

# **The Brazilian Prison System: a brief diagnosis**

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## **1. Introduction**

Brazil does not have a federal prison system. All prisons are run by the different states in the country – so there are 27 prison systems. Nevertheless, there is one single Penal Law for the whole country and one Penal Execution Law which states very clearly how prisons should be run, what the rights and duties of the prisoners are, and which are the institutions that have responsibility or some sort of relationship with the prison system.

Nevertheless, both the Constitution, the Penal Execution Law and all international treaties dealing with the rights of prisoners Brazil has signed are systematically ignored. Brazilian prisons, as a rule, are inhumane and degrading. High levels of overcrowding, violence and corruption are widespread. The Brazilian Prison System has long been going through a serious crisis which is often covered by the media, mainly when prisoners riot, when they take hostages, when they escape or kill each other by the dozens. In a recent riot in the state of Rio at least 32 prisoners were killed by other prisoners in the most violent and atrocious way. Many had their heads, legs and arms cut. The levels of overcrowding are so dramatic that in a police lock-up in Rio we found 65 prisoners living in a cell measuring 12 square meters. Beatings by staff are not uncommon and the level of corruption in some prisons is such that cell phones, guns and drugs are quite often found.

As a rule the prison systems are under the Secretaries of Justice in the different states. In a few states a Secretary of Prisons has been created and in a few others the prison system is under the Secretary of Public Security, which basically deals with the police. In the national level there is a National Secretary of Justice, under the Ministry of Justice and also a National Council for Criminal and Penitentiary Policy. The first, through its National Penitentiary Department, should help the states both financially and through technical support. The latter should be dealing with

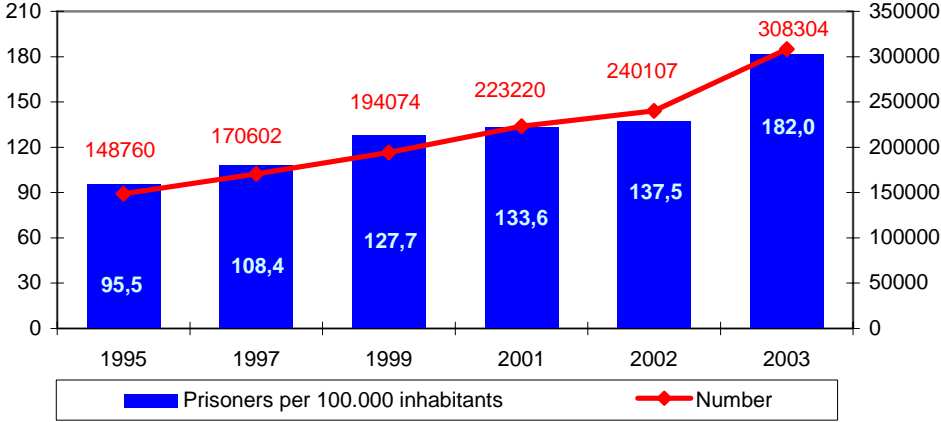
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policy – providing orientation to the states, monitoring what is going on in the different state prison systems, etc. Lack of funds and in some cases, lack of expertise, hinder the work of these different institutions.

Between 1995 and 2003 the number of prisoners in the Brazilian Prison System more than doubled. It went from 148.760 to 308.304 men and women incarcerated. As far as prisoners per 100.000 inhabitants the number went from 95,5 in 1995 to 182 in 2003, which means an increase of 93%. Only between 2003 and 2004 an additional 60.000 new prisoners entered the system.

**Graph 1 - The growth of the Brazilian prison population (1995 to 2003)**



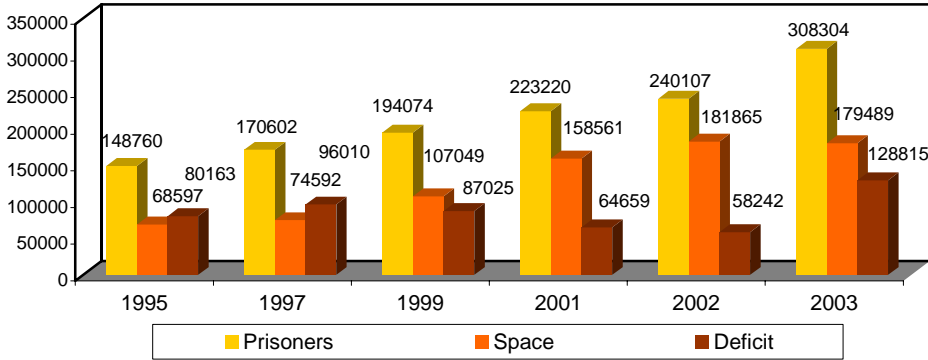
Source: Ministry of Justice

As we all know and as a rule, the growth of the prison population does not bear direct relationship with crime rates. The growth of the prison population throughout the world in recent years, and in Latin America the situation is not any different, has to do with the fact that tougher legislation has been enacted through which longer sentences are imposed and all kinds of legal benefits are cut or postponed. The United States model of being *tough on crime* has contaminated the world and Latin America in particular. Although Brazil does not have life imprisonment or the death penalty, some very tough legislation came around during the last decade. It is true that high levels of violent crime and the overexposure of violence in the media have helped create such profound levels of fear of crime that politicians ended up enacting what many jurists have come to call “panic legislation” that end up having no impact on crime rates themselves. A good example is the legislation on hideous crimes which dates from 1992 and was supposed to curb kidnapping. The fact is that from 1992 to 2003 kidnappings in Sao Paulo went up more than 800%!

The growth of the prison population in some states is absolutely shocking: in the state of Sao Paulo, for instance, one thousand new prisoners enter the system every month. And that means one thousand new prisoners if we already subtract the number of those that leave the system either on parole or after fulfilling their entire sentences! To deal with this enormous growth the state of Sao Paulo should build at least two new prisons for 500 prisoners every month and, of course, this is not done and the result is dramatic levels of overcrowding. The state of São Paulo has practically half of the prisoners in Brazil and the highest rate of prisoners per 100.000 inhabitants.

From 1995 to 2003, an extraordinary effort to build new prisons went on: 112.132 new prison spaces were built, which meant dozens of new prisons throughout the country, and still the deficit today is around 100.000.

**Graph 2. Prison population, prison space and deficit (1995 to 2003)**



Source: Ministry of Justice

From October 2002 to March 2003 I was responsible for coordinating a diagnosis of the Brazilian Prison System for the Ministry of Justice and the material that follows stems from the work then done which was funded by the Federation of Industries in the state of Rio de Janeiro. A lengthy questionnaire was sent to all 27 states to answer. Only two did not send us back the instrument: the states of Paraíba and Roraima. Since these two states together have approximately 6.000 prisoners, their failure in complying with our request did not affect the overall picture. Nevertheless, the results are preliminary and should be considered with a certain amount of caution. Despite the effort of criticizing the data that came from the states a few inconsistencies were registered. In a number of items there were no answers and basically we know that it is very difficult for the states to produce data when the system is not computerized and most of the information was collected specifically for this report. Most of the information that follows relates

to the year 2003. If otherwise, it is mentioned. It should also be noted that the diagnosis was mainly targeted at trying to understand issues of management, much more than the profile of prisoners, although data related to the prisoners was also collected.

## **2. Basic information on the Brazilian Prison System**

- According to the collected information, there were 308.304 prisoners in Brazil in November 2003. Among these, 75% were in the state prison systems and 25% were in police lock-ups, which is absolutely illegal according to Brazilian legislation. The law says that police lock-ups are meant to hold prisoners while they are giving testimony, being screened and having their fingerprints taken.
- The number of prisoners in police lock-ups is very high in many states. In some states more than 50% of the prisoners are held by the police. In the state of Minas Gerais, for instance, 80% of the prison population is with the police. In many states some prisoners serve their entire sentences in police lock-ups.
- The monthly average of new prisoners in the state prison systems is very high. In 10 states the average rate of new comers equals 5% of the total prison population in the prison system. No strategic planning may effectively deal with rates like this.
- If one compares the number of prisoners getting in and out of the systems it is clear that the number of prisoners getting in is almost double of those getting out. The prison system works like a funnel and it is not difficult to understand why overcrowding is always going up despite the building of so many new prisons in recent years.
- Within the state prison systems approximately 70% of the prisoners have already been sentenced, which may be considered fairly good according to international rates.
- In the police lock-ups though the majority - 64% - is still awaiting trial, which means that 36% of those held in police lock-ups have already been sentenced in disagreement with national and international legislation.
- 76% of the prisoners have been sentenced to fulfill their sentences in “closed regime”. Approximately 13% in “semi-open regime” and 3% in “open regime” (while they are serving sentences in the latter two the prisoners may work outside the prison walls and spend a few week-ends during the year with their families).

- More than 4.000 prisoners in the semi-open and open regimes are kept in police lock-ups in complete disrespect for the law since they cannot use the benefits they are entitled to as far as working outside and visiting the family.
- 20% of the states have created a special Secretary to deal with the prison system which shows the increased importance this area has achieved due to huge prison populations.
- 25% of the states do not have a legal diploma called Prison Regulation. When the Penal Execution Law was sanctioned in 1984 it was made clear that all the states should adapt their own prison regulations to the federal legislation. The fact that after 20 years 25% of the states still do not have such regulation is outrageous and show how loose management is in many states. And even worse: 50% of the states have never organized a manual of responsibilities for the different functions within the prison systems. Of course this scenario indicates that improvisation is the mark of management in many of the state prison systems.
- 42% of the states have not signed terms of agreement with the federal government in the area of health care for the prisoners. Rio de Janeiro was the first state to do it in 1992 and now, more than 10 years having passed, less than half of states have managed to secure the transfer of resources from the federal government to deal with this issue.
- 17% of the states do not control the legal situation of the prisoners and among those that do it 32% do not have a computurized control of these data which means that in many states prisoners are probably not released when their time is over or are not granted parole when the law would so enable them.
- 88% of the states informed they regularly distribute clothing and hygiene items. Nevertheless, from our own experience, visiting some of the states, this is not done on a regular basis or to all the prisoners.
- Approximately 50% of the state prison systems do not have nurseries for babies or the small children of women prisoners, which contradicts the Penal Execution Law.
- 60% of the states censor prisoner's mail, which contradicts the Brazilian Constitution.
- 82% of the states use staff in activities for which they were not hired in the first place. A lot of people that entered the state prison systems as guards end up working in other areas mainly because in the last few years there have been no admissions for areas such as health services, legal aid, social work, etc. For those running the prison systems it is much easier to convince the executive branch of government to admit new staff in the "security"

areas and there is an acute shortage of professionals in all other areas. Thus, someone who enters the system as a prison guard but has a university degree ends up working in a different area, mainly if they have a politician as a “godfather”.

- In the different state prison systems military policemen are involved in all kinds of activities . In 45% of the states the directors of the prison systems are from the Military Police and in 66% of the cases prison establishments are directed by military policemen. In 80% of the states it is the Military Police which makes all transfers of prisoners and is responsible for taking prisoners for trials, hospitals, etc. besides being responsible for the external security of the prison establishments.
- Only 20% of the states have Penitentiary Schools for both the initial and continued training of staff which reveals how improvisation is the mark of management in practically the whole country as far as the prison system is concerned.
- In 70% of the states there is no career plan for prison staff, another clear demonstration of how little attention the prison system receives from the state governments.
- Only 16% of the states have a organized structure/strategy to deal with re-entry.
- 66% of the states use private services, mainly for the area of feeding prisoners.
- 6 states have what is called semi-private prisons. The truth is that they are completely private except for the director of the prison who is hired by the state.
- 72% of the states separate prisoners and allocate them in certain establishments according to the group they allegedly belong to which is a recognition of the power of those groups leaving the authority of the State in a very fragile position. Prisons end up “being run” by these so called “factions”.
- 39% of the states do not have Community Councils, which is required by the Penal Execution Law. Community councils should be made up of representatives from various community organizations and should monitor prison conditions, among other responsibilities.
- There are no Public Defendants in 28% of the states. In these states prisoners get a court appointed lawyer. Both strategies are very limited.
- In 24% of the states the system of punishments and rewards for prisoners is not part of a set of detailed rules. The Penal Execution Law states which are the most serious infractions a prisoner may commit and what kind of punishment may apply but minor

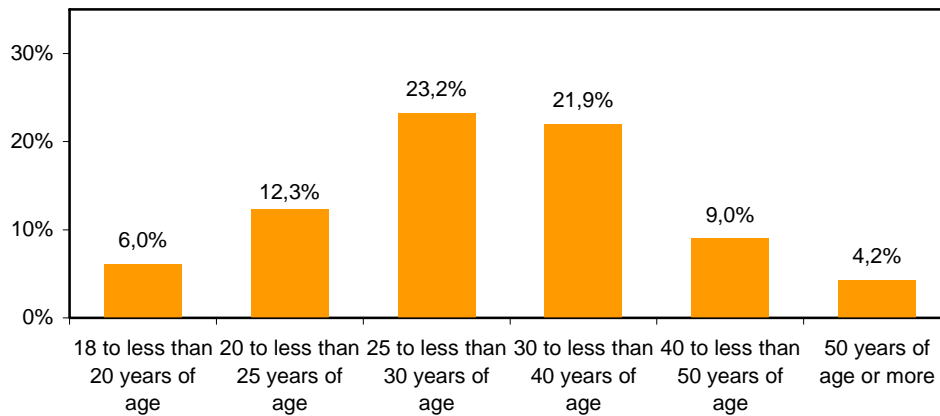
infractions to a disciplinary rule each state should have are not regulated leaving room for all kinds or arbitrary decisions by staff.

- There were more than 4.000 escapes in the Brazilian Prison System in the year 2002.
- 303 prisoners were murdered by other prisoners during 2002. This alarming number does not seem to shock human rights groups and, as a rule, there is no indemnization for the families.
- 50% of the state prison systems do not have a institutionalized strategy of internal control. Each deviant act committed by staff is dealt with as it happens. Considering the huge amount of corruption and violence going in Brazilian prisons the lack of such strategies is absolutely not acceptable.
- 36% of the states informed that they have created Ombudsmen for prisons – in other words, they have created some form of external oversight. The truth is that most of these schemes are attached to the office of whoever is responsible for prisons in the different states – in other words, there is no independent structure of accountability.
- 91% of the states informed they now have metal detectors in the entrance of the different prison establishments. It is difficult to understand then (if we do not consider corruption being widespread) why so many guns and cell phones are regularly found with prisoners and why the prison administrations do not review their rules as far as the routine used for searching visitors which, as a rule, is absolutely humiliating.
- In 30% of the states there are no rules on how should the search of visitors be conducted leaving room for all kinds of arbitrary behavior.

### 3. Basic information on the profile of the prisoners

- Approximately 95% of the prison population is made up of men and 5% of women which is close to most prison populations in different countries.
- As it happens in most countries, the Brazilian prison population is very young as the next graph reveals:

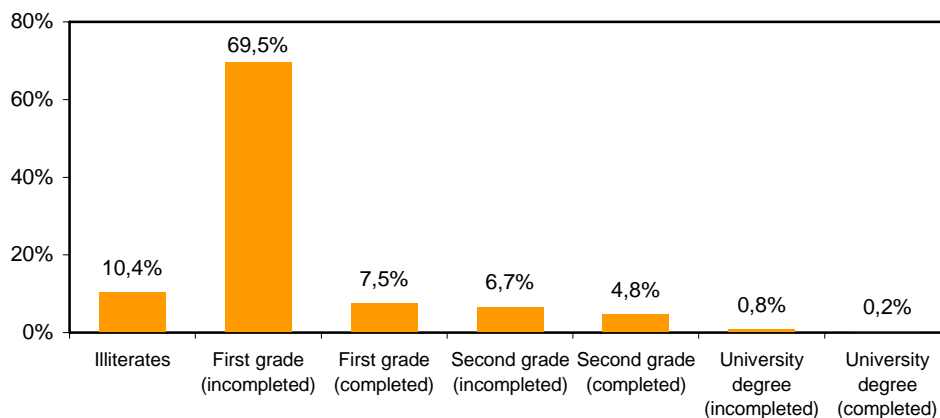
**Graph 3 - Prisoners in Brazil: distribution by age**



Source: Lemgruber, J. – “Projeto Arquitetura Institucional do Sistema Único de Segurança Pública”, Ministry of Justice – FIRJAN / PNUD, Brazil, 2004.

- The prison population has very low levels of education:

**Graph 4 - Prisoners in Brazil: distribution by level of education**



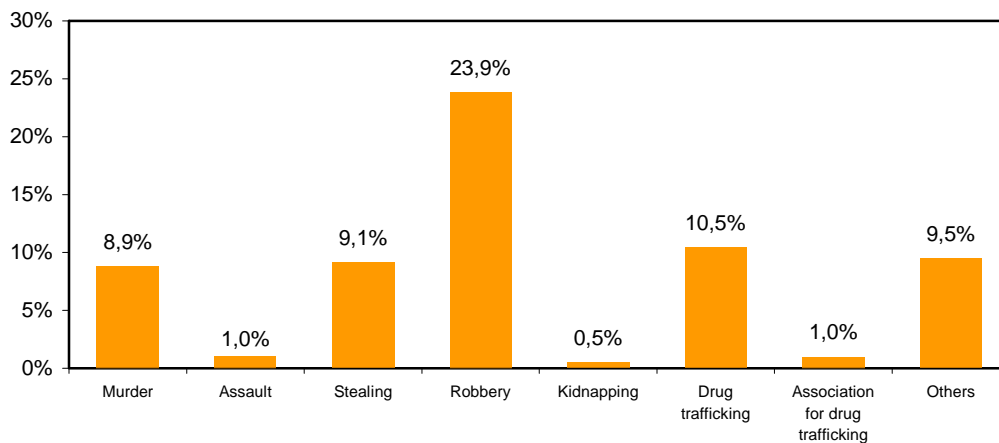
Source: Lemgruber, J. – “Projeto Arquitetura Institucional do Sistema Único de Segurança Pública”, Ministry of Justice – FIRJAN / PNUD, Brazil, 2004.

- Only 17% of the prisoners are involved in some kind of educational activity. Considering the low levels of schooling this number is outrageous and it should be said that the Penal

Execution Law puts very objectively that the prison systems are obliged to provide first grade education to all prisoners – that is 8 years of schooling.

- As far as the crimes committed there is a problem with the data collected because the state of Rio de Janeiro did not provide information for this item and we know that approximately 60% of the prisoners in the state of Rio have been sentenced for dealing drugs and Rio has about 8% of the Brazilian prison population. Nevertheless, considering what was informed, the data collected revealed the following situation:

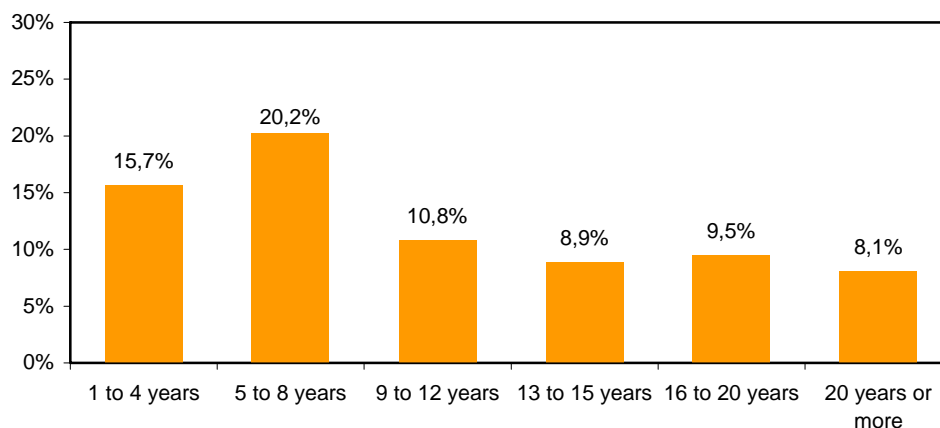
**Graph 5 - Prisoners in Brazil: kind of crime**



Source: Lemgruber, J. – “Projeto Arquitetura Institucional do Sistema Único de Segurança Pública”, Ministry of Justice – FIRJAN / PNUD, Brazil, 2004.

- As far as the length of the sentence, the majority of the prisoners got a 5 to 8 years sentence as shown below:

**Graph 6 - Prisoners in Brazil: Length of sentences**



Source: Lemgruber, J. – “Projeto Arquitetura Institucional do Sistema Único de Segurança Pública”, Ministry of Justice – FIRJAN / PNUD, Brazil, 2004.

- Only 26% of the prisoners work inside prison walls which reveals how incompetent the states are to provide work for the prisoners and by doing so they limit the legal possibility prisoners have to apply for what is called “remission of the sentence”. The Penal Execution Law states that for every three days of work a prisoner may serve one less day of the sentence given to him or her. What is even worse: in many states less than 10% of the prisoners have some kind of work.
- Only 20% of the prisoners sentenced to fulfill their sentences in a half-open or open regime are authorized to work outside prison walls although 76% of them may visit their families on set dates.
- 70% of the prisoners receive visits and 27 % are allowed to privately visit with their wives or companions and in a few states even homosexuals may privately receive the visits of their mates. This is one of the few positive features of the Brazilian prison system.
- More than 2.000 prisoners have tested positive for HIV Aids. Considering the orientation of the World Health Organization against imposed testing one should imagine that these numbers are probably much higher.

#### **4. Final remarks**

There is an urgent need to discuss strategies to reduce the use of imprisonment and increase the use of real alternatives to prison, avoiding all kinds of widening of the social control net. Countries which have a huge social debt to the poor and have to invest in eliminating hunger, in providing decent health and education services for their people, in the generation of jobs, in the building of public housing and sanitation systems, among so many other areas, should not dare incarcerate non-violent criminals. Prisons should be reserved for those who pose a real threat to society. Everything else is just a waste of public money. As Douglas Hurd, who used to be a Home Office Secretary in the United Kingdom, once said “prisons are an expensive way of making people worse”.

There is also an urgent need to inform the public, the judiciary, policy makers and the media about the true costs of incarceration. And all of us who believe deprivation of liberty should be used as a last resort must work along these lines. (Attached goes a power point presentation meant to discuss exactly these issues).