



BRAZIL

Prison Crisis Spurs Rights Reform

Custody Hearings Help Curb Overcrowding



A cellblock in the Pedrinhas prison complex.
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SUMMARY

A pilot program in northeastern Brazil is reducing the number of people sent to pretrial detention, a major factor in prison overcrowding and gang recruitment. The program in Maranhão state promptly brings detainees before judges for “custody hearings” to determine whether they should be held in pretrial detention or released on bail.

The prompt hearings are required under international law but are rarely provided in Brazil, where many prisoners wait months to see a judge. In nearly 50 percent of cases in the pilot program in the state with the worst prison violence in recent years, presiding judges found that pre-trial detention was not warranted and ordered the detainee’s release. In cases in which judges made custody determinations based only on police reports, judges ordered detainees released in 10 percent of the cases, although international law requires a legal presumption in favor of release.

In January 2015, Human Rights Watch visited Pedrinhas, the largest prison complex in Maranhão, and interviewed 25 inmates and 17 relatives of current or former inmates, as well as judges, prosecutors, public defenders and defense lawyers, former guards, local officials, and representatives of the Sociedade Maranhense de Direitos Humanos (Maranhão Human Rights Society), a non-governmental group.

Custody hearings prevent the unlawful arbitrary imprisonment of suspected non-violent offenders while they await trial. The hearings allow judges to make informed decisions regarding whether a person has been lawfully detained and should be sent to pretrial detention.

Without the hearings, detainees waiting to see a judge for the first time may spend months in overcrowded prisons, under intense pressure to join gangs, Human Rights Watch found.

More than 90 inmates have been killed in Maranhão’s prisons in the past two years, most by members of rival gangs, according to data from the National Council of Justice¹ and the Maranhão Human Rights Society. Gang members have mutilated their victims, carried out kidnappings and extortion inside prisons, and raped visitors, detainees and officials told Human Rights Watch.



An inmate in the Pedrinhas prison complex.

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Over the past decade, two gangs formed within Pedrinhas: the Primeiro Comando do Maranhão (Maranhão's First Command, PCM), most of whose members are from the interior of the state, and Bonde dos 40 (Streetcar of the 40, a reference to 40-caliber handguns), most of whose members are from São Luis, the capital city. Initially created by inmates seeking to protect themselves from violence within the prisons, the gangs grew to control entire facilities within Pedrinhas.

They also extended their illegal activities outside the prison walls and now dominate entire neighborhoods of São Luis. During these years, violent crime rose precipitously in the state, with the homicide rate tripling between 2002 and 2012, according to the Mapa da Violência 2014,² an academic study based on Health Ministry data.

In January, police detained 36 men at a party in São Luis, after anonymous callers told the police that it was organized by a prison gang, though partygoers and family members Human Rights Watch interviewed said they were not gang members. Yet upon arrival at Pedrinhas, the

detainees asked to be held in cells with members of Bonde dos 40 because they live in neighborhoods dominated by that gang and were afraid they would be killed if they were incarcerated with members of PCM. This is clearly a recipe for gang recruitment, Human Rights Watch found, with consequences for the detainees long after their release.

The growth of the gangs has been due in large measure to the lack of security within prisons, which has been aggravated by overcrowding, local officials told Human Rights Watch. As of October, more than 6,500 people were incarcerated in Maranhão facilities, built to hold 3,605 inmates, according to a state judiciary report.

Sixty percent of these inmates are pre-trial detainees, the report says. They are routinely housed with convicted criminals, in violation of international standards.

The right of a detainee to be brought before a judge without delay is a fundamental right under international law, enshrined in treaties ratified by Brazil, including the International Covenant on Civil and Political Rights and the American Convention on Human Rights. The right applies to all detainees without exception and is intended to bring the detention of a person in a criminal investigation under judicial control. The individual must be brought physically before the judge so the judge can inquire into the person's treatment in custody.

Custody hearings are also critical to stem torture and mistreatment of detainees by police, a serious problem in Brazil. Judge Fernando Mendonça told Human Rights Watch that he found signs of mistreatment in three cases during custody hearings under the pilot program and referred them to the Prosecutor's Office. Physical signs of mistreatment would have most likely disappeared if detainees had to wait for many months to see a judge.

A draft bill introduced in Brazil's Congress in 2011 would require custody hearings throughout the country, but Congress has not acted. In February 2015, the state of São Paulo started its own custody hearings program in partnership with the National Council of Justice. Other Brazilian states should follow the example.

Findings

For years, lack of custody hearings in Maranhão has resulted in the unlawful incarceration of people charged with minor crimes who should not have been held in pre-trial detention under Brazilian law. Filling prisons with people who should not legally be there contributes to overcrowding, a major cause of the growth of gangs in Maranhão.

Pre-trial detainees are routinely housed with criminals, another violation of international law that has contributed to gang recruitment.

Detainees who did not belong to a gang before their arrest feel compelled to join one when they are incarcerated, detainees, family members and local officials told Human Rights Watch. When detainees arrive, prison personnel ask them what gang they belong to and assign them to the units controlled by that group. They are also allowed to ask to be sent to a "neutral" unit if they say they are not gang members. However, both detainees and officials said they believed gangs were also present in that unit.

The deputy head of Maranhão's Public Defender's Office told Human Rights Watch that for cases involving drug charges the first hearing before a judge takes place "in the best of circumstances" 90 to 120 days after arrest. "That means gangs have at least 120 days to convince the person to join them," he said.

For detainees accused of other crimes, the wait is often even longer, officials told Human Rights Watch. Human Rights Watch found cases of pre-trial detainees in the prison who had been held up to nine months without seeing a judge.

A spiral of prison violence finally led Maranhão to adopt custody hearings starting in October. Through December, 20 percent of the people detained in flagrante –or caught in the act -- in São Luis were granted custody hearings, according to the first official report on the pilot program. Early assessments show that the hearings have helped prevent the improper arbitrary pre-trial imprisonment of non-violent suspects and that custody hearings can be provided through the collaboration of local authorities and the police.



Inmates in the Pedrinhas prison complex, where both pretrial detainees and convicted prisoners are housed together.

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Some inmates sleep in hammocks in the Pedrinhas prison complex due to the lack of bunks, mattresses or even space on the floor to lie down.

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Prison Overcrowding and the Growth of Gangs in Maranhão

Maranhão's prisons have for years been plagued by overcrowding, contributing to lawlessness and the rise of gangs within the prison walls.

As of October 2014, there were 6,538 detainees in a system with a capacity of 3,605, according to a report by the state judiciary. Pedrinhas had 152 inmates in a unit for 96, and 252 inmates in another unit for 104. During the January visit, Human Rights Watch saw between 12 and 16 people in three cells, each with a capacity of 8. One cell had 9 detainees but only three cement bunks.

This overcrowding makes it very difficult for guards to maintain control and protect inmates from each other, two former Pedrinhas guards told Human Rights Watch. One said that for many years there had not been enough guards

to safely enter cellblocks and cells "to stop atrocities and crimes." As a result, prison personnel mostly stayed outside of the iron gates of cellblocks. For years cells were not locked in Pedrinhas, and detainees were free to move around within cellblocks.

Inmates from nearby São Luis routinely victimized detainees from the interior of the state, who were sent to Pedrinhas due to lack of space in facilities closer to their homes, officials said. To defend themselves, the inmates from the interior founded the PCM, prompting São Luis inmates to form Bonde dos 40. "The state let the gangs take control of the prison system," Cesar Castro Lopes, a former guard who is vice president of the guards union told Human Rights Watch.

Gang Violence

Gangs were responsible for a dramatic increase in the number of killings behind bars in the state in 2013. Sixty inmates were killed, most in Pedrinhas, compared with 7 the year before, according to data from the National Council of Justice and nongovernmental groups. There were 32 killings in 2014 and three from January to March 23, 2015.

Most of the victims are targeted because of their real or suspected membership in a rival gang. “It is a war,” the jailed leader of the PCM, Moises Magno Soares Rodrigues, aka “Saddam,” told Human Rights Watch, referring to the violence between his gang and Bonde dos 40.

Ubiracy Pereira Aranha, 22, was a random victim of that war. He was shot in the head on October 10, 2013 after PCM members invaded the area where Bonde dos 40 inmates were being held during prison riots and attacked them indiscriminately. Eight other inmates were killed that day and 20 were injured. Aranha had been convicted of homicide for participating in a robbery during which one of his accomplices killed a restaurant owner. He was scheduled to be released on furlough the day he died, his mother told Human Rights Watch.

In some cases, gang members killed inmates placed in a cell or facility controlled by a rival gang. A. J., a detainee, said that in June 2013 prison officials transferred 16 members of Bonde dos 40 to a wing occupied by PCM detainees in Pedrinhas. He attributed the decision to negligence on the part of the prison director, who did not bother to check gang memberships. From a window, A.J. saw the PCM members kill three of the transferred inmates with homemade knives and a gun. The other Bonde dos 40 members were able to escape, some of them injured, he said.

In several cases, inmates took gruesome steps to cover up alleged murders. Ronalton Silva Rabelo, 32, who was sent to pretrial detention in September 2012 on burglary charges, was found to be missing on April 1, 2013, according to police and prison reports obtained by Human Rights Watch. J.K., one of his cellmates, told police that some days earlier, eight inmates, among them members of Angels of Death (Anjos da Morte, ADM), a small gang, entered the cell and grabbed Rabelo. One of them called ADM’s top leaders to ask them for authorization to kill Rabelo, which they granted. The killers dismembered Rabelo and cooked his body parts to disguise the odor of a decomposing body, then disposed of them in the garbage, J.K. said. P.Y., another witness, corroborated the story and said that Rabelo was killed because before he was sent to prison he had injured a man who was later detained in the same unit.

The police decided not to open a formal criminal inquiry after some inmates said that they heard rumors that Rabelo had paid 40,000 reais (about US\$12,700) to two prison employees to facilitate his escape, according to the police report J.K. said one of those inmates was among the killers. Rabelo’s family said they did not believe he escaped because he was to be released a few days later.

Another inmate, Rafael Alberto Libório Gomes, 23, was discovered missing in 2014, and his dismembered remains were found buried within the prison grounds a few days later.

In other cases, gang members mutilated their victims’ corpses and left them on display. The first beheadings in Maranhão’s prisons occurred during a riot in Pedrinhas in 2010 and since then inmates have decapitated victims several times, local officials said. In January 2014, video footage recorded by prisoners and posted online by *Folha de São Paulo* newspaper showed the decapitated corpses of three of the four inmates killed by fellow prisoners in December 2013.³



A cellblock in the Pedrinhas prison complex.

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Segregation of Gang Members

The government of Maranhão declared a state of emergency in the prison system and deployed the Military Police and National Guard in Pedrinhas in October 2013 after a riot that left 9 inmates dead and 20 injured. Gang members also burned buses in São Luis; the violence led schools to suspend classes.

A year later, in an attempt to reduce violence within Pedrinhas, prison authorities began housing gang members in different units. Previously, inmates from different gangs had been housed in the same units and, although divided into separate wings, had more opportunities to come into contact with one other, said Rodrigues da Costa, who served as director of the state prison system from September to December 2014. Authorities also started keeping prisoners locked in cells, rather than allowing them to interact in open pavilions. Since then, the number of deaths has dropped dramatically. From October 1, 2014 to March 20, 2015, there were five deaths in Pedrinhas. However, gang leadership control over the inmate population within each facility has increased, according to several state officials with whom Human Rights Watch spoke.

Pressure to Join Gangs

When pre-trial and convicted male detainees arrive at Pedrinhas, they are initially placed in what is known as the “triage” unit, where separate cells reserved for Bonde dos 40 members, PCM members, and detainees who are not gang members. Prison authorities ask the new arrivals whether they belong to a gang and assign them to cells based on their response.

The inmates who declare themselves gang members are eventually transferred to one of five Pedrinhas units designated for one of the two gangs. Those who declare themselves “neutral” are moved to a facility known as “Cadet” (short for “Casa de Detenção”) that is supposed to be free of gang activity. But prison officials and judges told Human Rights Watch that they suspected there were gang members in the “neutral” facility as well. Female inmates are held in a seventh unit.

Inmates told Human Rights Watch that they come under intense pressure to join the gangs. One pre-trial detainee said that members of Bonde dos 40 and PCM had called his wife to tell her that he had to join a gang. He is being held in a special isolation unit for his protection.

O.S., 42, is a detainee in a “semi-open” facility in São Luis, where inmates who have already served part of their sentences are allowed to leave during the day but must return at night. He works at his brother’s minimarket, in a neighborhood controlled by Bonde dos 40. He said that in Pedrinhas, he felt compelled to stay in PCM cells because he is from the state’s interior. “In prison either you go to PCM or to Bonde, there is no neutral,” he said.

Now, members of Bonde dos 40 consider him an enemy, even though neither he nor his brother are formal members of PCM. They get threats from gang members in the neighborhood and fear death every day, he said. Bonde dos 40 killed a third brother in front of his house in São Luis in August 2013.



The entrance to the Casa de Detenção (Cadet), one of the facilities in the Pedrinhas prison complex.

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The Alleged Bonde dos 40 Party

On the night of January 16, police raided a party in São Luis after receiving anonymous calls saying it had been organized by Bonde dos 40. Agents said they found two guns and some drugs in the house, although they could not ascertain their owners. They let women and minors go, and arrested 36 young men, a woman who attended the party told Human Rights Watch. The police charged all of them with illegal gun possession, instigation of drug use, and corruption of minors. A judge ordered pretrial detention for all of them after reviewing the police file, but did not see any of them in person.

Human Rights Watch interviewed two of the detainees and the relatives of nine others. All insisted that the party had nothing to do with Bonde dos 40 and that neither they nor their relatives were affiliated with the gang.

Nonetheless, when they arrived at Pedrinhas, the detainees asked to be placed with members of Bonde dos 40. One of the detainees, G.H., said they were from a neighborhood where that gang is active and the media had wrongly identified them as members of Bonde dos 40 the day of the arrest. “We are all afraid of being killed” if sent to a cell with PCM members, he said. G.H., 23, is married and has a child. He works for a delivery company.

Another detainee was R.C., 20, who was doing a course on Port Logistics at Senai, a professional school, but would not get his diploma because he was absent for more than three days due to his incarceration, said his mother, who owns a pet shop. He decided to go to the party at the last minute, when friends called him as he was going to play soccer, she said. He plans to go to college and study mechanical engineering, his mother said. “I never saw him use drugs,” she said. “He likes going to parties. He loves to dance.”

H.Y., 27, another of the detainees from the party, is a mason for a contractor of Vale do Rio Doce, a multinational mining company. He is married and has two children. He said he

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Tagging by Primeiro Comando do Maranhão (Maranhão's First Command, PCM) gang inside the Pedrinhas prison complex.

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was afraid of losing his job because he was in prison. He said he did not have a lawyer.

B.T., whose 18-year-old nephew was detained, said that once they were released, the men would have to be very careful not to enter neighborhoods dominated by PCM by mistake. "After this incident, their daily lives won't be the same, only if they move out of the state," she said. "They will lose the freedom to come and go as they please."

Police in Maranhão carried out mass arrests at two other parties that it said were organized by Bonde dos 40 between September 2014 and January 2015.



Tagging by the Bonde dos 40 (Streetcar of the 40, B40) gang at the entrance of the Liberdade neighborhood in São Luis to mark its territory.

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Custody Hearings in Maranhão

In response to the wave of violence in the state's prisons, a committee that included representatives of the governor's office, the judiciary, the Public Defender's Office, the Prosecutor's Office, and the police proposed initiatives to address the roots of the problem, including prison overcrowding. One of their proposals was for custody hearings for detainees who have been arrested in the act of committing a crime.

Although Brazil's authorities were already obliged under international law to hold these hearings, the pilot program found that the hearings also help reduce pre-trial prison populations. The hearings prevent arbitrary detention and allow independent judges to make evidence-based

decisions on the necessity and legality of keeping a particular suspect incarcerated.

Under the rules established by Maranhão's state judiciary, custody hearings are to be carried out within 48 hours of arrest. At the hearings, judges rule only on whether pre-trial detention is warranted under Brazilian law, not on the likely guilt of the accused. Under Brazilian law, before a judge makes a decision to hold an accused in pre-trial detention the judge must conclude that the suspect may tamper with evidence or threaten witnesses, is a flight-risk, is a threat to "public order" or the national "economic order," or has already violated probation rules.

Pre-trial detention can be considered only if the suspect is accused of a crime that carries a sentence of more than four years in prison, or if the person has previously been convicted of a crime, faces charges of domestic violence, or there are doubts about the detainee's identity. Judges in Maranhão also have the option of requiring a suspect to wear a GPS tracking anklet and to sleep in their own home as conditions for pre-trial release.





From October 17 through December 5, 84 custody hearings were held in the state, according to the first official report about the initiative. The judges ordered pre-trial detention for 43 suspects and released the other 41, nearly 50 percent of the total. During the same time period, judges released 10 percent of detainees who did not have custody hearings.

Several judges said that the lack of custody hearings led to the detention of people who should have been granted conditional release. These included detainees charged with minor offenses for which they would have to serve no time if convicted.

For instance, C.V. spent more than two months in jail on a charge of buying a stolen motorcycle, even though he had no prior convictions and his sentence would not have included prison time if he had been convicted. When he was arrested, a police chief set bail of BR724 (US\$262), which C.V. could not pay, his case file said. The Public Defender's Office petitioned for this release, and he was freed on probation. His stay in jail cost taxpayers about 5,000 reais (US\$1,811).

In the case of the men arrested at the alleged Bonde dos 40 party, judges took an interest in the case after they had been in jail for almost two weeks and arranged for custody hearings. The presiding judge determined that the men should be released on probation as they did not pose any threat to society. He noted that the police had provided no evidence linking the detainees to gang activity, nor to the guns and drugs allegedly found at the party.

Inside the Casa de Detenção (Cadet), one of the facilities in the Pedrinhas prison complex.

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Yard at the Casa de Detenção (Cadet), one of the facilities in the Pedrinhas prison complex.

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The Right to a Custody Hearing under International Law

The right to be brought before a judge without delay is enshrined in treaties ratified by Brazil, including the International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights. The United Nations Human Rights Committee, which is responsible for interpreting the ICCPR, has advised states that the requirement applies “in all cases without exception” and held that the delay between the arrest of an accused and when he is brought before a judicial authority “should not exceed a few days,” even during states of emergency.

The committee has stated that even when the need to transport a detainee may lead to delays, 48 hours is normally sufficient and that “any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.” Detention in excess of 48 hours without judicial control increases the risk of ill-treatment. The detainee “must be brought to appear physically before

the judge,” the committees said, as “the physical presence of detainees at the hearing gives the opportunity for inquiry into the treatment that they received in custody.”

Other countries in Latin America have incorporated this right into their domestic law. For instance, in Argentina in cases of arrest without a judicial order, the detainee must be brought to a competent judicial authority within six hours.

In Chile, in cases in which a person is arrested while committing a criminal act, the detainee must be presented within 12 hours to a prosecutor, who must either release him or bring him before a judge within 24 hours of the arrest. In Colombia, the detainee caught while committing a criminal act must be brought before a judge within 36 hours. In Mexico that period is 48 hours.

In contrast, Brazil’s criminal procedure code requires that when an adult is arrested in the act, only the police files of the case must be presented to the judge within 24 hours, not the actual detainee. Judges evaluate the legality of the arrest and make the decision about continued detention or other precautionary measures based solely on written documents. They only see the detainee at their first hearing, often months after the arrest



Inmates in the Pedrinhas prison complex.

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The Custody Hearing as a Safeguard Against Torture

Maranhão's rules for custody hearings also instruct judges to observe signs of physical or mental mistreatment of detainees. Judge Fernando Mendonça said he found signs of mistreatment in three cases during the custody hearings he conducted from October until the end of January, which he referred to the Prosecutor's Office. Those physical signs of possible torture would have most likely have disappeared before a judge could see the detainees if they had not been granted custody hearings.

Torture remains a serious problem in Brazil. In previous research on this issue, Human Rights Watch found compelling evidence in 64 cases of alleged abuse since 2010 that security forces or prison authorities engaged in cruel, inhumane, or degrading treatment of people in their

custody. Abuses often occur in the first 24 hours of police custody. The National Human Rights Ombudsman's Office received 2,374 complaints of torture and cruel, inhuman, or degrading treatment in prison or in police stations through a telephone service in 2014, an increase of more than 25 percent over 2013, according to figures provided to Human Rights Watch.



An inmate in the Pedrinhas prison complex.

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The Future of Custody Hearings in Brazil

Under Maranhão's pilot program, custody hearings are only held in São Luís and ordinarily only for people detained during the daytime. Judges who cover nights and weekends are reticent to carry out custody hearings, alleging it is hard to combine them with their regular workload, the first official report about the program said. The report said that results in unequal treatment and that custody hearings should be held in all cases. The judges who conducted the pilot program told Human Rights Watch that they hope to expand custody hearings to the rest of the state and to all cases in São Luís in the next few years.

The National Council of Justice has urged other states to start holding custody hearings. It supported starting the pilot program in São Paulo, which also had the backing of the Justice Ministry. The program began on February 24. The

hearings currently are being held in the center and southern part of São Paulo, but are to be expanded to the rest of the city in a few months, the National Council of Justice said. In addition, judicial authorities in the state of Piauí have said they will create a commission to prepare a custody hearings program.

The draft bill before Congress would require custody hearings within 24 hours of arrest nationwide. The bill says that a prompt hearing before a judge guarantees the physical and psychological safety of detainees, prevents torture, and allows judges to monitor the legality of the detention.

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- ¹ Available at http://www.cnj.jus.br/images/imprensa/Relatorio_CNJ_-_Inspecao_-_Complexo_Penitenciario_de_Pedrinhas_no_Maranhao_-_Dez-2013_4_copiar.pdf
- ² Available at http://www.mapadaviolencia.org.br/pdf2014/Mapa2014_JovensBrasil.pdf
- ³ Available at <http://www1.folha.uol.com.br/cotidiano/2014/01/1394160-presos-filmam-decapitados-em-penitencia-ria-no-maranhao-veja-video.shtml>



Judge Fernando Mendonça conducts a custody hearing in January 2015.

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