complicating any effort to calculate minimum space requirements is the fact that whether a given amount of living space is adequate will vary according to a number of factors, including the amount of time prisoners spend outside of their cells, the cells' air circulation, etc. Cultural norms regarding privacy may also be relevant. Without strict numerical guidelines, however, prison capacity estimates are extremely malleable. See, for example, "Ohio 'Eases' Prison Overcrowding," *Prison Legal News*, Vol. 7, No. 11 (November 1996) (describing how the prison system of the U.S. state of Ohio changed its rules on minimum space allowances, thereby inflating its rated capacity and "easing" overcrowding). Indeed, Human Rights Watch inspected a few facilities in Brazil whose stated capacities, as provided by the wardens, were clearly exaggerated.

The national prison law does mandate that individual cells be at least six square meters (approximately sixty-five square feet) in size. In violation of the prison law, however, most Brazilian prisoners live in group dormitories; even those who live in so-called individual cells nearly always share them with one or more cellmates.

<sup>61</sup>"Perfil dos presos . . ." *Folha de S. Paulo*, March 20, 1998.

The shortage of prison space is particularly dramatic when examined in light of the enormous number of criminal defendants who have evaded serving their prison sentences, leaving these sentences pending. The federal Ministry of Justice estimated in 1994 that there were 275,000 such unserved sentences (*mandados incumpridos*), significantly more than the number of prisoners in confinement.<sup>62</sup> In Brasília alone, the public prosecutor's office announced this year that of the 15,077 prison sentences handed down in his jurisdiction over the past three years, only one-third of them have actually been served; defendants in the remaining cases are fugitives.<sup>63</sup> Obviously, were these missing convicts suddenly to be found and confined, the prisons would burst.

The real number of fugitives from prison is difficult to estimate, however, as state and federal figures include multiple sentences for a single defendant, defendants who have died, and cases in which the statute of limitations has expired. One prisons expert advises that, at minimum, "the existing numbers should be divided by five" in order to take these factors in account.<sup>64</sup> Even so, the number of additional inmates these sentences represent could place a significant burden on an already overwhelmed penal system.

### **Detention Before Trial**

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<sup>62</sup>1994 Prison Census, p. 64.

<sup>63</sup>"Brasília está sem vaga nas prisões e policiais nas ruas," *O Globo*, February 11, 1998.

<sup>64</sup>Human Rights Watch interview, Julita Lemgruber, Rio de Janeiro, December 30, 1997.

An important contributor to overcrowding in Brazil's prisons is the confinement of unsentenced prisoners, who constitute roughly one-third of the inmate population.<sup>65</sup> Because such persons have not been convicted of any crime, they are presumed innocent under the law, and some proportion of them will indeed be acquitted of the crime for which they are held despite having already served time in confinement.

Under international human rights standards, defendants should normally be released pending trial. Articulating this principle, Article 9(3) of the International Covenant on Civil and Political Rights (ICCPR) provides in relevant part that: "It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial."<sup>66</sup> In interpreting this

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<sup>65</sup>According to the latest census, nearly 40 percent of prisoners have not received a definitive sentence, but this figure includes some prisoners who were convicted at the trial court level and are appealing the conviction. "Presos sem condenação somam quase 40%," *Folha de S. Paulo*, March 20, 1998. Again, the proportions vary greatly from state to state. In Amazonas, a northern state where the justice system is particularly overwhelmed, more than two-thirds of the inmates confined at the principal men's prison in late 1996 were unsentenced. "Situação da penitenciária masculina," *Em Tempo* (Manaus), November 10, 1996.

<sup>66</sup>*See also* General Comment No. 8 of the Human Rights Committee on the International Covenant on Civil and Political Rights, Art. 9 (Sixth Sess. 1982), U.N. Doc. A/40/40 (stating "[p]re-trial detention should be an exception and as short as possible").

provision, the U.N. Human Rights Committee has ruled that detention before trial should be used only to the extent it is lawful, reasonable, and necessary. Necessity is defined narrowly: “to prevent flight, interference with evidence or the recurrence of crime” or “where the person concerned constitutes a clear and serious threat to society which cannot be contained in any other manner.”<sup>67</sup> The weighing of the relevant criteria for a finding of necessity requires an individualized determination.

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<sup>67</sup>*Hugo van Alphen v. the Netherlands* (No. 305/1988) (July 23, 1990), Official Records of the General Assembly, Forty-fifth Session, Supplement No.40 (A/45/40), vol. II., annex IX, sect. M., para. 5.8.

Pretrial detention in Brazil is not always ordered in conformity with these exacting standards; indeed, many criminal defendants do not even have the right to request provisional liberty. The Law of Heinous Crimes, passed in 1990, bars judges from granting pretrial release to defendants charged with any of a number of crimes, including homicide, rape, and armed robbery.<sup>68</sup>

Compounding the effects of excessive pretrial detention are lengthy criminal proceedings, during which the defendant remains incarcerated. The average length of trial proceedings seems to vary greatly from state to state in Brazil, and we were unable to obtain national statistics on this topic, but our visits to the prisons convinced us that some unsentenced prisoners are confined for years. The problem seems to be particularly severe in the north and northeast of the country. At the Campina Grande prison in the state of Paraíba, we met one unsentenced prisoner who had been incarcerated for three years and nine months. In Natal, Rio Grande do Sul, we spoke to another who had been preventively detained for two years and four months without a decision in his case. In Manaus, Amazonas, a number of prisoners reportedly languished for several years in pretrial detention until a prison rebellion drew attention to the problem. Even without concrete numbers on the average length of trial proceedings it is clear, as one member of the National Council on Criminal and Penitentiary Policy explained, that the substantial numbers of unsentenced prisoners in Brazil are “proof of the slowness of justice.”<sup>69</sup>

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<sup>68</sup>Lei dos Crimes Hediondos, art. 2(II).

<sup>69</sup>“Presos sem condenação . . . ”

Besides favoring pretrial release, international human right norms specifically bar long periods of pretrial detention.<sup>70</sup> Trial proceedings lasting several years have been found to be excessive by the U.N. Human Rights Committee and other authoritative bodies.<sup>71</sup>

### **Failure of Sentence Progression**

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<sup>70</sup>ICCPR, art. 9(3); American Convention, art. 7(5).

<sup>71</sup>In *Dermitt v. Uruguay*, 71 I.L.R. 354 (1982), the Human Rights Committee found a delay of two years between arrest and judgment to violate the relevant provisions of the ICCPR. In *Fillastre v. Bolivia* (No. 336/1988) (November 6, 1991), U.N. Doc. CCPR/C/43/D/336/1988 (1991), the committee found violations because trial proceedings lasting over four years had not yet resulted in a verdict. See also *Giménez v. Argentina* (No. 11.245) (March 1, 1996) (OEA/Ser.L/V/II.91) (Inter-American Commission finds a violation of right to trial within a reasonable time where the defendant was detained more than five years pending a judgment).

A fundamental concept undergirding numerous provisions of Brazil's national prison law is that of the individualization and progression of the prisoner's term of confinement. What this means in concrete terms is that, first, the sentencing judge should consider the defendant's individual circumstances in imposing the sentence. Thus, for example, the question of whether a prisoner is a recidivist or a first-time offender is relevant in deciding whether he is sentenced to a closed prison, to an open facility, or to community service. Second, the judge of penal execution should continually monitor the prisoner's case while he is imprisoned, adjusting the terms of sentence according to the prisoner's conduct. Normally, a prisoner who begins his sentence in a closed prison should, after he has served part of his sentence, be transferred to a semi-open facility and from there, after further time has passed, to an open facility, and finally to release into society.<sup>72</sup> In sum, this view of incarceration sees it as a dynamic process, not simply a fixed term of years.

The prison law's prescriptions regarding sentence progression have not been translated into practice, however. Most prisoners never see an open- or semi-open facility; instead they serve their entire sentence in a closed prison, or even a police lockup. Human Rights Watch interviewed many such prisoners, who although eligible for transfer to less restrictive forms of incarceration remained in prison. In May 1998, Brazil's Ministry of Justice estimated that 11.2 percent of convicted prisoners in Brazil—or more than 11,000 prisoners—were eligible for sentence progression, though few were benefiting from it.<sup>73</sup>

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<sup>72</sup>Lei de Execução Penal, art. 112 (stating that sentences of confinement “will be executed in a progressive form, including transfer to a less restrictive regime, to be determined by the judge, when the prisoner has completed at least one-sixth of his sentence in the previous regime and his behavior warrants such progression”) (translation by Human Rights Watch).

<sup>73</sup>“Brasil tem 11 mil presos com direito ao semi-aberto,” *Folha de S. Paulo*, May 4, 1998.

The failure of sentence progression has several causes, including prisoners' lack of legal assistance, the shortage of judges to process their cases, and the small number of open- and semi-open spaces in the penal system. But keeping prisoners who are eligible for sentence progression confined in closed facilities not only contributes to overcrowding, it also makes such prisoners frustrated and angry, resulting in frequent rebellions.<sup>74</sup> Such prisoners have "literally been forgotten by the judicial system," as the legislative inquiry of the São Paulo prison system pointed out;<sup>75</sup> prisoners' strong sense of the unfairness of this chronic inattention is obvious to any visitor.

#### **Remedying the Overcrowding Crisis**

There are only two basic ways to handle prison overcrowding: through new construction or through the release of excess inmates. Both of these strategies are to some extent currently in use in Brazil. Neither of them, however, has been sufficient to handle the extreme levels of overcrowding plaguing the country's penal system.

#### **Reducing the inmate population**

By reducing the inmate population the government not only remedies overcrowding, it lessens prison costs. With this in mind, public authorities—particularly in a developing country like Brazil—must consider carefully whether public monies are most effectively spent on prisons or on other methods of controlling crime.

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<sup>74</sup>As the vice-president of the National Council on Criminal and Penitentiary Policy asserted, "Delay in granting [sentence progression] benefits is one of the principal motives of prison rebellions, together with overcrowding." *Ibid.*

<sup>75</sup>1996 São Paulo CPI report, pp. 14 and 28 (translation by Human Rights Watch).



At the intellectual and theoretical level, the notion of employing alternative sanctions to prison—and of confining people only as a last resort—is well established in Brazil. Numerous academic articles have been written lauding the use of alternatives to prison such as fines, community service, limitations on rights, and suspended sentences; and high government officials have endorsed the concept.<sup>76</sup> Proponents of alternative sanctions cite the negative impact that incarceration has on the inmate, the overwhelming failure of the rehabilitative ideal, the high costs of operating prisons, and the crisis of overcrowding in the penal system to support the argument that society must look for new methods of dealing with criminality. They point to studies indicating lower rates of recidivism among offenders sentenced to alternative sanctions than those given traditional terms of incarceration.<sup>77</sup> According to this view, prisons should be reserved for the most violent offenders, those persons who represent a clear danger to the community.

The national prison law embraces these ideas to an extent, as demonstrated by its array of provisions relating to punishments other than prison.<sup>78</sup> Still, the use of alternative sanctions remains relatively rare in practice; certainly, such sanctions have not yet had much of an impact in reducing prison overcrowding. According to the 1995 prison census, only some 2,098 offenders were serving alternative penalties, the majority (64 percent) of them having been assigned community

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<sup>76</sup>See, for example, Julita Lemgruber, "A Necessidade da Aplicação e Ampliação das Alternativas à Pena Privativa de Liberdade," *Revista do Conselho Nacional de Política Criminal e Penitenciária*, vol. 1, no. 5, January/June 1995; Lemgruber, "Os Riscos do Uso Indiscriminado da Pena Privativa de Liberdade," *Revista do Conselho Nacional de Política Criminal e Penitenciária*, vol. 1, no. 7, January/June 1996; Nelson A. Jobim, "Penas Alternativas: Pontos para Reflexão," *Revista do Conselho Nacional de Política Criminal e Penitenciária*, vol. 1, no. 7, January/June 1996; Heitor Piedade Júnior, "Reflexões sobre o Fracasso da Pena de Prisão," *Revista do Conselho Nacional de Política Criminal e Penitenciária*, vol. 1, no. 6, July/December 1995; Hans-Dieter Schwind, Ivette Senise Ferreira, and João Benedicto de Azevedo Marques, *Penas Alternativas* (São Paulo: Fundação Konrad-Adenauer Stiftung, 1996).

<sup>77</sup>See João Benedicto de Azevedo Marques, "Penas alternativas: um novo caminho," *Folha de S. Paulo*, January 5, 1998.

<sup>78</sup>Lei de Execução Penal, arts. 147-170.

service.<sup>79</sup> In the state of São Paulo, as of January 1998, only 410 persons were serving such sentences.<sup>80</sup>

Several factors combine to limit reliance on such sanctions. To begin with, they can only be used with prisoners sentenced to less than one year of incarceration, and thus are not available with regard to a wide variety of crimes. In addition, few localities have set up the organizational structures needed to implement sanctions such as community service, lacking supervisory bodies to ensure that such penalties are indeed carried out. Judges, too, are said to be generally resistant to the idea of allowing offenders to serve non-custodial terms; they tend to regard such sanctions as overly lenient.<sup>81</sup>

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<sup>79</sup>1995 Prison Census, table XXIV, p. 50.

<sup>80</sup>Benedicto, "Penas alternativas . . . "

<sup>81</sup>Human Rights Watch interview, Oscar Vieira, Instituto Latinoamericano para la Prevención do Delito, São Paulo, November 26, 1997.

Two states are said to be national leaders in the use of alternative sanctions: Mato Grosso do Sul and Rio Grande do Sul.<sup>82</sup> Because of the paucity of reliable statistics, it is not known how frequently such sanctions are employed there.

In São Paulo, as well, the government recently established a community service program to serve as a structure for the greater use of alternatives to imprisonment.

The unending series of violent incidents in the prisons in 1997, with their extensive media coverage, helped pave the way for greater acceptance of alternatives to incarceration. At present, a law is pending in the National Assembly to allow judges to substitute alternative sanctions for prison sentences of up to four years, rather than one.<sup>83</sup> Minister of Justice Iris Rezende reportedly claimed that the proposed measure could result in the release of some 30,000 inmates.<sup>84</sup> Supporters of such efforts are optimistic that the use of alternative sanctions will continue to grow.

Sentence reduction and early release programs offer additional options to reduce overcrowding. Under the terms of the national prison law, prisoners may reduce their sentences by one day for every three days that they work (with each

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<sup>82</sup>Human Rights Watch interview, Julita Lemgruber, Rio de Janeiro, December 30, 1997. The 1995 prison census, however, ranks the southern state of Santa Catarina first in the use of such penalties, with Minas Gerais second. 1995 Prison Census, table XXIV, p. 50.

<sup>83</sup>The law was approved by the Chamber of Deputies in July 1997.

<sup>84</sup>André Lozano, "Iris defende pena alternativa," *Folha de S. Paulo*, October 24, 1997.

working day being between six and eight hours long).<sup>85</sup> Prison authorities are supposed to maintain a log that records which prisoners are working, a copy of which should be submitted to the appropriate judge of penal execution on a monthly basis. Unfortunately, because work opportunities are scant in many prisons—and hardly exist at all in police lockups and jails—inmates are often unable to take advantage of any of the benefits of this provision.

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<sup>85</sup>Lei de Execução Penal, art. 126.

A federal commission reviewing the national prison law recently proposed to broaden the terms of the sentence reduction rules to cover prisoners who study while they are incarcerated.<sup>86</sup> The revised rules would permit reductions for everything from basic literacy courses to higher education. It is thought that extending the law in this way will encourage inmates to study and improve themselves, while shortening the prison terms of those prisoners who are least likely to reoffend.

Finally, the national prison law also provides for early release or parole (*livramento condicional*) of inmates who can show that they satisfy a number of requirements, including having already served some minimum portion of the sentence imposed on them (at least one-third to one-half of their sentence, depending on the inmates' prior record), and having "demonstrated satisfactory conduct during the term of the sentence," a more subjective measure.<sup>87</sup> The latter

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<sup>86</sup>"Comissão propõe redução de pena para quem estuda," *O Globo*, March 27, 1998.

<sup>87</sup>Lei de Execução Penal, art. 131; Penal Code, art. 83 (listing requirements). Foreign prisoners do not qualify for early release because they cannot serve out the remainder of their Brazilian sentence (which still runs even after release) in a foreign country. We heard numerous complaints from foreign prisoners about this rule, which can keep them in prison twice as long as their Brazilian counterparts who commit the same crime.

requirement is meant to discourage inmates from misbehaving while incarcerated; however, because it requires a qualitative not a quantitative analysis, it can greatly impede the speedy processing of early release applications.

Indeed, inmates' most frequent complaint about both sentence reduction and early release programs is the slowness with which applications for these benefits are processed. At the São Paulo Women's Penitentiary, for example, where the large majority of inmates work, we found women who were eligible for release but were still waiting a year or more for their applications to be heard, a problem that the prison director confirmed.<sup>88</sup> Due to the lack of legal assistance in the prisons and the insufficient numbers of judges of penal execution, many prisoners who qualify for early release never obtain it. In recognition of this problem, a bill has been introduced in the National Congress to establish a summary procedure that would facilitate the granting of such benefits.<sup>89</sup>

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<sup>88</sup>Human Rights Watch interview, São Paulo, November 25, 1997. The director said that one woman was still waiting to hear the results of an application filed in March 1996.

<sup>89</sup>Human Rights Watch interview, coordinator, National Council on Crime and Penitentiary Policy, Brasília, December 18, 1997.

Finally, any discussion of early release is not complete without a mention of the Brazilian phenomenon of late release. Lacking legal assistance, some prisoners not only fail to benefit from early release programs, they even remain incarcerated beyond the term of their sentences. At the thirty-fifth police precinct in São Paulo, for example, the commander told us that his lockup held several people in this situation when he arrived.<sup>90</sup> The head of the Depatri police facility said that one prisoner there had served four months more than his one-year sentence, but that this man had to be held until judicial authorization for his release was received.<sup>91</sup> Until a 1997 prison rebellion forced authorities to take steps to resolve the problem, the central prison in Manaus, Amazonas, reportedly held a few dozen prisoners whose sentences had already expired.<sup>92</sup>

Under the Brazilian constitution and articles 188-93 of the prison law, the president may pardon any crime and release the convicted criminal from prison.<sup>93</sup>

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<sup>90</sup>Human Rights Watch interview, São Paulo, November 18, 1997.

<sup>91</sup>Human Rights Watch interview, Carlos César Rodrigues, São Paulo, November 24, 1997.

<sup>92</sup>"Líderes explicam os motivos da rebelião," *A Crítica* (Manaus), July 9, 1997.

<sup>93</sup>See Mirabete, *Execução Penal*, pp. 414-23.

In the interests of reducing prison overcrowding, the president has on occasion granted collective pardons and sentence commutations to large numbers of inmates. Such pardons are most commonly granted shortly before Christmas, allowing released prisoners to spend the Christmas holidays back with their families. In 1995, for example, 1,748 prisoners received Christmas pardons.<sup>94</sup> The following year, in April 1996, the president issued the largest pardon in the country's history, under which some 15-18,000 inmates reportedly became eligible for early release.<sup>95</sup> Nearly 3,000 more prisoners, including a group of paraplegic inmates, were pardoned in March 1998 in commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights.<sup>96</sup>

#### **Expanding prison capacity**

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<sup>94</sup>1995 Census, Table XXIII; decreto no. 1.645, de setembro de 1995.

<sup>95</sup>Decreto no. 1.860, de 11 de abril de 1996, que concede indulto especial e dá outras providências; "Indultan en Brasil a entre 15 mil y 18 mil reos del órden común," *La Jornada* (Mexico City), April 13, 1996.

<sup>96</sup>Rodrigo França Taves, "Governo vai indultar três mil presos nos 50 anos da Declaração dos Direitos Humanos," *O Globo*, March 12, 1998.



As of late, the primary method whereby the Brazilian government proposes to remedy the prisons crisis is by building new prisons and expanding existing ones. After many years of relative inattention to the need to expand the prison infrastructure,<sup>97</sup> the federal government began in 1994 to focus on prison construction and was prodded into more decisive action in 1997 by a rash of prison rebellions that drew media attention and shone a spotlight on the horrendously overcrowded conditions of Brazil's penal facilities. Over the course of the year, high federal officials including the president made a series of prominent announcements of new programs of prison construction.<sup>98</sup>

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<sup>97</sup>In 1994, for example, the federal government allocated only four million reais (approximately U.S. \$3.6 million) toward prison construction, while by 1997 the corresponding amount had risen to 110 million (approximately U.S. \$97.9 million). "País deve ganhar 44 novos presídios," *Folha de S. Paulo*, May 25, 1997.

<sup>98</sup>See Daniela Falção, "Ministério promete 10 presídios para SP," *Folha de S. Paulo*, February 21, 1997; "País deve ganhar 44 novos presídios," *Folha de S. Paulo*, May 25, 1997; "Brazil to build new prisons to ease overcrowding," CNN World News, June 3, 1997.

In all, the government claims that 105 new prisons will open by the end of 1999, fifty-two of which will be paid for by the federal government. The state receiving the largest single contribution of federal prison funds is São Paulo.<sup>99</sup> As of late October 1998, São Paulo had inaugurated eleven new prisons whose total capacity was 9,420 inmates. Ten additional prisons, with a total capacity of 8,100 inmates, were scheduled to open by the end of the year.<sup>100</sup> One of the stated goals of the construction effort is to replace the decaying and notorious Casa de Detenção, transferring the thousands of inmates held there to new facilities. Yet the twenty-one new prisons—while allowing prison authorities to reduce the number of inmates held at the Casa de Detenção—are insufficient to make up the existing deficit in prison capacity. Moreover, if past trends are any indicator, the continuing growth of the state's inmate population may offset these gains.

An extensive prison building program is a costly enterprise, and Brazil's current construction plans have been estimated at \$440 million reais (approximately US \$391 million).<sup>101</sup> Whether this amount of money will indeed be allocated remains to be seen. The example of Rio Grande do Sul, Brazil's southernmost state, is a cautionary one: in 1995, the state government promised to build five new prisons by late 1996; not only were none built, but the overall prison capacity actually shrank during this period because of lack of maintenance.<sup>102</sup> Moreover,

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<sup>99</sup>In two other states Human Rights Watch visited, Amazonas and Rio Grande do Norte, federal funding was being put toward new prison construction, although the new facility in Amazonas will not be large enough to remedy overcrowding at the state's existing men's prison.

<sup>100</sup>Fax from Cláudio Tucci, Adjoint Secretary of Prison Administration of the State of São Paulo, to Human Rights Watch, October 30, 1998. Of these twenty-one new prisons, nine were financed using 80 percent federal money and 20 percent state money, while the remaining twelve were fully state-financed. Human Rights Watch interview, João Benedicto de Azevedo Marques, Secretary of Prison Administration of the State of São Paulo, São Paulo, November 26, 1997.

<sup>101</sup>"Ministério vê injustiça," *Folha de S. Paulo*, March 17, 1998. Federal funding for prison construction is collected via the National Penitentiary Fund (Funpen), established for this purpose in 1994. Administered by the National Prisons Department of the Ministry of Justice, Funpen is funded through court fees and lottery profits. Jobim, "Penas Alternativas . . .," pp. 17-18.

<sup>102</sup>Human Rights Watch interview, Judge Marco Antônio Scapini, Porto Alegre, Rio Grande do Sul, December 1, 1997. In August 1995, Secretary of Justice and Security

even if this new crop of prisons is built, it seems far less certain that the government is ready to invest the money necessary to operate the facilities in a humane fashion, with all of the associated staff, food, medical and other expenses.

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José Fernando Eichenberg had said that he guaranteed that Porto Alegre's decrepit Central Prison in Porto Alegre would be closed the following year and that new prison construction was being undertaken. "Presídio está parcialmente liberado," *Correio do Povo* (Porto Alegre), August 7, 1995. It was still open in December 1997, when Human Rights Watch visited, but one wing had been ordered closed as unfit for habitation.

#### IV. SÃO PAULO AND MINAS GERAIS: THE POLICE LOCKUP AS PRISON

*You'll see: it's like a trash receptacle: the prisoners here have been thrown away like trash. The conditions are subhuman. Go ahead, write that down: SUBHUMAN.*

—João Batista Araújo, commander of São Paulo's third police precinct, warning Human Rights Watch researchers about conditions in the precinct lockup.

Police lockups are supposed to hold criminal suspects upon arrest and for short periods of time—a few days at most—until their release or their transfer into a larger pretrial detention facility. At any given moment, therefore, the police authorities should confine only a small fraction of the total inmate population, the bulk of inmates being held in penal facilities under the authority of the prison system. There are important philosophical and practical reasons supporting this general rule: first, that the investigating authority should not also be the detaining authority, given the incentives that exist for the former body to abuse its custodial power and place undue pressure on criminal suspects; and second, that police lockups are built as small, temporary facilities and usually have little provision for work, recreation, education, visits, or other activities. Their physical plant, in other words, is ill-equipped for holding prisoners for any extended period of time.

Despite these concerns, large numbers of prisoners in Brazil remain for long periods in the power of the police. Indeed, in some states, the normal proportions are reversed: the prison system holds only a fraction of the inmate population, and the police authority—the Secretariat of Public Security—has become the de facto prison authority. The most significant examples of this phenomenon are the states of São Paulo and Minas Gerais, which administer Brazil's first- and third- largest inmate populations, respectively. With nearly half of the state's inmates being held in facilities operated by its Secretariat of Public Security, São Paulo has delegated a significant part of its prison responsibilities to the police.<sup>103</sup>

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<sup>103</sup>At the end of October 1998, a total of 32,478 inmates were held in facilities operated by São Paulo's Secretariat of Public Security. Fax from Luiz Antônio Alves de Souza, Adjunct Secretary of Public Security, to Human Rights Watch, October 30, 1998. A few thousand inmates had, however, recently been transferred to newly-inaugurated facilities within the prison system, and some 11,000 more transfers were supposed to take place during the next few months. Nonetheless, as these numbers indicate, from fifteen to twenty thousand inmates will remain in police hands.

In Minas Gerais, the figures are even more appalling: 82 percent of state inmates are held in police lockups.<sup>104</sup>

Overall, as of the 1995 prison census, the country's prisons only held 61.4 percent of the total inmate population, with the remainder being held in police lockups and jails under the control of state public security secretariats. A high percentage of these inmates had already been convicted and sentenced, yet they remained confined together with pretrial detainees in violation of international norms requiring the separation of accused and convicted prisoners.<sup>105</sup>

Not only are convicted prisoners held in police lockups, but they are often held there well after being convicted. Indeed, Human Rights Watch researchers met numerous prisoners in São Paulo who had remained in lockups for years after conviction. At the sixteenth police precinct, the commander told us that prisoners often stay five to seven years in a daily routine of "complete idleness."<sup>106</sup> In Minas Gerais, in a lockup in which 260 prisoners (and sometimes up to 310 prisoners) were regularly held in space for sixty-seven, we found several prisoners who had been confined for two or three years, and one who had been held there for five and a half years. For such prisoners, detention in police lockups not only means worse conditions, it also means that they are unable to work and thus unable to benefit from the sentence reduction provisions of the national prison law.

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<sup>104</sup>Minas Gerais 1997 CPI report, p. 36.

<sup>105</sup>See ICCPR, art. 10(2)(a); American Convention, art. 5(4).

<sup>106</sup>Human Rights Watch interview, Darcy Sassi, São Paulo, November 19, 1997.

Thus, rather than holding a handful of criminal suspects, the population of many states' lockups is skewed toward convicted prisoners. In São Paulo, when we visited, a slight majority of prisoners in police custody had been sentenced; in Minas Gerais, nearly three-quarters; in Brasília, 20 percent.<sup>107</sup> In recent months, however, the São Paulo authorities have taken important steps to place convicted prisoners in the custody of the prison authorities, giving them priority with regard to transfers to newly-opened prisons.

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<sup>107</sup>Human Rights Watch interview, Luiz Antônio Alves de Souza, adjunct secretary, Secretaria de Estado dos Negócios da Segurança Pública, São Paulo, January 8, 1998; Minas Gerais 1997 CPI report, p. 36; Human Rights Watch interview, Judge Georges Lopes Leite, Brasília, December 18, 1997. Human Rights Watch does not have comprehensive figures with regard to this issue for the state of Rio de Janeiro, which has the country's second-largest inmate population, but anecdotal evidence suggests that the proportions are equally unacceptable. *See, for example*, Célia Costa, "Uma fuga que já era esperada," *O Globo*, May 19, 1998 (noting that of 356 inmates confined in one police precinct, ninety, or 25 percent of the total, were convicted).

### **Torture in Police Lockups**

While the physical conditions of police lockups prove their unsuitability for anything more than short-term detention of arrested criminal suspects, the possibility—indeed the likelihood—of police torture provides an even more compelling reason to transfer inmates into the prison system as quickly as possible. As Human Rights Watch described in our very first report on Brazil, which focused on police precincts in São Paulo and Rio de Janeiro, the “torture of ordinary suspects, not only by beatings, but by relatively sophisticated methods, is endemic.”<sup>108</sup> Police in Brazil routinely resort to torture as a means of interrogating suspected criminals.<sup>109</sup>

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<sup>108</sup>Americas Watch (now the Americas Division of Human Rights Watch), *Police Abuse in Brazil: Summary Executions and Torture in São Paulo and Rio de Janeiro* (New York: Human Rights Watch, November 1987), p. 9.

<sup>109</sup>See Human Rights Watch/Americas, *Police Brutality in Urban Brazil*, pp. 28-31; Human Rights Watch/Americas, “Fighting Violence with Violence: Criminality and Human Rights Violations in Rio de Janeiro,” *A Human Rights Watch Short Report*, vol. 8, no. 2(B) January 1996; Americas Watch, “The Killings in Candelária and Vigário Geral: The Urgent Need to Police the Brazilian Police,” *A Human Rights Watch Short Report*, vol. 5, no. 11, November 1993; Human Rights Watch/Americas, *Final Justice: Police and Death Squad Homicides of Adolescents in Brazil* (New York: Human Rights Watch, February 1994); Americas Watch and the Center for the Study of Violence, “Urban Police Violence in Brazil: Torture and Police Killings in São Paulo and Rio de Janeiro after Five Years,” *A Human Rights Watch Short Report*, vol. 5, no. 5, May 1993.

According to Brazilian human rights groups, a significant number of police precincts in Brazil, perhaps even a majority of them, include a torture room. This room is frequently called the *sala de pau*, or perch room, in reference to the torture technique most commonly employed by Brazilian police, the *pau de arara*, or parrot's perch. The parrot's perch is a bar on which the victim is suspended from the back of his knees, with his hands tied to his ankles. Once on the perch, the victim, usually stripped naked, is subjected to beatings, electric shocks, and near-drowning. Near-drowning, in turn, is a torture technique in which the victim's head is submerged in a tank of water, or water is forced into his mouth and nostrils. According to those who have undergone this form of torture, the experience produces a terrifying sensation of impending death.

In the course of this research, Human Rights Watch interviewed scores of prisoners who credibly described being subjected to torture during their initial detention in police precincts. An inmate in Manaus, Amazonas, convicted of drug smuggling, described how he was tortured in a police precinct by being hung upside-down for more than three hours and beaten with sticks until his ribs cracked.<sup>110</sup> In São Paulo, inmates at the Depatri police facility described being brought upstairs to a torture room, having rags stuffed in their mouths, and being shocked on their ears and necks, and under their arms.<sup>111</sup> But it was in the state of Minas Gerais that we heard the most consistent and compelling accounts of torture. Moreover, the detainees we interviewed there frequently remained for long periods in the precincts where they had suffered the abuse, enduring continuing contact with their torturers.

#### **Minas Gerais: a case study of police torture**

The Mayor's Office for Human Rights and Citizenship in Belo Horizonte (Coordenadoria de Direitos Humanos e Cidadania da Prefeitura de Belo Horizonte), the capital of Minas Gerais, reported in 1996 that:

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<sup>110</sup>Human Rights Watch interview, Penitenciária Desembargador Raimundo Vidal Pessoa, Manaus, Amazonas, December 16, 1997.

<sup>111</sup>Human Rights Watch interviews, Depatri, São Paulo, November 24, 1997.



The police in [Belo Horizonte] work almost exclusively outside of “formal,” not to say “legal” limits. Arbitrary practices . . . [include] the systematic application of torture as a means of investigation. The government’s policy of public security is one of “watch and punish,” of explicit repression, of increase in the police apparatus and its ferocity.<sup>112</sup>

In interviews with Human Rights Watch during the same period, representatives of the mayor’s human rights office stated they receive several

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<sup>112</sup>Human Rights and Citizenship Division, Office of the Mayor of Belo Horizonte, *Dossiê Violência Policial, Minas Gerais* (Belo Horizonte, March 1996), p. 3 (translation by Human Rights Watch).

credible complaints of torture each week.<sup>113</sup> Indeed, between 1989 and 1996, the human rights division of the public prosecutor's office in Belo Horizonte indicted more than 500 civil police officers—nearly 15 percent of the force—for battery or abuse of authority.<sup>114</sup> During 1994 to 1996 alone, the division filed 439 indictments against civil police officers and 116 indictments against military police officers for such crimes.<sup>115</sup>

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<sup>113</sup>Human Rights Watch interview, members of the Human Rights and Citizenship Division, Office of the Mayor of Belo Horizonte, March 28, 1996.

<sup>114</sup>Until April 1997, when torture was codified as a distinct crime in the Brazilian penal code, torture cases were typically prosecuted under the legal prohibitions on battery or abuse of authority. In cases involving minors, however, prosecutors were able to rely upon an article in the Children's and Adolescents' Statute that criminalizes torture when committed against persons under the age eighteen. *See* Law No. 8.069/90, art. 233. The human rights division of the public prosecutor's office used this provision to convict six civil police officers involved in the torture of a minor on April 13, 1993. *See* Sentence, Criminal Appeal No. 54.187/0, State Appellate Court, Belo Horizonte, August 30, 1996.

<sup>115</sup>Human Rights Division, Public Prosecutor's Office, "Indictments Against Military and Civil Police in the Ordinary Courts 1994, 1995, and 1996," Belo Horizonte,

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February 3, 1997. Because some police officers are the subject of more than one indictment, the number of police officers against whom indictments have been filed is somewhat less than these figures suggest. Although crimes committed by military police are ordinarily prosecuted in military courts, prosecutions for the crime of abuse of authority, which does not exist in the Military Criminal Code, may be filed against military police officers in the ordinary courts.

In April 1997, a special commission of the Minas Gerais State Legislative Assembly that was charged with investigating abuses within the penal system visited thirteen of the state's police lockups. During these visits, the commission took numerous statements from victims of torture and other physical abuse. In the Special Operations Department (Departamento de Operações Especiais, DEOESP), for example, the commission interviewed prisoners who had been tortured in a room known as the "little church" (*igrejinha*). One of the detainees at the DEOESP volunteered to show the commission exactly where the *igrejinha* was located, and led commission members, accompanied by a cameraman from the legislative assembly, to the room. What they found was:

[just] as the prisoners had described it: a room with tiled walls, with exposed electrical wires, several electrical outlets, pipes with running water . . . . Two grooves or holes were observed in the locale: one in the wall, just below the shower and another in a half-wall located on the opposite side and at the same height as the [one in the wall]. In another room, a metal bar was located which, when placed in these grooves, fit perfectly. According to the prisoners, it is with this bar that torture sessions known as "parrot's perch" occur. In this apparatus, the prisoner is hung, with his feet and hands tied, and receives electric shocks.<sup>116</sup>

The DEOESP was not the only police precinct in which the Minas Gerais legislative commission documented instances of physical abuse and torture; members of the commission told Human Rights Watch that they also had serious concerns regarding torture at the Thefts and Robberies Precinct in Belo Horizonte.<sup>117</sup> During our March 1998 visit to Minas Gerais, Human Rights Watch visited this facility, speaking to a number of victims of torture. Inmates at other

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<sup>116</sup>1997 Minas Gerais CPI report, p. 92 (translation by Human Rights Watch). Human Rights Watch viewed the CPI's video and also spoke with prisoners who described the *igrejinha* at the DEOESP in similar terms.

<sup>117</sup>Human Rights Watch interview, Belo Horizonte, Minas Gerais, March 12, 1998.

facilities who had previously been held at the Thefts and Robberies Precinct gave additional testimony.

One victim gave the following description of his treatment by police there:

I was tortured several times [at the Thefts and Robberies Precinct]. The torture room there is next to the garage. They use a saw-horse with a metal bar connecting the two sides, and a tire underneath it for when they pull the bar out. They beat me, gave me electric shocks, and drowned me. After that, they made me participate in reconstituting the crime the way they said it happened. When they were torturing me, they asked me to turn in more people.<sup>118</sup>

Like the above account, prisoners' descriptions of torture at the Thefts and Robberies Precinct generally included the following elements: the person to be tortured was stripped naked and placed over a bar suspended between two supports, often with a rubber tire underneath. The person's hands and feet were tied together and he was hung with the back of his knees in contact with the bar and his head hanging close to the ground. At the end of the session, the torturers often pulled the bar out from between the two supports, allowing the tire to cushion the fall of the torture victim. The torture sessions consisted of beatings, electric shocks, and near-drowning. According to numerous sources, torture is practiced in a room designated for that purpose located close to the garage entry into the precinct, near the "triage" center of the police lockup. The room itself has white tiled walls and, midway across it, a half-wall about three feet high.<sup>119</sup>

One detainee told Human Rights Watch about his own torture and the torture of others:

When I arrived I was taken to that room that's filled with chairs now. It was on September 18, 1997, about 10:30 a.m. The whole team—about

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<sup>118</sup>Human Rights Watch interview, Penitenciária Nelson Hungria, Nova Contagem, Minas Gerais, March 18, 1998.

<sup>119</sup>During his March 1998 visit to the Thefts and Robberies Precinct, Human Rights Watch's Brazil office director James Cavallaro entered a room that matched the description given by numerous prisoners, thus corroborating their physical description of it. Shortly after Cavallaro entered, a visibly upset jailer insisted that he leave, closing the door behind him.

eight men—put me on the perch. I was already naked. They went and got the saw-horse and put a metal bar across it. Then they put me on the bar—the perch. They wanted me to give them the names of the other guys involved. They tortured me there for about twenty minutes.

When someone is being tortured everyone knows. You can hear the screams. Any problem, like setting a fire in the cell, trying to escape, and you get the perch. Except today, because you're here. Since I've been here they've taken guys from the lockup out to the perch room three times.

Another detainee at the precinct showed Human Rights Watch open wounds on his head from police beatings and described the torture room in detail:

I have been taken to the torture room twice since I've been here. The first time was two weeks after I arrived. The second time was about twenty days after I got here. Both times they hung me on a metal bar on top of a saw-horse. They gave me electric shocks and beat me with a rubber stick. They put the shocks all over my body, on my testicles, my anus.

A female detainee interviewed by Human Rights Watch at the Thefts and Robberies Precinct explained that torture sessions are not limited to the male detainees:

They tortured me when they brought me in. It was in that room down by the triage part of the lockup. I was naked. First they put me on the perch and they wet me. Then they beat me and gave me electric shocks. Everywhere. On my vagina. There were about four men torturing me . . . I saw death in front of me.

This woman's nightmare did not end when the police stopped torturing her. When we met her, her cell was located on the wing closest to the torture room. She told us: "From my cell, I can hear the screams of the torture sessions. The torture room is near the '*corró*' cell. They torture people there every day."

Unfortunately, there is nothing new about reports of torture at the Thefts and Robberies Precinct. By all accounts, the practice has been going on for years. Human Rights Watch took statements describing torture that occurred over a period of several years. A prisoner with whom we spoke at the Department of Investigations (DI) precinct, who has been held in police lockups since 1995, described a torture session at the Thefts and Robberies Precinct that had taken place nearly three years earlier:

I was arrested in May 1995 and taken to Thefts and Robberies. I was processed in the fifth precinct [within the Thefts and Robberies complex] by Delegate Marcos Aurélio. He was the precinct chief in charge. The group that tortured me was led by Breno. There was another guy who's bald named Max and Marquinhos on that team. They took me to the perch room several times. It's on the ground level. There's a little half-wall in there and the room is white. They would hang me on the perch and nearly drown me and give me electric shocks all over: on my head, on my penis.

Other prisoners described nearly identical torture sessions occurring years before that. One inmate, who spoke to us at the Nelson Hungria Penitentiary, spoke of torture he had endured at the Thefts and Robberies Precinct nearly six years earlier in the same room and using the same techniques described by prisoners at the precinct during our March 1998 visit. He explained:

I was in Thefts and Robberies in 1992 and 1993. When you come in from the garage, there's a room with a little wall inside. The walls have tiles on them. They have a perch in there with a tire underneath. The tire's there so you don't hit the floor when they take you off the perch. I was tortured there, sometimes with an electric shock machine. They would put these clips on you and then wind up a little machine and that's how they shocked you. Now they use wires.

They got me to confess to a lot of crimes. I even signed confessions in crimes that I didn't even know about just to stop suffering the torture.<sup>120</sup>

### **A Buffer to the Prison System**

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<sup>120</sup>Human Rights Watch interview, Penitenciária Nelson Hungria, Nova Contagem, Minas Gerais, March 18, 1998.

In some states, particularly São Paulo and Minas Gerais, the levels of overcrowding are much less severe in the prisons than in the police lockups. Facilities under the control of São Paulo's Secretariat of Public Security held an average of 3.1 prisoners per available space in 1996, at the same time that those within the Secretariat of Prison Administration held an average of 1.3 prisoners per available space.<sup>121</sup> In Minas Gerais, while "all of the lockups of the police stations were in a desperate state of overcrowding," the prison system was, in fact, filled to substantially less than capacity.<sup>122</sup> To an extent, the lesser overcrowding of prisons compared to lockups is surprising, as prison inmates generally have more activities, more possibilities for work, and more out-of-cell time than do their counterparts in police lockups; in other words, high levels of overcrowding are easier for prison inmates to bear.

Yet the reason for this general rule is simple: a powder keg of 1,000 angry inmates presents much more danger than a powder keg of only one hundred of them. Prison authorities know that when large penal facilities get out of control, the costs may be extremely high; even in the best of circumstances large facilities are more difficult to manage than smaller ones. (It is likely that this concern, among others, underlies the Standard Minimum Rules' recommendation that prisons hold no more than 500 inmates.) As a high official in São Paulo's public security secretariat stated, in explaining why the secretariat has not tried to pressure the prison system to accept more inmates: "There are limits to how much you can crowd a prison. They can really explode."<sup>123</sup>

The disparity between prison overcrowding and police lockup overcrowding also has a basis in political factors. Although the situation varies from state to state, in some states the prison system is granted the power to control the transfer of prisoners out of police lockups. In other words, the prison system can limit the number of inmates it accepts (in contrast to police lockups, which cannot refuse to hold people as they are arrested). In São Paulo, for example, the public security secretariat can only transfer someone into the prison system when

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<sup>121</sup>Ouvidoria de Polícia, Relatório Anual de Prestação de Contas da Ouvidoria da Polícia, 1996, p. 98.

<sup>122</sup>Minas Gerais 1997 CPI report, p. 45. In April 1997, the prisons' capacity (not counting damaged cells) was 3,008 places, but only 2,308 inmates were being held. *Ibid.*, p. 47.

<sup>123</sup>Human Rights Watch interview, Luiz Antônio Alves, January 8, 1998.



the prison system has space for new arrivals. Every week, therefore, the prison secretariat informs the public security secretariat of the number of available prison spaces.<sup>124</sup> In Rio Grande do Norte, where the prison system has not historically had the power to control the number of incoming prisoners, a high justice official who was attempting to introduce this power called it “the most important part” of a pending reform package.<sup>125</sup> He acknowledged, however, that allowing such control might simply shift the prison system’s overcrowding problems to the police.

#### **Testing the Limits of Overcrowding**

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<sup>124</sup>Ibid.

<sup>125</sup>Human Rights Watch interview, Flávio Hebron, Natal, Rio Grande do Norte, December 13, 1997.

Although the effects may be less destructive than in the prisons, police lockups can explode as well. In 1997, the worst year on record for such incidents, there were 195 rebellions in facilities under the control of São Paulo's public security secretariat, as compared to seventy-one the previous year.<sup>126</sup> These incidents were sparked by various factors—sometimes they began as thwarted escape attempts, sometimes as protests over poor conditions—but one of the most common reasons was overcrowding. Over and over again during the course of the year, prisoners in São Paulo's jammed police lockups rioted for the right to be transferred to a less crowded prison.

The Itanhaém jail in São Paulo, for example, held 213 inmates in space for thirty-two when a riot broke out there in February 1997. Demanding transfers to the prison system, or to less crowded jails, the prisoners at Itanhaém refused to return to their cells at the end of the day. Several days later, transfers had reduced their numbers to 180, still over five times the facility's capacity. "They live like animals," acknowledged the director of the jail, where inmates each had about two and a half square feet (0.5 square meter) of space.<sup>127</sup>

A more dangerous incident was sparked by overcrowding at São Paulo's sixty-fourth police precinct in June 1997, when a group of convicted prisoners took a guard hostage as he brought in breakfast in the morning. Brandishing homemade knives, the inmates threatened to kill the guard if they were not transferred. The lockup held sixty-nine inmates in space for twenty; negotiations with the authorities finally resulted in the transfer of seven of them to the State Penitentiary.<sup>128</sup>

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<sup>126</sup>"Rebeliões bateram recorde em SP no ano passado," *Folha de S. Paulo*, March 17, 1998 (citing statistics provided by the public security secretariat).

<sup>127</sup>Adriana Bruno, "'Presos vivem como bichos', diz diretor," *Folha de S. Paulo*, February 22, 1997.

<sup>128</sup>"Presos do 64º DP fazem motim," *Folha de S. Paulo*, July 12, 1997. As of

**What the Future Holds**

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November 20, 1997, the lockup held seventy-four inmates. São Paulo Lockup and Jail Statistics, p. 2.

Given the chaos and bedlam of so many lockups, it is not surprising that police officials interviewed by Human Rights Watch were unhappy about being responsible for so many prisoners. Indeed, many precinct-level police officers complained vociferously about their guard duties. "These prisoners aren't our responsibility; they shouldn't be here," said the commander of São Paulo's ninth police precinct, in a typical comment. "But 70 to 90 PERCENT OF OUR TIME HERE IS SPENT TAKING CARE OF THEM."<sup>129</sup> Others uniformly echoed this sentiment, pointing out that the time they spent handling inmate matters detracted from their mission of investigating and solving crime.

Higher officials, while still not enthusiastic about the situation, seemed more resigned to it. In São Paulo, a high public security official described the secretariat's plans to build three new public jails with much larger capacities than lockups to handle the burgeoning inmate population.<sup>130</sup> Increasing the secretariat's total holding capacity would, of course, further institutionalize the de facto arrangement of long-term police custody of prisoners. (Although the fact that the public security secretariat already manages eight large jails, each with capacity for more than 500 inmates, is evidence that it acceded to this arrangement years ago.) The official acknowledged, however, that even the largest public jails make no provision for inmates to work or study, and are a poor substitute for prisons.

As described previously, São Paulo's recent expansion in prison capacity has allowed the state, at least for a time, to reduce the number of inmates held by the public security secretariat. After years of growth in the inmate population of police precincts, this is an important step forward. Yet many thousands of prisoners—from 15,000 to 20,000 of them—will remain in police hands for the foreseeable future.

### **The Counterexample: Rio Grande do Sul**

Not every state in Brazil violates the national prison law by keeping prisoners in police lockups for long periods of time. In Rio Grande do Sul, most notably, prisoners spend no more than a few days in police custody before transfer to the prison system. It seems that sometime in the late 1970s, the judge responsible for police matters barred pretrial detainees from remaining in lockups, and since

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<sup>129</sup>Human Rights Watch interview, Ivanete Oliveira Velloso, precinct chief, São Paulo, November 24, 1997.

<sup>130</sup>Human Rights Watch interview, Luiz Antônio Alves, January 8, 1998.

then the general rule has been respected.<sup>131</sup> The state of Amapá also reportedly does not keep prisoners in police lockups.<sup>132</sup>

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<sup>131</sup>Human Rights Watch interview, Judge Marco Antônio Scapini, December 1, 1997.

<sup>132</sup>Conselho Nacional de Política Criminal e Penitenciária, "Relatório Circunstanciado da visita da Inspeção feita em Estabelecimentos Penais nos Estados do Amazonas, Amapá e Roraima," July 7, 1998.

## V. PHYSICAL CONDITIONS

Brazilian prisoners are too often forced to endure appalling daily living conditions in the country's prisons, jails and police lockups. Because of overcrowding, many of them sleep on the floor of their cells, sometimes in the bathroom next to the hole that serves as a toilet. In the most crowded facilities, where there is no free space even on the floor, prisoners sleep tied to the cell bars or hanging in suspended hammocks. Most penal facilities are physically deteriorated, some are severely so.

Forced to provide their own mattresses, bedding, clothing and toiletries, many prisoners are dependent on the support of their families or others outside the prison. The struggle for space, and the authorities' failure to provide basic provisions in many facilities, leads to prisoner-on-prisoner exploitation, as prisoners who lack money and family support are victimized by others.

### **Basic Characteristics of Penal Facilities**

As evidenced by centuries of innovation in prison architecture, the size and shape of a prison can have a significant impact on its functioning. Bad prison design comes in many forms, of course—there are dark and dreary buildings with little ventilation, and buildings with hidden corners that are difficult to monitor—but one simple error is in making prisons too large.<sup>133</sup> As a general rule of thumb, the

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<sup>133</sup>As one expert on prison architecture put it: "While a small prison is not certain to be successful, a large one is sure to be unsuccessful." Norman Johnson, *The Human Cage* (New York: Walker and Co., 1973). Concurring with this position, São Paulo's secretary of prisons told us that he firmly believed in using smaller prisons—that large prisons "don't function." Human Rights Watch interview, João Benedicto de Azevedo Marques, São Paulo, November 26, 1997. With this in mind, he has been building multiple medium-sized prisons in São Paulo, most of which hold from 792 to 852 inmates, rather than a few giant ones.

Standard Minimum Rules recommend that prisons hold no more than 500 inmates.<sup>134</sup>

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<sup>134</sup>Standard Minimum Rules, art. 61.

Brazil's penal facilities run the gamut of sizes, shapes, and layouts. In São Paulo, the Carandiru prison complex includes Latin America's largest prison, the Casa de Detenção, which held 6,508 inmates in seven different pavilions on the day we visited it.<sup>135</sup> Other prisons of over 1,000 inmates include the State Penitentiary in São Paulo; the Central Prison of Porto Alegre and the State Penitentiary of Jacuí, both in the state of Rio Grande do Sul; the Center for Internment and Reeducation, in Brasília, and the Professor Barreto Campelo prison, in Pernambuco. Most of Brazil's prisons, however, are much smaller, holding several hundred inmates, while most women's prisons hold fewer than a hundred.

The larger prisons tend to have more than a single story: several pavilions in the Casa de Detenção, for example, are five stories tall. While each of the pavilions in the Casa de Detenção is built around a central courtyard, with a self-enclosed square or rectangular layout, it is more common in Brazil to find prisons laid out using long corridors lined on each side with cells and dormitories. A few unusual design schemes exist as well. The Raimundo Vidal Pessoa Penitentiary, in Manaus, Amazonas, is built on a radial plan, a style that was common in the early part of the century, the era from which it dates.

At the other extreme of size are the thousands of police lockups around the country, some of which have only one small cell, though others hold a hundred or more prisoners. In São Paulo, a common layout found in medium-sized police lockups is that of a covered patio flanked by two or three communal cells on each side. The smaller lockups, however, lack a patio: they simply contain four small cells on an interior hall.

### **Living Conditions and the Impact of Overcrowding**

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<sup>135</sup>With the inauguration of a number of new prisons in São Paulo in late 1998, several thousand prisoners were transferred out of the Casa de Detenção. Making up for these reductions, however, was the fact that the facility was being used as a waystation for prisoners being transferred to the interior of the state, so that as of late October 1998 the net change in inmate numbers there was minimal. Fax from Luiz Antônio Alves de Souza, Adjunct Secretary of Public Security, to Human Rights Watch, October 30, 1998.



The national prison law mandates that inmates be held in individual cells of at least six square meters (approximately sixty-five square feet) in size.<sup>136</sup> In accordance with this rule, many of Brazil's prisons rely upon individual cells in all or a substantial part of their living areas. Nonetheless, except for a few prisons such as the Charqueadas High Security Prison in Rio Grande do Sul and the Nelson Hungria Penitentiary in Minas Gerais, overcrowding has overruled the designers' plans: rather than holding a single prisoner, the individual cells are used communally, by two or more inmates. Besides individual cells, most prisons also have larger cells or dormitories that were specifically designed for group living. Police lockups generally have small to medium-sized cells designed for five to ten inmates.

Many penal facilities, and thus many inmates' cells and dormitories, are two to five times as crowded as they were designed to be. In some facilities, the overcrowding has reached inhuman levels, with inmates jammed together in crowds. The densely packed housing areas in these places offered Human Rights Watch researchers such sights as prisoners tied to windows to lessen the demand for floor space, and prisoners forced to sleep on top of hole-in-the-floor toilets. Such overcrowding also generates filth, bad smells, and vermin, which in turn exacerbate tensions among prisoners. Inmates are responsible for keeping their living quarters clean and, obviously, some do a better job than others: the more crowded the cell, the more difficult the task.

As mentioned previously, the overcrowding is generally most acute in police lockups. Human Rights Watch inspected São Paulo's seventy-eighth police precinct, for example, and found eighty prisoners divided among four small cells. According to official capacity figures provided by the public security secretariat, this lockup was designed to hold twenty inmates, making it four times as crowded as it should have been.<sup>137</sup> In every cell, besides prisoners squeezed together on the floor, we found five to seven prisoners hanging from ropes in the air. Even though the bathrooms were tiny, two or three prisoners in each cell slept there. The overcrowding was so extreme that it was hard to imagine that the facility could have crammed in sixteen additional inmates just a few months earlier, but that is what we were informed.

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<sup>136</sup>Lei de Execução Penal, art. 220.

<sup>137</sup>Human Rights Watch interview, Ricardo Arantes Cestari, assistant commander, seventy-eighth precinct, São Paulo, November 19, 1997; São Paulo lockup and jail statistics, p. 3.

A prisoner who had passed through the overcrowded Thefts and Robberies Precinct in Minas Gerais described its physical conditions in these terms:

Everything is dirty and infested. There are little bugs there—*muquirana*—that live in your clothes and make your skin itch all night. It's impossible to sleep. Every Friday they have a "*geral*" (full search). There is a big patio there. Everyone is forced to strip naked and wait in the patio, often in the cold. They turn on a hose and wash down everything. But it doesn't keep the bugs away.<sup>138</sup>

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<sup>138</sup>Human Rights Watch interview, Itauna, Minas Gerais, March 14, 1998.

The police lockups Human Rights Watch visited were all extremely overcrowded, but we at least found that the physical infrastructure of most of them was in good condition. Some prisons that are nearly as packed as the lockups are also physically decayed by heavy use and no repairs. The most shocking facility we saw, in combining overcrowding and rotten infrastructure, was the Central Prison of Porto Alegre, in the southern state of Rio Grande do Sul. With an official capacity of 600 places, it held 1,803 prisoners on the day we visited and had held up to 2,040 during the previous year.<sup>139</sup>

The prisoners' living areas were in an advanced state of decay. Not only was crumbling concrete, peeling paint, and broken flooring much in evidence, but the plumbing and electrical systems were also seriously damaged. In many cells we found that prisoners had rigged together elaborate contraptions made of plastic to drain away the water that leaked from the ceiling, which ranged from the occasional drip to, in one cell, a steady stream. A wall in one hall covered with moss evidenced a similar pipe breakage. Bare strands of electrical wire ran about the ceilings and down the walls, a clear fire hazard. One gallery gave off a strong smell of sewage. As in many facilities, the toilets did not flush.

In this prison, as in others, the distribution of living space is relatively unregulated, which means that the burden of overcrowding falls disproportionately on certain prisoners. That is, some cells overflow with inmates while others are more sparsely populated. In general, prisoners who are poorer, weaker, and less powerful tend to live in correspondingly less habitable accommodations.

In all prisons, the most cramped and uncomfortable areas are the disciplinary and holding (*triagem*) cells, which are as likely to hold prisoners needing protection from other prisoners as they are to hold those being punished. An appalling example of this is the fifth floor of pavilion five of São Paulo's Casa de Detenção, where conditions are exceptionally miserable and subhuman. The 356 prisoners assigned to a special section of the fifth floor, all of whom desired transfer to other prisons, were living there under a status labeled "preventive measure of

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<sup>139</sup>Human Rights Watch interview, Humberto de Sá Garay, operational director, Central Prison, Porto Alegre, Rio Grande do Sul, December 1, 1997.

security.” To the guards and other prisoners, however, they are known simply as the “yellow ones”: the prisoners who stay locked in their cells (and thus whose skin turns yellow from lack of exposure to the sun).<sup>140</sup>

Eight prisoners were crammed into a typical single-person cell in this section, although a few cells held ten. The air in these gloomy chambers was thick with carbon dioxide and body odor. In some cells, prisoners tied themselves to the barred windows to save space and to breathe fresh air. Broken squat toilets were located by the door of the cells without even a partition to shield them, leaving prisoners to defecate before an audience of six or eight cellmates. The walls and floors of the cells are of dark, dingy concrete whose paint wore off long ago.

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<sup>140</sup>See Letter from the Prisoners in the Secure Cells and Isolation in the “Yellow Section” of Pavilion 5, São Paulo, June 15, 1998.

One prisoner described life in the yellow section to us:<sup>141</sup>

We sleep with one guy in a hammock and the other nine on the floor. The bald guy has AIDS and asked to be transferred but was refused. We've got four foam cushions. There are days when they shut the water off. Then there's no water for the whole day. When we complain about almost anything, we get beaten. Five months ago we complained about the lack of water. It was in May. Five guards came in and took us downstairs. They stripped off our clothes and beat us with an iron pipe.

### **Light, Ventilation, and Temperature**

Since Brazil enjoys a warm climate, most of its prisons are not sealed; instead the cells or corridors have barred windows that allow in light and air. Ventilation is good in most facilities, although a few areas lack windows, and when these areas are overcrowded they become noxious with a lack of air and an abundance of vile smells. Again, punishment and holding cells tend to be the most poorly ventilated.

Several housing areas in São Paulo's Casa de Detenção have notably poor ventilation due to the use of metal plates (called *chapas*) to cover cell windows and protect prisoners from attack by their enemies. The punishment areas on the ground floor of pavilions four and five, and the secure area on the fifth floor of pavilion six both use these plates, which, although they have air holes in them, greatly reduce the entry of light and air. Since these cells also tend to be extremely overcrowded, the risk of inmates infecting each other with tuberculosis and other diseases is extremely high.

One entire facility in São Paulo is almost completely closed to air and sunlight: the Depatri police facility near Carandiru. With its four cell wings located on the bottom floor of a multi-story building, having only a couple of small windows on one end of a corridor, the building is dimly lit and very stuffy.

Human Rights Watch found dark punishment cells at the State Penitentiary of Campina Grande, in Paraíba, at the Dr. João Chaves Central Penitentiary in Natal, Rio Grande do Norte, and at the Penitentiary Raimundo Vidal Pessoa, in Manaus, Amazonas. The four punishment cells at the Natal facility were not

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<sup>141</sup>Human Rights Watch interview, November 28, 1997.

entirely dark, as some light could enter through their barred gates, but were so damp and crumbling that they gave the distinct impression of a medieval torture chamber.

The punishment area of pavilion four of the Casa de Detenção, better known among inmates and prison staff as the “dungeon,” receives almost no sunlight, and prisoners there stated that up until a few days before our visit they had spent six days in the dark, as the single light fixture in the cell had no bulb.

We heard few complaints about temperature extremes, but it is clear that some facilities become incredibly hot in the summer, given the combination of high ambient temperatures and crowded cells. In Rio de Janeiro, two prisoners died of heat exhaustion in police lockups in early 1998 due to these factors.<sup>142</sup>

### **Bedding and Clothing**

The U.N. Standard Minimum Rules require that each inmate be assigned a “separate bed” and be provided with “separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.”<sup>143</sup> Brazil’s penal facilities are, to judge from the examples we visited, almost uniformly not in compliance with these requirements.

In the vast majority of men’s facilities visited by Human Rights Watch, inmates sleep on foam mattresses provided by family members or purchased from other inmates.<sup>144</sup> Many prisons and police lockups have built-in concrete beds,

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<sup>142</sup>“Calor de 50 graus mata 2 presos em delegacias do Rio,” *O Globo*, February 6, 1998.

<sup>143</sup>Standard Minimum Rules, art. 19.

<sup>144</sup>Brasília’s prison system is one of the exceptions in that inmates are provided with a mattress, a sheet, and a blanket. Human Rights Watch interview, various inmates, Centro de Internamento e Reeducação, Complexo Penitenciário, Brasília, December 18, 1997.

sometimes bunk beds, although in most such facilities the inmate population far exceeds the number of beds available, leaving many to sleep on the floor. At the Depatri police facility in São Paulo, for example, a typical cell had eleven inmates sleeping in beds and eleven on the floor. At the Thefts and Robberies Precinct in Minas Gerais, all prisoners sleep on the floor, many just on blankets.

Inmates in Brazil's penal facilities wear their own clothing: whatever they are arrested in, to begin with, and then whatever their families bring them or they buy. There is almost no provision for government-issued clothing, even for prisoners who need it, except in a few women's facilities. Overall, nonetheless, most prisoners are adequately clothed and most wear serviceable though worn shoes.

### **Food**

Inmates in Brazil generally receive minimally adequate food rations, though hardly lavish ones.<sup>145</sup> Unlike some other Latin American prisons, no facility we that we visited in Brazil fails to provide food to its inmates, and in none did inmates complain of hunger. We did, however, hear allegations involving corruption and the uneven distribution of food in several prisons, as well as numerous complaints about food quality.

Prisoners at the Manaus central prison, in the state of Amazonas, described how the "sheriffs"—the powerful inmates—receive specially cooked meals from the prison kitchen that include all the best pieces of meat, while normal prisoners eat poorly. They acknowledged nonetheless that with the change of prison administration last year the food had generally improved.

Corruption and pilfering of food led authorities at São Paulo's Casa de Detenção to close its kitchen in early 1996 and instead rely on a private company to deliver prepared meals to prisoners. Before the switch was made to private catering, a significant amount of the food that was allocated to prisoners was actually sold outside of the prison.<sup>146</sup> As in Manaus, there also used to be problems involving the unequal division of food among prisoners; the delivery of identical

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<sup>145</sup>Article 20(1) of the Standard Minimum Rules outlines the basic requirements for prison food service: "Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for the health and strength, of wholesome quality and well prepared and served."

<sup>146</sup>Human Rights Watch interview, Walter Erwin Hoffgen, director, Casa de Detenção, São Paulo, November 28, 1997.

containers of food resolves that issue. The cost of this service is eight reais (approximately U.S. \$7) per prisoner per day.

In some facilities, inmates rely on family members to bring them nearly all their food or to give them money to buy food. At Natal's main prison, for example, inmates said that about 15 percent of the prison population received most of their meals from family members. In some prisons, inmates are allowed to use hot plates or makeshift stoves to prepare food in their cells, although in others such appliances are banned.

Prisoners who can afford it supplement their diets by buying food from prisoner-run canteens. We saw several such canteens in the Natal prison, for example, stocking a wide range of items that included soft drinks, bottled water, beans, corn meal, cooking oil, cigarettes, and candy.

Most prisons lack trays and other serving utensils. Prisoners serve themselves using their own utensils, such as plastic food containers.

Kitchen facilities, like the rest of the physical plant, were often old and in disrepair. The areas where food was stored were often dirty and, according to prisoners' reports, infested with vermin.

### **Water and Hygiene**

The sanitary facilities in some men's prisons violate international standards.<sup>147</sup> Although almost all prisoners have access to a toilet, the toilets are often broken or their drains blocked up, giving bathrooms a terrible stench. In some prisons, inmates complained of only sporadic running water. At Natal's Central Penitentiary, for example, inmates stated that the water only comes on for a half hour in the morning and a half hour in the evening.

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<sup>147</sup>The Standard Minimum Rules require that sanitary installations be "adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner"; that "[a]dequate bathing and shower installations shall be provided" to enable every prisoner to bathe "at a temperature suitable to the climate, as frequently as necessary for general hygiene . . . but at least once a week"; and that all areas normally used by prisoners be "kept scrupulously clean at all times." Standard Minimum Rules, arts. 12-14.



The showers in many prisons and police lockups consist only of a pipe coming out of the wall, without hot water or a shower head. In almost every facility we visited, however, prisoners had improved this set-up, either by adding a commercial shower head or, more commonly, by rigging up an electrical wire so that the water is heated as it flows out of the pipe.

Article 15 of the Standard Minimum Rules requires that inmates keep their persons clean and imposes on prison authorities the obligation of providing inmates "such toilet articles as are necessary for health and cleanliness." Few men's penal facilities provide inmates with toiletries or other supplies, however; these too are generally supplied by family members. In Brasília, an exception in this respect, inmates are given toilet paper, soap, and toothpaste. Women's prisons also generally provide their inmates with these basic items. Inmates in São Paulo's Casa de Detenção told us that toilet paper and cleaning supplies are generally available in the three pavilions housing prisoners who work, but that the remaining pavilions are not normally provided these supplies.

## VI. MEDICAL, LEGAL, AND OTHER ASSISTANCE

As part of its focus on rehabilitation and resocialization, Brazil's national prison law mandates that prisoners have access to various types of assistance, including medical care, legal aid, and social services.<sup>148</sup> In practice, none of these benefits are provided to the extent contemplated under the terms of the law, nor is medical care—the most basic and necessary of the three services—available at even minimally adequate levels to many prisoners.

### Medical Care

Serious contagious diseases such as tuberculosis and HIV/AIDS have reached epidemic levels in the Brazilian inmate population. By denying inmates proper treatment, the prison system not only endangers inmates' lives, it facilitates the transmission of such illnesses to the general population through conjugal visits and upon prisoners' release. Since prisoners are not entirely cut off from the world outside, the unchecked spread of disease among inmates represents a serious public health risk. As the 1996 São Paulo parliamentary report on prisons stated, the existing state of affairs can be described in a word: "calamity."<sup>149</sup>

### Prisoners' medical needs

Inmate populations everywhere tend to have greater medical needs than the population at large. Not only do prisons hold a higher proportion of persons at risk of illness, such as injection-drug users, but the prison environment is itself conducive to the contracting and spreading of disease. Among the factors favoring a high incidence of health problems among inmates are the stresses of imprisonment, unhygienic conditions, overcrowded cells that place inmates in close and continuous physical contact with each other, and physical abuse.

Prison violence sometimes results in serious injuries such as knife and bullet wounds, requiring emergency medical care. At the Casa de Detenção in São

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<sup>148</sup>Lei de Execução Penal, art. 11.

<sup>149</sup>1996 CPI report, p. 15.

Paulo, inmate nurses reported that someone was stabbed a few days before our visit and that they see such injuries about every two weeks.<sup>150</sup>

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<sup>150</sup>Human Rights Watch interview, São Paulo, November 28, 1997.

Prison nurses reported a high incidence of respiratory infections, skin rashes, headaches, digestive problems, and venereal diseases among the inmate population. A survey of prisoners in Manaus, Amazonas, found that 41 percent of inmates had health problems, nearly half of them involving respiratory illnesses, and another 11 percent relating to poor digestion.<sup>151</sup> A study conducted by researchers of the University of São Paulo revealed that 18 percent of prisoners at the Casa de Detenção had syphilis.<sup>152</sup> In addition, poor sanitary conditions are responsible for numerous bacterial and parasitic maladies.

But the most serious diseases that are common among prisoners are tuberculosis and HIV/AIDS. Often these diseases occur together, as once a person becomes ill with AIDS he is much more vulnerable to tuberculosis. In a study concluded in 1995, researchers found that 80 percent of male prisoners tested came up positive for the tuberculosis bacillus, as did 90 percent of female prisoners. These results showed a sharp increase over rates found a couple of years earlier, indicating that the problem is worsening.<sup>153</sup> Approximately 10 percent of prisoners who test positive actually develop active cases of tuberculosis. Studies conducted at the largest São Paulo prisons, for example, have found that between 2 and 4 percent of prisoners suffer from the disease.<sup>154</sup> In 1995, ten inmates at the Casa de Detenção died of it.

Human Rights Watch encountered tubercular inmates—many of whom were also HIV positive—in several facilities. At the Casa de Detenção, we reviewed

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<sup>151</sup>Arquidiocese de Manaus, *Perfil dos Encarcerados do Manaus*, February 1997.

<sup>152</sup>Aureliana Biancarelli, “Cadeias do país são campeãs de Aids,” *Folha de S. Paulo*, August 11, 1997.

<sup>153</sup>1996 CPI report, p. 16.

<sup>154</sup>“Cadeias do país . . . ”

the log book of inmate blood tests, which showed that of the forty-one inmates tested for tuberculosis in September 1997, five, or 12 percent, had the disease. We met one inmate undergoing treatment for tuberculosis who was confined in a stuffy punishment cell with little air circulation.

Describing prisons as “an ideal breeding ground for onward transmission of HIV infection,” the United Nations AIDS Program (UNAIDS) has repeatedly cautioned prison authorities to take affirmative steps to prevent the spread of the virus. The high levels of HIV/AIDS found in Brazil’s prisons certainly bear out their prognostications. In late 1997, researchers at the University of São Paulo estimated that some 20 percent of the Brazil’s inmate population was living with HIV, after having collected data from around the country. According to their research, the highest levels of HIV infection are found in the prisons in the southeast of Brazil—an area that includes São Paulo and its enormous inmate population—in some instances affecting some 30 percent of the inmate population. The lowest levels of infection are found in the northeast, where only 2 to 3 percent of inmates are infected.<sup>155</sup>

#### **Access to medical care**

In recognition of the seriousness of health concerns among prisoners, the Standard Minimum Rules include a number of provisions requiring that prisoners be provided basic medical care and, in particular, that sick inmates be visited daily by a doctor.<sup>156</sup> The failure of the prison authorities to provide such care is one of the primary sources of inmate complaints in Brazil.

The Human Rights Watch delegation that visited prisons did not include a doctor, and thus we were unable to assess the quality of care provided in specific

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<sup>155</sup>“Contaminação pelo HIV atinge 20% dos presos,” *Correio da Paraíba* (João Pessoa), December 1, 1997; *see also* 1996 CPI report, p. 17 (stating that 18.51 percent of São Paulo prisoners were HIV-positive, as were up to 25 percent of those in police lockups). The logbooks that Human Rights Watch examined at the Casa de Detenção showed that fifteen of seventy-eight HIV tests administered in September 1997 came back with positive results, or that 19 percent of prisoners tested had the virus. In Rio de Janeiro, a study conducted by the prisons department (Desipe) in mid-1997 revealed that some 5 percent of the 13,000 inmates in the state were infected with HIV. Commenting on the methodology used in the study, however, one expert stated that up to 12 percent of inmates might actually be infected. “Estudo revela que vírus da Aids atinge 5% dos presos do Rio,” *O Globo*, December 9, 1997.

<sup>156</sup>Standard Minimum rules, arts. 22-26.

cases. The overall deficiencies in the medical care provided in Brazil's penal facilities, however, were evident even to the inexperienced eye. To cite an illustrative yet telling fact, we did not meet a single qualified doctor during all of our prison visits; instead, we encountered numerous prison infirmaries run by inmate employees, or perhaps a single outside nurse. Prison pharmacies, in many instances, were obviously understocked, and inmates complained that their families had to buy them the medicines they needed.

A recent report on the Manaus prison hospital, in the state of Amazonas, illustrates some of the deficiencies in the medical care provided in Brazil's prisons:

- a) inadequate physical space, which is incompatible with the practices required for the exercise of medical-social activities; b) inadequate distribution of nurses and their assistants, who lack basic training for the exercise of some duties, particularly the care and treatment of inmates' mental health; c) nonexistence of monthly funding causing a lack of basic medications, which results in damage to patients' health; d) absence of technical equipment to facilitate attention to basic emergencies.<sup>157</sup>

Most prisons have at least one doctor on staff, although some—such as the Campina Grande prison in Paraíba, which has a part-time nurse to care for 650 prisoners—do not even have that. Few if any prison doctors work full-time. At Brasília's Center of Internment and Reeducation, which holds over a thousand inmates, there is a single doctor who visits twice a week. The doctor for the Central Penitentiary in Natal, Rio Grande do Norte, a prison with some 650 inmates, comes once a week for a few hours and sees about fifteen people.

At other prisons the wardens mentioned that they had two or more doctors, but when questioned regarding the number of hours each doctor works, it turned out to be the equivalent of one doctor working half-time, if that. At the Casa de Detenção, for example, even though several doctors are supposedly on the payroll, none of them appears to spend much time in the prison. Inmate nurses in the main infirmary reported that two doctors visit once a week, each staying for about five hours. At a satellite health clinic in another pavilion in the prison, inmate nurses

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<sup>157</sup>Conselho Nacional de Política Criminal e Penitenciária, "Relatório Circunstanciado da Visita da Inspeção . . ." (quoting prison officials' report) (translation by Human Rights Watch).

stated that a doctor comes for two hours every Wednesday and usually sees about fifteen out of the nearly 1,000 inmates who live in that area.

Prisoners' complaints about the lack of medical care were frequent: "I have a tooth that hurts, but there's no treatment here. All they do is pull teeth." "There's a doctor here but no medicine; they don't give me any medicine. I've got an ulcer so they give me half a liter of milk every forty-eight hours." "My family brings me medicine, otherwise I wouldn't get any."<sup>158</sup>

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<sup>158</sup>Human Rights Watch interviews, Penitenciária Nelson Hungria, Nova Contagem, Minas Gerais, March 18, 1998; Presídio Central de Porto Alegre, Rio Grande do Sul, December 1, 1997; Casa de Detenção, São Paulo, January 5, 1998.

Even at separate prison hospitals, inmates often receive terribly deficient care. A prisoner held at the prison hospital of São Paulo's State Penitentiary, for example, waited over two years to obtain the operation needed to mend his broken femur (leg). Over thirty appointments for the operation were made in outside public hospitals, the first one just days after his leg was injured, but he ended up missing one after the other because of a lack of guard escort or transport vehicle.<sup>159</sup>

São Paulo's police lockups do not have in-house doctors or nurses. To respond to inmates' medical needs, they normally have only the most basic remedies on hand, like aspirin, skin lotion, and stomach medicine. Sick prisoners are sometimes brought to local first aid stations for medical attention, but prisoners complain that, given the extra burden that this places on precinct staff, it is difficult if not impossible to convince the authorities to bring them there. "It's pointless to ask," remarked an inmate with asthmatic bronchitis being held in the overcrowded ninth police precinct. Another prisoner with a fairly advanced case of AIDS, who was not receiving any medication, said, "When we ask the police to take us to the PS [first aid station], they just tell us thieves deserve to die."<sup>160</sup>

The sickest prisoners from the lockups can be brought to the prison hospital to receive medical attention; judicial authorization is necessary to do this, however, and it can be difficult to obtain because of the insufficient numbers of judges. Moreover, even extremely sick prisoners almost always receive out-patient treatment—returning to their original lockup by the end of the day—due to a shortage of hospital beds.

Because the system is so overwhelmed, severely ill and even dying prisoners may remain together with other inmates in lockups. A couple of months before Human Rights Watch inspected the Depatri police facility, near Carandiru in São Paulo, a prisoner there died of meningitis. One of his former cellmates described what happened:

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<sup>159</sup>Letter from Dr. Haley Nunes da Silva, director of the Health Division of the State Penitentiary, to the warden of the State Penitentiary, April 10, 1997.

<sup>160</sup>Human Rights Watch interview, Seventieth Police Precinct, São Paulo, November 26, 1997.



He was twenty-five years old, a black guy. He had been sick for about a month, and had been lying down on the floor, sweating like crazy. They took him out to get air about twenty times or so. Once they took him to the PS [first aid station]. He was always asking for medical care. Finally they took him out when it was clear he was almost dead, and the guards said later that he had died.<sup>161</sup>

At that same facility, about a month later, an epileptic prisoner died. “He had a seizure and started banging his head on the cell bars. He was taken to the hospital and then returned, and he died in the visiting room.”<sup>162</sup>

Although comprehensive national statistics have not been compiled, it is believed that AIDS and tuberculosis—often together—are the leading causes of death in Brazil’s prisons. Many prisoners die of these diseases after having received little or no medical care. Inmates in São Paulo’s police lockups do not receive AIDS medication, although they do receive out-patient treatment for tuberculosis. In most states’ prisons, sick inmates are not transferred to the prison hospital or infirmary until they are in the advanced terminal stages of their illness. (In accordance with international standards, prisoners who are HIV-positive but not showing symptoms of AIDS are not segregated from other prisoners.<sup>163</sup>) Although compassionate release (known as humanitarian pardon [*indulto humanitário*]) is theoretically available to dying prisoners, procedural obstacles and delays mean that in practice relatively few prisoners obtain it.<sup>164</sup>

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<sup>161</sup>Human Rights Watch interview, São Paulo, November 24, 1997. The police commander confirmed that the inmate had been taken to the hospital, where he died. He also said that he had requested that the public health service visit the facility, but that they had never come.

<sup>162</sup>*Ibid.*

<sup>163</sup>See WHO Guidelines on HIV Infection and AIDS in Prisons (1993), Guidelines 27-28; U.N. Guidelines on HIV/AIDS and Human Rights, U.N. Doc. E/CN.4/1997/37 (1997), Guideline 4(e).

<sup>164</sup>In São Paulo, it is supposed to be available to prisoners in an “advanced stage of a serious and incurable illness.” Dr. Benedito Roberto Garcia Pozzer and Dr. Sérgio Mazina Martins, “Termo de Correição Ordinária,” June 16, 1997 (translation by Human Rights Watch).

At least fifty-eight Casa de Detenção inmates died during the year prior to our visit there, most of AIDS and tuberculosis. One of these prisoners died of AIDS only a few days before we arrived; a notation in the infirmary log book described the circumstances of his death:

On November 24, 1997, patient [X] died in this infirmary. Prior to this death, the prisoner in charge of the infirmary, [Y], requested that [X] be sent to the Central Hospital but staff member [Z] said that [X] had been examined only on November 21 and since he had just arrived in the infirmary, he could not be sent to the hospital.

As this case exemplifies, only a small minority of the severely ill prisoners in São Paulo's prison system end up in the main prison hospital, the Central Hospital of the Health Department of the Prison System (Hospital Central do Departamento de Saúde do Sistema Penitenciário). This hospital, located on the grounds of the State Penitentiary, has only eighty-four cells and is normally far under capacity. Human Rights Watch was unable to visit the facility, but we note that a judicial delegation that inspected it in April 1997 made the following findings:

The food furnished is not in accordance with minimum medical specifications . . . . [T]he doctors of the Central Hospital are not conducting daily visits to each of their patients . . . which is absolutely unacceptable, above all since it is known that all of the patients interned there, with extremely rare exceptions, are in a condition that requires intense care and constant vigilance . . . . In theory the Central Hospital should be the establishment that centralizes all hospital care for the convicts in the [prison system], but the small number of patients interned there demonstrates that it is far from being able to attend to such needs.<sup>165</sup>

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<sup>165</sup>Ibid.

Rio de Janeiro reportedly provides better health care than most state prison systems in Brazil; it has seven prison hospitals, including one for inmates with AIDS where patients receive the modern drugs that have proven effective in stopping the advance of the disease.<sup>166</sup> These drugs are also reportedly available in the AIDS sanatorium of the São Paulo prison system's central hospital; however, the small number of beds in that facility limits their use to a tiny fraction of the total number of prisoners suffering from AIDS.

Condoms are distributed in some prisons as a preventive measure against the spread of HIV. In Rio de Janeiro, for example, the prison department (Desipe) announced in late 1997 that it gave out an average of 10,000 condoms a month for the 13,000 inmates in the system.<sup>167</sup> At the High Security Penitentiary of Rio Grande do Sul, prison officials told us that the roughly 300 inmates in the prison receive about one hundred condoms every visiting day.<sup>168</sup>

The National Ministry of Health advocates several additional preventive measures and, in some states, funds their use in the prisons. These measures include the creation and distribution of educational materials for prisoners, such as pamphlets describing prevention techniques, and the training of nurses and others who work in the prisons. Among other interesting efforts, the Ministry of Health supports the publication of an HIV/AIDS-focused journal written and edited by prisoners in the Porto Alegre Central Prison, in Rio Grande do Sul, which is distributed among the inmate population. Besides discussing sex, drugs, and HIV/AIDS prevention openly and bluntly, the journal serves as a forum for inmates to speak their mind about prison problems and abuses.<sup>169</sup>

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<sup>166</sup>Human Rights Watch interview, Julita Lemgruber, Rio de Janeiro, December 30, 1997. The AIDS facility is the Hospital Penitenciário de Niterói.

<sup>167</sup>"Estudo revela que . . . "

<sup>168</sup>Human Rights Watch interview, Lieut. André Córdova, Charqueadas, December 2, 1997.

<sup>169</sup>Here are some illustrative excerpts from inmates' letters published in the journal: I'd like say something about respiratory illnesses, which afflict a large part of the inmate population; the coughing in the galleries [living areas of the prison] is like a symphony. I'd like to know if we have the right to syrup or remedies of that type; I'd also like to ask in the name of all of us in [gallery] 2B, more attention from the responsible authorities. All inmates have the right to health and I see various of us with fever and serious problems without any [medical] attention.

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I live with several HIV+ inmates, and I see the suffering of all those who live with the disease; the medical treatment of the prison system is not sufficient for the number of those infected with the virus. My request is that more help be given those infected, as they need medicine that the Penitentiary Hospital is not able to provide them and so they're forgotten by society and the government, condemned to a Slow Death.

*O Arpão*, Nos. 5 and 6, November 1997, pp. 2-3.

Consistent with international standards, Brazil does not have mandatory HIV testing of prisoners.<sup>170</sup> Many prisons, moreover, have little voluntary testing because of resource constraints.

To their credit, justice and health officials acknowledge the seriousness of the HIV/AIDS epidemic among the prison population.<sup>171</sup> They emphasize, in particular, that the constant stream of inmates leaving the prison system facilitates the spread of HIV/AIDS among the general population. According to their estimates, every year some 12,000 HIV positive inmates are released, becoming “focal points for the propagation of the disease.”<sup>172</sup>

### **Paralegic prisoners**

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<sup>170</sup>See WHO Guidelines on HIV Infection and AIDS in Prisons, Guideline 10; U.N. Guidelines on HIV/AIDS and Human Rights, Guideline 4(e).

<sup>171</sup>Their public statements indicate that officials have made important progress since 1988, when Human Rights Watch found that “there seems to be no policy towards the AIDS problem in the prisons we visited and some officials tend to downplay it.” *Prison Conditions in Brazil*, p. 30.

<sup>172</sup>“Rio lança cartilha que ensina presos e parentes a se prevenirem contra a Aids,” *O Globo*, August 29, 1997 (translation by Human Rights Watch).

A tragic case illustrating the penal system's lack of medical care is that of a group of paraplegic prisoners who were until late 1997 held in a special ward of the prison hospital at São Paulo's State Penitentiary. These prisoners, consisting of thirty-six paraplegics and two tetraplegics, received almost no medical care. Not only was physical therapy not provided them, but they were not even turned in their beds very often, and as a result many of them developed painful bedsores on various parts of their backs, buttocks and legs.<sup>173</sup> In March 1997, thirty-five of the paraplegic prisoners sent a letter to the Prison Ministry describing their plight, which the ministry forwarded to the Human Rights Commission of the São Paulo Legislative Assembly. The letter stated that the authorities were not providing them any medication; that the only people taking care of them were other prisoners with no knowledge of medicine; that they were "living in the midst of rats, cockroaches and other pests," and that "much of the time, or most of the time, the deaths that occurred were because of lack of care."<sup>174</sup>

That same month, the paraplegic prisoners were visited by the legislative commission, which confirmed the dreadful conditions in which the inmates were held. A report of the visit found:

It is other well-intentioned prisoners, who lack medical training, that care for the [paraplegic inmates] . . . including doing minor surgery when necessary . . . [These other prisoners] "operate" on the sores, cutting off the dead skin/flesh and applying homemade remedies . . . [T]he most commonly used remedy of these prisoners for the treatment of bedsores is sugar and coffee grounds . . . [A]ll the paraplegics use a type of homemade catheter ( . . . a plastic tube running from a 2 liter soda container). Urethral infections are common among paraplegics . . . There are paraplegics who were assured by doctors at the public hospitals where they were held when they were first caught that they would be able to walk again, if the bullet(s) in their bodies were extracted and if they received physical therapy. But the bullets still have not been . . . and the

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<sup>173</sup>Human Rights Watch researchers saw photos of these bedsores, some of which were like gaping wounds.

<sup>174</sup>Letter from prisoners to the Prison Ministry, March 17, 1997 (translation by Human Rights Watch).

patient's physical condition has deteriorated to the point that his legs have locked in place, in the fetal position, doubled under his chest.<sup>175</sup>

In June 1997, two of the tetraplegic prisoners died, and in August, the paraplegic prisoners announced a hunger strike to protest the lack of medical care. Finally a judicial investigation was initiated to examine the situation, but in October 1997 the São Paulo prison authorities closed their ward, transferring all but eleven of them out of the hospital and distributing them among at least twelve different prisons.

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<sup>175</sup>Relatório Resumido da Visita da Inspeção Feita por Parlamentares e ONG's aos Paraplégicos na Penitenciária do Estado-Carandiru, March 27, 1997, pp. 2-3 (translation by Human Rights Watch). The Department of Health confirmed that one prisoner who was shot in 1993 "was supposed to return [to the hospital] for surgery, which never happened, and he has been four years with a bullet in his shoulder, always in pain. He had been informed . . . that if he was operated on, he could recover." Maria Antonieta de Castro Sá Gonçalves, Departamento de Saúde, "Relatório: Visita ao Hospital Auxiliar (Anexo) da Penitenciária do Estado, Situação dos Presos Paraplégicos," April 9, 1997 (translation by Human Rights Watch)

Eleven of the paraplegic prisoners were transferred to the Franco da Rocha Penitentiary. There, because of the absence of even minimal infrastructure to provide for their medical needs, the local judge of penal execution sent them home for their families to care for them, converting their sentences into terms of house arrest. It is known that at least one other paraplegic prisoner was transferred to the State Penitentiary of President Venceslau, a prison located in the interior of the state far from the inmate's family. This prison reportedly lacks all resources necessary to cope with his special needs.<sup>176</sup>

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<sup>176</sup>Letter from Father Francisco Reardon to Dr. Ivo de Almeida, Judge of Penal Execution and Prisons, January 8, 1997. Human Rights Watch met a paraplegic inmate at the Casa de Detenção in similar circumstances: he was receiving no medicine, no physical therapy, and his family, not the state, had paid for his wheelchair. Despite a doctor's order that he receive treatment, he was not being brought to the hospital by the prison authorities because of a shortage of escort vehicles. Human Rights Watch interview, São Paulo, November 28, 1997.



**Legal Assistance**

One reason that many prisoners do not obtain the benefits available to them under the national prison law is the scarcity of legal assistance. Although public defenders are supposed to provide legal services to prisoners, they are little in evidence in many of the country's penal facilities.<sup>177</sup> "I've only seen them once," remarked the head of a São Paulo police facility that held 343 prisoners, when asked if any legal aid lawyers had visited during the seven months he had worked there.<sup>178</sup> Many prisons have several lawyers on staff, or receive visits from outside public defenders, but it is evident that the demand for legal assistance far exceeds the supply.

To compensate in part for the lack of sustained legal assistance, many state prison systems sponsor periodic sweeps (*mutirões*) by which groups of lawyers and law students enter prisons and assess inmates' legal status, evaluating whether they are eligible for early release or other benefits. The Brazilian Bar Association frequently sponsors such events, as do local law faculties.

**Social Services**

One final obstacle inmates face in obtaining early release and other benefits is the scarcity of social assistance. In order to qualify for early release, prisoners are supposed to be evaluated by social workers, who make recommendations as to whether they are suitable for release. Here too, however, the demand for such services in many prisons outstrips the supply, as evidenced by numerous inmate complaints on the topic.

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<sup>177</sup>Practically the only public defenders that Human Rights Watch encountered during its visits to Brazil's prisons were the three in Roger prison in João Pessoa, Paraíba, who fought to bar Human Rights Watch from inspecting the facility.

<sup>178</sup>Human Rights Watch interview, Carlos César Rodrigues, Depatri, São Paulo, November 24, 1997.

## VII. PRISONER-ON-PRISONER ABUSES

*The problem is that everyone is thrown in together; murderers are mixed with chicken thieves.*

—Pedro Wilson Guimarães, president of the Human Rights Commission of Brazil's Chamber of Deputies<sup>179</sup>

Violent recidivists and persons held for first-time petty offenses often share the same cell in Brazil, a situation which, combined with the prisons' harsh conditions, lack of effective supervision, abundance of weapons, and lack of activities, results in prisoner-on-prisoner abuses. In the most dangerous prisons, powerful inmates kill others with impunity, while even in relatively secure prisons extortion and lesser forms of mistreatment are common.

### **Lack of Classification**

Brazil's national prison law includes detailed guidelines requiring prisoners to be classified and separated by sex, criminal history, legal status (i.e., convicted or awaiting trial), and other characteristics, echoing international standards on the subject.<sup>180</sup> In practice, however, few of these rules are respected. Women prisoners

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<sup>179</sup>Human Rights Watch interview, Brasília, December 18, 1997.

<sup>180</sup>Lei de Execução Penal, arts. 5, 82, 83, and 84; Standard Minimum Rules, art. 8.

are separated from men, minors are largely kept out of adult prisons,<sup>181</sup> and former police are generally confined away from other prisoners, but in most penal facilities little else is done to separate different categories of prisoners.

Most importantly, little effort is made to separate potentially dangerous prisoners from their more vulnerable fellows. Some states have special high

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<sup>181</sup>Human Rights Watch encountered minors in two adult prisons, but they were held there because of fairly exceptional circumstances. At the High Security Prison of Charqueadas, in Rio Grande do Sul, six minors were being temporarily held in a holding area in early December 1997, along with four other inmates under age twenty-one. The group had been recently transferred from a youth detention center that had been damaged in an inmate riot. The area where they were held was separate from the main part of the prison and they had no contact with adult prisoners; however, they also had no place to exercise or get sun. In the Manaus prison, in Amazonas, we met a sixteen-year-old prisoner who had spent several days in a holding area at the front of the prison because he was arrested carrying identity papers showing a false age. He was sharing a cell with several adults.

security prisons to hold the most dangerous and escape-prone prisoners, but these hold only a small fraction of the inmate population; otherwise there is no functioning system of prisoner classification by security level—such as maximum, medium, and minimum security—either by prison or within each prison. Prisoners are fairly randomly mixed: cell assignments, for example, tend to be dictated by space concerns or decided by the prisoners themselves.

Convicted and unconvicted inmates are freely intermingled. Besides the large number of convicted prisoners confined with unconvicted prisoners in police lockups, discussed previously, there are also numerous unconvicted inmates held with convicted inmates in the prisons.<sup>182</sup>

#### **Lack of Effective Supervision**

The 1995 prison census counted a total of 19,366 custodial personnel working in the country's prisons, for an average of 4.5 inmates per guard.<sup>183</sup> At any given moment, however, a surprisingly high proportion of guards are on medical leave or vacation or are otherwise absent from their work. In addition, people nominally hired as guards are in fact assigned administrative tasks in many prisons.

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<sup>182</sup>The 1994 prison census, for example, noted that 14.46 percent of prison inmates were unconvicted (and that the legal status of another 4.6 percent was not known). 1994 Prison Census, pp. 16-17.

<sup>183</sup>1995 Prison Census, table XIX, p. 43. Similarly, in mid-1997, the São Paulo prison authorities announced that the state had approximately 8,000 guards for 34,675 inmates, or 4.3 inmates per guard. Rodrigo Vergara, "Número de presos em SP cresce 8% em 96," *Folha de S. Paulo*, May 13, 1997.

Guards are also used as drivers and for escort when prisoners are brought to court or to other outside appointments, further reducing the number of custodial staff on duty within the prisons. Finally, although guards' schedules vary from state to state, guards typically work only one day out of every four.<sup>184</sup>

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<sup>184</sup>In most states Human Rights Watch visited, guards work twenty-four-hour shifts and then have seventy-two hours' rest. In some states, guards work twelve-hour shifts, followed by either thirty-six or seventy-two hours off.

The end result is that most prisons have a very limited number of guards responsible for supervising impossibly disproportionate numbers of inmates. At São Paulo's Casa de Detenção, for example, the warden said that he usually has ten to twelve guards on duty per 1,700 prisoners, or about one guard per floor of each cellblock.<sup>185</sup> Each guard, therefore, is responsible for monitoring some 140 to 170 prisoners. Guard numbers drop even lower on Mondays—when absenteeism is particularly high—which happens to be the day on which prison violence is most likely to break out.

The worst prison Human Rights Watch visited in terms of inadequate guard supervision was the João Chaves Penitentiary, in Natal, Rio Grande do Norte. Although twenty-four military police officers were assigned to the prison each day, they were divided among the women's annex, the administrative areas, escort services, etc., leaving only three guards responsible for the internal control of the men's prison. Thus, given the inmate population of 646 in December 1997, there were 215 inmates per guard. Moreover, the three guards remained stationed at a table near the entrance of the prison. During a day at the facility, we rarely saw them get up from the table to monitor the situation of the inmate population.

Most other prisons had serious shortages of custodial staff, if not at the levels described above. The State Penitentiary of Campina Grande, in Paraíba, had about ninety-three inmates for each on-duty guard; Roger prison, in João Pessoa, Paraíba, had about sixty-two inmates per guard, and the Porto Alegre Central Prison, in Rio Grande do Sul, had about sixty inmates per guard, to cite a few examples. At Brasília's main prison, which had about sixty-one inmates for each on-duty guard, the warden told us that he needed triple this number to "satisfactorily" handle the prison population.<sup>186</sup> The warden of São Paulo's State Penitentiary noted that even though the inmate population had grown significantly

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<sup>185</sup>Human Rights Watch interview, São Paulo, November 28, 1997.

<sup>186</sup>Human Rights Watch interview, Francisco da Silva Viera, director, Centro de Internamento e Reeducação, Complexo Penitenciário, Brasília, December 18, 1997.

over the last decade, guard numbers had remained stable.<sup>187</sup> Besides a few women's prisons, which tended to have higher proportional staff numbers, the only prison in which Human Rights Watch encountered somewhat reasonable proportions of inmates and guards was the Nelson Hungria Penitentiary in Nova Contagem, Minas Gerais, where about fifty guards supervised 683 inmates (for about fourteen inmates per guard).

Prison-to-guard ratios in the police lockups Human Rights Watch visited were equally grim. Most lockups had only one guard on duty at a time. This single guard, moreover, was normally stationed outside of the lockup itself and would rarely venture inside to monitor the prisoners' well-being. In some facilities, such as São Paulo's third police precinct, we found a heavy metal door separating the lockup area from the rest of the precinct, which precluded visual surveillance and muffled sound. At the Depatri police facility in São Paulo, not only were guards stationed at a distance from the prisoners, but there are only two guards per shift to monitor some 350 inmates.

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<sup>187</sup>Human Rights Watch interview, São Paulo, November 27, 1997.

Paradoxically, the low staffing levels of Brazil's penal facilities, rather than compelling each guard to be more vigilant, encourages guards to neglect their duties even more. Being so outnumbered, guards are more at risk when they are in contact with prisoners. Given the shocking number of inmate riots and hostage-taking episodes over the last few years, it is no surprise that many guards prefer not to do rounds within the prison but instead, as much as possible, to remain at a safe distance. At Porto Alegre's Central Prison, for example, prisoners asserted that guards almost never enter the prisoners' living areas (*galerias*); indeed, that "the guards *can't* enter" these areas while the prisoners are inside.<sup>188</sup> Killings of guards, while infrequent, are not unheard of. At the Hortolândia House of Detention in June 1995, in a particularly brutal incident, rioting prisoners killed two guards and the prison warden.<sup>189</sup>

Guard corruption is a final contributing factor to this dangerous mixture. Prisoners pay guards to allow them to bend the rules, including smuggling in weapons and visiting areas of the prison they would otherwise be barred from, in some instances, to take revenge on their enemies there. As a prisoner at the Manaus men's prison put it, "Give a guard 30 reais and he won't care what you do; he'll give you the key to someone else's cell."<sup>190</sup> The head of a São Paulo police facility stated bluntly:

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<sup>188</sup>Human Rights Watch interview, Porto Alegre, Rio Grande do Sul, December 4, 1997.

<sup>189</sup>"Rebelião termina com seis mortes," *Folha de S. Paulo*, June 22, 1995.

<sup>190</sup>Human Rights Watch interview, Penitenciária Desembargador Raimundo Vidal Pessoa, Manaus, Amazonas, December 16, 1997.



I have only a few jailers, and most of them are corrupt. I'm trying to get rid of the worst two, but it's hard to prove corruption. These guys, they make 300-400 reais [approximately U.S. \$ 265-355] a month. Prisoners offer them huge amounts of money to bring in electric drills. I have prisoners who inform for me; I found out that cell four is trying to buy a set of tools for \$2,000. I'm trying to implement a new policy requiring that jailers be searched when they enter. The metal detector doesn't work . . . . So far we haven't found guns, but we've found knives. Prisoners even manage to have pizza delivered from the pizzerias of their choice.<sup>191</sup>

The end result of low guard numbers and lax surveillance is a power vacuum. Unsupervised and undisciplined, prisoners in Brazil are left to govern themselves. With the meager guard presence in many prisons, there is very little to prevent tougher, stronger, richer and more well-connected inmates from threatening, intimidating and sometimes violently abusing their more vulnerable fellows.

#### **Availability of Weapons**

Weapons, particularly homemade knives and stilettos, are plentiful in the prisons. The wardens of several facilities showed us weapons they had confiscated during searches: pieces of sharpened steel with wrapped fabric handles, sharpened steak knives, and other dangerous instruments. Prisoners in a number of facilities told Human Rights Watch that "everyone" had weapons.

Prison authorities conduct regular searches of the prisons, but these are inadequate to cope with inmates' ingenuity in making and smuggling in weapons. To cite an example suggesting the extent of the problem, a one-day search at São Paulo's Casa de Detenção turned up 250 knives.<sup>192</sup>

#### **Gangs and the Prison Hierarchy**

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<sup>191</sup>Human Rights Watch interview, Carlos César Rodrigues, commander, Depatri, São Paulo, November 24, 1998.

<sup>192</sup>"Revista na Detenção acha 250 estiletes," *Folha de S. Paulo*, March 7, 1997.

Much prison violence is related to gang conflicts, which, in turn, are often the result of competition to control the prison drug trade. The director of the State Penitentiary of Jacuí, in Rio Grande do Sul, told us that a violent 1992 “war” between the *manos* and the *abertos*, two prison gangs, had forced state authorities to inaugurate a new high-security punishment facility prematurely.<sup>193</sup> More recently, in May 1998, a huge gang clash at the Professor Barreto Campelo prison in Pernambuco left at least twenty-two inmates dead.<sup>194</sup>

In some prisons, dangerous rivalries between different cellblocks or prison wings erupt. At Porto Alegre’s overcrowded Central Prison, for example, prisoners in the second floor of pavilion B tried to “take over” the third floor in early 1997, violently invading it. Human Rights Watch interviewed one of the inmates from the third floor who was taken hostage during this assault: “I was grabbed from behind and dragged downstairs. Then they tied my hands and feet together and beat me with sticks.”<sup>195</sup> The other inmates threatened to roll him up in a foam mattress and set it afire if the military police tried to free him. He has visible scars from the episode.

Prisoners spoke of the “prefecture,” the “leadership,” or the “sheriffs” of their facilities, acknowledging the status of the most powerful inmates in formal terms. At the Central Prison in Porto Alegre, we heard that members of the prefecture control the drug trade—which was booming—live in the best cells, and get the few available jobs, thus gaining sentence reductions. At the Manaus men’s

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<sup>193</sup>Human Rights Watch interview, Capt. Pacheco, Charqueadas, Rio Grande do Sul, December 3, 1997.

<sup>194</sup>“22 Inmates Dead in Brazil after Fight between Gangs,” *Seattle Times*, May 31, 1998

<sup>195</sup>Human Rights Watch interview, inmate, Porto Alegre, Rio Grande do Sul, December 4, 1997.

prison, such leaders are said to number nearly fifty in an inmate population of over 500; they control the sale of narcotics; they also order other prisoners beaten.

### Gay Prisoners

Gay and transsexual prisoners face particular hardships, as discrimination against them is intensified in the hierarchical society of the men's prisons. A number of gay and transsexual prisoners are confined in São Paulo's Casa de Detenção, most of them in a group of cells in pavilion five.<sup>196</sup> A despised minority in the prison system, they have no choice but to govern their behavior in accordance with a set of unwritten "laws" established by other inmates. On visiting days, for example, they have to remain in their cells all day; they cannot show themselves for fear of upsetting the visitors. If they have visitors themselves, they can go out only if they thoroughly cover themselves up. Each prison, and each pavilion in the Casa de Detenção, has somewhat different rules for homosexuals, but they are all similarly degrading and discriminatory.

One gay prisoner told us:

They say we have no dignity, no honor, and no rights. They're proud to be *men*, bandits; they're tough . . . They see us as objects to be used. If there's a rebellion, we're the ones who suffer. The guards here have no control over the situation inside.<sup>197</sup>

Most gay prisoners survive by washing other prisoners' clothing and doing other types of "women's work," including prostitution. The gays and transvestites who live in their own section have a certain degree of independence; those who arrive without friends there face greater difficulties. Gay prisoners who end up living in another section ("with the men," as they put it), will have to work for the other prisoners like a slave. "She becomes a sex slave as well," one gay inmate added, explaining:

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<sup>196</sup>There were said to be some thirty-three openly gay or transsexual inmates. Some of them had adopted stereotypically "feminine" attributes (such as hair ribbons and plucked eyebrows); some were obviously taking hormones and had developed large breasts, but even the more stereotypically "masculine" gay prisoners referred to each other as "she."

<sup>197</sup>Human Rights Watch interview, São Paulo, January 5, 1998.

We serve two sentences here: the one imposed by the judge, and the one imposed by the prisoners. We have no value to them. Nobody pays any attention to the word of a homosexual. They let us talk to them only up to a certain point. None of them would ever drink out of my cup.<sup>198</sup>

### **Prisoner-on-Prisoner Violence**

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<sup>198</sup>Ibid.

Given this conjunction of causal factors, it is easy to understand why eruptions of prisoner-on-prisoner violence are frequent in Brazil's penal facilities. Examples from recent years include the following: inmates who wanted to end an early 1998 rebellion at the São José prison in Belém do Pará, in the Amazon region, killed three of the rebellion's leaders, throwing two of them off a high prison wall to their deaths; seven prisoners were killed in Rio de Janeiro police lockups during a two-week period in July 1997, the result of gang rivalries; a group of prisoners at São Paulo's Casa de Detenção broke into another inmate's cell and stabbed him to death in May 1997; in the first three months of 1997, four prisoners were killed in the severely overcrowded Vila Branca public jail, in São Paulo, one of the prisoners having been stabbed forty times; a gang clash at the Sorocaba public jail in February 1997 left three prisoners dead.<sup>199</sup>

At São Paulo's Casa de Detenção, about ten inmates die each year as a result of knife wounds, according to the inmate nurses who normally treat such injuries.<sup>200</sup> Indeed, one inmate was killed in March 1997 within fifteen minutes of arriving at the facility; he was stabbed to death while still in a holding cell. An inmate nurse explained how violence frequently occurs:

Most stabbings happen on Monday; it's collection day. After the visits on Sundays, people who are owed money come to collect. When the guys who owe don't have the money, fights start.<sup>201</sup>

At Porto Alegre's Central Prison, one of the more dangerous facilities Human Rights Watch inspected, one inmate told us:

In three years I've seen six people die violently; most of them owed money. One guy, in 1996, they injected ten grams of

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<sup>199</sup>"4 Prisoners Die in Brazil Rebellion," Associated Press, March 1, 1998; Fernanda da Escóssia, "Fuga de cadeia mata 1 e fere 3," *Folha de S. Paulo*, July 19, 1997; "Presidiários fazem 2 refêns e matam detento no Carandiru," *Folha de S. Paulo*, May 30, 1997; Wagner Magalhães, "Cadeia superlotada transfere presos," *Folha de S. Paulo*, March 26, 1997; "Briga entre presos deixa três mortos," *Folha de S. Paulo*, February 10, 1997.

<sup>200</sup>Human Rights Watch interview, Casa de Detenção, São Paulo, November 28, 1997.

<sup>201</sup>*Ibid.*

cocaine in him; when he didn't die quickly of that they hanged him.<sup>202</sup>

Officials there said that three inmates had died violently in the past year, all of them hanged by other prisoners. Manaus prison inmates told Human Rights Watch that four prisoners were killed in 1997, one hanged by others and three stabbed. "When you talk too much, you die; that's the law here," asserted one inmate.<sup>203</sup>

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<sup>202</sup>Human Rights Watch interview, inmate, Presidio Central de Porto Alegre, Rio Grande do Sul, December 1, 1997.

<sup>203</sup>Human Rights Watch interview, Manaus, Amazonas, December 16, 1997.

The national prison census of 1994 reported a total of 131 prisoner-on-prisoner homicides and forty-five suicides (as the above descriptions suggest, some of the “suicides” may actually have been coerced).<sup>204</sup> While these statistics are not nearly as shocking as those of certain other Latin American countries, they still indicate that prison authorities need to take steps to prevent prison violence. Human Rights Watch’s research suggests, in addition, that recent prisoner-on-prisoner homicide numbers are substantially higher (or that the 1994 numbers were flawed by underreporting).<sup>205</sup> Unfortunately, the 1995 prison census failed to provide any statistical information on prison violence.

#### **Extortion and the Prison Real Estate Market**

Inmates in some facilities—usually the most overcrowded ones—have to pay other inmates for the use of a cell. At São Paulo’s Casa de Detenção, for example, inmates pay from 180 to 800 reais (approximately U.S. \$160 to \$711) to share a cell, depending on its quality and location. Some powerful prisoners there “own,” or control, ten or more cells. At the Campina Grande State Prison in Paraíba, inmates must make a one-time payment of about one hundred reais (approximately U.S. \$89) to use a cell. Prisoners who cannot afford this payment sleep in the corridors. At the Natal prison, it reportedly costs nothing to live in a dormitory, but inmates must pay one hundred to 120 reais to share an individual cell. Prisoners often pay each other in packs of cigarettes, known as *maços*.

Weaker or less powerful prisoners often have to pay other inmates for other “privileges” as well. Their belongings are frequently taken from them.

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<sup>204</sup>1994 Prison Census, p. 55.

<sup>205</sup>Nearly every men’s prison visited by Human Rights Watch reported at least one such killing within the previous year; some reported several killings. (The only exception was the Charqueadas high security prison, where prisoners are held in individual cells and their movements are strictly controlled.) Since Brazil has over 500 prisons, these numbers suggest that there are well over 500 inmate killings each year.

### **Isolation Cells and Prisoners Sworn to Death**

Every prison Human Rights Watch visited, except some of the women's facilities, had holding or isolation cells, usually located near the front of the prison close to guard supervision. Sometimes these cells held incoming prisoners, but more often they held prisoners who, for one reason or another, feared injury at the hands of others. Such prisoners are often described as "sworn to death" (*jurados de morte*) or "security" (*seguro*) prisoners.

São Paulo's Casa de Detenção has two main isolation areas—one on the fifth floor of the sixth pavilion, the other, much larger area on the fifth floor of the fifth pavilion—both of which had the worst conditions in the prison. Prisoners are held in these areas after requesting "preventive security" (*medida preventiva de segurança*) status. In fear of other prisoners, they are all awaiting transfer to other prisons, which may be granted after three, six, or eight months, or longer. As one such prisoner explained: "I've got an enemy. If I go back to my cell, either he'll have to kill me or I'll have to kill him. I prefer to get out of here."<sup>206</sup> Other prisoners had no money to pay for a cell. In all, out of an inmate population of about 6,500, about 330 inmates—5 percent of all prisoners—were in this situation when Human Rights Watch visited.

Human Rights Watch interviewed six prisoners held in an isolation cell at João Pessoa's Maximum Security Prison who were all in evident fear for their lives; indeed, some of them were clearly terrified. They explained a complicated murder plot involving marijuana laced with poison, which they claimed was erroneously blamed on them. The intended victim of the failed murder attempt was the so-called "head" of the prison, an inmate who reportedly planned to retaliate by having them all killed. "We could die at any moment," one of the group said, his voice trembling. "They've been threatening us; they've tried three times to get to our cell. I don't sleep any more."<sup>207</sup> Illustrating the reasonableness of his fears, he said that three knife fights had occurred in the past month, each ending in serious injury. Another member of the group said a prisoner there was stabbed to death six months previously.

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<sup>206</sup>Human Rights Watch interview, São Paulo, January 5, 1998.

<sup>207</sup>Human Rights Watch interview, João Pessoa, Paraíba, December 10, 1997.



In prison riots, when other inmates obtain control of a facility, such prisoners are frequently taken hostage, tortured, and even killed.<sup>208</sup> Human Rights Watch spoke with eight security prisoners at the Riberão Pires public jail, in São Paulo, who were taken hostage during a riot about two weeks before our visit. Other prisoners tied them to gas canisters and threatened them with knives, cutting one inmate. During an earlier incident there, in February 1997, rioting prisoners poured boiling water over a security prisoner who had previously notified the authorities of an escape attempt.<sup>209</sup>

#### **The João Chaves Penitentiary: Case Study of a Violent Prison**

Although Human Rights Watch visited a number of violent prisons during our mission to Brazil, we were particularly troubled by the situation of the João Chaves Penitentiary in Natal, Rio Grande do Norte. According to Col. Sebastião Saraiva, the prison warden, ten prisoners at João Chaves met violent deaths between March 1997 and early February 1998.<sup>210</sup> Both times that Human Rights Watch visited the facility, we found its atmosphere to be extremely grim: a number of prisoners Human Rights Watch interviewed clearly believed that their lives were at risk.

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<sup>208</sup>See, for example, "Acaba rebelião de 42 horas," *Folha de S. Paulo*, May 14, 1997 (rebellion in which twenty-five security prisoners were taken hostage, two of them killed); Fausto Siqueira, "Rebelião mata 4 e fere 9 na Praia Grande," *Folha de S. Paulo*, November 4, 1996 (rebellion in which four security prisoners were killed).

<sup>209</sup>Human Rights Watch interviews, inmates, São Paulo, November 22, 1997.

<sup>210</sup>The seven inmates killed by police in the aftermath of a February 1998 escape attempt, described below, are not counted in this figure; when they are included, the number of prisoners killed in the one-year period totals seventeen.

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Prisoners told Human Rights Watch that, in several instances, authorities were indifferent to death threats received by prisoners who were later killed. Some prisoners said that prison authorities encouraged certain prisoners to kill others in exchange for unauthorized leave or other irregular benefits. Although prison officials and state authorities vehemently denied these accusations, Human Rights Watch was able to document two extremely disturbing cases that suggest, at minimum, official indifference to inmate killings. In both cases, the prisoners whose lives were threatened were not afforded transfers or any other sort of protection after they informed the authorities of the risks they faced and were killed by other inmates shortly after reporting the threats they had received.

According to records from the twelfth police precinct in Natal, police inquiries were conducted to investigate the deaths of ten inmates at João Chaves between March 1997 and January 1998. The table below reproduces the twelfth precinct's record of completed inquiries, provided to Human Rights Watch by precinct chief Fábio Rogério Silva:

Inquiry Number	Date of filing	Name of Victim	Name of suspect(s)
003/97	4/2/97	Francisco Luiz da Silva Junior	Gutemberg Bezerra da Silva
004/97	4/3/97	Gutemberg Bezerra da Silva	Marinaldo Soares; José Costa Patrício
006/97	4/23/97	Marinaldo Soares	José Costa Patrício
010/97	-----	Rosanea da Silva de Oliveira	Elissandra Ferreira da Silva; Almir Queiroz da Silva
014/97	11/26/97	Francisco Canindé Bezerra dos Santos	João Maria Segundo do Nascimento
016/97	12/31/97	Djerson Andrade de Almeida	Jailton Bastos de Souza
017/97	1/21/98	João Maria Segundo do Nascimento	José Barbosa de Souza
002/98	1/22/98	Mário Sérgio Ribeiro dos Santos	João Maria Vicente de Souza
004/98	1/27/98	Antonio Rodrigues da Costa	João Batista da Silva
005/98	1/30/98	José Francisco Cerqueira	Francisco de Assis Dantas

### **The death of Francisco Canindé Bezerra dos Santos**

On August 27, 1997, Francisco Canindé Bezerra dos Santos was placed in a punishment cell. Shortly afterwards, Bezerra dos Santos was transferred to the *cafua*, a decrepit area also used for punishment.<sup>211</sup> On August 28, Francisca Bezerra dos Santos, his sister, received an anonymous telephone call from the João Chaves Penitentiary, informing her that she should go to the Santa Catarina Hospital because her brother had been taken there after being severely beaten. Records from the Santa Catarina Hospital confirm that he was treated on an out-patient basis on August 28, 1997.<sup>212</sup> Francisca first asked her sister-in-law, Vera Neide Gonzaga da Silva, to go to the hospital and later went herself. Both women saw Bezerra dos Santos, accompanied by police officers. According to their statement, he was bleeding from the nose and had bandages on his head.

The two women proceeded to the João Chaves Penitentiary, where they met with the warden. Bezerra dos Santos's sister told the Human Rights Division of the State Prosecutor's Office that she asked the warden to remove her brother from the punishment area, but that he refused, insisting that Bezerra dos Santos remain there for thirty days.

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<sup>211</sup>The *cafua* consists of four cells, three of which measure roughly six feet by ten feet. None of the three smaller cells have direct access to natural light, nor do they have any sanitary facilities. (See discussion below.)

<sup>212</sup>Hospital Santa Catarina, patient treatment record no. 145.038/97 (attached to letter no. 096/97-SEC, from Dr. Sebastião Paulino da Costa, director, Hospital Santa Catarina, to Francisco Batista de Vasconcelos, human rights prosecutor, Natal, Rio Grande do Norte, November 11, 1998).

The following day, she went to the Human Rights Division of the State Prosecutor's Office and met with Prosecutor Fernando Batista de Vasconcelos. Based on the information that she presented, Vasconcelos prepared three letters to relevant authorities requesting that immediate measures be taken. One letter was addressed to Sebastião Saraiva, the prison warden, one to the judge with oversight authority for the João Chaves Penitentiary, Dr. Manoel dos Santos, and one to the judge from Bezerra dos Santos's home district. After submitting the first letter to Judge dos Santos, Bezerra dos Santos's sister proceeded to the prison, where she arrived at about 1:10 p.m. At 2:00 p.m., Saraiva met with her and received the letter, stamping and signing it with the date of receipt: August 29, 1997. The letter included a copy of the statement of Vera Neide Gonzaga detailing the physical abuse and seclusion in a punishment cell to which Bezerra dos Santos had been subjected. The letter requested that warden Saraiva have him taken to the Office of the State Medical Examiner so that an examination could be performed to determine whether he had been subjected to abuse or torture, that necessary medical care be given to him, and that Saraiva order the opening of a police inquiry to investigate the allegations of physical abuse he had suffered.<sup>213</sup>

The two women remained at the prison until 3:30 p.m., but were not allowed to see Bezerra dos Santos. After returning home that evening, the two women learned that he had been killed that same day—August 29—by other prisoners at the João Chaves Penitentiary. According to Prosecutor Vasconcelos, Bezerra dos Santos had made public complaints about police involvement in drug trafficking within the João Chaves Penitentiary. This, according to Prosecutor Vasconcelos, provoked the decision of the prison officials to place him in the *cafua* and then, at a minimum, to fail to take measures to protect his life within the main detention area of the prison.

Although the police inquiry into Francisco Canindé Bezerra dos Santos' death was concluded on November 26, 1997, the official investigation has not looked into warden Saraiva's role in the crime as of this writing.

#### **The death of Djerson Andrade de Almeida**

At about 10:00 p.m. on September 28, 1997, during a routine search of the interior of the João Chaves Penitentiary, prison staff (military police officers) found

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<sup>213</sup>Letter No. 016/97 Human Rights Division, State Prosecutor's Office, from Prosecutor Francisco Batista de Vasconcelos to Col. Sebastião Saraiva, Natal, Rio Grande do Norte, August 29, 1997.

an industrially produced bomb (TNT-3 type produced by Embel).<sup>214</sup> Shortly afterwards, according to the local media, prison authorities interrogated seventy-one prisoners to determine who was responsible for the entry of the bomb into the prison. As part of these interrogations, a number of prisoners were held in the *cafua*.<sup>215</sup>

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<sup>214</sup>“Encontrada uma Bomba na Penitenciária,” *Diário de Natal*, September 30, 1997.

<sup>215</sup>As noted above, Human Rights Watch visited the *cafua* during its December 1997 visit to João Chaves and documented its appalling physical conditions.

Authorities singled out a group of at least six prisoners, apparently believed to be responsible for the entry of the bomb, and held them in the *cafua*. The relatives of these detainees registered complaints with the Center for Human Rights and Popular Memory (Centro de Direitos Humanos e Memória Popular) in Natal. The center, by letter of October 3, 1997, informed a prosecutor, Fernando Vasconcelos, of the detention and torture of six prisoners in the *cafua*.<sup>216</sup> The six prisoners listed in the letter were: Djerson Andrade de Almeida, José Roberto Lopes Cunha, Lindemberg da Fé, Marcelo Santos da Silva, Eduardo Anunciação Ribeiro da Silva, and João da Silva Oliveira. On that same day, October 3, prosecutor Vasconcelos requested by letter sent to the prison warden, Sebastião Saraiva, that the physical integrity and the lives of the prisoners be guaranteed and that the six men be sent to the Office of the State Medical Examiner so that examinations could be performed on all of them. Vasconcelos sent a copy of this letter, along with a cover letter explaining the gravity of the situation, to Carlos Eduardo Alves, the secretary of justice of Rio Grande do Norte.

Later that day, on the advice of prosecutor Vasconcelos, the prisoners' relatives went to the offices of the *Diário de Natal*, one of the city's leading dailies, to inform the paper of the imminent risk faced by their family members. According to the *Diário de Natal*, relatives of the six prisoners and of a prisoner known only by the nickname "Cabeludo" told the paper that these men were being held naked in the *cafua* where they were subject to beatings and torture to force them to confess to their participation in an escape attempt involving the bomb found the previous Sunday.<sup>217</sup>

Reporters from the *Diário de Natal* went to the João Chaves Penitentiary and requested permission to meet with the prisoners held in the *cafua* but were denied access by warden Saraiva. Instead, he presented other prisoners, who told

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<sup>216</sup>Prison warden Sebastião Saraiva told the *Diário de Natal* that eight prisoners, under investigation for their role in planning an escape, were being held in the *cafua*. "Diretor Nega Tortura e Diz Tratar Bem os Presos," *Diário de Natal*, October 4, 1997.

<sup>217</sup>*Ibid.*

the journalists that they were unaware of any cases of torture committed at the prison.

Andrade de Almeida's father, Paulo Luiz de Almeida, in a signed statement given to the State Prosecutor's Office, recounted that on October 2, through the assistance of attorney José Humberto Dutra de Almeida, his son was removed from the *cafua* and returned to the main part of the prison. However, he was taken from the area in which those awaiting trial were held to an area which houses those already convicted. According to Paulo Luiz de Almeida, on October 3, his son sent a note to him in which he asked for one hundred reais (approximately U.S. \$89) to pay for a space to sleep in the area to which he had been transferred. The following day at about 11:00 a.m., the elder Almeida went to the João Chaves Penitentiary and was informed that his son had been tortured and killed by other inmates.<sup>218</sup>

AS IN THE CASE OF FRANCISCO CANINDÉ BEZERRA DOS SANTOS, ALTHOUGH THE POLICE INQUIRY INTO DJERSON ANDRADE DE ALMEIDA'S DEATH WAS COMPLETED ON DECEMBER 31, 1997, A THOROUGH INVESTIGATION INTO THE WARDEN'S RESPONSIBILITY HAS NOT BEEN CONDUCTED AS OF THIS WRITING.

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<sup>218</sup>Statement of Paulo Luiz de Almeida to the State Prosecutor's Office, 27th District of Natal, Natal, Rio Grande do Norte, October 14, 1997.



## VIII. ABUSES BY GUARDS AND POLICE

From the moment of arrest until their release from prison, Brazilian inmates face chronic and sometimes extreme official violence. In the immediate aftermath of prison riots, in particular, inmates frequently suffer appalling physical abuse. Poorly remunerated and lacking appropriate training, prison guards are often quick to resort to physical beatings in lieu of the authorized punishments listed in the national prison law. Still, the most egregious instances of brutality—including summary executions of prisoners—are committed by civil and military police rather than guards. The 1992 Carandiru massacre, one of the bloodiest episodes in Brazilian history, was committed by members of the military police; so were last year's slaughter of eight prisoners in João Pessoa, Paraíba, the December 1997 killings of seven escaped prisoners near Fortaleza, Ceará, and the February 1998 killings of at least six escaped prisoners in Natal, Rio Grande do Norte. Given that the record of many states' civil and military police in conducting their regular policing duties is severely blemished by brutality, corruption, and related abuses,<sup>219</sup> it is not surprising that their history of dealing with inmates is similarly flawed.

As with human rights violations generally, what most encourages these acts of violence is the persistent impunity that prevails for officials guilty of them. At every stage of the criminal process—from investigation to prosecution to judgment to appeal—the scales are heavily weighted in favor of the perpetrator of abuse. Indeed, very few incidents of physical abuse of prisoners, including even the most egregious cases of torture, are ever investigated. The unpopularity and political powerlessness of the inmate population means that few people care if abuses against prisoners go unpunished.

### **Prison Personnel**

Recognizing the important responsibilities entrusted prison guards—who must prevent escapes and maintain order in the prisons while ensuring the safety and welfare of all inmates—the Standard Minimum Rules contain a number of provisions mandating that guards be carefully selected, appropriately trained, and adequately remunerated. They note, in explaining these concerns, that the proper

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<sup>219</sup>See generally Human Rights Watch/Americas, *Police Brutality in Urban Brazil*.

functioning of the prisons depends on guards' "integrity, humanity, professional capacity and personal suitability for [prison] work."<sup>220</sup>

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<sup>220</sup>Standard Minimum Rules, art. 46(1).

**Structure of responsibilities**

In most states, civilian guards who are hired and trained by the justice secretariat staff the prisons, while civil police officers staff the police lockups. In other words, once an inmate is transferred to the prison system, he should be out of police hands.

Nonetheless, state military police—which are subject to civilian control and whose name is thus something of misnomer—do play a role in the prisons.<sup>221</sup> The principal responsibility of the military police is to ensure the prisons' external security by standing watch in towers and other structures that ring the prisons. They are also commonly called upon to assist prison staff in quelling riots, preventing escapes, and handling other prison disturbances.

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<sup>221</sup>The exact nature of the military police is difficult to specify. Prior to 1988, the military police were directly subordinate to the armed forces. In that year, they were placed under civilian control, being made subordinate to state governors. Certain remnants of their military status nonetheless remain, the most problematic of which is the existence of a separate system of military justice for adjudicating crimes allegedly committed by military police officials. The continued reliance on the military justice system, with its separate courts and different procedural norms, is a significant factor encouraging impunity for police abuses. (See further discussion below.)

In certain states, moreover, the police are formally employed within the prisons. The most extreme example of police control of the prison system is that of Rio Grande do Norte, a small northeastern state with a relatively small inmate population. When we visited the state in December 1997, the prisons were entirely under the administration of the military police. A spokesman from the Secretariat of the Interior, Justice, and Citizenship, which runs the prison system, said that the state had never in its history employed a civilian corps of prison staff, although it was planning to hire some soon.<sup>222</sup>

Rio Grande do Sul, Brazil's southernmost state, has given over control of five of its prisons—the five most unmanageable facilities—to the state military police. After several years of continuing disturbances, culminating in a dramatic hostage crisis and the escape of a number of notorious inmates, the military police were authorized to take over the prisons on July 25, 1995. The authorization was limited to a six-month period, but it has been extended every time it was due to expire. When Human Rights Watch visited, the military police were confident that their mandate would be extended in this way indefinitely; indeed, they appeared to have settled very comfortably into their functions as prison administrators.

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<sup>222</sup>Human Rights Watch interview, Flávio Hebron, assistant secretary, Natal, Rio Grande do Norte, December 13, 1997. Similarly, a 1988 report from the National Council of Criminal and Penitentiary Policy stated that civil police in Rio Grande do Norte staffed the prisons and that military police were charged with external security, while a 1995 Prison Ministry report stated that all prison duties “are performed by the military and civil police, without any order.” Conselho Nacional de Política Criminal e Penitenciária, *O Sistema Penitenciário da Região Nordeste*, June 27, 1988, p. 72; Coordenação Nacional de Pastoral Carcerária, *Relatório do Encontro Regional Nordeste de Pastoral Carcerária*, June 5, 1995. We have been unable to confirm whether civilian guards have in fact been hired and trained since our visit.

While most observers, and even some prisoners, agreed that the military police in Rio Grande do Sul have been an improvement over the corrupt and abusive civilian guards they replaced, their presence in the prisons is said to violate a state constitutional provision that limits their prison responsibilities to providing external security. When questioned on this, the head of the Força Tarefa (military prison force) responded simply, "We don't get involved in constitutional questions," although he did agree that their prison duties were unusual.

In Ceará, another state visited by Human Rights Watch, military police have been placed in charge of maintaining the internal security of the state's prisons. Still, we have insufficient information to conclude that Brazil is witnessing the systematic "militarization" of its prisons, as has occurred in other Latin American countries.<sup>223</sup> We are nonetheless concerned about the degree of military police control over the prison system, which violates international norms mandating that prisons be guarded by a professional corps of civilian staff.<sup>224</sup>

### **Lack of training**

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<sup>223</sup>See, for example, Human Rights Watch/Americas, *Punishment Before Trial: Prison Conditions in Venezuela* (New York: Human Rights Watch, 1997), pp. 22-23, 60-64 (describing the militarization of Venezuelan prisons and related problems).

<sup>224</sup>Standard Minimum Rules, art 46(3) (stating that "personnel shall be appointed on a full-time basis as professional prison officers and have civil service status.")

The national prison law mandates that guards receive both initial and refresher training courses.<sup>225</sup> Nonetheless, a lack of adequate training severely handicaps guards in Brazilian prisons, leaving many of them ill-equipped to manage their custodial duties. The military police officers working in several Rio Grande do Sul prisons, for example, receive only five days' training before being assigned to a job within the prison.<sup>226</sup>

Guards in Minas Gerais complained loudly of the absence of training during interviews with Human Rights Watch. Their training course, when one is given, consists of a week of classroom lectures held within one of the prisons. The state has no training academy, nor are refresher training courses available for guards who are already working.<sup>227</sup>

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<sup>225</sup>Lei de Execução Penal, art. 77, sec. 1; *see also* Standard Minimum Rules, arts. 47 (2) & (3) (requiring that guards receive an initial training course "in their general and specific duties" and that they "maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals").

<sup>226</sup>Human Rights Watch interview, Lt. André Córdova, Charqueadas, Rio Grande do Sul, December 2, 1997.

<sup>227</sup>Human Rights Watch interview, members of Minas Gerais prison guards union, Belo Horizonte, Minas Gerais, March 17, 1998; *see also* 1997 Minas Gerais CPI report, p. 66 (noting that "the [prison] system has important deficiencies" with regard to guard training).

In São Paulo, the state with the largest corps of prison guards, the head of the prison guards' union told Human Rights Watch that "the training provided us has never been adequate."<sup>228</sup> Unlike some states, São Paulo does have a Penitentiary Academy charged with guard training, yet the subjects taught there are limited. The union head noted that during their forty-day training course, guards receive substantial training in police skills, but little information regarding the humane treatment of prisoners.

#### **Low salaries**

Guard salaries vary greatly from state to state, but they tend to be low, and in some states they are minuscule. Several states, moreover, supplement their regular custodial staff with contract employees, generally on renewable six-month contracts; these guards receive lower pay, little or no training, and few benefits.

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<sup>228</sup>Human Rights Watch interview, Octávio César Berthault, Casa de Detenção, São Paulo, November, 28, 1997.

Higher-paid guards are found in Brasília, where guards make approximately 1,700 reais per month (approximately U.S. \$1,513), and Amazonas, where guards make between 1,000 and 1,500 reais (from \$890 to \$1,335) per month.<sup>229</sup> New guards in São Paulo start at 711 to 785 reais (approximately \$633 to \$699) per month. In Minas Gerais, until June 1997, guards earned 220 reais (approximately \$196) per month; then, after a strike, their salaries rose to 463 reais (approximately \$421) per month.<sup>230</sup> Jailers in São Paulo police lockups usually earn between 300 and 400 reais (approximately \$267 to \$356) per month.

In Paraíba, only a fraction of the guard staff has job tenure, receiving a standard salary of 400 reais (approximately \$356) per month; most guards work on six-month contracts for 120 reais (approximately \$107) per month. Guards in that state told us that even tenured employees frequently work a second job in order to make ends meet.<sup>231</sup>

Such low salaries contravene the Standard Minimum Rules, which require that prison staff be rewarded with salaries that are "adequate to attract and retain

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<sup>229</sup>Until a couple of years ago, guards in Amazonas state made only 180 to 280 reais per month (approximately US \$160 to \$250), but after the civil police were granted a raise in salary, the state government augmented guards' salaries as well.

<sup>230</sup>Human Rights Watch interview, members of Minas Gerais prison guards union, Belo Horizonte, Minas Gerais, March 17, 1998.

<sup>231</sup>Human Rights Watch interviews, Campina Grande, Paraíba, December 8, 1997.



suitable men and women.”<sup>232</sup> Not only do miserably low salaries fail to attract qualified staff, they encourage corruption.

**Authorized Punishments: Warnings, Restrictions, and Isolation**

The national prison law enumerates the punishments for disciplinary infractions committed by inmates, mandating, in order of ascending severity, verbal warnings, written warnings, restriction or suspension of certain rights (such as visits), and a maximum of thirty days’ disciplinary isolation. It also specifically bars other punishments: in particular, collective punishments, the use of a dark cell, and punishments that endanger the prisoner’s physical or mental health.<sup>233</sup>

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<sup>232</sup>Standard Minimum Rules, art. 46(3).

<sup>233</sup>Lei de Execução Penal, arts. 53 and 45. The Standard Minimum Rules contain similar prohibitions. Standard Minimum Rules, art. 31.

As will be described below, Human Rights Watch found that the legal prohibition on collective punishments is routinely violated in Brazil's penal facilities and that the punishments inflicted very commonly involve physical abuse. We also discovered several punishment cells used for disciplinary isolation that, while not pitch black, were very dimly lit or dark most of the time.<sup>234</sup> We did note that the thirty-day time limit on disciplinary isolation was customarily observed.

As is typical in all prisons, punishment cells tended to have much worse conditions than normal cells.<sup>235</sup> The Natal prison, in Rio Grande do Norte, had one of the worst punishment areas Human Rights Watch visited. Called the *cafua* (dungeon), it consisted of four cells, three of which measured roughly six feet by eleven feet, and a larger one of roughly ten feet by seventeen feet. None of the three smaller cells had direct access to natural light, nor did they have any sanitary facilities. Prisoners told Human Rights Watch that those sent to the *cafua* regularly

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<sup>234</sup>Two such cells, labeled *cela-batida*, were found at the Campina Grande prison, in Paraíba. Although these were empty the day that Human Rights Watch visited, one prisoner told us that he was recently confined seventeen days in one of them, and prisoners in neighboring cells said that someone had been removed from it that very day, before our visit, after spending seven days there. Human Rights Watch interviews, Campina Grande, Paraíba, December 8, 1997.

<sup>235</sup>It should be noted, however, that the national prison law specifically requires punishment cells to provide living conditions equal to those mandated for normal cells, in terms of space, ventilation, sanitary facilities, etc. Lei de Execução Penal, art. 53, sec. IV (referring to article 88 of the same law).

spent thirty uninterrupted days in the punishment cells and were thus forced to defecate on the floor of their cells or in plastic bags which they later tossed through the cell's iron gate. One prisoner spoke of being held in one of the smaller cells with nine other people.

During our December 1997 visit to the Natal prison, we were told that the *cafua* had been shut down fifteen days earlier. Several prisoners with whom we spoke, however, told us that they had been held in the *cafua* and released only a few days before our December visit. After an October escape attempt, more than fifty prisoners were crammed into the larger punishment cell. "We spent three days nose to nose," one inmate told us. "No one could sleep."<sup>236</sup> On our February 1998 return trip to the prison, several inmates told us that the *cafua* continued to be used, although more sporadically than before.

#### **Unauthorized Punishments: Summary Executions, Torture, and Other Physical Abuse**

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<sup>236</sup>Human Rights Watch interview, Natal, Rio Grande do Norte, December 12, 1997.

Particularly in the wake of riots, escape attempts, and other serious incidents—but sometimes even for trivial offenses—prison guards and police disregard the strictures of the national prison law and resort to physical violence. The following is a state-by-state description of recent incidents of violent physical abuse in Brazil's prisons and police lockups, the most serious of which involve summary executions of inmates.<sup>237</sup>

#### **Amazonas**

Until mid-1997, the Raimundo Vidal Pessoa Penitentiary in Manaus, Amazonas—the state's main prison—was the site of rampant official violence. Prisoners described how the prison warden, a member of the military police, personally oversaw beatings of prisoners, sometimes even taking part himself, as well as how drunken guards would hit prisoners on any pretext. Military shock troops used to enter the prison on a regular basis, beating inmates and breaking things. The situation began to change with the establishment of a new Secretariat of Justice in March 1997. To the surprise of everyone, when three prisoners were brutally beaten by military shock troops in July 1997 the new justice secretary visited the prison and apologized to prisoners in the name of the state government.<sup>238</sup> He also sought the prosecution of members of the military garrison that did the beatings.

That same month, after a prison riot during which innumerable reports of physical abuse were aired, the warden was dismissed along with a few of his top

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<sup>237</sup>Torture as a method of police interrogation, rather than for detention-related reasons, is discussed in the chapter on police lockups.

<sup>238</sup>"Secretário pede desculpa a presos por agressão de PMs," *A Crítica* (Manaus), July 3, 1997.

deputies.<sup>239</sup> In December 1997 when Human Rights Watch visited the facility, inmates had many complaints to discuss, but physical abuse by guards and police was not one of them. In our investigation, this was practically the only men's prison where the issue was not raised.

**Ceará**

*The results of the police operation were exceptional.*

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<sup>239</sup>A letter that prisoners released to the press during the riot began: "We want the dismissal of the warden and all of his administration. We want a civilian director and not a military one, so that we do not suffer under a military regime and torture from them." "Carta de presos denuncia espancamento," *A Crítica*, July 9, 1997.

—Gen. Cândido Vargas Freire, secretary of public security, describing the police response to an attempted jailbreak near Fortaleza, Ceará, in December 1997, in which seven escaping prisoners were killed and three hostages were injured, two by police gunfire.<sup>240</sup>

Labeled “Bloody Christmas” by the press,<sup>241</sup> the police response to the attempted escape of twenty-three prisoners from the Instituto Penal Paulo Sarasate (IPPS) near Fortaleza, on December 25, 1997 involved the excessive use of deadly force and at least two summary executions. Despite this, police authorities minimized the gravity of the incident and, as of this writing, prosecutors have failed to conclude the investigation that might lead to charges against police who committed abuses during the operation.

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<sup>240</sup>“Para Secretário operação foi ‘excepcional,’” *O Povo* (Fortaleza), December 27, 1997 (translation by Human Rights Watch).

<sup>241</sup>“SANGUE NO NATAL: NOVE MORTOS NA FUGA DO IPPS,” *DIÁRIO DO NORDESTE* (FORTALEZA), DECEMBER 26, 1997.

On December 24, 1997, three prisoners' rights advocates—Eunisia Barroso, coordinator of the Prison Ministry of the Archdiocese of Fortaleza; Maria Nilva Alves, president of the Maria Nilva Foundation; and Eder Gil Teixeira Pinheiro, vice-president of the Maria Nilva Foundation—arrived at the IPPS to offer Christmas donations to the prisoners confined there.<sup>242</sup> While the visitors were attending a *capoeira* demonstration in their honor,<sup>243</sup> twenty-three prisoners stormed the room where the performance was being held and forcibly seized the three advocates and the IPPS chief of internal security, Lt. Francisco Tomaz de Aquino. Wielding two revolvers and various homemade knives, the inmates led the four hostages into the prison's schoolroom. During an exchange of fire with prison guards, one or more shots fired by authorities struck Francisco Sérgio Dias Ferreira—the prisoner believed to have been the leader of the attack—in the head, killing him instantly.<sup>244</sup> With the four hostages effectively under their control, the remaining prisoners initiated a series of negotiations with prison officials, using Alves's cellular phone.<sup>245</sup>

The negotiations between the prisoners and the police (which were to ultimately last for more than twenty-five hours) were a trying experience for the hostages. Although prison officials announced to the press that they had delivered ample rations of water, food, and bedding to the hostages, both Teixeira Pinheiro and Barroso told Human Rights Watch that their pleas for food and water were repeatedly disregarded by prison officials and that it was only after some seventeen hours of captivity that they were finally given a two-liter bottle of water to share among twenty-three people. As Barroso—a sixty-seven-year-old diabetic—told us,

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<sup>242</sup>The Maria Nilva Foundation is a private, charitable organization that provides assistance to prisoners' families.

<sup>243</sup>Capoeira is a traditional Afro-Brazilian dance and martial art form.

<sup>244</sup>Barroso noted that although the prisoners wanted to kill one of the hostages in order to avenge the shooting of Dias Ferreira, she and one of the prisoners were able to convince the others of the tactical imprudence of taking a hostage's life. Human Rights Watch interview, Eunisia Barroso, Fortaleza, Ceará, January 4, 1998.

<sup>245</sup>According to press accounts, the prisoners first demanded that they be relocated to prisons in the interior of Ceará, later that they be transferred to the Professor Olavo Oliveira Penal Institute (another prison in the state of Ceará), and finally that they be given cars, guns, and free access to leave the IPPS. "Negociações foram feitos através de aparelho celular," *Diário do Nordeste*, December 26, 1997.

the health effects of the denial of food and water were severe: "For me, the lack of water was horrible. I could feel my kidneys and my blood hardening. To keep me from passing out from the heat, the prisoners had to wet my lips with the sweat from their shirts."<sup>246</sup>

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<sup>246</sup>Human Rights Watch interview, Eunisia Barroso, Fortaleza, Ceará, January 4, 1998. According to the hostages, the ill effects of the denial of food and water were exacerbated by the other difficult conditions of their captivity. Throughout the night, the hostages and prisoners were kept awake by prison guards who threw stones at the schoolroom and yelled repeatedly, "Someone is going to die tonight." As there was no bathroom in the area in which they were held, the hostages and the prisoners were compelled to use a corner of the schoolroom as a makeshift bathroom; when the women had to relieve themselves, the others would simply turn their heads.



In an attempt to secure food and water, some of the prisoners sought access to the administration building of the prison. Teixeira Pinheiro and Barroso told Human Rights Watch that as the prisoners approached the front door of the administration building, military police fired upon them from overhead decks, wounding prisoner Francisco Kelly Costa.<sup>247</sup> Secretary of Justice Paulo Duarte told Human Rights Watch that military police opened fire because they believed Kelly was armed and attempting to storm the building.<sup>248</sup>

Because police removed members of the press from the compound during the incident and did not allow either relatives of the hostages or representatives of local NGOs to participate in the negotiations, it is difficult to ascertain who led the negotiations for the police. Varying press accounts report that Police Precinct Chief (Delegado de Investigações e Capturas) Luis Carlos Dantas, IPPS Director Col. Henrique Amaral Brasileiro Neto, Col. Adailton Magalhães of the Fortaleza Military Police Command (Comando de Policiamento da Capital), and State Secretary of Justice Paulo Duarte were among the principal negotiators. Regardless of who directed the talks, police officials appeared to place priority on the release of Lieutenant Tomaz—who, as a law enforcement official, should have been the last hostage to have been rescued by police. As Colonel Magalhães told members of the press during the negotiations: “We are giving preference to the initial rescue of the lieutenant, because we think that the women—Maria Nilva and Eunisia Barroso—have greater emotional control over the situation. They have already been

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<sup>247</sup>Human Rights Watch interviews, Eder Gil Teixeira Pinheiro and Eunisia Barroso, Fortaleza, Ceará, January 4, 1998.

<sup>248</sup>Human Rights Watch interview, Secretary of Justice Paulo Duarte, Fortaleza, Ceará, January 6, 1998.

able to speak with the prisoners and calm them down."<sup>249</sup> In an interview with Human Rights Watch, Eunisia Barroso's son Tramaturgo Barroso, who was waiting outside of the prison during the negotiations, stated that he heard a prison guard make a similar, albeit more frankly stated, comment: "After the lieutenant is free, screw the others."<sup>250</sup>

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<sup>249</sup>"Término das negociações e início da tragédia," *Diário do Nordeste*, December 26, 1997 (translation by Human Rights Watch).

<sup>250</sup>Human Rights Watch interview, Tramaturgo Barroso, Fortaleza, Ceará, January 3, 1998.

At approximately 10:00 a.m. on the following day, December 25, the prisoners and the police reached an agreement. In their accord with the detainees, the police agreed that in exchange for the release of Lieutenant Tomaz and the prisoners' pledge to leave the compound by day rather than by night, they would provide the prisoners with four cars, eight .38 caliber revolvers, two boxes of ammunition, bed sheets (to conceal the prisoners and hostages while they left the schoolroom for the cars), newspapers (to conceal the prisoners and hostages in the cars), masking tape, and a guarantee not to pursue the fugitives for at least one-half hour after their exit from the facility. In the meantime, police began to assemble troops—including more than 150 officers from the military, federal, and civil police—around the prison and mounted a series of road obstructions—including a military police bus, trucks from the federal highway police, and a local fire truck—along highway BR-116 to help frustrate the prisoners' flight.<sup>251</sup>

At approximately 3:00 p.m., the prisoners and the hostages, concealed in the sheets that the police had provided, left the schoolroom and headed for the cars waiting for them in the prison yard. Before leaving the compound, the prisoners—pursuant to their agreement with the police—released Lieutenant Tomaz. After covering the windows of the four cars with newspaper (except for an approximately fifteen-by-twenty-inch gap in the windshield through which the drivers could see), twenty prisoners and the three remaining hostages departed the compound in the newly acquired vehicles. Surviving prisoners and hostages told Human Rights Watch that there were six prisoners and one hostage (Teixeira Pinheiro) in the first car, five prisoners and no hostage in the second car, five prisoners and one hostage (Alves) in the third car, and four prisoners and one hostage (Barroso) in the fourth car. During the escape, members of the second car seized a fourth hostage, Waldir Bezerra Alencar, at a roadside gas station.

As the fourth car was leaving the facility, the police immediately gave chase to the escapees, using a convoy of cars that had been previously stationed at

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<sup>251</sup>Rodolfo Spínola, "Motim em Fortaleza termina com 9 mortos," *Estado de S. Paulo*, December 26, 1997.

the front gate. The police pursued the fleeing cars at speeds approaching one hundred miles per hour and shot at the four vehicles, despite the fact that hostages were being held in each of the cars. Police maintain that the pursuit was marked by a constant exchange of gunfire between the prisoners and the police. In contrast, surviving hostages Teixeira Pinheiro and Barroso told Human Rights Watch that none of the prisoners in either of their two vehicles fired at the police. No police suffered gunshot wounds as a result of the chase.<sup>252</sup>

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<sup>252</sup>Military police officer Ernani Castro told the press that he was injured by gunfire during the operation. According to Castro's statement, a shot fired by the prisoners struck Castro's chest, protected by a bullet-proof vest, resulting in a bruised rib. "Tenente escapou por usar colete," *Tribuna do Ceará* (Fortaleza), December 26, 1998.

Approximately ten minutes into the chase, the first of the four cars swerved and hit a tree, killing one prisoner and injuring hostage Teixeira Pinheiro, who suffered severe damage to his legs, neck, thorax, and spine. A surviving escapee from the first car told Human Rights Watch that immediately after the accident occurred, a hooded police officer fired at him several times from a distance of about twenty feet, wounding him twice in the arm. According to the prisoner, the hooded officer then approached him, pointed the gun at his head, and cocked the trigger but was warned by a fellow officer not to shoot because the press and Police Chief Dantas were coming.<sup>253</sup>

Survivors allege that police sabotaged at least two of the cars before giving them to the prisoners and flattened the tires of the third car with their gunfire. The driver of the second car, prisoner Silvio Martins Alves (“Goiano”), told the press that the wheels of his car were extremely misaligned and his brakes were maladjusted; upon reaching one of the police road blocks, Goiano crashed the car into a post on the side of the road.<sup>254</sup> Barroso, who was being held hostage in the fourth car, told Human Rights Watch that shortly after the initiation of the pursuit, her car suddenly began to billow smoke and ceased to operate.<sup>255</sup>

Several of the surviving prisoners and two of the hostages maintain that throughout the chase—and even after the second, third, and fourth cars had been

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<sup>253</sup>Human Rights Watch interview, Fortaleza, Ceará, January 5, 1998.

<sup>254</sup>“Presos contam que acidente foi provocado,” *O Povo*, December 27, 1997.

<sup>255</sup>Responding to these allegations of police sabotage, Gen. Cândido Vargas de Freire, Secretary of Public Security and Civil Defense (Secretário de Segurança Pública e Defesa Civil), remarked that the crashes were not attributable to police misconduct but rather to “the lack of preparation of the detainees, who did not know how to drive.” “Para Secretário operação foi ‘excepcional,’” *O Povo*, December 26, 1997.

effectively disabled—the police fired repeatedly at the vehicles. Alves, Barroso, and surviving escapees told Human Rights Watch that although prisoners exited the cars with their hands in the air yelling that they surrendered, hooded police fired repeatedly at the immobilized vehicles.

A surviving prisoner from the second car told Human Rights Watch that after his vehicle crashed, a hooded police officer approached him, shot him in the back, and, were it not for the intervention of military police Captain Marques, would have executed him. The prisoner told us that Captain Marques insisted on returning the prisoner to the IPPS for the others to see “how brave he was,” handcuffed him, and then kicked and punched him repeatedly in the back and head. The prisoner asserted that after the beating he was taken back to the IPPS, where police tied a towel around his head and kicked him in the stomach until he began to spit blood and fainted.

Barroso and a surviving prisoner told Human Rights Watch that upon approaching their inoperable car, hooded police officers opened fire. According to both Barroso and the prisoner, the passengers shouted to the police that they had been hit and that there was a hostage in the car. Both witnesses told us the officers then approached the car and pulled inmate Antônio Calixto de Souza and two other prisoners from the vehicle and demanded that the detainees lie face down on the asphalt.<sup>256</sup> Realizing that a fourth prisoner was still alive and hidden under the glove compartment in the passenger section of the car, police reportedly opened fire on the car once again, striking Barroso for a second time.<sup>257</sup> The surviving prisoner told Human Rights Watch that the police then pulled him off the car, demanded that he lie face down next to the other prisoners, and kicked him repeatedly in the back and ribs.

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<sup>256</sup>Dedezinho told us that the other two prisoners were known as “Pernambucano” and “Dragão.”

<sup>257</sup>According to medical reports, Barroso was shot in the left hip and in the posterior thorax region of her neck. “Coordenadora da Pastoral Carcerária está fora de perigo,” *O Povo*, December 26, 1997.

Barroso and the surviving prisoner told Human Rights Watch, police investigators, and members of the press that after firing at their vehicle and forcing the prisoners to the ground, hooded police officers summarily executed at least two of the escapees. Barroso told us that she witnessed an officer go to one side of the car, kick the unarmed prisoners, and then shoot Calixto. After the officer fired three shots, he was stopped by a fellow officer, who shouted: "OK, OK. That's enough." The prisoner told us that while he was on the ground, he witnessed a hooded police officer shoot and kill other prisoners from a distance of approximately six to nine feet. According to him, an officer suggested that they kill the rest of the passengers, roll the car, and pretend that the car had crashed. The prisoner told us that this same officer then shot him in the neck. He maintains that he was able to survive only by feigning death until the arrival of the press moments later. Subsequent testimonies by Maria Nilva Alves and three other inmate eyewitnesses confirm the survivors' accounts of these executions.<sup>258</sup> Because police removed the vehicles from the scene shortly after the incident, it was not possible for ballistic experts to perform examinations, required by Brazilian law, to determine the angle and the distance from which the shots had been fired.<sup>259</sup>

In all, seven escaping prisoners—Daniel de Oliveira dos Santos ("Pirambu"), Francisco Ferreira de Moraes ("Pernambuco"), Assis, Robério Fátima da Silva ("Melão"), Antônio Calixto de Sousa, Maranhão, and Marcelo—were killed. Autopsies conducted by Dr. Eduardo Callado, coroner of the Forensic Medical Institute in Fortaleza, lend further support to the survivors' characterization of events. In a statement to the press on December 28, Dr. Callado affirmed that of the seven prisoners who were killed during the chase, only one did not suffer bullet wounds.<sup>260</sup> According to Callado, the majority of the bodies had been struck by an

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<sup>258</sup>Human Rights Watch interviews, Maria Nilva Alves and surviving prisoners, Fortaleza, Ceará, January 1, 1998, and January 4, 1998. Barroso told the press that immediately after reporting the execution in an official declaration to police investigators, she received death threats at the hospital where she was recuperating. Maria Nilva Alves also reported that she has received death threats. In response to the threats, Governor Tasso Jereissati requested police protection for both of the women. "Tasso pede proteção da PF para Eunisia e Maria Nilva," *O Povo*, January 1, 1998.

<sup>259</sup>Human Rights Watch interview, Ranvier Feitosa Aragão, Director of the Police Laboratory (Instituto de Criminalística), Fortaleza, Ceará, January 6, 1998.

<sup>260</sup>"Legista não descarta hipótese de execução de detentos do IPPS," *O Povo*, December 28, 1997.

average of four to five bullets. One prisoner had been shot a total of ten times. Dr. Callado told the press that although some of the bullet wounds were the result of shots fired from distances of up to approximately ninety feet, others were the result of shots fired from approximately three feet. In an interview with Human Rights Watch, Callado noted that many of the bullets had entered the prisoners' bodies through either the head or back.<sup>261</sup> Given the multiple wounds suffered by the escapees, Dr. Callado told Human Rights Watch that he could not rule out the possibility that the escapees were summarily executed.

At the time of Human Rights Watch's meeting with authorities in Ceará twelve days after the operation, the police had questioned only seven people, none of them surviving prisoners. Further, they had failed to submit the weapons used during the chase to the police laboratory for expert analysis. Nicéforo Fernandes de Oliveira, the head of the State Prosecutor's Office (Procurador Geral da Justiça), declined to invoke his constitutional authority to conduct an independent investigation of the failed escape, instead delegating responsibility to the police themselves.

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<sup>261</sup>The seven individuals who were questioned by police were: the three hostages, one detainee, and three of the officers who participated in the operation. "Nicéforo nega omissão do Ministério Público," *O Povo*, January 9, 1998; Human Rights Watch interview, Dr. Eduardo Callado, Fortaleza, Ceará, January 1, 1998.



After a detailed investigation of the attempted escape, precinct commander Pedro de Sá Roriz Neto recommended that the responsible police officers be indicted for violating articles 129 (causing bodily harm) and 121 (homicide) of the Brazilian Criminal Code in shooting the prisoners and their hostages.<sup>262</sup> Despite the conclusions of the official inquiry, prosecutor Francisco de Assis Oliveira Marinho, responsible for indicting police involved in the chase, has not, as of this writing, brought formal charges against any of the officers who participated in the operation.<sup>263</sup>

#### **Minas Gerais**

Inmates detained at the Investigations Precinct (Departamento de Investigações) in Belo Horizonte described routine physical abuse as punishment for escape attempts. One prisoner explained:

When there was an escape attempt here in October the civil police entered. Cell number seven was digging a tunnel. There were about thirty of us in the cell. The police took us out to the patio completely naked. There were about fifteen police with a

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<sup>262</sup>Technical Assistance Division, Secretariat of Public Security, Police Inquiry, report of February 20, 1998.

<sup>263</sup>On March 20, 1998, prosecutor Oliveira Marinho returned the inquiry to the police, requesting that they conduct further investigation and tests, such as ballistic tests of the bullets found in the victims. Letter No. 87-PJ/98, from prosecutor Francisco de Assis Oliveira Marinho to Gen. Cândido Vargas Freire, state secretary of public security, Aquiraz, Ceará, March 20, 1998.

water hose. They set up a gauntlet and we had to run through it. They hit us with sticks like baseball bats. All the police participated. We had to pass through it one by one.<sup>264</sup>

At the Nelson Hungria prison in Nova Contagem, numerous prisoners told Human Rights Watch about the violence of the “E team,” a guard unit that works in the prison. A young prisoner described what happened after guards found marijuana in his cell during a search on December 30, 1997:

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<sup>264</sup>Human Rights Watch interview, Departamento de Investigações, Belo Horizonte, Minas Gerais, March 17, 1998.

I was in the patio with the other prisoners when it happened. They took me to my cell and made me take off my clothes. There were three of them, Juscelino, who's the head of security, Milton, and another guy, and they started punching and kicking me. They also gave me the "telephone." My ears still hurt from that. Then they took me to the administration building to talk to the major. That was when my sister saw me, because she was there, trying to visit and trying to find out where I was. They wouldn't let me see my sister.<sup>265</sup>

#### **Paraíba**

A prisoner at the Campina Grande State Prison told Human Rights Watch that when he arrived at the prison in June 1995 with six other inmates, guards welcomed them with a beating. Ordering the inmates to remove their clothes, the guards reportedly asked them: "Do you want to know the rules here? The rules are that you get beaten." Then the guards kicked them and hit them with a dried bull's penis (other prisoners described this weapon, which seemed to be a local speciality). Another prisoner spoke of a later incident in which guards handcuffed some prisoners, who they thought had drugs, and then pulled out their toenails. Prisoners noted, however, that no inmate had been beaten since the arrival six months previously of a new prison warden, who had a different approach to maintaining discipline.

Similar improvement following a change of a warden was noted at the Maximum Security Penitentiary in João Pessoa. Human Rights Watch was told that the then-current warden, who had been in charge for nearly a year when we visited, "doesn't allow beatings. But two years ago, when I arrived here for the first time, you couldn't enter the place without getting beaten."<sup>266</sup> A few exceptional instances

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<sup>265</sup>Human Rights Watch interview, Penitenciária Nelson Hungria, Nova Contagem, Minas Gerais, March 18, 1998. The "telephone" refers to the infliction of a violent slap with cupped hands on both of the victims' ears at the same time.

<sup>266</sup>Human Rights Watch interview, inmate, João Pessoa, Paraíba, December 10,

of guard violence were described to us, however. Six months before our visit, on a Saturday when the warden was away, the guards discovered a knife in one cell. Placing handcuffs on all of the prisoners in that cell, the guards brought them to the administrative area of the prison.

It was early in the afternoon, and they had been drinking whisky. They poured drinks on our heads. They kept asking, "Whose knife is it?" They were really drunk. No one answered their question, so they got angry and beat the crap out of us. They punched us and kicked us and hit us with a *marrote* [dried pig's penis]. They broke my thumbs . . . . A week later these guards were transferred.<sup>267</sup>

Another prisoner described how the subdirector broke his dental plate a week before our visit. It was after a search of prisoners' cells in which guards had torn up prisoners' sheets, poured out their toiletries, and left all of their personal belongings in piles on the floor. This prisoner complained when he returned to his cell and saw the mess. The subdirector turned around and inquired, "Who said that?" The prisoner indicated that he did, and the subdirector asked him, "You think you've got the right to say that?" When the prisoner responded affirmatively, the subdirector pretended to pull his gun out of his holster and shoot the prisoner, then punched him in the face, breaking his dentures and cutting his lip.

The apotheosis of the prison system's chronic violence was the killings that took place at Roger prison, João Pessoa, on July 29, 1997. The events began when a handful of prisoners attempted to escape. Armed with knives, the prisoners climbed out of the isolation cells where they had been held and seized four guards and three other prisoners as hostages. Putting on the guards' uniforms, the prisoners rushed out of the cellblock seeking to escape, but ran into the prison warden instead. Grabbing hold of the warden, they brought him back to the cellblock, tied him up, and placed him in a holding cell. Negotiations with the authorities ensued, lasting from about 5:30 p.m. to 11:00 p.m. The prisoners demanded cars, guns, bullet-proof vests, and ammunition. Meanwhile, several units of military shock troops surrounded the prison.

It is unclear who ordered the troops to invade the prison at 11:00 p.m.; the two military commanders on hand both reportedly assert that they did not.<sup>268</sup> Once the order was given, a "trusty" known as Ivan—one of a group of prisoners relied upon by the prison authorities—used a crowbar to break the chains binding the main

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<sup>267</sup>Human Rights Watch interview, inmate, João Pessoa, Paraíba, December 10, 1997.

<sup>268</sup>Human Rights Watch interview, Nilo de Siquiera Costa Filho, Promotor da Vara de Execuções Penais da Comarca da Capital, João Pessoa, Paraíba, December 9, 1997.

gate, and a horde of police (prisoners estimated that there were some one hundred of them) rushed into the prison, throwing tear gas and shooting. At the same time, the military police exploded a bomb by the prison wall, causing a tremendous noise. The seven rebellious prisoners were in the holding cell with the warden, but when the invasion began they released the warden and the other hostages, who ran out of the cellblock.

According to inmate eyewitnesses, the police invaded the cellblock together with a group of trusties—inmates who worked in the kitchen and who were despised by the remainder of the prison population. Ivan, who pried open the gate, was the acknowledged leader of these inmates.

The police entered shooting: one prisoner was hit twice in the chest, killing him; another was hit in the head; a third was hit in the neck and back; a fourth was shot at close range in the thigh, and a fifth in the back.<sup>269</sup> Yet at least seven of the eight prisoners who died in the incident were not killed in the initial police attack but after the police had the situation under control. Instead of bringing the wounded and dying prisoners to the hospital, the police roughed some of them up a bit and exited the scene—yelling triumphantly that they had won a war—leaving the prisoners in the hands of their known enemies, the kitchen workers. Armed with the crowbar, Ivan led a brutal assault on the injured prisoners, finishing them off. The bodies all showed the marks of multiple weapons: knives, bullets, and blunt instruments. The coroner who later examined the bodies said they were the most violent deaths he had seen in seventeen years of practice. Another medical expert who examined the autopsy reports stated that “the ferocity of the injuries, the multiplicity of the blows, the choice of the [body] parts hit and the diversity of the

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<sup>269</sup>An autopsy report on the deaths indicates that a sixth prisoner had three wounds in his left groin, each approximately one centimeter in diameter, “similar to those caused by the entry of a bullet.” Genival Veloso, Relatório Médico-Legal, September 2, 1997 (translation by Human Rights Watch).

arms and instruments used [shows] unquestionable evidence of cruelty, of an unnecessary and unjustifiable malice.<sup>270</sup>

All seven of the prisoners implicated in the hostage-taking were killed, as well as one prisoner in a neighboring cell (a holding cell known as *reconhecimento*).<sup>271</sup> Four other prisoners in the neighboring cell were shot and wounded by the military police. When all of the would-be escapees were dead, the kitchen crew dragged the corpses out of the prison—pulling them by their feet—loaded them on a truck, and brought them to the hospital.

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<sup>270</sup>Ibid., sec. 4.5.

<sup>271</sup>The dead prisoners were: Roberto Cabral de Oliveira, Jailson Santos de Castro, Josenilton Alves da Silva, Josivaldo Mendes da Silva, Ailton Lino da Rocha, Severino Alves dos Santos, Lindemberg da Silva Torres, and Sebastião Galdino da Silva.

An investigation into the killings was ongoing when Human Rights Watch visited Paraíba in December 1997. In an interview with a João Pessoa prison prosecutor who was following the case, we were informed that the operation was deemed successful because the hostages were saved. In his view, criminal prosecutions were unlikely; as he stated bluntly, "No one convicts people who kill outlaws, here in Brazil."<sup>272</sup>

In late March 1998, however, a local prosecutor indicted nine members of the military police and four inmates, including Ivan, for the killings, charging the military police with homicide and the inmates with homicide and causing bodily harm.<sup>273</sup> The indictment emphasized that all of the witnesses interviewed "spoke of the savage way in which the lives of the rioters were put to an end." It also noted that "after the slaughter, the police who participated in the operation celebrated the victory intensely, going so far as to shoot their weapons in the air."

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<sup>272</sup>Human Rights Watch interview, Nilo de Siquiera Costa Filho, João Pessoa, Paraíba, December 9, 1997.

<sup>273</sup>Prosecutorial Indictment, First Jury Tribunal of João Pessoa, Paraíba, March 31, 1998 (translation by Human Rights Watch). Under Brazilian law, military police can only be tried for homicide in the ordinary courts; all lesser crimes must be tried in the military justice system.



### Rio Grande do Norte

On February 5, 1998, more than thirty prisoners attempted to escape from the Dr. João Chaves Penitentiary in Natal, Rio Grande do Norte. In reacting to the escape attempt, police officers recaptured sixteen prisoners, injured at least ten, and killed seven. The seven prisoners killed were identified as Antônio Ferreira dos Santos (known as “Bonifácio”), Carlos Alberto Quirino Targino, Erinaldo Miranda Máximo (“Chocolate”), João Maria Vincente de Souza (“Bahia”), Jonierison Linhares do Ó (“Cigano” or “Cabeludo”), Francisco de Freitas da Silva (“Chita”), and Moisaniel Oliveira da Silva. Police officers maintain that the prisoners’ deaths occurred during shoot-outs with police. Eyewitness testimony and expert analysis, however, reveal that police employed grossly excessive force in their pursuit of the escaping prisoners. In several deaths, as detailed below, the number of shots fired and the proximity from which the shots were fired suggest that the prisoners were summarily executed.

Recaptured prisoners told Human Rights Watch that on the evening of February 5, a group of roughly thirty prisoners set up two makeshift ladders at the rear wall of the prison.<sup>274</sup> In order to flee, the prisoners had to climb the wall that surrounds the prison, run the one hundred yards between the wall and a second barbed-wire fence, and crawl through holes in the fence to the outside street, where three cars and a motorcycle awaited them. According to press accounts, a prison guard discovered the fleeing detainees as they were scaling the first wall and quickly informed other guards of the attempted escape.<sup>275</sup>

The prisoners told Human Rights Watch that prison guards immediately opened fire on fleeing prisoners, wounding many of them as they climbed the wall or ran for safety in the one hundred-yard area between the wall and the fence. According to the prisoners, the first escapee that the police killed was Targino, shot while he was attempting to scale the rear wall. After being shot, Targino fell to his death inside the prison. The official autopsy report performed on Targino shows the entry of a single bullet in Targino’s buttocks, which penetrated his torso and lodged inside his chest.<sup>276</sup>

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<sup>274</sup>Human Rights Watch interviews, recaptured prisoners, Natal, Rio Grande do Norte, February 12, 1998.

<sup>275</sup>“Fuga em massa deixa seis mortes,” *Tribuna do Norte* (Natal), February 6, 1998.

<sup>276</sup>DR. ABELARDO RANGEL MONTEIRO FILHO, THE CORONER WHO PERFORMED THE AUTOPSY ON TARGINO, AND DR. GUARACI DA COSTA BARBOSA, DIRECTOR OF FORENSIC MEDICINE OF THE POLICE TECHNICAL AND SCIENTIFIC INSTITUTE (INSTITUTO TÉCNICO E CIENTÍFICO DE POLÍCIA, ITEP), TOLD HUMAN RIGHTS WATCH THAT THE ANGLE OF ENTRY AND THE CONTINUED TRAJECTORY OF THE BULLET WAS CONSISTENT WITH EITHER A SHOT FIRED FROM A POINT

All ten of the prisoners interviewed by Human Rights Watch reported that after forcing recaptured prisoners to lie face down on the ground, prison officials continued to shoot at those fleeing, firing over and around those who had already been effectively recaptured. Recaptured prisoners told Human Rights Watch that during and in the immediate aftermath of the flight, police shot at least eight fleeing detainees. Those recaptured also told us that the police ordered the recaptured prisoners to crawl toward nearby prison guards, who then kicked them and hit them repeatedly in the head and body with their rifle-butts.

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UNDERNEATH AND BEHIND TÁRGINO OR FROM A SHOT FIRED FROM ABOVE TÁRGINO WHILE HE WAS LYING FACE DOWN ON THE GROUND. Human Rights Watch interviews, Drs. Filho and Barbosa, Natal, Rio Grande do Norte, February 13, 1998.

According to press accounts, more than 200 police officials mounted a search in surrounding neighborhoods for the prisoners who had successfully escaped from the penitentiary.<sup>277</sup> Residents of the neighborhood adjacent to the prison's rear wall, who asked to remain unidentified, told Human Rights Watch that police fired repeatedly as they entered the neighborhood, causing residents to urge the police to stop shooting and to seek refuge in their homes for fear of being struck by police gunfire.<sup>278</sup> One resident, who witnessed the police kill a fugitive detainee hiding on her premises, informed Human Rights Watch that the police fired dozens of rounds at the unarmed prisoner, who had lodged himself under a sink in her small backyard. The resident told Human Rights Watch that at the time of the interview, more than a week after the incident, she had not been asked by police to give an official account of the event.

One recaptured prisoner told Human Rights Watch that after apprehending him in a nearby neighborhood, police placed him in the trunk of a squad car and took him back to an empty room in the penitentiary, where various officers stripped him of his clothes, forced him to kiss their boots, and kicked him. This same prisoner told Human Rights Watch that another officer then came into the room, struck him repeatedly in the face, and boxed his ears with the palms of his hands.

Coroners' examinations of the corpses of prisoners killed during the pursuit reveal evidence of the unnecessary use of deadly force. In four of six cases, police officials shot fleeing prisoners from behind. The number of shots fired (an average of six gunshot wounds were found in each corpse, although one corpse had fourteen such wounds) and the concentration of gunshot wounds to the head and torso are consistent with an intent to kill, rather than to injure or stop, the fugitive prisoners. The fact that no police officers were injured during the pursuit, and that no weapons were found with the victims after they were killed, casts doubt on police descriptions of engaging in shoot-outs with escapees.

On February 8, 1998, three days after the escape attempt, civil police received a tip from local residents that escapee Moisanil Oliveira da Silva was hiding in an abandoned house in the Ceará Mirim neighborhood of Natal. Press reports indicated that when police went to the abandoned home and attempted to seize da Silva, they engaged in a brief gun battle with him and wounded him during

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<sup>277</sup>"Fugitivos tentaram abrir rota da fuga à bala," *Tribuna do Norte*, February 6, 1998.

<sup>278</sup>Human Rights Watch interviews, area residents, Natal, Rio Grande do Norte, February 12, 1998.

the exchange.<sup>279</sup> After recovering da Silva from the abandoned home, police then took him to a local hospital, where he was pronounced dead on arrival and taken to the police coroners' office (ITEP).

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<sup>279</sup>“Fugitivo do presídio é morto em Ceará-Mirim,” *Diário de Natal*, February 10, 1998.

Human Rights Watch obtained access to the official autopsy report that was performed on da Silva's body and met with the coroners responsible for the report, Dr. Monteiro, Dr. Barbosa, and José Pinto, chief of ballistic examinations of the ITEP.<sup>280</sup> The official autopsy reveals that da Silva was killed by a single bullet to his right temple that caused powder tattooing and produced two wounds—a small wound to his forehead and a hole in his skull measuring approximately 4.4 by 2.0 inches—upon exit. Dr. Pinto told us that this severe type of head injury could only have resulted from a shot that was fired at extremely close range from a high-caliber weapon. The official autopsy report and expert statements thus suggest the summary execution of da Silva by police officials, rather than a shoot-out.

On February 13, 1998, Gen. José Carlos Leite Filho, secretary of public security, told Human Rights Watch that four official investigations of the confrontation between the escaped prisoners and the police had been initiated.<sup>281</sup> As of this writing, no formal charges have been brought against any officer who participated in the operation.

### **Rio Grande do Sul**

A number of inmates at the Central Prison of Porto Alegre described a September 1997 incident involving a guard's cartridge belt. The belt disappeared—having been stolen by inmates—leading the military police to conduct a general search of the cellblocks. All of the prisoners from B and C blocks were brought down to the patio, then several truckloads of police, including many shock units in riot gear, ripped through the prison, breaking inmates' televisions and other personal items. Rioting broke out, and the police forced all of the inmates in C block, B-1 gallery, and B-2 gallery through a police gauntlet (known as a "Polish

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<sup>280</sup>Human Rights Watch interviews, Drs. Monteiro, Barbosa, and Pinto, Natal, Rio Grande do Norte, February 13, 1998.

<sup>281</sup>Human Rights Watch interview, General José Carlos Leite Filho, Natal, Rio Grande do Norte, February 13, 1998. Presumably, these include a civil police investigation and a military police investigation.

corridor"). Naked, in groups of ten, the prisoners were made to run between two lines of police who hit them. After that, the inmates were left outside in the rain for two and a half days, without food, water, sanitary facilities, or visits.

Other inmates spoke of being beaten for lesser offenses. An HIV-positive prisoner who initiated a hunger strike because of the lack of medical care, for example, claimed that he was hit in the head by guards who objected to his protest.

### **São Paulo**

In numerous São Paulo police lockups, Human Rights Watch learned of individual and group beatings in the aftermath of riots or escape attempts. In the course of these "punishment" sessions, special police squads typically required detainees to strip naked, then beat them with police batons, wooden sticks, and iron bars, often making them run a gauntlet through officers armed with such weapons.

In mid-November 1997, the day after an escape attempt at São Paulo's ninth police precinct, about ten special police shock troops entered the facility and beat inmates. They took all of the inmates out of cells three and four, had them take off all of their clothing and go into the patio in groups of five. There the inmates had to put their heads against the wall and were each hit three or four times with pieces of wood. Most inmates were hit on their buttocks, but a few were also hit in the ribs and a couple were hit in the testicles. The police also broke inmates' belongings, putting everything in a pile and dumping out inmates' containers of coffee and sugar on it. As one inmate recounted: "I lost everything in the raid: my pillow, my towel, letters from my girlfriend and my parents, razors, soap, a pair of jeans, several shirts, a new hat, and my foam mattress."<sup>282</sup> Inmates from cell five were forced to bring out their television and throw it on the ground before the police.

Inmates at the Depatri police lockup, in Carandiru, told of how police frequently enter the lockup shooting; they pointed out bullet holes in the wall to Human Rights Watch researchers. Going cell by cell, the police generally force inmates to take off their clothes and leave their cells; then they sometimes beat the naked inmates and break things in their cells.

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<sup>282</sup>Human Rights Watch interview, ninth police precinct, São Paulo, November 24, 1997.

Five prisoners escaped from São Paulo's thirty-fifth police precinct the week before Human Rights Watch visited it; another was shot by a police officer during the attempt. About fifteen minutes after the incident, some forty police shock troops arrived. They entered the lockup shooting and hitting inmates. The inmates shouted that they wanted the press to enter, and the police reportedly responded by saying, "No press today, you're going to get pressed!" All of the prisoners had to remove their clothing and run a police gauntlet, even the oldest inmate there, a fifty-two-year-old interviewed by Human Rights Watch. "They said go slowly, because if you go fast you'll have to do it again," he explained.<sup>283</sup> The police hit certain inmates with baseball bats, making them kneel on the ground. Some of the police officers brought buckets of feces and urine from a broken toilet in one of the cells and threw them on the kneeling prisoners. In the end, the police forced all of the inmates, most of whom were covered in cuts and bruises, into two of the five available cells: sixty people in each cell. The press was not allowed to visit until the following day.

A riot at the Pinheiros jail on September 30, 1997 resulted in a particularly egregious case of police brutality. The previous day, inmates and police had gotten into a dispute when inmates complained that their breakfast was late, and one officer responded by shooting at random into the lockup. The inmates collected the spent shell casings and bullets, showing them to the precinct commander to try to convince him to discipline the officer. When the officer showed up for work as usual on September 30, inmates, furious with the situation, decided to take him hostage and riot to demand better treatment. They wanted their children to be allowed to visit twice a month instead of once, and they wanted a full day of outdoor recreation instead of two hours outdoors each day. When the gate of the jail was opened, a group of about twenty inmates rushed out, seizing several hostages, including three male police officers, a female justice official, and a female nurse's assistant.

A young inmate was seized by the police during the initial moments of the revolt. They hit him in the back of the head with an iron bar, knocking him unconscious. He revived moments later in the entryway of the jail; a police officer was demanding that he disclose who was leading the riot and who among the inmates was armed. The inmate told us:

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<sup>283</sup>Human Rights Watch interview, thirty-fifth police precinct, São Paulo, November 18, 1997.

One cop was behind me, holding my arms. I fell, then another one hit me with the iron bar. He hit me four times in the head and neck, knocking me out again for a time. When I opened my mouth I spit out teeth. Then they started hitting me with a wooden bat in the shoulder and chest. Finally, they dragged me by the feet to the entrance, picked me up and threw me against the steel door. I slid down the door, halfway unconscious. While I was on the ground, an officer stuck a knife into my hand, right between my wrist and my thumb. I felt it but I didn't move. The officer told the others, "You can call the morgue; this guy's history."<sup>284</sup>

The inmate woke up later in a military police station. A doctor visited and stitched up his mouth and his hand. That evening, he was transferred to a high security isolation cell at the Dakar 4 facility, where he was held alone for thirty days. During this period, his family had no idea what had happened to him or where he was held. When Human Rights Watch interviewed him in November 1997, he was missing two teeth on one side of his mouth, and two other teeth were broken; the scar on his hand was still healing.

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<sup>284</sup>Human Rights Watch interview, São Paulo, November 26, 1997.



Official violence is also a serious problem in São Paulo's prisons, although, to their credit, since the 1992 Carandiru massacre prison officials have been careful to avoid the use of deadly force, relying more on negotiation to resolve tense situations. Notably, the New Year's 1998 riot at Sorocaba prison, in which fifteen guards and hundreds of family members were held hostage, was ended without serious bloodshed. But while killings have been avoided, beatings are frequent. Inmates at the Casa de Detenção, particularly those in the punishment areas, described numerous incidents of guard brutality.<sup>285</sup> During Human Rights Watch's visit to the facility, we saw heavy pipes with wrist straps—just as inmates had described them—in more than one guard station around the prison.

### **Impunity**

Impunity for abuses against prisoners, even for large-scale massacres, is a chronic problem that encourages further abuses. Despite the high level of official violence against prisoners, Human Rights Watch discovered very few cases in which officials were criminally prosecuted for their actions, and even fewer in which convictions were obtained. In Porto Alegre, in 1993, a known singer detained for the attempted rape of a minor was sexually abused by other inmates who were encouraged by guards; these guards were prosecuted and reportedly sentenced to long terms of confinement.<sup>286</sup> But such cases are extremely rare, just as it is rare for known singers to be held in prison.

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<sup>285</sup>For a report of beatings and other abuses in the punishment area of pavilion four of the Casa de Detenção—an area known as the “dungeon” (*masmorra*)—see Pastoral Carcerária da Arquidiocese de São Paulo, “Relação de incidentes comunicados à Pastoral Carcerária da Arquidiocese de São Paulo, referentes às celas conhecidas como ‘Masmorra’ do Pavilhão 4, da Casa de Detenção de São Paulo,” 23 dezembro 1997.

<sup>286</sup>Human Rights Watch interview, Judge Marco Antônio Scapini, Porto Alegre, Rio Grande do Sul, December 4, 1997.

In the past decade, there have been several high-profile incidents in which military or civilian police have killed large numbers of prisoners. None of these incidents, no matter how abhorrent, has resulted in more than the brief imprisonment of the perpetrators. The two most prominent among these cases—both of which continue to drag on—are described below. Because they generated substantial media coverage, strong domestic interest, and sustained international attention, their lack of effective resolution is especially indicative of the impunity that prevails for such abuses.

The first case occurred in the aftermath of an aborted escape attempt at the forty-second police precinct in Parque São Lucas, São Paulo, on February 2, 1989. To punish the fifty-one would-be escapees, a group of twenty-nine military police and two civilian police forced the prisoners to strip naked and run a gauntlet. After beating the men severely, the police forced them into a small, unventilated cell. A third civilian police officer (the precinct commander) arrived at the scene shortly afterwards but failed to order the men's release from the cell, despite their desperate cries and evidence that many were dying. After about an hour, eighteen of the prisoners had died of asphyxiation.

In the ordinary courts which try civilian policemen, one of the two officers on the scene was convicted and has no further appeal. This officer was not held in pretrial detention, however; he has fled justice and is unlikely to be located. The conviction of the second officer is being appealed. The police precinct chief was tried and acquitted, but according to the latest information Human Rights Watch has received, the acquittal was reversed on appeal and he should be retried this year.<sup>287</sup>

The case against the military police dragged on for almost eight years in the notoriously ineffective military courts, before being transferred to the ordinary courts pursuant to a 1996 law that shifted a limited class of homicide cases from the military into the civilian justice system. At present, twenty-seven military police face charges in the ordinary courts (two have died since the 1989 incident). These police continue on the force, although they are restricted to administrative duty pending the outcome of the prosecution.

Days after the massacre, Americas Watch (now the Americas division of Human Rights Watch) filed a petition with the Inter-American Commission on

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<sup>287</sup>Under Brazilian law, acquittals, like convictions, can be reversed on appeal, necessitating the retrial of a case.

Human Rights, which the Center for Justice and International Law (CEJIL) subsequently joined. In 1997, at an extremely late stage in the commission's processing of the petition, Brazil requested that the commission intervene to help it reach a friendly settlement with the petitioners. On January 9, the governor of the state of São Paulo signed a decree authorizing indemnifications to family members of the victims in the amount of U.S. \$27,000 per dependent. Also pursuant to the settlement negotiations, the Brazilian government has agreed to speed up the prosecutions of the civilian and military police, and to recognize, publicly, its international responsibility for the violation.

The other most notorious and important prison case is the Carandiru massacre. On October 2, 1992, after a riot at São Paulo's Casa de Detenção (located within the Carandiru prison complex), military police stormed the facility and killed 111 prisoners. The police made little if any effort to negotiate with the prisoners before entering. When the police shock troops invaded, after gaining control of the situation, they forced prisoners to strip naked and executed dozens of them, including many who were trying to hide under their beds. No police were injured by gunfire, undermining the official story that the police engaged in a "shootout." The police commander (Col. Ubiratan Guimarães), who continues to advance this version of events, was elected to the São Paulo State Legislative Assembly. As a state legislator, a position he held until early this year, he benefited from parliamentary immunity from prosecution, even for past crimes.

In early 1996, shortly before passage of the law which permitted the transfer to the ordinary justice system of the Parque São Lucas case, the military courts decided to cede jurisdiction over the Carandiru case. At present, the case against the 120 police officers, initially indicted in the military courts, is proceeding in the ordinary courts. No trial date has yet been scheduled.<sup>288</sup>

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<sup>288</sup>In February 1994, Human Rights Watch and CEJIL filed a second petition against Brazil for the Carandiru massacre. (The first, filed in October 1992, just a few weeks after the killings, was dismissed based on a failure to exhaust domestic remedies.) In large part because the current São Paulo prison authorities have promised to destroy the Casa de Detenção and build several smaller facilities, and because the case has been transferred out

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of the military justice system, the Inter-American Commission has informally halted proceedings against Brazil in this case.

## IX. PRISONERS' CONTACTS WITH THE OUTSIDE WORLD

By keeping prisoners physically isolated from outsiders, incarceration naturally strains family ties and friendships, promoting the loss of contact and the breakup of relationships. Besides the adverse affect this has on prisoners' psychological well-being while confined, it also bodes poorly for their future readjustment to life outside. It is critical, given these concerns, that the prison system not further exacerbate prisoners' isolation beyond that which is inherent to incarceration. Instead of creating impediments to prisoners' contacts with outsiders, the burden is on the prison system to facilitate such contacts.<sup>289</sup>

In Brazil's prisons, the limited resources available to inmates provide another, more practical reason for prison authorities to assist prisoners in maintaining family ties. Without their families, prisoners would lack much-needed material support. In many instances, it falls to prisoners' families to supply bedding, clothing, medicine and hygienic items, among other things.

Prison authorities are able to hinder inmates' relations with their family and friends through both direct and indirect means. Direct restrictions might include limited visiting hours, bans on correspondence, and restrictions regarding who is permitted to visit. Brazilian penal facilities, by and large, do not impose many such restrictions; their visiting policies, in particular, tend to be generous. Yet certain indirect restrictions on prisoners' outside contacts are more common in Brazil. The

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<sup>289</sup>See Article 23 of the ICCPR, which states: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State"; *see also* Article 79 of the Standard Minimum Rules, which states: "Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both."

primary problem in this respect is the humiliating treatment of inmates' visitors, which occurs to varying degrees in many penal facilities.

### **The Problem of Distance**

In a country as large as Brazil, the issue of prisoners' distance from their families must be considered. If family members have to travel long distances to visit their incarcerated kin, then visits are likely to be infrequent.

In this respect, Brazil's system of state control of prisons is of benefit because prisoners normally remain in the state in which they live. (Prisoners who have committed crimes in other states, however, are not favored under this system.)

Travel distances may nonetheless be imposing even within the boundaries of a single state, particularly given the poverty of most prisoners and their families and the size of many Brazilian states. Human Rights Watch heard a number of complaints from prisoners who were originally from the rural interior of a state but were confined in a prison within the city and who, accordingly, received few visits. Judges in the interior of some states are reportedly reluctant to transfer prisoners into the prison system upon conviction, because to remove them from the local jail and place them in a central prison would essentially cut them off from family support.<sup>290</sup>

Police and prison authorities often rely on prisoners' desire to remain near to their families as a disciplinary tool, threatening rebellious or disruptive prisoners with transfers to more remote facilities. In São Paulo's police lockups, this is one of the primary means of controlling prisoners.

### **Visiting Policies**

Inmate visiting policies vary from state to state and from facility to facility in Brazil. The national prison law specifically includes visits in its enumerated list of prisoners' rights, stating that a prisoner has the right to visits from his "spouse, girlfriend, relatives, and friends."<sup>291</sup> It does permit visits to be suspended as a disciplinary sanction, however.<sup>292</sup>

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<sup>290</sup>Human Rights Watch interview, Félix Valois Coêlho Júnior, Secretary of Justice and Citizenship, Manaus, Amazonas, December 15, 1997.

<sup>291</sup>Lei de Execução Penal, art. 41(X) (translation by Human Rights Watch). Interestingly, the word "girlfriend" (*companheira*) is specifically employed in the feminine gender, even though the masculine form of the noun (*companheiro*) is understood in Portuguese usage to include both girlfriends and boyfriends (an English equivalent would be "companion" or "mate"), and would normally be used when both genders are included. By using the feminine form of the noun, therefore, the law seems not to take into account the

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situation of women inmates, who might enjoy visits from their boyfriends; it also specifically excludes gay male inmates from visits from their partners. Indeed, the latter concern—wrongly, in the view of Human Rights Watch—probably inspired the law’s wording. See Mirabete, *Execução Penal*, p. 122 (stating, “for the sake of preserving order and decorum, it is understood that only conjugal visits from the spouse or girlfriend should be allowed . . . excluding those of a homosexual character”).

<sup>292</sup>Ibid., art. 41, para. único, and art. 53(III).

The importance inmates place on staying in contact with family and friends is evidenced by, among other things, the frequency with which more generous visiting policies are called for during prison rebellions. One of the central demands made by inmates rioting in 1994 and again in 1997 at the central prison in Manaus, Amazonas, was longer visiting hours. A short list of negotiating points released by prisoners during a July 1997 riot at Roger prison in João Pessoa, Paraíba, included the demand that visits "be held Wednesdays and Sundays from 8:00 a.m to 4:00 p.m."<sup>293</sup> Similarly, the cancellation of visits is sometimes sufficient to spark rioting.<sup>294</sup> In general, prisoners want more visits, longer visits, more visitors, and better treatment of them.

Most penal facilities have one or more visiting days per week during which visitors may enter for several hours. In general, visiting policies tend to be more liberal in the prisons, which have greater infrastructure for accommodating them, than in the police lockups. Most prisons have two visiting days per week, often Wednesday and Sunday, or Saturday and Sunday. In some facilities, a weekday is designated for conjugal visits, while a weekend day is for visits with friends and family members. Children are generally allowed to visit their incarcerated parents once a month, on a special visiting day.

Visiting hours vary, but generally visitors enjoy at least a few hours with prisoners, and in many prisons visitors are permitted to stay for nearly the entire

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<sup>293</sup>Arquidiocese da Paraíba, "Relatório da Rebelião no Presídio do Roger," September 15, 1997 (translation by Human Rights Watch).

<sup>294</sup>See, e.g., "Fim da rebelião na Penitenciária de Papuda deixa 12 feridos," *O Globo*, March 22, 1998 (rebellion at prison in Brasília caused by cancellation of weekend visits); "Rebelião de presos deixa um morto e dois feridos em Cajamar," *O Globo*, April 29, 1998 (rebellion at São Paulo police lockup caused by cancellation of visits).



day. São Paulo's Casa de Detenção, the largest prison in the country, has more limited visiting hours, however: prisoners are permitted a half-day of visits per week (the particular day and time depends on which pavilion a prisoner lives in). On the last weekend of the month, prisoners there are allowed visitors on both days. Around the Christmas holidays, when visits are more frequent, the facility receives up to 30,000 visitors each weekend.<sup>295</sup>

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<sup>295</sup>Human Rights Watch interview, director, Casa de Detenção, São Paulo, November 28, 1997.

Police lockups generally receive visitors one day a week for two to four hours. Until recently, however, inmates confined at the Thefts and Robberies Precinct in Belo Horizonte, Minas Gerais were not allowed visits at all; indeed, their insistence that this ban be lifted “was one of the most important demands that they presented to the [legislative delegation that investigated conditions there in 1997].”<sup>296</sup> After the legislative delegation’s report was released, the facility revised the policy and began allowing brief visits once a week, though only of parents, wives and girlfriends.

In accordance with the national prison law, prisons generally allow visits from friends as well as family. Police lockups, in contrast, often restrict visitors to an inmate’s relatives and spouse or companion, barring visits from friends. Some lockups are even extremely selective regarding which relatives qualify for visits, allowing parents but not cousins, for example.<sup>297</sup> Lockups also tend to enforce stricter rules regarding the registration of visitors, requiring visitors to register in advance and receive special visiting cards. At the sixteenth police precinct, the commander told us that they even conduct an investigation to ensure that the proposed visitors are legitimate: “we have to watch out for prostitutes, you see.”<sup>298</sup>

Most facilities, and particularly smaller facilities such as police lockups, have limits on the number of visitors a prisoner can receive on any given day. Often only two are allowed, but some prisons permit up to five. Given the size of many Brazilian families, the low limits imposed in some facilities can be onerous.

Few penal facilities have special areas for visits; instead, visitors are often allowed to enter directly into prisoners’ living areas. In some prisons, such as São Paulo’s Casa de Detenção, “social visits” with family and friends take place in the courtyard, while wives and girlfriends are allowed to enter prisoners’ cells. This arrangement is fairly standard in São Paulo’s police lockups. At some police facilities, such as the ninth police precinct and the Depatri lockup, prisoners and their male visitors are separated by bars or by a screen. To our knowledge, however, no penal facilities in Brazil employ plexiglass partitions—which

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<sup>296</sup>1997 Minas Gerais CPI report, p. 59 (translation by Human Rights Watch).

<sup>297</sup>São Paulo’s sixteenth police precinct imposed this rule, only permitting parents, grandparents, children, and wives or girlfriends to enter. Human Rights Watch interview, Darci Sassi, São Paulo, November 19, 1997.

<sup>298</sup>*Ibid.*

completely preclude physical contact between the prisoner and his visitor—as are found in certain high security prisons in the United States and elsewhere.

All penal facilities have restrictions on the types of food and other items that visitors may bring to prisoners. Obviously illegal drugs are considered contraband in all facilities, as are guns, other weapons, tools such as drills, and alcohol. In addition, every facility has different rules regarding the entry of food, clothing, and personal items. In many police lockups, cooked food is barred: only packaged food and cookies are permitted. Visitors can generally bring in normal hygienic and cleaning supplies; indeed they are usually the only source for such items.

### **Conjugal visits**

When questioned regarding what options he has for maintaining discipline, the commander of São Paulo's thirty-fifth police precinct did not miss a beat: "Visits. Their biggest worry is that you might cut off their girlfriends' visits."<sup>299</sup> Conjugal visits are allowed on a regular basis in all of Brazil's male prisons and, to our knowledge, most of the country's police lockups.<sup>300</sup> In general, conjugal visit policies for male prisoners in Brazil are extremely generous, although the degree of control exercised by the authorities over such visits varies somewhat from state to state.

The prisons impose few limitations regarding which prisoners are eligible for conjugal visits—commonly referred to as "intimate visits"—generally it is only prisoners in disciplinary or administrative segregation who are denied them. All other prisoners can usually receive conjugal visits, which last the same amount of time as regular visits, once a week.

There is greater variation regarding which visitors are eligible for conjugal visits. Some facilities register visitors and attempt to keep out prostitutes; some allow anyone; some limit conjugal visits to the prisoner's wife or stable female companion.<sup>301</sup> The basic rule at the facilities run by the military police in Rio

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<sup>299</sup>Human Rights Watch interview, police commander, thirty-fifth police precinct, São Paulo, November 18, 1997.

<sup>300</sup>São Paulo's Depatri police facility did not allow conjugal visits until about six months prior to our visit, but elsewhere the practice was well-established. For a discussion of conjugal visits in women's prisons, see the chapter on women prisoners below.

<sup>301</sup>Many facilities bar prostitutes in theory, but we were told that in practice guards are paid to allow them in. *E.g.*, Human Rights Watch interview, inmates, Penitenciária Desembargador Raimundo Vidal Pessoa, Manaus, Amazonas, December 16, 1997.

Grande do Sul is that the prisoner has to register his girlfriend and he can only be involved with one girlfriend at a time. Brasília limits conjugal visits to the prisoner's spouse or the woman that he lived with prior to being incarcerated (requiring some proof that the two lived together, such as a statement from their former neighbors).

Few men's facilities have separate conjugal visiting areas; instead, prisoners' living areas are used. (A couple of prisons that we visited had separate areas for conjugal visits at one time in the past, but the expansion in the inmate population meant that these were converted into regular living areas or, in one case, into disciplinary cells.) Particularly in light of the overcrowding of the prisons and lockups, lack of privacy is a serious concern. Inmates create their own private space as best they can, a challenging proposition in lockups that sleep forty to a cell. At São Paulo's seventieth police precinct, where inmates were forced to sleep sitting up because of the crowding, the police commander told us that the lack of space precluded conjugal visits. "We manage," said the inmates.<sup>302</sup>

An interesting innovation in some Brazilian prisons—generally those where the men's and women's facilities are adjacent to each other—is to allow conjugal visits between prisoners. Women incarcerated in the women's pavilion of the João Chaves prison in Natal, Rio Grande do Norte are allowed to visit the men's side of the prison once a week if their husband or serious boyfriend is held there. The women's prison of Manaus, Amazonas recently instituted a similar program, except that women inmates do not actually enter the men's prison; instead special cells marking the boundary between the two facilities are used.<sup>303</sup> In Brasília, as well, the

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<sup>302</sup>Human Rights Watch interviews, São Paulo, November 26, 1997.

<sup>303</sup>The policy of allowing men and women inmates conjugal visits with their incarcerated partners was instituted in mid-1997, after the prison system came under the administration of the newly created Secretariat of Justice. Human Rights Watch interview, Suely Borges Oliveria, director, Penitenciária Feminina de Manaus, Manaus, Amazonas, December 17, 1997.

men's and women's prisons until recently allowed such visits, but the relocation of the women's prison in late 1997 to a more remote site put an end to this practice.

Prison wardens had no complaints regarding conjugal visits, concluding that, if anything, they eased tensions among prisoners and improved the atmosphere within the prison. The wardens of several prisons, including São Paulo's Casa de Detenção, emphasized to Human Rights Watch that conjugal visits were a critical defense against prison rape. "Before they were allowed, young prisoners were sold as sex slaves," explained one warden.<sup>304</sup> Because our research methodology in Brazil was not specifically adapted to gauging the frequency of sexual abuse among Brazilian prisoners, we cannot confirm whether conjugal visits have reduced or eliminated the problem. We do, nonetheless, tend to view such claims skeptically, since our investigation of the subject in other countries indicates that prison rape is less about sexual deprivation than it is about power and domination.<sup>305</sup>

#### Searches of visitors

Human Rights Watch heard a number of complaints about abuses against visitors, primarily involving the humiliating searches that visitors may undergo as a condition of entry.<sup>306</sup> Rules regarding visitor searches varied a great deal from facility to facility, but the authorities everywhere voiced the same justification for them: that visitors bring in contraband, especially weapons and drugs. "What have we found? We've found marijuana hidden in coconuts, sacks of potatoes, the

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<sup>304</sup>Human Rights Watch interview, São Paulo, November 28, 1997. Another high official of the São Paulo prison system articulated a similar view during an interview last December: "The intimate [conjugal] visit was a revolution in the prisons. Being able to see women, the tendency is for the prisoner to leave off raping his colleagues." "Aids diminui violência sexual em prisões," *Folha de São Paulo*, December 28, 1997.

<sup>305</sup>See, e.g., Wilbert Rideau and Ron Wikberg, *Life Sentences: Rage and Survival Behind Bars* (New York: Times Books, 1992), p. 75 ("Rape in prison is rarely a sexual act, but one of violence, politics, and an acting out of power roles.")

<sup>306</sup>These complaints have been documented elsewhere. The 1997 report of the legislative inquiry into conditions in the penal facilities of Minas Gerais concluded, for example: "Prisoners' family members and representatives of religious groups endure vexing and even degrading situations" when they are searched upon entry to the prisons. 1997 Minas Gerais CPI report, p. 60.

bottoms of tennis shoes . . . We've found cocaine in pant hems . . . . We found a bomb."<sup>307</sup>

To try to prevent such items from entering, prison authorities subject visitors and their belongings to meticulous searches. Some facilities employ pat-down searches in which the visitor remains clothed; some conduct strip searches; some do vaginal inspections. The one rule that seems to be uniformly applied is that male guards search male visitors and female guards search female visitors.

At the High Security Penitentiary in Charqueadas, Rio Grande do Sul, for example:

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<sup>307</sup>Human Rights Watch interview, Col. Sebastião Saraiva de Souza, warden, Penitenciária Central Dr. João Chaves, Natal, Rio Grande do Norte, December 12, 1997.

Male visitors have to take off all their clothes, which we search, and open their mouths and hands . . . then they squat, three times facing front and three times facing back . . . . Women have to take off their clothes and squat too; then they lie on the table and open up their vaginal lips so the guards can see if anything is visible there . . . . Children up to age twelve just have to take off their clothes, and the clothes are searched. Searches of adolescents from twelve to sixteen are the same as those of adults, except they're accompanied by an adult responsible for them.<sup>308</sup>

At this facility, we were told that there are "no exceptions" to the rule of strip searches, not even for the ten registered visitors over sixty-five years old. In most other prisons, in contrast, the rules are more flexible. As the warden of the Campina Grande prison in Paraíba described it, "Some visitors get pat-down searches; some have to take off their clothes; it depends on whether the inmate is in here for a drug crime. When there's suspicion, we do a more intensive search."<sup>309</sup> Indeed, inmates stated that women guards wearing gloves sometimes conduct vaginal searches of women visitors at this facility.

Prison authorities argue that stringent searches are necessary without seeming to acknowledge the embarrassment and emotional distress that such searches inflict on visitors. But even though it is difficult to reconcile the goals of prison security and respectful treatment of visitors, the one cannot simply override the other. In the absence of proper safeguards to ensure that visitors' dignity and privacy are protected, such searches may constitute degrading treatment in violation of Article 7 of the ICCPR and Article 5(2) of the American Convention on Human

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<sup>308</sup>Human Rights Watch interview, Lt. André Córdova, Penitenciária de Alta Segurança de Charqueadas, Rio Grande do Sul, December 2, 1997.

<sup>309</sup>Human Rights Watch interview, João da Mata Medeiros Filho, director, Penitenciária Estadual de Campina Grande, Paraíba, December 8, 1997.

Rights, as well as arbitrary interference with personal privacy in violation of Article 17 of the ICCPR and Article 11 of the American Convention.

A 1996 decision of the Inter-American Commission on Human Rights is instructive on this issue. The case involved attempts by prison authorities in Argentina to require a woman and her daughter to submit to vaginal searches before visiting the woman's incarcerated husband. Emphasizing the extreme intrusiveness of such searches, which are likely to "provoke profound feelings of anguish and shame" in persons subject to them, the commission ruled that they constitute degrading treatment and violate visitors' right to privacy.<sup>310</sup> Although the commission acknowledged the weighty security concerns underlying the search policy, it focused on the need for stringent safeguards to limit any possibility of the arbitrary or unnecessary use of such searches. In particular, it stated that vaginal searches are only justifiable if they are authorized by a law that clearly specifies the circumstances in which they are appropriate and if, in each particular instance in which they are used: 1) they are absolutely necessary for achieving a legitimate objective; 2) there is no alternative means of achieving the objective; 3) they are authorized by a judicial order, and 4) they are conducted by a health professional.

Another cautionary note on potentially degrading searches was sounded by the U.N. Human Rights Committee. In a general comment on body searches, the committee reminded government authorities that "effective measures should ensure that [body] searches are carried out in a manner consistent with the dignity of the person being searched."<sup>311</sup>

Brazil has few if any mechanisms in place to help ensure that potentially degrading searches of prison visitors are not arbitrarily and abusively performed. The national prison law does not regulate such searches, nor are there other effective constraints on their use. Strip searches, particularly when a woman is subject to a visual inspection of her vagina, have a high potential for causing shame and distress. Vaginal searches, which some inmates alleged are used, represent an even more serious invasion of privacy. Given the important interests on both sides of the issue, regulation and oversight are needed.

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<sup>310</sup>*María Arena v. Argentina*, Case No. 10,506 (October 30, 1996). The commission also ruled that such searches violate the right to protection of the family, guaranteed in Article 17 of the American Convention.

<sup>311</sup>General Comment 16 to Article 17, "Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies," U.N. Document HRI/GEN/Rev.1, July 29, 1994.



It should be noted, in addition, that the absence of proper visiting facilities reinforces the need for such intrusive searches, as the fact that visits normally take place in inmates' living areas heightens security concerns. Rather than subjecting visitors to these searches, the prisons should explore other ways of handling visits. As the Inter-American Commission emphasized in its opinion, alternative means of protecting prison security should be relied on more extensively: metal detectors, for one.<sup>312</sup>

#### **Legal visits**

We heard no complaints from prisoners regarding interference with legal visits. It was obvious, however, that only a minority of inmates ever received such visits. Most prisoners only see their lawyers just prior to and during visits to court.

#### **Correspondence and Telephone Communications**

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<sup>312</sup>At the women's prison in Porto Alegre, Rio Grande do Sul, for example, visitors go through a metal detector and their bags are searched, but they are not subject to body searches. Instead, prisoners are searched after visits. Human Rights Watch interview, Isis Nelly Silva dos Santos, warden, Penitenciária Feminina Madre Pelletier, Porto Alegre, Rio Grande do Sul, December 3, 1997.

Inmates in Brazilian penal facilities are allowed to send and receive unlimited numbers of letters. In most facilities, though, their letters are censored: both incoming and outgoing mail is read. “We check for escape plans, threats, intimidation attempts. Once we found someone asking his family for a weapon.”<sup>313</sup> A few facilities allow inmates to write freely without review by prison staff.

Human Rights Watch only encountered three prisons in which inmates had easy access to telephones: the Center of Internment and Reeducation in Brasília, the João Chaves prison in Natal, Rio Grande do Norte, and the Raimundo Vidal Pessoa prison in Manaus, Amazonas. At almost every other prison, and at all police lockups, prisoners had no telephone access whatsoever.<sup>314</sup> (One possible exception to this rule in a few prisons was suggested by inmates who alleged that cellular phones were owned by rich inmates who had bribed guards to allow them. Human Rights Watch researchers did not see any cellular phones in the prisons, however.)

### **Access to the Press**

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<sup>313</sup>Human Rights Watch interview, Humberto Paiva, warden, Penitenciária de Segurança Máxima, João Pessoa, Paraíba, December 10, 1997.

<sup>314</sup>At the São Paulo Women’s Penitentiary we were informed that if an inmate had an important reason for needing to make a phone call—to check up on the health of a sick family member, for example—she could ask a social worker to make the call for her. Officials there also told us that they were in the process of completing a study assessing the possibility of installing pay phones in the prison, an option that they favored. Human Rights Watch interview, São Paulo, November 25, 1997.

Giving prisoners unhindered access to the press—or journalists free access to prisoners—can serve as an important defense against human rights violations. In Fortaleza, Ceará, in the most dramatic example that we can cite, two inmates—among the few survivors of group of inmates killed in a December 1997 escape attempt—may even owe their lives to members of the press who followed close behind the police that were pursuing their vehicles. In countless other incidents, journalists have been directly responsible for bringing prison abuses to light. Inmates' confidence in journalists' ability to prevent abuse, simply by being there to witness it, is demonstrated by the fact that inmates often include press access to a prison among their demands in negotiated resolutions of prison riots. Yet just as Human Rights Watch itself encountered widely varying reactions to our prison monitoring effort among Brazilian officials, we noted that reactions to journalistic coverage varied significantly as well. In the absence of fixed rules on the topic, prison officials are free to permit or bar journalists from their facilities as a matter of discretion.

Under certain circumstances, journalists are welcome. The former commander of São Paulo's seventy-eighth police precinct reportedly wanted to draw attention to its desperate situation of overcrowding—a problem he had no part in causing—so he permitted television camera crews in to film inmates hanging from the ceiling to sleep.<sup>315</sup> Other overcrowded police lockups have been similarly open to the press. At the central prison in Manaus, Amazonas, despite its terrible conditions, members of the press are allowed in freely. More frequently, however, journalists are barred from entering penal facilities and from interviewing prisoners about abuses, particularly in the immediate aftermath of violent incidents.<sup>316</sup> The

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<sup>315</sup>Human Rights Watch interview, Ricardo Arantes Cestari, assistant commander, seventy-eighth police precinct, São Paulo, November 19, 1997.

<sup>316</sup>See, e.g., Denize Assis, "Choque invade cadeia e termina motim," *Folha de São Paulo*, November 8, 1997 (noting that journalists were not granted access to the interior of the jail after a police invasion repressed an inmate riot).

night of the bloody 1992 massacre of 111 prisoners at the Casa de Detenção, most notably, members of the press were kept out of the prison and not informed of what had happened; indeed, two photographers and a reporter were briefly detained by the police when they tried to photograph a military police vehicle taking away bodies.<sup>317</sup>

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<sup>317</sup>Human Rights Watch/Americas, "Brazil: Prison Massacre . . .," p. 7.

## X. WORK AND OTHER ACTIVITIES

Work, supplemented by education and training, plays a significant role in the national prison law's rehabilitation strategy. By mastering a trade or a profession, learning a skill, and acquiring good work habits, a prisoner can greatly improve his chances of successfully integrating into society upon release. Nonetheless, only a minority of Brazilian prisoners are offered the opportunity to work. Educational and training opportunities are also scarce, giving prisoners few constructive outlets for their energies. In some prisons, and particularly in police lockups, even recreation is limited. The idleness and boredom that result aggravate tensions among inmates and between inmates and guards.

### **Work**

Under the national prison law, all convicted prisoners are required to work.<sup>318</sup> It should be noted, however, that the law's obligations with regard to prison labor are reciprocal: prisoners have the right to work and prison authorities, therefore, are required to provide prisoners with the opportunity to work.<sup>319</sup> Yet, despite the law's mandates, the country's penal facilities do not offer sufficient work opportunities to occupy all prisoners. Although the proportion of prisoners who are engaged in some form of useful labor varies significantly from prison to prison, only in a few women's prisons did we find work opportunities to be plentiful. To cite some representative examples from among the facilities visited by Human Rights Watch: about 15 percent of the inmate population in the central prison in Manaus, Amazonas was employed; about 50 to 60 percent of the inmate population at São Paulo's State Penitentiary was employed; no one at the High Security Penitentiary of João Pessoa, Paraíba was employed; about 30 to 40 percent of the inmate population at the Campina Grande prison in Paraíba was employed; about 15 percent of the inmate population of the central prison in Natal, Rio Grande do Norte was employed, and about 20 percent of the inmate population at the Central Prison of Porto Alegre, Rio Grande do Sul was employed.

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<sup>318</sup>Lei de Execução Penal, art. 31. In accordance with international standards, unconvicted prisoners are not required to work. *See* Standard Minimum Rules, art. 89.

<sup>319</sup>Lei de Execução Penal, art. 41, sec. II.

Even worse is the situation in the police lockups. The only job opportunity they offer is janitorial work. Only a handful of inmates in each lockup—known as *faxinas*—have such jobs: usually from two to six prisoners, depending on the size of the lockup. Everyone else, whether convicted or unconvicted, is idle.

It should be emphasized that the low numbers of employed prisoners are due to the shortage of work opportunities, not any lack of interest on the part of prisoners. To begin with, under the national prison law work is supposed to be mandatory, not optional. But even more compelling in practice is the incentive created by the law's sentence reduction provisions, which require that one day be deducted from a prisoners' sentence for every three days worked. Anxious to gain early release from prison, almost all prisoners are willing to work, even to work without pay. Indeed, the shortage of work opportunities was the subject of numerous inmate complaints. The absence of work in the lockups, moreover, is one of the many reasons prisoners riot for transfer into the prison system.

The type of work offered prisoners ranges from maintenance, clean-up, and repair work—available in most prisons—to employment by private companies, which hire inmates to produce items such as folders, boxes, and notebooks. Some prisons have workshops operated by the National Prison Foundation (Fundação Nacional Penitenciária, FUNAP), the national body charged with managing prison labor, where inmates sew or do carpentry.

Prisoners' earnings vary considerably from prison to prison. The national prison law mandates that inmates be paid three-quarters of the minimum wage, which, at current wage rates, would be 97.5 reais per month (approximately U.S. \$86).<sup>320</sup> Human Rights Watch found few prisons that paid inmates anything near this amount; indeed, in violation of international standards regulating prison labor, some did not pay inmates at all.<sup>321</sup> Inmates at a number of facilities, including São Paulo's Casa de Detenção and State Penitentiary, do piece-work and are paid

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<sup>320</sup>Lei de Execução Penal, art. 29.

<sup>321</sup>Here are some examples from the prisons Human Rights Watch visited: Roger prison, in João Pessoa, Paraíba, paid most prisoners a monthly salary of ten reais (approximately U.S. \$9), but a handful of prisoners responsible for the maintenance and repair of the prison, were paid a monthly salary of seventy-five reais (approximately \$67); the Central Penitentiary in Natal, Rio Grande do Norte, did not pay inmates (who work in order to receive sentence reductions); the Manaus central prison paid inmates a monthly salary of seventy-five reais; São Paulo's Casa de Detenção did not pay prisoners who were teaching (typing classes, etc.) or doing janitorial work. Article 76(1) of the Standard Minimum Rules requires that inmates be paid for their labor.

according to their output. Inmates making cards at the Casa de Detenção, for example, told us that they made about twenty to twenty-five reais per month (approximately \$18 to \$22) if they worked long hours, and about fifteen reais per month if they worked regular hours.<sup>322</sup>

**Education**

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<sup>322</sup>Human Rights Watch interview, São Paulo, January 5, 1998.

The generally low educational level of people who enter the prison system, which reduces their attractiveness on the job market, suggests that prison educational programs can be a vital avenue for preparing inmates for a successful return to society. Recognizing this possibility, the national prison law mandates that prisoners be offered the opportunity for study, guaranteeing them, in particular, an elementary school education.<sup>323</sup> It also promises inmates vocational and professional training.<sup>324</sup>

The more overcrowded, noisy and dangerous the prison, of course, the less conducive it is to education. Not surprisingly, some notoriously bad prisons, such as Roger prison in João Pessoa, Paraíba, offer inmates no educational opportunities. In other prisons, only a fraction of the prison population is able to study. At São Paulo's State Penitentiary, for example, nearly 10 percent of prisoners—some 200 inmates—were said to be studying at the primary school level, while about 5 percent of inmates in São Paulo's Casa de Detenção were said to be taking primary or secondary school classes, as were about 8 percent of prisoners at the central prison in Manaus, Amazonas. Paralleling their denial of work, police lockups offer prisoners no study opportunities whatsoever.

Although some outside professors are brought in to teach, most classes are taught by inmates, those with greater education or special skills. In the Manaus central prison, for example, we met a Colombian inmate who taught several Spanish classes.

During our visits, we saw several empty classrooms but few classes in progress. At the Casa de Detenção, we did see a typing class in the sixth pavilion; the teacher, an inmate, told us that a total of about seventy prisoners receive typing classes of an hour a day for six months.

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<sup>323</sup>Lei de Execução Penal, arts. 17-21.

<sup>324</sup>Ibid., art. 19. This article includes a somewhat puzzling proviso: that "the convicted woman will have professional training adequate to her condition." The scholarly commentary on the national prison law that we have reviewed fails to shed any light on the concrete meaning of this requirement.



**Exercise and Recreation**

In somewhat inexact language, the national prison law requires “proportionality” between the time prisoners dedicate to work and the time they dedicate to rest and recreation.<sup>325</sup> Of course, since most prisoners spend little time working, they therefore have a great deal of time available to exercise, play games, relax, or sleep. Their access to recreational facilities—in particular, to reasonably sized outdoor playing fields or courts—varies considerably from prison to prison, however.

Some prisons have outdoor patios or fields adjoining the cell blocks, and prisoners spend the entire day in them. In others, inmates of different wings of the prison are brought out in turn to use one or two exercise areas. In the Manaus central prison, for example, prisoners in each of the four wings get an hour and a half of outdoor time each day in a large soccer field. At the Porto Alegre Central Prison, in Rio Grande do Sul, prisoners get two hours of patio time each day. At the High Security Prison of Charqueadas, in Rio Grande do Sul, prisoners are locked in their cells all day except for the four hours daily that they are released into the patio to exercise. These facilities are in accord with the Standard Minimum Rules, which mandate that prisoners be allowed at least one hour per day of outdoor exercise.<sup>326</sup>

But in many other prisons—or in certain sections of prisons—inmates have more limited outdoor exercise possibilities. At the Dr. João Chaves Penitentiary in Natal, Rio Grande do Norte, for example, prisoners are only allowed into the patio two days a week, for two hours each time. At João Pessoa’s High Security prison—another facility in which prisoners spend almost the whole day locked in their cells—inmates get between thirty and forty-five minutes a day of outdoor time. In general, prisoners in isolation cells, who for whatever reason must be kept separate from the main inmate population, are usually provided the most limited

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<sup>325</sup>Ibid., art. 41, sec. V.

<sup>326</sup>Standard Minimum Rules, art. 21(1).

exercise opportunities. The prisoners living in the holding cells and gallery B-3 of the Porto Alegre Central Prison, for example, are brought out to get two hours of sun once a week, sometimes twice a week. Brasília's main prison contains a special wing for inmates with enemies in other areas of the prison, whose forty or so inhabitants are never allowed out in the yard to exercise, and who only go out for sun once a week.<sup>327</sup> Their situation parallels that of the "yellow" inmates in São Paulo's Casa de Detenção, who get two hours of sun one day a week.

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<sup>327</sup>Human Rights Watch interview, Francisco da Silva Viera, director, Centro de Internamento e Reeducação, Brasília, December 18, 1997.

Exercise is all but impossible in police lockups. Many of them do have patios adjoining the cells, which prisoners are released into during the day. If the lockups had the small numbers of prisoners that they were designed to hold, then some recreational activities would be possible, but overcrowding has eliminated this option. Instead, to pass the time, prisoners listen to radios, sing, play cards, and talk. As one prisoner pointed out, emphasizing the daily routine of complete idleness, he has “nothing to do all day but think about ways to escape.”<sup>328</sup>

In both the prisons and the police lockups, escape via television and drugs is common among prisoners. Indeed, in São Paulo’s Casa de Detenção, we saw prisoners smoking marijuana in the cell corridors. “Drugs make the time go by,” explained an inmate at another facility.<sup>329</sup>

### **Religion**

Consistent with international standards, the national prison law guarantees prisoners the right to religious freedom.<sup>330</sup> Most prisoners are at least nominally Catholic and, as mentioned previously, the Prison Ministry of the Catholic Church has local representatives around the country who visit the prisons on a regular basis, holding religious services and ministering to prisoners’ religious needs. Protestant and Afro-Brazilian denominations are also active in the prisons. Often a group of religious inmates of a given denomination—particularly Protestant (or Evangelical) inmates—will live together in a special section of a prison.

Larger prisons often have one or more churches. The second pavilion of São Paulo’s Casa de Detenção, for example, has separate rooms for its Catholic

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<sup>328</sup>Human Rights Watch interview, ninth police precinct, São Paulo, November 24, 1997.

<sup>329</sup>Human Rights Watch interview, Penitenciária Desembargador Raimundo Vidal Pessoa, Manaus, Amazonas, December 16, 1997.

<sup>330</sup>Lei de Execução Penal, art. 24; Standard Minimum Rules, art. 41.

church, African church, and two Protestant churches. Police lockups, in contrast, have no room to allow for any special accommodation of prisoners practicing their religion.

## XI. WOMEN PRISONERS

In Brazil, as elsewhere, the female inmate population is small by comparison to the male inmate population. The country's prisons, jails and police lockups confine some 8,510 female inmates, constituting about 4 percent of the inmate population. The penal system's gender distribution roughly approximates that found in other countries in the region.

Like their male counterparts, many women prisoners suffer harsh conditions of confinement and abusive treatment, including overcrowded penal facilities, insufficient medical and legal assistance, and the inadequate provision of basic supplies. Yet female inmates are generally spared some of the worst aspects of the men's prisons. Overall, women prisoners tend to enjoy greater access to work opportunities; suffer less custodial violence, and are provided greater material support. On the other hand, women prisoners also bear special burdens, in particular, limited recreational facilities and discrimination in conjugal visiting rights.

Even more so than the men's prison population, the women's prison population includes a large proportion of inmates charged or convicted under the country's drug laws. Indeed, in the facilities we visited, roughly half of the female inmates were held for drug crimes, usually for very low-level offenses.

As was once common in Latin America, many of the women's prisons were formerly administered by nuns. The São Paulo Women's Penitentiary, for example, was managed by an order of Catholic nuns until 1980. At present, the women's prisons tend to have better levels of staffing than do the men's prisons, resulting in somewhat more supervision and assistance.

### **Physical Layout and Conditions**

Reflecting the small number of female prisoners in each state, the women's prisons are small facilities, none of which approach the dimensions of the larger men's prisons. The São Paulo Women's Penitentiary, the largest women's prison in the country, has four main cellblocks for a total capacity of 256, although it has held up to 400 female inmates; the Women's House of Detention in Tatuapé, in the state of São Paulo, also holds over 200 inmates. The vast majority of women's prisons, however, hold fewer than a hundred inmates. Many are located in buildings converted from a previous use—the João Pessoa women's prison is located in a former convent, for example—or in small annexes adjoining larger men's prisons.<sup>331</sup>

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<sup>331</sup>The women's prisons that Human Rights Watch visited in Manaus, Amazonas, and Natal, Rio Grande do Norte adjoined larger men's prisons, as was the case until

Most women's prisons are overcrowded, although to a lesser extent than the men's prisons. At the São Paulo Women's Penitentiary, for example, we saw two women living in each individual cell, and we were told that three women had been squeezed into some cells during recent renovations. A few women's prisons, such as the Natal and Brasília facilities, were at or slightly below capacity.<sup>332</sup> The physical infrastructure of the women's facilities tended to be in good condition—much better than the men's facilities—with decent paint, tile bathrooms, and functioning sinks and toilets.

Unlike the men's prisons, most women's prisons did not have very large exercise areas. Many of them included only small paved patios. The Natal women's prison, one of the worst in this respect, had an internal patio with plants in it between the two rows of cells, allowing women inmates almost no space to exercise.

The worst facility that Human Rights Watch saw, in terms of the conditions in which women inmates lived, was São Paulo's third police precinct. Located in an area known as "Crackolandia" for the drugs sold and consumed there, the precinct lockup held numerous drug addicts and, among the women inmates, prostitutes. The facility lacked a women's annex; instead, women prisoners were crammed into a holding cell at the entrance of the men's area. The day we visited,

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November 1997 with the women's prison in Brasília.

<sup>332</sup>The Manaus women's prison held thirty-five inmates when Human Rights Watch visited, a number that seemed somewhat high given its small size. It had a total of ten cells, the first being a holding cell for incoming inmates, and the remaining nine cells holding three to four inmates (they were roughly appropriate for two inmates). Surprisingly, the director stated that its capacity was one hundred, which would make it far under capacity. To fit one hundred inmates, however, each double cell would have to hold ten inmates; they would hardly have room to sit.

ten women were locked into a long narrow cell of approximately sixteen by three feet, of which the last couple of feet were occupied by a hole-in-the-floor toilet. With a broken lightbulb hanging from the ceiling, the cell had no light besides the sunlight that entered through the barred metal gate. One of the women inmates, who was five months pregnant, was complaining of sickness and pain, but the guards ignored her. She had spent the last ten days locked in the dark crowded cell.

#### **Medical Care**

Despite the fact that women prisoners usually have more medical needs than men prisoners, medical care is often extremely deficient in penal facilities for women. The women's prison in João Pessoa, Paraíba, for example, lacks an infirmary and a doctor; medical care is provided by a nurse who visits three mornings a week. We spoke to a woman there who was seven months pregnant but who had never received a prenatal medical examination.

HIV/AIDS is a serious threat to the health of women prisoners: indeed, studies indicate that the disease strikes an even higher percentage of incarcerated women than men. Twenty percent of the women prisoners tested for the AIDS virus at the Women's Penitentiary in São Paulo were found to be HIV-positive.<sup>333</sup> A large proportion of these women are thought to have contracted HIV via shared injection equipment, a conclusion based on the high frequency of drug use within this population.

#### **Relations among Inmates**

Because the small size of the female inmate population in each state means that each women's prison generally serves a large geographic area, each facility also tends to hold all types of inmates, with no separation by criminal history, legal status, or other criteria. Within each prison, as well, inmates tend to be

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<sup>333</sup>Human Rights Watch interview, biologist from the Faculty of Health of the University of São Paulo, Penitenciária Feminina, São Paulo, November 25, 1997. Medical staff at the Women's Penitentiary in Porto Alegre, Rio Grande do Sul, said that they believed at least 10 percent of inmates at that facility to be HIV-positive. Human Rights Watch interview, Penitenciária Feminina Madre Pelletier, December 3, 1997.

intermingled somewhat haphazardly. Only a couple of facilities visited by Human Rights Watch separated women according to their legal status or their conduct: the Porto Alegre women's prison and the Brasília women's prison. The Porto Alegre facility had several pavilions that separated different groups of inmates, so that, for example, pretrial detainees were held apart from convicted prisoners. The Brasília facility, similarly, had two distinct pavilions: one for convicted prisoners who maintained a good conduct record, and the other for pretrial detainees and those convicted prisoners with less than stellar conduct.

Despite the lack of separation by category, reports of inmate-on-inmate violence were few. "The fights here are endless, but they're with words, not weapons," explained one woman, in a typical comment.<sup>334</sup>

The only prison in which inmates described an atmosphere of danger was the women's facility in Natal, Rio Grande do Norte, where Human Rights Watch found three women living in two tiny cells in an isolation area, separate from the general prison population. These women, who lived in isolation by choice, claimed to be in fear of their lives. One of the women had been stabbed thirteen times by a group of inmates within the prison; she had spent three days in the hospital and had terrible scars on her chest. Another of the women said, "There's a small group that's in charge within the prison; they beat people; they order killings; they control the drug trafficking."<sup>335</sup>

### **Discipline, Punishment, and Treatment by Guards**

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<sup>334</sup>Human Rights Watch interview, woman inmate, Comeia, Brasília, December 19, 1997.

<sup>335</sup>Human Rights Watch interview, Pavilhão Feminino, Penitenciária Central João Chaves, Natal, Rio Grande do Norte, December 13, 1997.



Consistent with international rules, Brazil's national prison law stipulates that women prisoners must be supervised by women guards.<sup>336</sup> In practice, some women's prisons employ both male and female guards, although they normally impose restrictions on which areas of the facility male guards can enter, so that, for example, men are not supposed to venture into housing areas or bathrooms. Women prisoners in several facilities told us, nonetheless, that male guards often entered these areas; at one facility they even stated that sexual relations between guards and prisoners had occurred in the past.<sup>337</sup>

Human Rights Watch heard far fewer complaints of staff violence at women's facilities than at men's facilities. Beatings were rare at most facilities—with the most serious incidents involving outside police rather than prison staff—and even the sanction of isolation in punishment cells was not casually used. (Indeed, the Manaus women's prison did not even have a punishment cell.) “They never beat us,” an inmate at the Natal women's prison affirmed. “A couple of years ago there was a guard who'd hit us sometimes, but she was fired.”<sup>338</sup> Overall, relations between prisoners and guards in the women's prisons were much more cordial and friendly than they were in the men's facilities, with genuine affection being expressed in some instances.

Women at the João Pessoa women's prison, in Paraíba, had an ugly incident to recount, however. A new inmate who was locked in a holding cell asked

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<sup>336</sup>Lei de Execução Penal, art. 77, sec. 2. The provision makes an exception for specialized technical personnel such as doctors. Similarly, article 53(3) of the Standard Minimum Rules states:

Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

In additions, article 53(2) of the Standard Minimum Rules bars male staff members from entering women's facilities or sections outside of the presence of a female officer.

<sup>337</sup>Human Rights Watch interviews, Pavilhão Feminino, Penitenciária Central João Chaves, Natal, Rio Grande do Norte, December 13, 1997. The women assured us that these sexual relations were consensual, not coerced. However, given the imbalance of power between the people involved, this distinction is highly problematic in the prison context. See generally Human Rights Watch Women Rights Project, *All Too Familiar: The Sexual Abuse of Women in U.S. State Prisons* (New York: Human Rights Watch, 1996).

<sup>338</sup>Human Rights Watch interview, Natal, Rio Grande do Norte, December 13, 1997.

a friend of hers who was outside the cell window to lend her a lighter. Since she was not supposed to smoke in the cell, a male guard who overheard the request got angry and brought her to a punishment cell down the hall. There, “he kicked me in the gut; I fell, and he picked me up and choked me with a bath towel. I tried to scream. The girls in the collective cell heard me; they got scared and yelled, ‘Don’t hit her.’ Then he let me go.”<sup>339</sup> The woman spent two hours handcuffed, then eighteen days in the punishment cell.

Women in João Pessoa also complained about verbal abuse, particularly from the male guards. “They humiliate and insult us, calling us ‘sow, whore, monkey, bandit, disgrace, demon face.’” Similar complaints of verbal abuse were voiced at the São Paulo Women’s Penitentiary, where women inmates said that male guards occasionally refer to them as “prostitutes.” At the Manaus prison, women stated that male guards had entered several times to verbally and physically abuse a mentally ill woman prisoner.

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<sup>339</sup>Human Rights Watch interview, João Pessoa, Paraíba, December 9, 1997.

A 1997 report on women confined at the Tatuapé Women's House of Detention, in São Paulo, found similar problems with male guards. In particular, the report stated that the delegation "received 15 complaints of beatings and mistreatment inside the facility. All of them identified the same employee, affirming that he acted violently and arrogantly, and asked not to be identified because they feared retaliation."<sup>340</sup>

### **Riots and Protests**

Riots and other protests are relatively infrequent in the women's prisons. Prison authorities at some facilities, such as the Manaus and Natal women's prisons, claimed that such incidents never occur. As in men's penal facilities, however, when riots do occur, they are often put down violently.

On the afternoon of January 12, 1997, military and civil police brutally beat some eighty-five women prisoners at the public jail of Santa Rosa de Viterbo, in São Paulo. The women had been conducting a noisy but peaceful protest against the authorities' refusal to allow one woman to attend her grandson's funeral, yelling and beating on plastic containers. Instead of resolving the matter verbally, the police commander invaded the jail with about fourteen other officers. Armed with broomsticks and police batons, the officers beat nearly all of the women, thirty of them severely.

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<sup>340</sup>Grupo Cidadania nos Presídios, "Casa de Detenção Feminina do Tatuapé," 1997 (translation by Human Rights Watch).

The women surreptitiously photographed their bruises and, through visitors, smuggled out the photographs to the Prison Ministry, which reported the beatings to the São Paulo police ombudsman. After an extensive investigation, the ombudsman found no evidence to support police claims that the women had set fire to their mattresses and provoked the raid, concluding that “there was no rebellion, but rather an unjustified beating.”<sup>341</sup> His formal report of the incident recommended that the police be punished both criminally and administratively.<sup>342</sup> As of January 1998, however, punishments had been light.<sup>343</sup> At the same time, twelve of the women prisoners had been prosecuted for mutiny.<sup>344</sup>

The São Paulo’s Women’s Penitentiary was the site of several rebellions in 1997, during a period when it was severely overcrowded. In the first one, which took place in February, a group of women who wanted transfers to a less crowded prison took two guards hostage. One woman prisoner described how the incident was quelled:

[The women with hostages were in pavilion four.] About eight guys from the shock troops came in with iron bars and beat

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<sup>341</sup>Human Rights Watch interview, Benedito Domingos Mariano, police ombudsman for the state of São Paulo, São Paulo, January 7, 1998.

<sup>342</sup>Ouvidoria da Polícia do Estado de São Paulo, Protocolo no. 2.817/97, February 25, 1997, p. 9.

<sup>343</sup>The administrative judgment against the police commander who ordered the invasion and who the women prisoners said led the beatings recommended that he be suspended from his duties for ten days and that four civil police officers under his command each be suspended for five days. Delegacia Seccional de Polícia de Ribeirão Preto, Relatório: Sindicância Administrativa Disciplinar no. 004/97, August 19, 1997. (This judgment only becomes final after review by the police disciplinary council.) Administrative proceedings against the eight military police implicated in the incident resulted in sentences of from one to four days’ detention. Polícia Militar do Estado de São Paulo, Enquadramento Disciplinar nos. 885088, 900936-1, 930613-7, 930628-5, 934367-9, 943818-1, 951344-2, and 912341-5.

In June 1997, a criminal court concluded that there was probable cause to prosecute the five civil police and eight military police for abuse of authority and battery (*lesão corporal*). Order, Juízo de Direito da Comarca de Santa Rosa de Viterbo, June 3, 1997.

<sup>344</sup>“Relatório Anual de Prestação de Contas da Ouvidoria da Polícia - 1997,” p. 5.

inmates. They started in pavilion four and then went to three and two. All of them were outsiders or [male] guards in charge of external security. They didn't go to pavilion one. The women guards took off running; they abandoned the pavilions. We could see the men coming in, and we heard the screams. Some of the men were wearing uniforms and some were in jeans. We ran into the cells—five or six of us in each cell. They came in with the iron bars in their hands. They set up a gauntlet and made some of the women pass through it.<sup>345</sup>

Numerous women were injured in the attack, and one woman's leg was broken. Most of the injured women were transferred to other prisons; some were sent to an insane asylum.

A second serious riot broke out on July 17 of the same year. This one began spontaneously.

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<sup>345</sup>Human Rights Watch interview, São Paulo, November 25, 1997.

A girl burned herself in the morning after getting beaten by police, when she was locked up in the punishment cell (*cela forte*) on the second floor of pavilion one. She set her mattress on fire, and they took a while to go get her, so she burned a lot. Her skin was falling off; she was screaming; everyone saw her. The rebellion started in the afternoon. Everyone was upset about what happened; the director, seeing how distressed we were, asked if we were upset because we didn't have enough drugs, like we were all drug addicts. This set everybody off. People started yelling at the director, she took off, and they started smashing up the workshops.<sup>346</sup>

Police shock troops amassed at the main gate but did not invade the prison. Instead, two judges came and spoke with inmates' representatives, and the rioting subsided. In the aftermath of the riot, prison officials removed the televisions from the ground floor of the cellblocks and changed inmates' evening lockup time from 9:30 p.m. to 6:00 p.m. One group of about ten prisoners was transferred out; sixteen other alleged leaders of the riot, some of whom indicated to Human Rights Watch that they were unfairly singled out for punishment, were first confined for thirty days in cells in an area known as "behind the wall," on the second floor of the first pavilion. During this entire time, they were not brought out for sun or exercise and had no television or radio. "We only got out for five minutes to take a shower, with six male guards watching over us."<sup>347</sup> Then they were brought to a nearby area known as "in front of the wall" where they were held for another ninety days of "psychological treatment," which involved twenty-three hours per day of lockup and occasional group therapy sessions.

Just after the women were moved to the area in front of the wall, a number of guards, mostly men, conducted a "blitz" of their cells. One woman told us:

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<sup>346</sup>Human Rights Watch interview, São Paulo, November 25, 1997.

<sup>347</sup>Ibid.

There were two guards who were drunk. One of them slapped Irene in the face and spit on her, calling her a whore because she complained, then they broke her things. The same guard wanted to hit Cristina, but [a woman guard] wouldn't let him.<sup>348</sup>

### **Family Ties**

Maintaining contact with their families is a critical issue for incarcerated women. Almost all women prisoners have children, either inside or outside of the prison, as well as husbands or boyfriends, other relatives and friends. These women worry that they will lose custody of their children, that their partners will abandon them, and that their families and friends will forget them. Even more so than men prisoners, imprisoned women face serious obstacles to preserving their social connections.

To begin with, because of the traditional stigma attaching to the incarceration of women, some women inmates are ostracized by their families and receive few or no visits. At the eighteenth precinct, for example, one of eight police lockups in the city of São Paulo that hold women inmates, the assistant police commander told us that approximately twenty—or more than one-third—of the fifty-eight women confined there had no visitors.<sup>349</sup> In addition, visiting rules and conditions in many women's facilities left much to be desired. At the São Paulo Women's Penitentiary, in particular, women are only allowed visits a few hours a week in a noisy and crowded visiting area.<sup>350</sup> The visiting area at the João Pessoa

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<sup>348</sup>Ibid.

<sup>349</sup>Human Rights Watch interview, São Paulo, November 21, 1997.

<sup>350</sup>Visits are held on Sunday from 9:00 a.m. to 11:30 a.m., and 1:00 p.m. to 4:30 p.m., with half the prison receiving visits in the morning and half in the afternoon. Visitors who have traveled from abroad or from distant regions within Brazil, however, are permitted to visit every day over a two-week period.

women's prison was extremely well-kept and attractive, with shade trees and benches, but women complained that it was far too small to handle the nearly seventy visitors that came every Sunday. Women at São Paulo's eighteenth police precinct were only allowed a two-hour visit every Wednesday.

The Brazilian constitution mandates that women prisoners be permitted to keep their nursing babies during the entire lactation period.<sup>351</sup> In order to implement this rule, the national prison law states that every women's prison must be equipped with a nursery for mothers and their infants.<sup>352</sup> Many women's prisons abide by these requirements, but not all of them. At the women's prison in Manaus, Amazonas state, babies can only stay with their mothers for a week because the facility is too overcrowded to permit them to remain longer. Worse, in São Paulo's eighteenth police precinct, women are not even allowed to spend this first week with their infants, but must give them up at the hospital. We spoke to two mothers there who had given birth less than a month and a half before our visits: both of them had only seen their babies once since the delivery date.<sup>353</sup>

Some facilities, on the other hand, have more flexible rules for detained mothers, allowing them to keep their infants for several years. The Women's Penitentiary in Porto Alegre, Rio Grande do Sul is one such facility: it held twelve children ranging from babies to five-year-olds at the time we visited.

### **Conjugal Visits**

The conjugal visiting policies of many states discriminate against women prisoners. While male prisoners tend to be freely granted such visits, with little or no control being exercised by state authorities, women prisoners are sometimes denied them or allowed them only under extremely tight restrictions.

São Paulo is one state that does not permit women prisoners conjugal visits, although it does men. When Human Rights Watch visited the São Paulo Women's Penitentiary in November 1997, we were told that a project to institute such visits was underway, although prison officials could not predict when they might start.<sup>354</sup>

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<sup>351</sup>Constitution of Brazil, art. 5, sec. L.

<sup>352</sup>Lei de Execução Penal, art. 83, sec. 2.

<sup>353</sup>Human Rights Watch interview, São Paulo, November 21, 1997.

<sup>354</sup>Human Rights Watch interview, São Paulo, November 25, 1997.



Most women's prisons allow conjugal visits to those women who can show that they comply with a number of requirements. At the Porto Alegre women's prison, for example, women must show good behavior; have a stable relationship with the man, and undergo a series of medical exams (for HIV and sexually transmitted diseases). In addition, both she and her partner must be interviewed by a social worker.

Conjugal visits were only instituted at the João Pessoa women's prison in December 1997, a week before Human Rights Watch visited it. "To avoid promiscuity," the director of the prison had imposed a number of requirements on women wanting such visits, limiting them to women with husbands or "stable companions," and good conduct records.<sup>355</sup> After convincing the local judge of penal execution of the efficacy of these requirements, the director obtained a judicial order allowing the visits.

Because of such restrictions, the number of women actually receiving conjugal visits is low. At the Porto Alegre women's prison, only nine of 146 women inmates were allowed such visits; at the João Pessoa prison, only five of sixty-five inmates were allowed them; at the Manaus prison, only six of sixty-eight. (The exception in this respect was the Natal prison, where nearly all women were permitted conjugal visits.)

On the whole, the dramatically different treatment of women compared to men with regard to the granting of such visits constitutes discrimination on the basis of sex, prohibited by the ICCPR and the Convention to Eliminate All Forms of Discrimination against Women (CEDAW), both of which Brazil has ratified.<sup>356</sup>

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<sup>355</sup>Human Rights Watch interview, Vera Lucia Almeda Targino Alcoforado, director, Casa de Recuperação Feminina Bom Pastor, João Pessoa, Paraíba, December 9, 1997. The director told Human Rights Watch that the woman must have lived with the man for at least six months prior to her incarceration and that social workers "investigate" their relationship.

<sup>356</sup>Article 26 of the ICCPR provides: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as . . . sex." Similarly, article 2 of the CEDAW states: "States parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: . . . (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; . . ."

The traditional denial of conjugal visits to women prisoners reflects society's historically greater discomfort with acknowledging or accommodating women's sexuality, and the current discriminatory visiting rules employed by many states continue to reinforce pernicious gender-based stereotypes. Even where prison authorities do not interfere with male prisoners' possibly promiscuous behavior or take steps to prevent the spread of sexually transmitted diseases in male prisons, they only permit strictly regulated monogamous sexual activity for women prisoners, and then only for carefully selected women.

Nor does the possibility that women prisoners may become pregnant negate the fact of discrimination. Pregnancy as a condition is inextricably linked and specific to being female. By targeting a condition only women experience, discrimination on the basis of pregnancy is itself a form of sex discrimination. Indeed, where pregnancy-based discrimination has been reviewed in light of international human rights standards, the bodies charged with interpreting those standards have consistently characterized pregnancy-based discrimination as a form of sex discrimination.<sup>357</sup>

In at least one jurisdiction, it should be noted, men and women prisoners' requests for conjugal visits are assessed under equivalent rules. Brasília restricts both men and women inmates to conjugal visits with their spouses or stable companions (looking for proof that the couple has lived together), and requires both partners to be tested for HIV and venereal disease.<sup>358</sup> We were told that Rio de

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<sup>357</sup>For example, the International Labor Organization's Committee of Experts interpreted ILO Convention 111 on Discrimination in Respect of Employment and Occupation, which prohibits discrimination based on gender in access to employment, to prohibit pregnancy discrimination. *Conditions of Work Digest*, Volume 13 (Geneva: International Labor Office, 1994), p. 24. Similarly, in a 1991 case the European Court of Justice (ECJ) ruled that pregnancy-based discrimination constitutes impermissible sex discrimination. The ECJ ruled against a Dutch company that sought to avoid hiring a woman because she was pregnant, concluding that "only women can be refused employment on the grounds of pregnancy and such a refusal therefore constitutes direct discrimination on the grounds of sex." Case C-177/88, *Dekker v. Stichting Vormingscentrum voor Jong Volwassenen (VJV-Centrum) Plus*, 1990 E.C.R.3941. Although the findings of the ECJ are not binding in Brazil, the court's holding constitutes persuasive authority that pregnancy-based discrimination is a form of sex discrimination.

For a more extended discussion of this topic, see Human Rights Watch Women's Rights Project, *No Guarantees: Sex Discrimination in Mexico's Maquiladora Sector*, Vol. 8, No. 6 (August 1996), pp. 30-33.

<sup>358</sup>Human Rights Watch interviews, Brasília, December 19, 1997.

Janeiro also imposes the same requirements for conjugal visits on men and women prisoners, but we were unable to confirm this claim.

### **Work, Education, and Other Activities**

Overall, women inmates have greater access to work than do men inmates. At most of the women's prisons Human Rights Watch visited, the large majority of prisoners were employed. At the São Paulo Women's Penitentiary, for example, 340 out of 388 inmates were employed, 288 in workshops making items such as notebooks, party favors, and underwear, the rest providing janitorial services within the prison. All but one of the women confined at the Manaus women's prison, when we visited in December 1997, were working, mostly making craft items such as dolls. As of July 1997, nearly all inmates at the Tatuapé women's prison, also in São Paulo, had the opportunity to work.<sup>359</sup> Women's pay also tends to be much better, in that women inmates generally receive at least the minimum salary mandated under the national prison law.

Educational, training, and cultural opportunities are somewhat less abundant but are still more easily available than in the men's facilities. Besides basic academic subjects, art, dance, and music classes are given in some facilities. Women at the Natal prison said, however, that classes begin but never meet for more than two sessions, making it impossible to obtain a diploma in any subject.

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<sup>359</sup>Grupo Cidadania nos Presídios, "Casa de Detenção . . ."