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U.S. Department of State

Country Report on Human Rights Practices for 1998

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BRAZIL

Brazil is a constitutional federal republic composed of 26 states and the federal district. The federal legislative branch exercises authority independent of the executive branch. On October 4, voters reelected President Fernando Henrique Cardoso to a second 4-year term. Citizens also cast votes for all 513 federal deputies, one-third of the Senate, and for governors and state assemblies. This marked the third time since the end of military rule in 1985 that citizens freely chose their president and elected the legislative bodies in accordance with the 1988 Constitution. All parties are able to compete on the basis of fair and equal procedures. The judiciary is independent but inefficient and subject to influence.

Police forces fall primarily under the control of the states. State police are divided into two forces: The civil police, who have an investigative role, and the uniformed police, known officially as the "military police," who are responsible for maintaining public order. Although the individual state governments control the uniformed police, the Constitution provides that they can be called into active military service in the event of an emergency, and they maintain some military characteristics and privileges, including a separate judicial system. In September 1997, the Justice Ministry created a public security secretariat to coordinate efforts to reorganize and modernize the police forces. The federal police force is very small, primarily investigative, and plays little role in maintaining internal security. The state police forces committed numerous serious human rights abuses.

Brazil has a market-based, diversified economy. The Government, which traditionally played a dominant role in shaping economic development, is encouraging greater private sector participation in the economy through privatization of state enterprises, deregulation, and removal of impediments to

competition. Industrial production, including mining operations and a large and diversified capital goods sector, accounts for approximately 34 percent of gross domestic product (GDP); agriculture contributes about 13 percent. Brazil exports both manufactured and primary goods. Among the principal exports are coffee, soybeans, textiles, leather, metallurgical products, and transportation equipment. Per capita GDP was about \$5,000 in 1998 and the economy grew at a rate of 0.5 percent. Although income distribution improved slightly in 1998, it remained highly skewed, and the poorest half of the population received only 10 percent of national income while the richest tenth received 48 percent.

The Government generally respected the human rights of its citizens, but there continued to be numerous serious abuses. State police forces (both civil and uniformed police) committed many extrajudicial killings, and the police also tortured suspects under interrogation, arbitrarily detained persons, and conducted illegal searches. Off-duty police were implicated in killings for hire, kidnappings for ransom, and other abuses. Prison officials often beat inmates to maintain order. The state governments concerned did not punish most perpetrators of these abuses effectively. While state police forces dismissed increasing numbers of police officers for improper or criminal behavior, police tribunals (special courts for the uniformed police) remained overloaded, rarely investigated cases thoroughly, and seldom convicted abusers. The separate system of uniformed police tribunals contributes to a climate of impunity for police officers involved in extrajudicial killings or abuse of prisoners. Legislation enacted in 1996 gave civil courts jurisdiction over intentional homicide committed by uniformed police officers but left control of the initial inquiry in the hands of the police, which can preempt investigation and prosecution of cases.

The poor bear the brunt of most violence. Prison conditions range from poor to harsh. The judiciary has a large case backlog and often is unable to ensure the right to a fair and speedy trial. Justice is slow and often unreliable, especially in rural areas where some powerful landowners use violence to settle land disputes and influence the local judiciary. Violence against women, racial minorities, and homosexuals is a problem. Discrimination against women and religious and racial minorities is also a problem. Child prostitution and abuse are problems. Despite constitutional provisions safeguarding the rights of indigenous people, government authorities fail to protect them adequately from outsiders who encroach on their lands and fail to provide them with adequate health care and other basic services in many areas. However, the Government has demarcated 115,000 square miles of indigenous lands in the past 4 years, and about 11 percent of the country is identified for the roughly 330,000 indigenous people. The authorities do not adequately enforce laws against forced labor, including that by children. Illegal child labor is a serious problem.

Established in April 1997, the National Secretariat of Human Rights in the Justice Ministry oversees the implementation of a 1996 Action Plan to address human rights abuses. The Government continued its inter-ministerial campaigns against child labor and expanded its scholarship program to keep primary and secondary students in school. However, because of jurisdictional and resource limitations, the efforts of the Federal Government had an uneven and limited impact in many of the states where human rights violations are most common.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Political and Other Extrajudicial Killing

Extrajudicial killings continued to be a serious problem throughout the country. In urban areas, high crime rates, a low standard of police training, failure to apprehend most criminals, and an inept and

inefficient criminal justice system all contribute to police brutality and killings of criminal suspects. Human rights groups report that the uniformed police often summarily execute suspected criminals rather than apprehend them and then file false reports describing the executions as shootouts. The Permanent Forum against Violence in Alagoas stated that the practice of executing young petty criminals is widely referred to in police circles as "social surgery." A 1997 Human Rights Watch report described the unjustified use of deadly force in police raids in urban shantytowns; extrajudicial killings, justified in official reports as "resisting arrest;" and use of executions by off-duty officers to respond to minor provocations or to resolve personal vendettas. The Government's failure to investigate, prosecute, and punish police who commit such acts creates a sense of impunity that continues to encourage human rights abuses.

All crimes less serious than murder committed by uniformed police officers against civilians remain in the military justice system. Of 2,359 cases against police officers that were sent to police tribunals in Sao Paulo state between January and October, 64 percent were retired without a court hearing. Cases were retired for insufficient evidence and lack of knowledge of the author of the crime. According to a study released in November by the Institute for Religious Studies (ISER), 98 percent of the 301 cases of police homicides the Institute examined from 1993 to 1996 were determined to be "legitimate self-defense" and not brought to trial. ISER's medical researcher noted that in 245 cases there were signs of execution, including 13 cases with gunshot wounds made at point blank range. In 64 percent of the cases examined, the victims were shot in the back.

The number of citizens killed in conflicts with police in Sao Paulo rose 17 percent over 1997, according to the state government. According to the Sao Paulo police ombudsman, 60 percent of the victims had no prior police records, a fact that he believes casts doubt on police claims that 80 percent of shooting victims were resisting arrest. Off-duty police officers committed 31 percent of police homicides during this period. This is the first year state police provided statistics on homicides committed by off-duty officers, a measure long called for by human rights organizations. Sao Paulo state's civil (investigative) police killed 45 persons during the first 9 months, a 309 percent increase over the same period in 1997. The Sao Paulo state Secretary for Public Security ordered investigations of all homicides committed by police in the line of duty in response to public questioning of police practices.

Police homicides roughly doubled in Rio de Janeiro from 1997 to 1998, where police killed 511 persons through October. According to another ISER study, Rio de Janeiro police officers rarely fired to immobilize rather than kill; half of the victims were killed with four or more bullets, and the majority of victims were shot in either the shoulders or the head. Forty cases clearly demonstrated execution-style deaths, where victims were first immobilized and then shot at close range. Victims were often young, black, and without criminal records.

The shooting of two suspected bank robbers by a police officer in Rio de Janeiro, recorded on video tape and broadcast in its entirety on the national evening news, graphically illustrated the commonplace use of lethal force by the police and the public's tolerant attitude toward such practices. On August 5, a uniformed police officer on duty in a busy public square in the Ipanema neighborhood of Rio de Janeiro, alerted by a bystander, approached two men on a parked motorcycle who were suspected of just having robbed a local bank. The uniformed policeman drew his gun and approached the two men. As he came close enough to question them, he also attempted to take a gun from one suspect who then attempted to draw the gun himself. Without further warning, the policeman shot both suspects in the head at point blank range in succession and fired four more times as the suspects lay on the ground. The initial intense media coverage of the incident focused mostly on the positive public response to the policeman's actions. His superiors decorated him for bravery. Some media and human rights observers questioned the appropriateness of the officer's action, his lack of training and preparation to deal with such an incident, and his use of lethal force in a crowded public area.

The state assembly of Rio de Janeiro in June suspended the controversial bravery awards for police that are linked by human rights observers to increased fatalities. The state assembly overturned Governor Marcelo Alencar's veto and enacted a law that requests the executive to submit to the assembly legislation specifying criteria for the awards. The Governor appealed the assembly's action in the courts, arguing that the law is unconstitutional. In September the state Minister of Public Security appealed to the assembly for reinstatement of the bravery awards, arguing that they were needed to maintain adequate salaries for the uniformed police. However, the Governor-elect of Rio de Janeiro state, who is to take office in January 1999, announced that he would not seek to reinstate the bravery awards.

Police involvement in criminal activities often produces killings. Throughout the country, off-duty police were implicated in killings for hire, kidnappings for ransom, and instances of "social cleansing," or the killings of persons considered undesirable such as criminals, street children, and homosexuals. For example, in September 1997 off-duty Sao Paulo police officers were implicated in the kidnaping and murder of an 8-year-old boy. In 1996 in Belo Horizonte a group calling itself "Reacion" and reportedly composed of active duty and former police officers killed three street children. No new information was available on either investigation. Some incidents were widely publicized and drew attention to the need for better training and more pay for the police.

The Inter-American Commission on Human Rights (IACHR) stated in a December 1997 report that the police forces require widespread reform to curb repeated instances of violence and other abuses. The report stated that the number of deaths in Rio de Janeiro attributed to state police officers averaged 20 a month in 1996, which it termed an "alarming phenomenon." It stated that one battalion covering slum areas was responsible for one third of the deaths. The IACHR also stated that the state police killed three times as many persons as those they injured in civilian confrontations, a reversal of normal patterns. The IACHR noted that "this is evidence of the use of excessive force and even shows a pattern of extrajudicial executions by the Rio de Janeiro police."

On the night of August 3, four uniformed policemen in the city of Salvador abducted two transvestite prostitutes, took them to a nearby beach, and ordered them at gunpoint to enter the rough surf and to swim as far as they could. One victim drowned. The other survived and later identified his four assailants, who subsequently were arrested. The four policemen claimed they were acting under orders from superiors and implicated one of their commanding lieutenants. The lieutenant was not charged.

On December 16, gunmen murdered Ceci Cunha, a federal deputy in the northeastern state of Alagoas, her husband, her brother-in-law, and his mother. They were shot and killed shortly after an investiture ceremony for new Alagoas members of the federal Chamber of Deputies. The police arrested two suspects, one of them an employee of Cunha's elected alternate, who stands to inherit her seat in the Chamber. The investigation continued at year's end.

Harsh prison conditions, official negligence, poor sanitary conditions, lack of medical care, and dangerous conditions led to a number of deaths in prisons (see Section 1.c.).

In December 1997, unknown assailants shot and killed four street residents who were sleeping outdoors in the Madurerira neighborhood in Rio de Janeiro. No suspects have been arrested, and there was no information available as to progress in an investigation, if any, of the killings.

A 1996 law giving civil courts jurisdiction over intentional homicide committed by uniformed police officers was used in some high-profile cases. In the first such case, a civilian court in Sao Paulo convicted Otavio Gamba, the leader of a uniformed police squad caught torturing and murdering civilians on video in a roadblock in the Sao Paulo neighborhood of Diadema in March 1997 and

sentenced him to 65 years' imprisonment. Although Gamba received sentences totaling 65 years in jail for fatally shooting Mario Josino, as well as attempted homicide and abuse of authority, he will serve the maximum sentence permitted under the law, which is 30 years. Civil courts also gave three other officers sentences ranging from 4 to 26 years; four other officers involved in the widely publicized roadblock incident awaited trial at year's end. Police tribunals in August already had sentenced the eight policemen to jail terms ranging from 18 months to 4 years for their involvement in the case. These sentences largely conform to the maximum permitted by the tribunals, but all but one of the defendants is to serve the police tribunal's sentence under house arrest. The Sao Paulo uniformed police expelled two other officers for their involvement in the incident, but have not punished the officers responsible for supervising the group. The commander of the police battalion in the neighborhood, after initially being relieved of duty, was reinstated and suffered only administrative punishment.

In most less prominent cases, the decision whether a policeman acted in self-defense or committed an intentional homicide is based on an investigation performed by the police force itself; almost without exception, the police investigators conclude that suspects were "resisting arrest."

Federal authorities in the state of Mato Grosso do Sul are investigating 5 uniformed policemen regarding 11 death-squad style killings committed in 1997. A state legislator monitoring the investigation believes that these policemen committed at least 40 such homicides. In a separate incident, the authorities charged one of the five with killing for hire.

Human rights monitors visiting the morgue in Maceio, Alagoas state, found that the bodies of 12 persons, who allegedly were the victims of a death squad that included members of the police, were missing. The authorities had been investigating the group, known as the Uniformed Gang, because most of its members reportedly were police officers. They arrested more than 60 police officers, and the courts sentenced 3 of them to 6-year prison terms for illegal possession of machine guns.

The president of the state Supreme Court of Acre, with the assistance of federal authorities, reopened 110 murder and torture cases previously suspended by state authorities for lack of evidence. He claimed that at least 30 of the cases involve death squads with police participation. His investigation led to charges against one uniformed policeman and a civilian, who are being held in the Federal District because of threats made against them.

Five policemen charged in December 1997 with the February 1997 murder of Osvaldo Manoel da Silva await trial. The policemen claimed that da Silva died as a result of wounds suffered while resisting arrest, but a reconstruction of the events by a credible university forensic team indicated that he was shot three times while in the ambulance on the way to the hospital.

Sao Paulo civil authorities continue to investigate five Sao Paulo policemen in connection with the May 1997 killing of three homeless persons during a riot that erupted at a low-income housing project in greater Sao Paulo. The police were carrying out a court order to remove over 400 families that had occupied the "Fazenda da Juta" housing complex illegally on May 3. The police operation was broadcast on television and criticized as an excessive use of force. The authorities have not yet indicted the officers under investigation.

The authorities continue to investigate the May 1996 death-squad killings in the Franco da Rocha neighborhood of Sao Paulo. Witnesses identified five uniformed police officers as having arrested four men who were found dead a few hours later. Franco da Rocha is one of Sao Paulo state's poorest communities and the location of a clandestine dumping site for the victims of death squads. Since 1993 at least 212 bodies have been found there, including 50 victims killed by bullets to the head. The arms

and heads of some of the bodies were removed in an apparent attempt to conceal the victims' identities.

A Rio de Janeiro court sentenced Marco Aurelio Dias, the final defendant in the case of the massacre of eight street children near the Candelaria church in downtown Rio de Janeiro in 1993, to 204 years in prison (18 years for each homicide and 12 years for each attempted homicide). The penultimate defendant, Marcos Vinicius Manuel, had been sentenced to 89 years in prison in late 1997.

In November a jury acquitted 10 officers accused of participating in the 1993 killing of 21 residents of the Vigario Geral neighborhood of Rio de Janeiro. Human rights groups had monitored the case closely and strongly criticized the verdict. The Public Ministry planned to contest the decision. Two of the original 33 defendants have died, 2 are in prison, and no trial date has been set for another group of 19 police officers in the case.

State authorities in Para have asked for a change in venue from the city of Maraba to the state capital of Belem in the case of 153 police officers charged in 1997 with intentional murder in the November 1996 massacre of 19 landless workers in Eldorado de Carajas. State prosecutors charge that the majority of jury members selected in Maraba are prejudiced because of their ties to land-owning interests. Federal government agents are protecting journalist Mariza Romao, who received a series of death threats after testifying against the police officers charged in the case.

In 1997 state authorities charged the commander and 19 other police officers involved in the August 1995 massacre of 9 squatters in Corumbiara, Rondonia, with intentional homicide, which meant that those accused are to be tried in regular courts rather than by a special police tribunal. They also charged four squatter leaders with intentional homicide for the deaths of two policemen, as well as for the deaths of the nine squatters. The authorities justified the latter charges by declaring that the leaders were responsible for the land invasion that sparked the confrontation. The medical examiner reported that most of the squatters killed had been shot in the back at short range and that many of the bullets had traveled from the top of the body downward, indicating that the victims had been killed from behind while kneeling. At year's end, a Rondonia state court was reviewing the appeals filed after the local judge decided which cases would go to a jury.

Retired military police Colonel Ubiratan Guimaraes appealed a judge's September decision to try him in civil court for his role in the deaths of 111 inmates during the October 1992 Carandiru prison riot in Sao Paulo. If tried, Guimaraes would be the first policeman of the rank of colonel to face a civilian jury under the 1996 law. In October Guimaraes lost his reelection to the Sao Paulo state assembly, which previously had provided him with parliamentary immunity and shielded him from prosecution. Civilian prosecutors continue to investigate charges against 121 other Sao Paulo police officers accused of crimes ranging from homicide to use of excessive force while quelling the riot. In March civil prosecutors filed charges against 85 of those police officers, including 43 senior officers. As of year's end, no trial date had been set. Human rights activists have brought the case before the IACHR as an example of impunity in human rights cases.

There were no developments in the 1997 killing of radio show host Edgar Lopes de Faria (see Section 2.a.).

The rural Landless Workers' Movement (MST) continued its campaign of illegally occupying land identified as unproductive, blocking highways, and occupying government buildings, leading to continued confrontations with landowners, their gunmen, and policemen. MST activists destroyed private property during some occupations. A group of MST activists kidnaped three employees of the federal land reform agency in the state of Para in September and held them for over 36 hours until the

government agreed to provide the group with food staples.

In April an employee of a local landowner reportedly shot and killed MST leader Sadi Padillo in Abelardo Luz, Santa Catarina. The local Labor Party president charged that an armed militia paid by local landowners had targeted MST leaders for murder. Padilla had led a group of 300 families who occupied a local holding but who had left peacefully after reaching an agreement with the Government's land reform agency. The Pastoral Land Commission (CPT) reported that 26 landless activists were murdered through November. In December Sao Paulo state police reported finding the bodies of two MST members with bullet wounds in their heads and signs of torture. They had been leaders of a group of 180 peasant families who occupied land in September near Sao Jose dos Campos in northeastern Sao Paulo state. Such killings usually go unpunished, because the landowners thought to be responsible for many of them reportedly control the police in isolated areas and intimidate local judges and lawyers with violence and threats of violence.

In March an appellate court upheld the August 1997 court decision to prosecute four suspects accused of killing Pataxo Indian leader Galdino Jesus dos Santos for manslaughter rather than murder. The authorities appealed this ruling and still seek to prosecute them on homicide charges. Dos Santos died in April 1997 after five youths set him on fire while he was asleep on a small bench.

In August a federal appeals court upheld the decision of the state Supreme Court of Espirito Santo to move the retrial of MST leader Jose Rainha to the state capital of Vitoria. Rainha's attorneys convinced the state court that he faced a biased jury in Pedro Canario. No trial date had been set by year's end. A jury in the small, rural town of Pedro Canario, Espirito Santo, sentenced Rainha to 26 1/2 years for the 1989 murders of landowner Jose Machado Neto and police officer Sergio Narciso da Silva. The jury convicted Rainha even though the prosecution presented no material evidence and witnesses testified to Rainha's presence 1,500 miles away from the scene of the crime. Since Rainha's sentence exceeded 20 years, he was automatically entitled to a retrial.

In December a Sao Paulo jury found former Sao Paulo precinct chief Carlos Vasconcelos innocent in a retrial for his participation in the deaths of 18 inmates in 1989 in a jail administered by the civil police's 42nd Delegation. A jury previously had acquitted Vasconcelos on the same chargers in 1996, but state prosecutors appealed the decision. A 1997 court decision sentenced police investigator Celso Jose da Cruz to a 516-year jail term for involvement in the same killing; Cruz appealed the verdict and awaited a retrial at year's end. Twenty-nine other policemen charged as codefendants in the case still were awaiting trial.

According to human rights activists monitoring the case, proceedings have stalled against the former mayor of Rio Maria, in the state of Para, who was charged with the 1985 murder of Joao Canuto, the first president of the rural workers union in Rio Maria. Canuto's daughter, Luzia Canuto, received death threats as a result of the case. In June the IACHR criticized the Government for failing to prosecute the crime.

In coordination with the National Secretariat of Human Rights or on their own, several states, including Sao Paulo, Rio Grande do Sul, Minas Gerais, Espirito Santo, Ceara, Sergipe, and Bahia have implemented some form of human rights awareness training for the uniformed police. In many cases, including that of Bahia, the police authorities invited local nongovernmental organizations (NGO's) to conduct or assist in the training. The secretariat expanded an ongoing human rights training program for policemen coordinated with Amnesty International to 10 states.

The International Committee of the Red Cross (ICRC) in October completed its first course of human

rights training for high-ranking military police officers from 21 states at the federal police academy in Brasilia. The program is scheduled to run for 2 years and train over 300 police officers. The course is designed to have these officers pass the training on to junior ranking officers and police recruits at the state level. The ICRC is implementing the program under the auspices of the Justice Ministry's police coordination secretariat.

In December 1997, the military police in Sao Paulo initiated a community-policing program that is expected to take 10 years to implement fully. The police formed a committee composed of over 20 human rights groups, judges, and community leaders to assist and assess the project. They also instituted a policy of "recycling" policemen involved in shootings, removing them from patrols for 6 months and offering them counseling. As of November, one-fifth of the Sao Paulo state military police force (16,000 of 80,000 policemen) have received training under the program, and 4,300 policemen participate in community policing patrols. Additionally, the police have increased the acquisition of and training in the use of nonlethal arms such as tear gas, rubber bullets, and electric stun devices. Human rights groups maintain that the effect of these programs has been limited, at best. However, human rights activists in many states reported increased willingness of police authorities to address their concerns and to deal with problems brought to their attention.

b. Disappearance

There were no reports of politically motivated disappearances.

However, off-duty police reportedly were involved in several abductions for ransom. In 1997 the human rights division of the public prosecutor's office in Belo Horizonte reported that, in the previous 7 years, it had received nearly 100 complaints of "disappearances" of persons from Belo Horizonte in which the police allegedly were involved. In the majority of cases, the alleged victims were criminal suspects.

In 1995 Congress passed legislation recognizing and assuming government responsibility for the deaths of political activists who "disappeared" during the military regime while in the custody of public officials and obligating the Government to pay indemnities of between \$100,000 and \$150,000 to each of the families. In September 1997, President Cardoso signed a decree awarding reparations to the families of 43 such persons. A commission created by the law continued to evaluate requests for, and authorize payment of, indemnities.

MST activists kidnaped three government employees for 36 hours in September (see Section 1.a.).

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution and a 1997 law prohibit torture and provide for severe legal penalties for its use. However, there are frequent credible reports that police torture and beat criminal suspects to extract information, confessions, or money. In a highly publicized case in May, police in Rio de Janeiro tortured Deilson Santana, a suspect in the brutal killing of an 18-year-old student in an affluent Rio de Janeiro neighborhood. After a separate investigation into the murder cleared Santana of any responsibility, the officers responsible for the torture unsuccessfully tried to implicate him in an unrelated crime in an effort to discredit him.

The Government estimated in its 1994 report on the internal human rights situation that fewer than 10 percent of cases of mistreatment by police are reported. Victims generally are poor, uneducated about their rights, and afraid to come forward for fear of reprisals. Human rights activists claim that beatings in Sao Paulo prisons led to the deaths of Carlos Alberto Moura in February and Otovio dos Santos Filho

in October 1997.

The Sao Paulo state police ombudsman received 696 complaints through September alleging torture, abuse, or mistreatment. These represented 24 percent of all complaints received, compared with 11 percent of all complaints received in 1997. The ombudsman's office attributed this rise to a growing public awareness of its work and willingness to report cases of abuse. Nonetheless, the ombudsman's office believes that the number of cases reported represents only a fraction of those that take place. In June the civil police in Sao Paulo opened an inquiry into the systematic torture of prisoners occurring in January and February. Of the 350 prisoners held in a detention facility during this period, 107 showed evidence of a similar pattern of beating that included broken fingers, arms, legs, and jaws, according to state medical authorities. The civil police dismissed four officers as a result of the investigation. In another case, prison authorities dismissed a prison guard who reportedly beat prisoners with a baseball bat.

In testimony before the federal Chamber of Deputies' human rights committee in April, a member of the National Conference of Catholic Bishops prison pastoral commission criticized the abusive practices of two special units of the Sao Paulo civil police, the Special Operations Group and the armed unit for the prevention of robberies and assaults. Local chapters of the Center for Human Rights in the state of Tocantins submitted evidence of over 30 cases of torture committed by the police in the state to the federal Chamber of Deputies' human rights committee in December. State prosecutors removed the director of the state's provisional prison from her post and indicted her after two inmates were tortured in February.

On June 15, the Federal District civil police dismissed police officer Jorge Tadeu dos Santos and charged him with torture for beating a prisoner who had been detained for a traffic violation. This was the first case brought under the 1997 torture legislation in the Federal District.

The state of Santa Catarina created a panel to award citizens imprisoned or tortured for political motives between 1961 and 1979 compensation in amounts ranging from the equivalent of \$4,400 to \$26,500.

Prison conditions range from poor to harsh. Severe overcrowding is prevalent, especially in larger cities. According to Ministry of Justice figures for 1997, prisons nationwide held 101,482 prisoners although the total designed inmate capacity was 74,592. In the states with the largest prison populations, including Sao Paulo, Rio de Janeiro, Bahia, Rio Grande do Sul, and Pernambuco, overcrowding is significantly worse. In the state of Sao Paulo, which holds 40 percent of the national prison population, 52 percent of inmates were serving their sentences in police stations or local jails, according to state statistics from 1997. Most penal authorities do not have the resources to separate minor offenders from adults and petty offenders from violent criminals. Sao Paulo's prison system, in particular, suffers from chronic overcrowding, corrupt and abusive local prison management, and prisoner access to weapons and drugs.

In February prisoner Elcio Oliveira Lima died of heat prostration in an overcrowded local jail in the Santa Cruz neighborhood of Rio de Janeiro. A police officer on duty told the press that the temperature in the jail cells routinely reached 115 degrees. Another officer stated that there was a constant shortage of water in the jail. Lima was detained with 13 other prisoners in a 4.5-foot by 9.5-foot cell with an official capacity of 7 persons.

Prison riots were frequent occurrences. Sao Paulo state officials reported a 147 percent increase in prison revolts from 1996 to 1997 (from 72 to 178 incidents). On December 28, 1997, inmates took over the prison in Sorocaba, Sao Paulo state, in an effort to cover up an escape attempt. They took visitors

and prison officials hostage; one inmate and a visitor were killed. After 3 days of negotiations, 400 special police stormed the prison and freed the hostages. The authorities subsequently transferred 20 inmates to other prisons. In the first 7 months of 1998, 103 prison riots occurred in Sao Paulo state. On November 27, prisoners in the police station holding facility in Sao Paulo's Diadema neighborhood took a guard prisoner, demanding to be transferred from the overcrowded facility. They proceeded to kill three prisoners, two in front of television cameras. The authorities agreed to transfer 23 inmates, and the prisoners released the guard. On the same day, 5 armed men freed 109 detainees from a police station in Campinas; the facility was designed to hold 40 persons but held 179 at the time. Discipline is difficult to maintain under such conditions, and prison officials often resort to inhuman treatment to maintain order. According to the Catholic Church's prison ministry, guards beat all 24 prisoners in the "dungeon" section of Sao Paulo's notorious Carandiru prison on January 24 after discovering one knife. Similar beatings occurred on March 24 at Sao Paulo's 42nd precinct after guards discovered an escape tunnel.

Prisons do not provide adequate protection against violence inflicted by inmates on each other. On November 27, inmates burned two prisoners to death in a jail in Orlandia. In the Barreto Campelo maximum-security penitentiary in the state of Pernambuco, 22 prisoners died in a period of 1 week in violence attributed to battles between drug gangs in which prison guards also were involved, according to press accounts. The prison held roughly twice as many prisoners as its designed capacity. Prisoners are subject to extremely poor health conditions as well. Scabies and tuberculosis, diseases not common in the general population, are widespread in Sao Paulo prisons. The Ministry of Justice estimates that 10 to 20 percent of the national prison population is HIV positive. Denial of first aid and other medical care is sometimes used as a form of punishment.

In November President Cardoso approved a law authorizing alternative sentencing, aimed in part at easing prison overcrowding. A Ministry of Justice plan to construct 52 new prisons and renovate and enlarge existing prisons was delayed and construction contracts had not been awarded by year's end. The program is designed to add capacity to the prison system for 24,465 inmates, according to the Ministry. Twelve of the new prisons are to be constructed in Sao Paulo. Sao Paulo prison authorities transferred 3,773 inmates from the most overcrowded urban jails to prisons in the interior of the state, but the authorities did not meet their goal of transferring 12,000 prisoners during the year.

In December Human Rights Watch issued a comprehensive report on prisons entitled "Behind Bars in Brazil." The report is based on an intensive review of prison conditions in 8 of the 27 states and meticulously documents inhuman conditions and a range of human rights abuses throughout the prison system.

Although it is government policy to permit prison visits by independent human rights monitors, state authorities frequently denied such access. The Human Rights Watch report noted that gaining access to prisons was "surprisingly difficult," and that barriers ranged from outright denial of access to the use of procedural delays. Only three states of the eight investigated-- Amazonas, the Federal District, and Rio Grande do Norte--made their prisons completely accessible. The authorities in Rio de Janeiro state completely denied access. The authorities in Paraiba state denied Human Rights Watch investigators unmonitored access to the inmates at the Roger penitentiary in December 1997, despite a judicial order allowing for the possibility, only months after the deaths of 11 prisoners within the facility. Also in December 1997, the governor of Ceara issued a decree barring members of the Catholic Church's prison ministry from entering prisons in that state, citing the mission's presence as a factor causing a prison riot in Fortaleza earlier that month. The Church's prison ministry strongly denied the charge.

d. Arbitrary Arrest, Detention, or Exile

The law prohibits arbitrary arrest and detention, and the Government generally observes this prohibition;

however, police continued at times to detain persons arbitrarily. The Constitution limits arrests to those caught in the act of committing a crime or those arrested by order of a judicial authority. The authorities usually respect the constitutional provision for a judicial determination of the legality of detention, although some convicted inmates are held beyond their sentences due to poor record keeping. The law permits provisional detention for up to 5 days under specified conditions during a police investigation, but a judge may extend this period. However, groups that work with street children claim that the police sometimes detain street youths illegally without a judicial order or hold them incommunicado.

The Government does not use forced exile.

e. Denial of Fair Public Trial

The judiciary is an independent branch of government, but it is inefficient and subject to political and economic influence. In many instances, lower-income, less-educated citizens make limited use of the appeals process that otherwise might ensure the right to fair trial.

The judicial system, with the federal Supreme Court at its apex, includes courts of first instance and appeals courts. States organize their own judicial systems but must adhere to the basic principles in the Constitution. There is also a system of specialized courts that deal with police, labor, elections, juveniles, and family matters.

Special police courts have jurisdiction over state uniformed police (except when charged with intentional homicide); the record of these courts shows that conviction is the exception rather than the rule. A human rights group in the northeast that studied alleged police crimes against civilians tried in police courts from 1970 to 1991 found that only 8 percent of the cases resulted in convictions. In Sao Paulo, another study found that only 5 percent of cases resulted in convictions. A study of police homicides in Rio de Janeiro state in 1993-96 found no instance of a conviction in 301 cases (see Section 1.a.). These courts (which are separate from the courts-martial of the armed forces, except for the final appeals court) are composed of four ranking state uniformed police officials and one civilian judge. With too few judges for the caseload, there are backlogs, and human rights groups note a lack of zeal among police charged with investigating fellow officers.

In 1996 the President signed legislation giving ordinary courts jurisdiction over cases in which uniformed police officers are accused of intentional homicide against civilians. However, the internal police investigation determines if the homicide was intentional, and the police tribunal decides whether to forward a case to a civil court for trial. As a result, cases almost never come to trial. The first known case was the Gamba conviction in Sao Paulo (see Section 1.a.).

In a speech before the Order of Brazilian Attorneys in July, President Cardoso criticized the slowness and poor administration of the justice system and said that reform was imperative. The President noted that the Supreme Court had ruled on over 40,000 cases in 1997 and, citing a figure provided by the Institute of Economic, Social, and Political Studies of Sao Paulo, said that 90 percent of cases ruled on by appellate courts were redundant. The president of the federal Supreme Court complained in a 1997 press interview about the volume of appeals that by law the Supreme Court must review. It takes 8 years to reach a definitive decision in the average case, a delay the Supreme Court president considered unjust. At the appellate court level, a large backlog of cases hinders the courts' ability to ensure fair and expeditious trials.

Defendants are entitled to counsel and must be made fully aware of the charges against them. According to the Ministry of Justice, approximately 85 percent of priso