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# Drug Sentencing Policy Discourse of Fortaleza

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*SIT Study Abroad*

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# Drug Sentencing Policy Discourse of Fortaleza

Nick Sundback



SIT Fortaleza: Social Justice and Sustainable Development

Advisor: Dr. Alaíde Poti

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## **Section 1: Overview**

Section 1 contextualizes my research. It explains what I researched, who I spoke to, how I chose my research topic, key vocabulary terms, and provides context for examining my primary research focus.

### **Abstract**

Drug sentencing is a pressing issue in Brazil. With the context of high and increasing rates of crime and drug use, overcrowded prisons, and high rates of recidivism both in terms of prison and drug addiction, attitudes of individuals towards drug sentencing policy are worthy of observation and examination.

The objective of this monograph is to examine discourse by informants, five individuals who interact with sections of society most affected by drug sentencing, namely drug users. This monograph will consider pluralistic observations on, and evaluations of, drug sentencing practices, implementation of drug sentencing, an overview of the broader debate over the legal status of drugs, which by proxy affects drug sentencing, and harm reduction and prevention as alternative approaches to managing drug-related conflict.

### **Setting: Fortaleza, Brazil**

#### **A. Geography and Drugs**

Brazil's geographical positioning places it in the thick of drug-related policy on both a national and international level. Brazil borders three major producers of coca-Peru, Bolivia, and Colombia-as well as Paraguay, one of the world's largest producers of marijuana<sup>1</sup>. As the easternmost country in South America, Brazil lies along a lucrative drug trafficking route from Andes countries, through Brazil and West Africa, to Europe. Brazil's long and porous borders with its neighbors make controlling the border difficult and as a result of both ease of import and domestic production, drugs are readily available in Brazil.

## B. Economy and Drugs

Brazil's economy is large, but wealth is highly concentrated among the wealthiest while large swathes of population continue to live in poverty. A 2004 World Bank study on inequality in Brazil suggests that income inequality leads to increased crime<sup>23</sup>.

With an income share of the richest 20 percent of the population equal to 33 times the corresponding share of the poorest 20 percent, Brazil has one of the highest levels of income inequality in the world...There is also substantial

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<sup>1</sup> Brune, Nancy. "The Brazil-Africa Narco Nexus." *Americas Quarterly* Fall 2011.

<sup>2</sup> I quote the World Bank because it is a well-established source of quantitative research with high name recognition within the United States. My decision to quote the World Bank in this paper should not necessarily be construed as an endorsement of World Bank economic commentary in general.

<sup>3</sup> Inequality and Development in Brazil. *World Bank*. 2004.

international evidence that high levels of inequality are associated-perhaps causally-to a number of other costs for the functioning of the economy and of the society. Chief among these is the evidence that crime and violence levels are statistically significantly associated with inequality (see Fajnzylber, Lederman and Loazyza (1998)). In Brazil, recent research has estimated that the direct cost of violent crime in terms of life and health may be very large (see Lisboa and Viegas 2000).

In the context of drug sentencing, the passage above hints that income inequality may be a factor in crime, such as use of drugs, in Brazil. Regardless of whether economic inequality fuels drug use and crime, drug sentencing in Brazil occurs in a judicial system in which a large disparity in access to private legal aid exists between income brackets, and the public defender's office has a large backlog of cases. The inequality of access to legal aid between Brazilians affects the types of individuals who get convicted for drug-related crimes, which is to say disproportionately Afro-Brazilians<sup>4</sup> and low-income Brazilians.

### C. Brazil's Judicial System

Brazil's judicial system is independent of the executive. It struggles to ensure equal access to all citizens. José Inácio de Freitas Filho, the President of the Institute of Judicial Science, Citizenry, and Human Rights wrote in 2009 that, "on one side, a

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<sup>4</sup> *Afro-Brazilians and indigenous groups face serious bias, says UN rights chief*. N.p.: UN News Center, 13 Nov. 2009. Print.

middle and upper class, with the economic capacity to hire lawyers...and the least valued class' access to material resources? Of them, only the effective public defender...can collect all of the desperate lawsuits".<sup>5</sup> Globalintegrity.org finds that in practice, the poor and Afro-descendants face unequal treatment from the court system, individuals cannot afford a private lawyer unless their income is at least twenty times the minimum monthly wage, and there are an insufficient number of public defenders to attend lawsuits brought by the poor<sup>6</sup>.

#### D. Fortaleza

Fortaleza is the fifth largest city in Brazil, with about 3.5 million inhabitants living within the metropolitan area. Fortaleza is one of the largest cities in Northeastern Brazil, a region of the country that lags substantially behind Brazil's South and Southeast in literacy rates, per capita income, and levels of educational attainment. Fortaleza is the capital city of the state of Ceará, the 8<sup>th</sup> most populated state in Brazil. Ceará's per capita income level is roughly that of Indonesia, or about \$3,000 per person, per year. Like Brazil as a whole, per capita income in Fortaleza is distributed unevenly and the United Nations Habitat Global Observatory named Fortaleza one of the world's 10 most unequal cities in 2011, with a Gini coefficient

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<sup>5</sup> De Freitas Filho, José Inácio. "Não existe república sem acesso à Justiça". 2009.

<sup>6</sup> "Brazil: Integrity Indicators Scorecard." *Global Integrity Report*. 2010.

greater than 0.6<sup>7</sup>. Fortaleza's location along Brazil's northeast coast makes it a convenient launching point for shipments of drugs to Africa and Europe<sup>8</sup>.

### **Topic: Drug Sentencing**

Drug sentencing policy interests me because it deals with the intersection of four topics that are deeply problematic not only in Brazil, but in many countries including my own, the United States: high rates of drug use, crime related to drugs, shortage of prison space, and recidivism. Drug sentencing in Brazil would not be possible as a topic of research if there were no drug use, or no legal response to it, in Brazil. Unfortunately, Brazil deals with high rates of drug use and a legal system that has high rates of recidivism.

#### **A. High rates of drug use**

Drug use in Brazil is illegal, and individuals caught using drugs by law enforcement face criminal drug sentencing. In some instances, drug use also creates conditions of physical or mental health that incentivize involuntary internment. Statistics on drug use vary, but suggest that millions of Brazilians use drugs. The most commonly used illegal drug is marijuana.

CEBRID, the Brazilian Center for Drug Information, conducted a 2001 study in which 2.3% of respondents acknowledged using cocaine at least once. The rate of

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<sup>7</sup> Global Urban Observatory. *Urban Divide: Unequal Cities*. U.N.-HABITAT, 2010.

<sup>8</sup> "Ghanaian Drug Baron Arrested in Brazil." *GhanaWeb*. N.p., 19 May 2008

cocaine use was highest among men between 25 and 34 years old, at 7.2%. A survey released in 2004 suggests that 10.3% of children and adults living on the streets of Fortaleza consume crack or cocaine<sup>9</sup>.

Researchers at the Federal University of São Paulo estimate that 1.5 million Brazilians a day use marijuana. The research team estimates that nearly 500,000 teens regularly use marijuana, which they add impacts unemployment, public health, and suicide<sup>10</sup>.

The vast majority of Brazil's population does not, and has not, used illegal drugs. However, the minority that do use illegal drugs represent millions of people that collectively form a market for drug consumption. Drug use fuels competition and violent conflict by organized crime to supply drugs, and thousands of people are killed directly and indirectly by drugs each year. The International Center of Prison Studies estimated Brazil's prison population at 514,582 in December 2011<sup>11</sup>; an estimated 19% of all inmates in 2009 were incarcerated for drug trafficking<sup>12</sup>. Thus, drug sentencing to prison alone is an issue that affects tens of thousands of inmates and their families, not to mention alternative sentencing or involuntary internment.

## B. Drug-Related Crime

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<sup>9</sup> Dualibi, Lígia Donacim, et al. *Profile of cocaine and crack users in Brazil*. 2008.

<sup>10</sup> "Estudo diz que 1,5 milhão de pessoas usam maconha diariamente no país". *Departamento de Psiquiatria*. Universidade Federal de São Paulo.

<sup>11</sup> *World Prison Brief*. International Center for Prison Studies.

<sup>12</sup> Boiteux, Luciana. *Drugs and Prison: The repression of drugs and the increase of the Brazilian penitentiary population*.

Homicide in Brazil is closely tied to conflicts between organizations involved in distributing drugs and income inequality, according to 2005 research by professors in Recife and Rio de Janeiro<sup>13</sup>. In Fortaleza and Brazil as a whole, homicide rates have increased markedly over the last 15 years. I could not find specific research on causes of homicide in Fortaleza, so I use the working assumption that a large proportions of homicides are direct or indirect results of the drug trade, and to a certain degree, the indirect result of income inequality.

In 2011, Metropolitan Fortaleza had a homicide rate of 36 per 100,000 for youth between 15 and 24 years old, which is near the national average of 40 per 100,000. Metropolitan Fortaleza witnessed a 150% increase in reported homicides per year from 493 to 1,232 from 1998 to 2008. Broken down by race, Ceará's homicide count includes 191 whites and 1,382 mixed or black individuals, compared to the state's overall self-reported race breakdown as 32% white, 61% mixed, and 5% black<sup>14</sup>. 95 percent of the reported dead were male, near the national average of 94 percent. The average age of homicide was 20.

The high homicide rates in Fortaleza, Ceará, and Brazil illustrate that drug-related social conflict is expanding and extracts an enormous cost in human lives. The demographic skew of those most affected by homicides as young, nonwhite males suggests that drug related arrests and sentencing most likely impacts young, nonwhite males at a similar disproportionate rate.

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<sup>13</sup> De Lima, Maria Luiza C, et al. "Análise espacial dos determinantes socioeconômicos dos homicídios no Estado de Pernambuco". 2005.

<sup>14</sup> Sales, Raquel, comp. *Perfil da Raça da População Cearense*. 2012.

### C. Prison Overcrowding

Brazil's prison system struggles with misallocation of resources and a troubled prison system. In September 2009, the International Bar Association reported that Brazil's prisons were 60% above capacity, suffered from rampant fugeeism, and bred prison gangs. Prisons in Ceará are 87% over capacity, and Fortaleza is under court order to release prisoners<sup>15</sup>. Prison overcrowding on a municipal, state, and national scale implies that Brazil will need to commit additional resources to adding prison space, or revise sentencing procedures to reduce the number of individuals sent to prison while awaiting a potential conviction or serving time for one.

### D. Recidivism

Drug sentencing in Brazil also ties into recidivism. According to the Ministry of Justice, between 60 and 70 percent of individuals sentenced to prison for a crime will return to prison for committing another one<sup>16</sup>. High recidivism rates suggest that the Brazilian prison system is not preparing inmates to adjust to civilian life upon release or alter criminal behavior. I could not find specific qualitative information on recidivism in Fortaleza, but several of my interviewees stated that

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<sup>15</sup> *Juiz estabelece medidas para reduzir superlotação nas delegacias*. 2012.

<sup>16</sup> Supremo Tribunal Federal. *Direitos Humanos: ressocialização de presos e combate à reincidência*. 2009.

recidivism was a serious problem, so I make the assumption that the rate of recidivism in Fortaleza is approximately as high as Brazil's overall rate.

#### E. Personal Interest

I decided to choose to research drug sentencing discourse because in my opinion, drug possession, use, and sentencing are lawbreaking patterns that require sophisticated, multifaceted responses. I defined my research goal as listening to my informants speak about an issue on which they have tremendous experience and knowledge and I have little, recording their thoughts, and bringing to light similarities and contrasts between informants on this complex and consequential topic.

#### F. Key Terms related to Drug Sentencing

Drug-a mind altering substance with no currently permitted medical use in Brazil only available for purchase from vendors lacking state sanction to sell the substance.

Drug sentencing-refers to a situation in which an individual is compelled to perform an activity or participate in an organization, because of negative behavior related to drugs. This behavior may or may not be controllable by the individual in question and may include drug selling, buying, transport, use, and dependency. In my mind, drug sentencing has two primary foundations: Addiction, which may lead

to involuntary internment, and the apprehension of an individual possessing, using, or selling drugs by a law enforcement officer, which may lead to criminal sentencing. I refer to drug-related alternative sentencing and prison sentences as criminal drug sentencing, to distinguish from involuntary internment.

Drug sentencing policy-the laws, judicial precedent, and formal and informal procedures that determine the activities or programs an individual identified as having negative behavior related to drugs will be required to undertake, or not undertake.

Interviewees-individuals who graciously agreed to speak with me about their observations and opinions on drug sentencing and related topics. My interviewees come from a variety of professional fields and backgrounds, but all of them work on addictions, drugs, incarceration, and/or law enforcement.

Informants-Interviewees plus the panelists and moderator at a publicly accessible round table discussion focused on marijuana legalization.

## **Defining and Applying Discourse to Drug Sentencing**

### A. Defining Discourse

The goal of this research project is to describe and contextualize discourse within the target community of Fortaleza around drug sentencing and related issues. What is discourse? **Discourse** is, according to Dictionary.com, “a formal

discussion of a subject in speech or writing"<sup>17</sup>. In this research project, I aim to describe and contextualize the parameters and characteristics of drug sentencing discourse among residents of Fortaleza in general and informants in specific.

## B. Literary Contextualization

Drug sentencing is a public policy. In most instances in which an individual is compelled to do something against their will as a result of negative drug-related behavior, the government is compelling the individual to, for example, complete a criminal sentence or enter internment. I examine discourse around drug sentencing as a way of identifying potential public policy questions and suggestions on an issue that could benefit from additional attention and/or resources.

I analyze discourse around drug sentencing by exploring the observations and opinions of a small subsection of the overall population. I choose to focus my research on this subsection because I feel that individuals in communities of interest (defined below) have influence on Brazil's policies towards drug sentencing greater than their numbers.

I define my informants as experts of topics that intersect with drug sentencing, and my decision to focus on their discourse requires me to explain the role I envision such experts have in formulating drug policy. One literary point of

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<sup>17</sup> "discourse." *Dictionary.com*.

reference is *Rethinking the Policy Influence of Experts: from General Characterizations to Analysis of Variation*<sup>18</sup>.

Steven Brint defines experts as highly trained individuals who do not exercise budgetary authority and occupy positions in which they hold knowledge-based authority. My informants fit Brint's definition of expert. Informants work paid and unpaid jobs to support and foster the physical and psychological health of drug users and/or conduct research, not channel popular ideas.

One key difference is that Brint's study refers specifically to expert government administrators while I refer to experts both inside and outside the state government. I interviewed experts outside the government about public policy because I do not define drug sentencing policy as government law alone, but rather an agglomeration of government legislation, directives, and practice by individuals. That is to say I believe that drug sentencing experts outside legislation/ ordinance making positions of government retain the ability to change drug sentencing practices, and change the implementation of government-prescribed practices. My expanded definition of drug sentencing experts fits with my expanded research focus on discourse around drug sentencing practices, including implementation of law and involuntary internment, rather than on drug sentencing law alone.

Brint constructs four categories of government, distinguished by the degree of autonomous policymaking power experts wield. Technocracy signifies technical experts devise public policy. In terms of drug sentencing, in a "technocracy", sentencing laws would be determined by technocrats rather than politicians. Brint

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<sup>18</sup> Brint, Steven. "Rethinking the Policy Influence of Experts: From General Characterizations to Analysis of Variation." 1990.

labels the opposite category, in which research is designed to vindicate rather than propose public policy, as “servants-of-power”. In between lie “extensive mandates” and “limited mandates”. “Limited mandates” is a type of policymaking situation in which expert policymakers exercise influence in “areas that are clearly and solely technical” (366).

To elaborate on “extended mandates”, Terrence Halliday writes that:

A fragile consensus on one point among contemporary macrosociologists of the professions: the major professions of advanced western societies have had substantial influence on areas of public policy by virtue of their distinctive relationships with the state...the nexus between governments and professions has been stressed even more strongly by scholars who point to the dependence by professions on the state for control of their respective markets<sup>19</sup>.

For purposes of this monograph, I assume that the public policy area of drug sentencing is currently in a state of “extensive mandate”. Under “extensive mandates”, experts have policymaking prevalence over specific areas of a policy. I think that drug sentencing is in an “extended mandate” because public attitude seems to be diverted primarily towards the negative physiological effects of drugs, so drug sentencing as public policy seems to receive sporadic attention, leaving

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<sup>19</sup> Halliday, Terrence C. "Knowledge Mandates: Collective Influence by Scientific, Normative, and Syncretic Professions." 1985.

experts in the field considerable leeway to advocate their own thoughts and opinions.

I boil down and modify the concepts of “professional” or “expert” community in this monograph into two broad sectors of the population. The **general community** has relatively little formal training on or experience with the topic at hand. The topic also has a **community of interest**, composed of individuals who are relatively engaged in the topic. I place the dividing line between a relatively engaged and potentially influential community and a broad community that has relatively less potential influence over policymaking in terms of personal experiences with the public policy in question, including but not limited to professional experience. For that reason, I use the term “community of interest” rather than “expert” or “professional” community.

### **Separating General Community and Communities of Interest**

#### A. Defining Communities of Interest

Within the context of drug sentencing, I define the communities of interest as follows:

- Communities of drug users and sellers
- Organizations involved in trafficking drugs
- Individuals incarcerated for possessing, using, or selling drugs

- Government attorneys and public defenders who work with cases of alleged drug possession, use, or sale
- Professionals who research drug law, and/or the prison system
- Professionals who treat drug users within the context of the individual's drug use
- Relatives of individuals sentenced for drug possession, use, or sale
- Employees of correctional facilities, internment centers, mental hospitals, and alternative sentencing programs
- Individuals who are no longer part of any of the communities listed above, but were part of one or more of them for at least one year within the last five years

All of the communities listed above experience close interaction with drug sentencing policies. Individuals within these communities of interest are in most cases knowledgeable about current drug sentencing policies because they work with in some fashion, and/or are part of, communities that use risk arrest, conviction, and sentencing for possessing, using, and/or selling drugs as well as involuntary internment due to safety or health concerns. Individuals who cannot be classified into the above categories are, in my eyes, part of the general community, which I also refer to as the **general public**.

B. Contextualizing the relative importance of Target Group Discourse in my research

In this monograph, I focus primarily on the discourse within the community of interest. Since the community of interest in drug sentencing is my focus of research, I also refer to it as my **target community**. In relation to drug sentencing, I choose to focus on the community of interest for several reasons. I would find it difficult to conduct detailed research on discourse within a community as broad and diverse as the general community within our three-week research period, while trying to draw conclusions about overall discourse on a topic that is multifaceted and legalistic, such as drug sentencing policies. I could have tried to select a certain subsection of the general community to research, such as the attitudes of bus commuters on drug sentencing, but chose not to. As I saw it, I would have had to ask invasive, personal questions to people that appeared to be members of the general public to make sure that they were not, in fact, part of the target community. I also believed individuals within the communities of interest would be the most interested in my research and willing to participate. As a result, I decided to instead focus on communities of interest as my target community.

Although I focus my research on discourse within a subsection of the population, I still hold great interest in discourse among members of the general public regarding drug sentencing. Out of personal interest and to establish a point of reference, I include discourse by members of the target community, my interviewees, describing discourse within the general public about drug sentencing as a prelude to the discourse held by members of the target community.

### C. Contextualization of Group of Interest Discourse in Society

Brazil is a democracy, and thus theoretically Brazilian voters exercise ultimate control over drug sentencing public policy. *Democracy, Preferences, and Paternalism* by Robert Goodlin<sup>20</sup> provides a useful framework for analyzing how voters influence public policy. Goodlin classifies democratic governments as direct or indirect democracies, and as respecting “unreflective” and “reflective” preferences, or only “reflective” preferences of voters. Direct democracies determine citizen policy through direct voter input; examples include Switzerland and California referendums. In representative democracies, voter preferences are reflected indirectly through representatives they elect to formulate policy. Brazil is a representative democracy.

Less clear is whether Brazil’s government respects only reflective, or both reflective and unreflective policy preferences, of the Brazilian public. Reflective policy preferences are policy preferences formed by consensus after debate; unreflective policy preferences are fashioned with relatively little public discussion. I decided to limit the public policy in question to drug sentencing policy. I also equate reflective opinions on drug policy discourse as arising from sustained dialogue around drug sentencing policy, which in my research appears to primarily arise in the target community. Likewise, I equate unreflective public preferences with those of the general population, which does not have widespread or sustained discourse about drug sentencing as a discrete topic. Brazilian government policy on drug sentencing-alternative sentencing or community service for personal

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<sup>20</sup> Goodin, Robert E. "Democracy, Preferences, and Paternalism." 1993.

possession of drugs and small-scale trafficking-is broadly more progressive than informants' descriptions of general public opinion. Rather, the government's endorsement of alternative sentences places it squarely in line with broad support among informants in the target community for alternative sentencing and programs, making Brazilian public policy on drug sentencing reflective of reflective public preferences only.

According to my evaluations of Brazil as a representative democracy responsive to reflective (target group/ community of interest) preferences more than the preferences of the general public as represented by voters, Goodin would conclude that Brazil's public policy on drug sentencing reflects democratic elitism. This admittedly crude characterization of Brazilian drug sentencing policymaking serves as a springboard to analyze the consequences of certain ideas, and ideologies, within both the general public and target community for future policy proposals related to drug sentencing.

### **Situating Informants within the Target Community**

The goal of my research was to speak with members of my target community and record and analyze their opinions, suggestions, and criticisms of drug-related sentencing policy. Within the target community, ethical and logistical constraints limited my outreach to drug users, drug sellers, and inmates of correctional facilities. Logistical constraints complicated my outreach to government workers in correctional facilities and mental hospitals, attorneys, and public defenders. Ethical

concerns over privacy likewise limited my outreach to relatives of individuals sentenced for drug possession, use, or sale. Ultimately, most of my informants work as academic researchers and/or providing mental and/or physical health services to drug users. Informants represent a wide range of backgrounds, positions, and perspectives on drug sentencing, and I am immensely grateful for their participation in this research project.

#### A. Methodology

I collected my primary information through formal interviews with five individuals over a period of three weeks. Interviewees work in a range of fields including, but not limited to, clinical psychology, religious organizations, the government of the state of Ceará, municipal health clinics, and universities. I also attended a round table debate at the Faculdade 7 de Setembro on marijuana legalization, which I also use as a primary source as it was open to the public and a cameraman for a television station recorded part of the debate. *All quotes by informants in this paper are from personal interviews or the round table discussion, unless noted otherwise.*

I approached each interview with the primary goal of eliciting the interviewee's opinions on drug policy sentencing as a policy and reality in Brazil. I structured my research around the responses provided by interviewees, with the goal of understanding drug-related sentencing policy from the far wider and more interdisciplinary perspectives of each interviewee. When necessary, I posed follow-up questions to interviewees via email.

#### D. Introducing Informants

Below, I include a short professional history of each informant, so that you, the reader, can better place the observations and opinions of each in the context of his or her professional experience.

Dr. Antônio Mourão is a practicing psychiatrist. He is a professor of Psychiatry at the Federal University of Ceará (UFC). During the 2012 municipal elections, he ran as the Vice-Mayor for Workers' Party candidate Roberto Elmano.

Dr. Elton Gurgel teaches psychology at the University of Fortaleza (UNIFOR). He works with the Secretariat of Justice and Citizenry to implement a program launched in March titled the Program for Continued Actions of Assistance to Drug Addicts of the Penitentiary System (PACAD). Dr. Gurgel also serves on the National Commission for Drug Policy.

Nelson Massambani is the leader of the Central Baptist Church of Fortaleza's ministry outreach and recovery program to drug addicts called Celebrating Restoration. He graduated from the University of Fortaleza with a major in Preventing Drug Dependence and also leads the church's support network for couples.

Neto works at a Non-Governmental Organization (NGO) that provides support for recovering drug addicts, called LAR. It uses a strategy called "stepfathering" pairing new members with mentors with more experience in the

organization. Neto's full-time job is as an employee of the Ceará government, and not directly related to drugs.

Dr. Alaíde Poti is a practicing cognitive behavioral psychologist. She works with patients on a private basis, as well as within a municipal health treatment center in Maracanaú called CAPS (Center for Socio-Physical Treatment).

I also appreciate the wisdoms shared by the debate panelists below in the Round Table Discussion on Monday, November 26<sup>th</sup> at Faculdade 7 de Setembro.

Tiago Themudo is a Professor of Legal Anthropology at Faculdade 7 de Setembro.

Ângela Gondim is a Consumer Rights Professor at Faculdade 7 de Setembro.

Dr. Valton Miranda is a psychoanalyst with a private practice in Fortaleza.

Please see above for a synopsis of Dr. Antônio Mourão's professional life.

Raul Nepomuceno is a Professor of Public Law at the Federal University of Ceará (UFC).

I initially planned on interviewing individuals whose careers were clearly delineated along the separate career paths of academic, governmental, and civic organizations. However, the proportion of informants who work as psychiatrists or psychologists is much higher than I expected it would be. Out of curiosity, I asked Dr. Poti for her take on why so many of the people talking about issues that intersect with drug sentencing are psychiatrists or psychologists.

I believe it's because they truly work within the mental health field, and they're the people that deal with the issue at its core, with drug dependency, with the other issue of whether to decriminalize users who have dependency. For some reason, mental health is really linked to treatment, to looking at drug dependency as an illness, as something that should be treated with care, not punishment.

### **General Public Discourse in Fortaleza**

Part of the reason I chose to research drug sentencing policy in Fortaleza was because it is an issue that, to me, seemed very important to the city given the gravity of the crack epidemic, related crime, prison and public hospital overcrowding, and recidivism, but about which I had heard little during the first half of my study abroad semester. I have not heard members of the general public in Fortaleza talk about drug sentencing in their day-to-day conversations once during my three months in Fortaleza, though that could quite possibly indicate I am simply not in the right place at the right time.

Since I did not directly hear public discourse around drug sentencing, and did not have the time to interview members of the general public during my research period, I relied on descriptions of general public discourse provided by informants. Informants seemed to have relatively consistent views of general public discourse on drug sentencing, and I find no reason to dispute their assessments.

There seemed to be consensus between several of the individuals I interviewed who discussed community discourse and the panelists that drug sentencing is an emotive topic in Fortaleza and many people are in favor strict drug sentencing laws to deter drug use.

Multiple informants stated that, in their experience, community discourse around drug sentencing reform is emotive, at times to the degree that it reduces the quality of discourse around drug sentencing reform. In my mind, if this is true it could hold back policymakers from adopting sentencing reform policies supported by professionals with experience in the field because they would worry about a public backlash. [A note on formatting: brackets [] in quote excerpts signify words that were unintelligible on the recording when I transcribed. A word inside the brackets is a word that I am not sure if I heard correctly or not.]

Doctor Antônio Mourão: “In general, Brazilian society, here in the Northeast, is very conservative in terms of drugs.”

Valton Miranda: “Arranging a guilty person, a problem related to drugs. We are very prone to assigning someone guilt”.

Raul Napomuceno: “With these weighty topics, which are very complex, there is a strong general tendency to [] the other side of a debate. ‘Oh, this [] legalizing drugs, or marijuana, [] he’s defending weed!’ So, there’s also attached to someone [who supports legalization] the belief that they also

support drug use, as someone who supports something degrading, in short, that society considers as such. If someone is in favor of decriminalizing abortion, they are against life, in favor of death, and this type of [] impoverishes the discussion...There's also a very strong tendency in the common, average mindset, that the state has a role I would classify as paternalistic."

Elton Gurgel: "Nevertheless, there exists a very emotional element, peoples' need to say they want someone to be imprisoned for using drugs."

Though some of the informants explicitly stated that they believed the discourse around drugs in general, and drug sentencing by implication, led to an overly moralistic or passionate discourse in the general public, Dr. Gurgel clarified that members of the public are also willing to listen.

"One has to [] start a conversation with that person in which you clearly explain the consequence of prison, and in general, they rethink."

Public discourse about drugs in many parts of the world is framed as primarily a crime issue. For example, University of Manchester Law Professor Toby Seddon notes that in Britain, "empirical evidence does not support the view" that property crime is driven by drugs, contrary to a "widespread belief" among members of the public and government<sup>21</sup>. A Brazilian study in 2003 likewise found research participants whose primary source of information on drugs was the media

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<sup>21</sup>Seddon, Toby. "Explaining the Drug-Crime Link: Theoretical, Policy, and Research Issues." 2000.

readily associated drug use with violence<sup>22</sup>. I wouldn't be surprised if one of the reasons it members of the general public support prison for individuals convicted of drug possession, use, and sale is due to media representations of drugs.

Public attitudes in favor of tough sentences for drug-related law violations could push policy makers to appear tough on crime and prison sentencing policy if the current so-called democratic elitist pattern of drug sentencing public policymaking were to change. The likely result would be a shift towards a "limited mandate" of technocratic influence, rather than the "extensive mandate" I believe currently exists, indicating a more prison-based emphasis in drug sentencing.

Public attitudes also likely influence the frequency in which drug users are involuntarily committed to internment; families in favor of traditional drug sentencing policy would probably be more likely to bring a drug dependent relative in front of a psychiatrist and request internment.

### Section 1 Summary

This monograph is the product of research I conducted in Fortaleza, Brazil, on drug sentencing discourse. My primary research focus is on how informants, who work in fields related to drugs and incarceration, perceive drug sentencing options today, as well as their takes on public policy practices that emphasize non-crime-related aspects of drug use in an alternative discourse to sentencing policy, the subject of Section 2.

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<sup>22</sup> Brusamarello, Tatiana, et al. "Consumo de drogas: concepções de familiares de estudantes em idade escolar". 2008.

## **Section 2: Target Community Discourse on Drug Sentencing**

Section 2 explores target community discourse on drug sentencing outcomes as a discrete issue. The section begins with a description of the law that underpins criminal drug sentencing proceedings. I subsequently explore discourse on involuntary internment, another form of drug sentencing. I organize the observations and opinions provided by informants three broad categories based on sentencing outcomes: alternative sentencing, imprisonment, and involuntary internment.

### **Current Legal Framework**

The basic legal foundation of drug sentencing for drug law infractions in Brazil today is Law 11.343 of 2006. A concise description of the law is that it partially decriminalizes drugs. Individuals apprehended for possession of illegal drugs determined to be for personal use receive a warning, are sentenced to community service, or attend an “alternative” treatment program, rather than imprisonment. Individuals determined to be in possession of drugs for the purpose of selling them to others face a minimum prison sentence of five years, up from three prior to the law. The quantity of drugs necessary to be classified as a drug dealer is determined at the discretion of law enforcement officers<sup>23</sup>. The subjectivity

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<sup>23</sup> "Drug decriminalization would remap Rio de Janeiro." *Rio Real*. 2012.

inherent in classifying an individual as a drug user or dealer based on the discretion of a police officer is problematic for Nelson Massambani, Dr. Mourão, and Dr. Poti.

Nelson Massambani: To me, in this area, Brazilian law is still confusing. Why? Because who should determine if someone's a trafficker or not, is a user or not, is an addict or not, shouldn't be just a police officer, or just a judge. It should be a interdisciplinary team that can render, shall we say, a verdict in relation to what actually happened. Starting with a certain quantity of drugs, someone is classified as a trafficker and put away as a trafficker. From a certain quantity of drugs, they're classified as a user.

Me: How would you characterize current Brazilian law?

Dr. Mourão: Confused [in English]. Because there are a lot of recent facts in society and the judges, they're going to play. In many cases, they do whatever they feel in their heart, more than what is in the law. Even because the law is very ambiguous, very contradictory.

### Sentencing Small-Scale Traffickers

An additional wrinkle in the drug user-seller legal dichotomy is the status of "small traffickers". Dr. Gurgel explained to me that a Supreme Federal Tribunal decision holds that "small traffickers", those with no prior criminal record selling

small amounts of drugs to sustain their own addiction, are also eligible for alternative treatment.

We have a grey area, which is the individual who does small-scale trafficking, who practically doesn't, personal gain from trafficking, got it? By a decision of the STF, the Supreme Federal Tribunal, the possibility of applying alternative sentences was considered, if the person appears to be a small trafficker, who has no criminal history, and hasn't gotten involved with criminal organizations, got it?

Dr. Poti agrees with the Supreme Federal Tribunal that small-scale traffickers need access to alternative sentences<sup>24</sup>.

Dr. Poti: They're users, dependents in the same way they use this [selling] as a way to perpetuate their access to drugs. Illicitly.

Me: In your opinion, what should be done with them when they enter into contact with the judicial system?

Dr. Poti: I think social reinsertion should be attempted... It's one thing to for you to sell drugs basically to buy other drugs, and people who make money, who get rich off of this. That's completely different.

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<sup>24</sup> *Informativo STF*. 2011.

Nelson Massambani, on the other hand, believes that the primary distinction to be made is between seller and user, and sellers should go to prison.

Every trafficker should experience the rigor of the law. If the law is to serve five years in prison, ten years in prison, he should stay for ten years...As I see it, drug trafficking should be classified as a hedonistic crime, like kidnapping..

This monograph follows the contour of current drug sentencing law implementation in that I separate informants' discourse about criminal drug sentencing outcomes into separate sections for alternative sentencing and prisons. I then address involuntary sentencing, a form of drug sentencing that can happen with or without the participation of the judicial system.

### **Discourse around Current Implementation of Criminal Sentencing**

#### Perspectives on the Goal and Purpose of Criminal Sentencing

General public discourse about drug sentencing primarily expresses support for imprisoning drug law offenders. No informants mentioned discourse within the general public about alternative sentences. On the other hand, informants tended to

criticize the effectiveness of prison sentences and promote alternative sentencing as a more humane, sentencing option that better rehabilitates convicts.

Dan Kahan, Professor of Law and Psychology at Yale Law School, writes that the comparative “political unacceptability of alternative sanctions...reflects their inadequacy along the expressive dimension of punishment.” According to Professor Kahan, the public prefers prison as a sentence because alternative sentences “fail to express condemnation as dramatically and unequivocally as prison” (592). Kahan argues that the public supports prison over alternative sentences in part because prison sends a much clearer message of moral condemnation than, for example, a fine or community service (593). In turn, he adds, understanding public conceptions of prison’s goals provides reform proponents with knowledge they can use to devise alternatives to prison that enjoy increased public support<sup>25</sup>.

Within the context of drug sentencing in Brazil, Kahan’s analysis of reasons the public supports imprisonment ties in to discourse around the degree to which “experts” are able to formulate public policy according to their professional assessments versus public preferences. Brazilian law prescribes alternative sentences for convictions of drug possession and drug use, and allows alternative sentences for small-scale drug traffickers under certain conditions. Public discourse seems to favor imprisonment as a sentencing outcome for all of the situations that currently must or may lead to alternative sentences. Thus, current law seems to better reflect the pro-alternative sentence sentiments of informants more than general public discourse.

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<sup>25</sup> Kahan, Dan M. "What do Alternative Sanctions Mean?" 1996.

## A. Alternative Sentencing

Federal law prescribes alternative sentencing for individuals apprehended by police in possession of drugs determined to be for personal use. Government health ministries at the state level partner with non-governmental organizations to offer a wide variety of alternative sentencing options. Offenders can get a warning, but are usually required to appear in court in front of a judge to receive an alternative sentence to perform community service or participate in a program aimed at educating drug users about the health effects of drug dependency and/or promoting alternatives to drug use.

Nelson Massambani states that the provision of alternative sentencing for individuals found to be in possession of drugs is a positive development.

“They don’t take someone [using drugs] to prison anymore, they don’t issue an incident report, no, this doesn’t happen anymore. And it’s good. I take that to be very good.”

Dr. Gurgel concurs that the 2006 law represents an improvement over the preceding law.

“Our legislation, our current law, already presents major advances compared to the preceding one.”

I personally believe the “advances” Dr. Gurgel refers to involve alternative sentencing, since he serves on the National Commission for Drug Policy<sup>26</sup>, which he described as exploring public policy around alternative sentencing. At any rate, alternative sentencing is the default drug sentencing option for individuals found to be in possession of drugs for personal use by law enforcement officers. According to Dr. Gurgel, Ceará processes personal use drug possession cases at a special court for alternative sentencing:

In the instance of the state of Ceará, there’s a special court for alternative sentencing in Fortaleza, located within the Clovis Beviláqua forum. This court exists [as] a center exclusively dedicated to attending to people placed in front of the court by Justice [the Secretariat of Justice and Citizenry], for having infringed upon Article 28 [of Law 11.343, related to alternative sentencing] or for small-scale trafficking. They are drug users, and these individuals are attended to by psychologists, [and] social workers, who work with him, have discussions with him, and reflect on what they can do to contribute to the health of this individual, a person who is dependent on drugs, and for his or her citizenry rights as a whole.

The Secretariat of Justice and Citizenry partners with over two dozen non-governmental organizations (NGO’s) in Ceará to offer alternative sentencing,

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<sup>26</sup> Agência Brasília. *Políticas sobre Drogas*. 2012.

including Narcotics Anonymous and Alcoholics Anonymous. Included on the list is Celebrating Restoration, founded and run by Nelson Massambani himself.

Celebrating Restoration is affiliated with the Central Baptist Church of Fortaleza and incorporates biblical principles, but is open to individuals of all faiths. The program works with convicts to reestablish a strong spiritual and emotional foundation for recovery from addiction. The alternative sentencing component meets once a week at Colégio Kerigma, though the program also has a component that takes place inside prisons. In total, Celebrating Restoration currently works with about 400 individuals. A typical meeting includes an open meeting, support group, and study group based on 12 steps to recovery<sup>27</sup>.

Another example of a program in which individuals may complete alternative sentences is CAPS. CAPS is a municipal service that offers classes, individual therapy, and medication for the general community. According to Dr. Poti, juveniles convicted of drug possession are sentenced to CAPS I, which specializes in youth, at the discretion of the overseeing judge. The municipal government contracts with private practice mental health specialists to work with teens to develop strategies to prevent recidivism in therapeutic groups, one-one-one support sessions, and educational outreach programs. Convicted teens concurrently perform community service.

### Concerns about Alternative Sentencing Programs

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<sup>27</sup> "Nossa Programação". *Celebrando Restauração*.

Informants generally expressed support for alternative sentencing programs. Reasons for supporting alternative sentencing ranged from its higher effectiveness to its focus on social reintegration. Not one informant criticized alternative sentencing as an option, although Dr. Mourão expressed reservations about Evangelical alternative sentencing programs that in some instances “do not accept a psychiatric, medical approach” to drug addiction as an illness<sup>28</sup>. Neto voiced similar concerns that a religion-only approach “is difficult” but “religions have been a really important vehicle in this confrontation with drugs” overall.

#### Changes to Alternative Sentencing Programs

I believe that the fact that both suggested improvements to alternative sentencing programs would expand them reflects informants’ overall approval of alternative sentencing and a desire to further expand alternative sentencing options. Dr. Poti says that CAPS is understaffed relative to the number of service requests it receives, and would like to see more staffing. Nelson Massambani suggested government tax credits for businesses to hire ex-cons, and/or opportunities for ex-cons to work within the government as an optional extension to a drug-related criminal sentence.

#### Conclusions about Alternative Sentencing

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<sup>28</sup> Mourão, Antônio. Email correspondence. 2012.

Alternative sentencing options in Fortaleza are numerous and diverse. Advocates of alternative sentencing programs see additional opportunities for growth of the programs, which present an opportunity for collaboration between alternative sentencing programs and municipal, state, and federal governments.

## B. Prison Sentencing

Law 11.343 explicitly increased minimum jail time for individuals convicted of selling drugs from three to five years. A ruling by Brazil's Federal Supreme Tribunal allows alternative sentencing for small-scale drug traffickers; still, prison is an option for small-scale traffickers and a requirement for higher-level traffickers.

Informant discourse on prison was critical of its effectiveness and contrasted in tone with discourse in the general public about prison.

Nelson Massambani, himself a former inmate, elaborates on the reality of a prison sentence:

The Brazilian prisons are terrible. The prisons are terrible. So, I would say the following: those who enter into the penitentiary system, who are convicts, very few of them, very few, the numbers say this, won't return to crime when they leave...it leaves people more crazy, it only worsens, shall we say, your worst side.

As a silver lining, Massambani makes clear that in his opinion the prison system has become significantly more humanized in recent years. “That’s why the secretary, it’s the Secretary of Justice and Citizenry. This ‘citizenry’ has a lot more to do with the human side of you, provide a new opportunity for someone than simply throw him in prison and done.” Non-governmental organizations and the state government have created programs to offer support to prisoners and expand their network of support with the aim of adding value to prison sentences.

### Prisoner Support Programs

Within the last several years, the Secretariat of Justice and Citizenry of Ceará has teamed up with NGO’s to offer support services to prisoners as they serve time for convictions that are frequently drug-related. The programs aim to prepare prisoners for life after release and dissuade them from relapsing into drugs and crime.

Prisoners incarcerated for drug trafficking do not get special treatment or exclusive prisoner programs. Rather, convicted drug traffickers have the option of participating in opt-in programs open to all prisoners such as Celebrating Restoration, when such programs are available at the prison as they complete their sentence. I believe that the drug-related prisoner programs are open to all prisoners because many prisoners are imprisoned because of drugs indirectly.

In the context of prison, drugs and criminal convictions seem to have a strong correlation.

Nelson Massambani: “Perhaps seventy, eighty percent of these offenses [leading to incarceration], during the time that these guys committed the offenses, were under the influence of drugs, under the influence of alcohol...It’s not uncommon for the trafficker to also be a drug user.”

Dr. Gurgel: “And there, once imprisoned, we identify a percentage, a good chunk of them, are drug users, and a good chunk are addicts”.

Given concerns informants expressed about the prison system in general, much of our discussion of prisons revolved around developing programs to add value to the prison experience of inmates so that their physical and psychological needs are better addressed and they are better prepared to adjust to civilian life. Given that recidivism is high both in terms of drug use and incarceration, and the two are often intertwined, prisoner support programs designed for dealing with drug abuse are open to all prisoners, not just prisoners convicted of selling drugs.

Celebrating Restoration operates within prisons in addition to as a venue for serving alternative sentences. The Department of Justice and Social Citizenry launched PACAD, a program providing medical and mental health attention to inmates under Dr. Gurgel’s supervision. Celebrating Restoration uses the same methodology as with convicts who receive alternative sentences. PACAD was initiated in March 2012 and is in the preliminary stages of implementation. I did not

have the opportunity to visit or speak with individuals involved in additional prisoner support programs, such as professional training or literacy courses.

### Conclusion on Prison Sentencing

Informants shared generally skeptical attitudes towards prison as a mechanism for treating the needs of convicts. Dr. Mourão, Dr. Gurgel, and Neto stated that the best outcome would be a reduction in prison sentences through investing more resources in preventative social programs such as education and job training, especially for vulnerable sections of the population. The concept of prevention as a potential partial alternative to drug sentencing discourse that focuses on the legal process after an individual is apprehended possessing, using, or selling drugs is a topic that repeatedly appeared during my research, and is explained in detail in Section 3 of this monograph.

## **Involuntary Internment**

### A: Legal and Theoretical Framing of Involuntary Internment

The third form of drug sentencing is involuntary internment in a psychiatric facility, rather than in a correctional program. Involuntary internment can occur at the request of relatives of an individual with a mental illness, or can be mandated by

the government. Law 10.216 of 2001 elucidates conditions under which forced internment may occur.

Article 4: Internment in any form will only be resorted to when resources outside hospitals are shown to be insufficient.

§1 The ultimate goal of treatment is for the social reinsertion of the patient into his or her environment.

§ 2 Internment treatment programs will be structured to offer holistic assistance to carriers of mental illness, including medical services, social assistance, psychologists, occupational therapy, recreation, and more.

§ 3 The internment of carriers of mental illness in institutions with characteristics of asylums is prohibited, or rather, those facilities that lack the resources mentioned in § 2, or do not ensure patients the enumerated rights in Article 2.

Article 8. Voluntary or involuntary internment will only be authorized by physicians properly registered with the Regional Council of Medicine in the state in which the establishment is located.

§ 2 The period of involuntary internment will end at the written request of a relative, legal guardian, or when determined by the specialist responsible for treatment.

Article 9. Forced internment is determined in accordance with respective law by a qualified judge, who will take into account security conditions at the establishment, with respect to the safety of the patient, other inmates and staff.

I classify involuntary internment as a form of drug sentencing because the drug user is compelled to participate in a program to which they have not consented on account of their drug use. It is not, however, usually criminal drug sentencing in that the individual is sentenced to internment for reasons related to health rather than lawbreaking.

## B. Target and General Community Discourse on Involuntary Internment

### Purpose of Involuntary Internment

Involuntary internment of a drug user for health and/or safety risks posed to oneself or others can be framed as a combination of health intervention and crime prevention. For example, UCLA Neuropsychiatric Institute Director M. Douglas Anglin and Director of the Center for Advancing Longitudinal Drug Abuse Research Yih-Ing Hser write that “Treatment of the drug user can reduce or eliminate drug use and thereby reduce the user’s criminal activity...A greater social investment in

treatment may be the most cost-effective way to achieve these public policy goals” (393-4)<sup>29</sup>.

Interestingly, neither discourse in the general public nor discourse among the target group seems to view involuntary internment as primarily an issue of crime prevention. As described below, the general public reportedly views involuntary internment as a way to separate and protect themselves from crack users. Informants who support forced internment tend to frame it as a strictly case-by-case medical intervention for crack users rather than as a broad potential solution to drug use and drug-related crime.

#### Discourse on Involuntary Internment

As with criminal drug sentencing to prison versus alternative sentences, there seems to be a discrepancy between the general public’s reported positive view of involuntary internment and skeptical and cautious attitudes expressed by respondents.

Dr. Poti perceives public discourse around forced internment as largely supportive of the practice.

They agree with the idea that drug dependents, especially crack users, should be interned against their will and interned by law. That’s a really common view of the public, everyday people, as if it were a cleanup operation.

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<sup>29</sup> Anglin, M. Douglas, and Yih-Ing Hser. "Treatment of Drug Abuse." 1990.

Parts of Brazil's government also support involuntary internment. In October, the Ministry of Health endorsed plans by the mayor of Rio de Janeiro to collect and intern crack users<sup>30</sup>.

Many, though not all, informants also support involuntary internment for crack users. However, supporters tended to emphasize their reservations about forced internment, rather than promoting it as a matter of general public policy.

Dr. Poti: What do I think? Sometimes, most often with cases involving crack use, it's necessary and has had good resolutions...I still have a lot of doubts, because of ethical issues, we know what's going on, what happens, and fear certain areas that are unregulated...the psychology council did some evaluations of therapeutic [internment] communities and some subhuman conditions. So, it's something I agree with on one hand but also distrust.

Nelson Massambani supports involuntary internment, with the qualification that the drug dependent "is putting at risk his or her life, or the lives of others"<sup>31</sup>.

Dr. Mourão is "against forced internment on principle"<sup>32</sup>. Dr. Mourão wrote an article in January in which he questions the public impulse to forcibly intern drug addicts.

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<sup>30</sup> Formenti, Lígia. *Ministro da Saúde apoia internação forçada de viciados*. 2012.

<sup>31</sup> Massambani, Nelson. Email correspondence. 2012.

<sup>32</sup> Mourão, Antônio. Email correspondence. 2012.

The heated discussion around whether to forcibly intern crack users, as some public officials would like, reveals a complete lack of understanding about this topic. It's a misconceived, arrogant, and authoritarian way to face the problem...there are different gradations and approaches of treatment, dependent on the degree of addiction. Talk only about internment. Big mistake! Ambulance service, protected houses, in short, a range of other measures are a lot more effective. What's important is the notion of a support network<sup>33</sup>.

Neto, who voluntarily interned himself, supports outlawing the practice because it's ineffective.

I think interning someone against his or her will doesn't work. I don't think it works...The only requirement [to join NA] is the wish to stop using. There, it's said that a person can be analyzed, can be counseled, can be persuaded, you can pray for them, you can threaten them, they can be dirty and locked up, but he's not going to stop until he wants to stop. Only those who want to, who have this wish are those who manage to stop. You take an individual and throw him in there, against his will, and in the great majority of cases he won't successfully recover.

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<sup>33</sup> Mourão, Antônio. "Com gente é diferente". 2012.

## Improving Involuntary Internment

Among informants who believe involuntary internment should remain a legal practice, most emphasized that it should take place under a narrow range of circumstances, rather than naming particular aspects of the experience that needed to change. Dr. Poti also suggested tightening regulation and improving monitoring of internment institutions.

## Conclusion on Involuntary Internment

Involuntary internment is a drug sentencing option that has recently received considerable attention from parts of the Brazilian government, where some officials promote it as a comprehensive approach to dealing with crack users. This conflicts with informants who express serious concerns about the procedure and advocate it should be used sparingly, if at all.

## Conclusion on Drug Sentencing Options Discourse

Section 2 offers informants' explanations and evaluations of the three primary outcomes of drug sentencing in Brazil today. Informants that spoke about alternative sentencing programs refer to them in broadly positive terms and are working to create a model of similar support and social integration programs as an option for convicts sentenced to prison. Discourse about involuntary internment is

varied, and informants that support involuntary internment do so on a conditional, limited basis. A broad observation is that informants seem to favor less invasive alternative sentencing over more invasive incarceration and internment, while they perceived the general public as favoring more invasive options.

### **Section 3: Target Community Discourse on Drug Policy Related to Drug Sentencing**

Section 3, like Section 2, presents and compares informants' viewpoints on drug sentencing discourse. However, this section focuses on alternative paradigms to drug sentencing discourse, while Section 2 focuses on the outcomes of the sentencing process. That is to say that target community discourse in Section 3 is related to drug sentencing in a more broad manner than in Section 2.

Section 3 has three subsections, each corresponding to a form of approaching drugs through a lens other than crime and sentencing. The first alternate approach is changing the legal status of drug(s) altogether, which would imply an end to criminal drug sentencing for many drug-related activities. The second emphasizes prevention, or investing time and resources in social programs to reduce factors that lead to drug use. The third is harm reduction, a form of treatment in which treatment providers work with drug addicts to minimize physical and psychological harm caused by drug dependence.

#### **Literary Contextualization of Drug Policy**

I would like to contextualize this discussion of drug policy with a 2003 article by Ellen Benoit, *Not Just a Matter of Criminal Justice: States, Institutions, and North American Drug Policy*, which classifies drug policies into four categories. The most restrictive category is criminalization, which bans all legal use of a drug. Next is

medicalization, in which the government enforces penalties against recreational use of a drug but permits its use for specific medical purposes. Further on the permissive side is harm reduction, which bans recreational drug use but may not necessarily enforce penalties against it; rather, emphasis is on treating addicts to minimize the harm they inflict on themselves and others. Finally, libertarian drug policy permits recreational drug use<sup>34</sup>.

I find Benoit's breakdown of drug policy into four categories based on government permissiveness of drugs useful in contextualizing the observations and opinions I heard from informants. Benoit devised this classification to evaluate drug policy in North America, not Brazil. Discourse about prevention as a form of drug policy was very prominent among informants, but doesn't fit into Benoit's classification scheme because it can be applied in conjunction with any of the four approaches. In the United States, public discourse about the positive and negative aspects of a proposed medicalization approach to marijuana is very prominent, while among informants in Fortaleza, only Dr. Mourão mentioned the topic. These two topics served to remind me of differences in drug policy discourse between the United States and Brazil, while informant discourse on potentially changing the legal status of marijuana and/or harm reduction seem to fit better within Benoit's classification frame of drug policies.

### **Legal Status of Drugs and Drug Sentences**

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<sup>34</sup>Benoit, Ellen. "Not Just a Matter of Criminal Justice: States, Institutions, and North American Drug Policy." 2003.

Debate over the merits and demerits of decriminalizing or legalizing one or more illegal drugs is a broader form of discourse over drug sentencing policy. Were the legal status of one or more currently illegal drug to change, it's likely sentencing law for possessing and/or selling the drug would also change. In some instances, drug decriminalization or legalization would change criminal drug sentencing in Brazil to eliminate drug sentencing for possessing or selling drugs.

I had the good fortune of attending a round table about marijuana legalization at the Faculdade 7 de Setembro (September 7<sup>th</sup> College) on November 26<sup>th</sup>. Participants had a wide variety of opinions over how they conceptualize the legal status of marijuana, Brazil's most widely used illegal drug.

Consumer Rights Professor Ângela Gondim: The autonomy [to take a drug responsibly] only exists the first couple of times...drugs cause dependency...when one becomes dependent, this autonomy no longer exists. That's why the state still stifles drug use, police work to protect social harmony, family values, the values of getting along with each other, and still criminalize drugs and punish those who engage in trafficking.

Dr. Valton Miranda: I have, in my conviction, the idea that the entire discussion of legalization of marijuana is only the first step...People who deal with this theme, confront this discussion, for example ex-president Fernando Henrique Cardoso and ex-Minister Gilberto Gil, it's clear, the idea is to legalize all drugs.

Pending legislation in Brazil's Senate would fully decriminalize personal use of all drugs<sup>35</sup> has aroused considerable controversy from various sectors of society. To Nelson Massambani, decriminalization will lead to more drug use.

Me: There are figures inside the federal government who say, at the very least, it would be a good idea to decriminalize marijuana here. What do you think about that?

Nelson Massambani: [Excerpt] I would say this: decriminalize marijuana, today? No way. No way. Because for me, that would only increase the impact, which is already large.

On the other hand, Dr. Mourão, Neto, and Professor Nepomuceno expressed support for decriminalizing marijuana, and Dr. Poti supports its legalization. By extension, they support reducing the number of situations in which an individual can face criminal drug sentencing. As a consequence, more government resources would theoretically be available for alternative drug-related public policy approaches, such as prevention programs or harm reduction.

## **Prevention**

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<sup>35</sup> "Frente evangélica critica propostas que tratam de eutanásia, aborto e drogas." By Idhelene Macedo. 2012.

Within my discourse on drug sentencing, the professionals I interviewed seemed to be focused on preventing the conviction (or state of medical emergency) leading to the drug sentencing. Through the course of my interviews, I found that no matter how I approached or worded the question “What should we do about drug sentencing?” the response was a variant of “reduce the number of convictions thorough prevention”.

Dr. Mourão: I consider prevention the most efficient task. However, it needs to be done with criterium and it's very complex. Repression is very expensive and confusing; treatment has had very few positive results<sup>36</sup>.

Alternative sentencing programs work not only to educate and enrich individuals convicted of possession of drugs for personal use, but also to the end of preventing future drug convictions. Three of the professionals I interviewed explicitly stated that prevention is the most effective policy the government can promote to reduce social problems related to drug-related criminal sentencing such as overcrowded prisons, the crack epidemic, crime related to drugs, and recidivism. In a sense, their emphasis on prevention versus drug sentencing reform as a priority of public policy represents a different paradigm than the one in my mind when I asked them how they would change current drug sentencing procedures.

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<sup>36</sup> Mourão, Antônio. Email correspondence. 2012.

Me: What are some difficult aspects of drafting a drug law that could improve the situation here?

Dr. Mourão: [Excerpt] Where we need to put emphasis is in prevention. Because the majority of young people in Fortaleza don't use drugs. They are young people that study, work help their parents, and there's a minimal [proportion], it doesn't come out to one percent, that use drugs. So, social policy can't exist due to one percent. It has to exist for the ninety nine percent. This is the case of prevention.

In my mind, prevention programs are important to the discourse around drug sentencing not only as an alternative paradigm, but also as potential models for alternative sentencing programs working with individuals convicted of possessing drugs for personal use that might prevent recidivism.

Informants had a striking range of agreement in terms of what general public policies deter drug use and crime- namely, investment in social policies such as education and extracurricular activities for youth.

Me: What public policies would you envision to strengthen alternatives to prison?

Dr. Gurgel: Basically, the most effective would be prevention. It's the most effective policy we have.

Neto: I believe the base [of recovery from drug addiction] is resocialization...I think that this, together with...having an atmosphere of recovery, and having a job, having an education, having, having a sensation of being the owner of your own life...The great majority of people who obtain [recovery] are those people who have this here. Work. Professional training.”

Dr. Mourão: We already know which factors fortify youth to not use drugs. For example, sports. Social interaction in a group...And what is most successful, the most positive part of prevention, is quality school. School...A young man, he has a lot of hope, a lot of dreams, and it's really unfortunate to live in a country that doesn't nourish the dreams and hopes of its youth. I think that, if we were to improve our educational system, schools, perspectives of hope, having dreams, drugs would begin to disappear.

Nelson Massambani: How I see it, what we need to do is attack from below with exactly this, prevention, so a young person, a teen, doesn't just take an offer for a quick run...

My informants described prevention programs that range in scope from providing a violin teacher for youth at an Evangelical church to improving the quality of the educational system in broad terms. Some of the programs would benefit all youth, while others are tailored specifically towards those deemed at-

risk. Dr. Mourão describes a preventive social program for youth in a neighborhood with high rates of drug use and crime:

[Prevention] is not bringing in Dr. Mourão to give a lecture about the dangers of drugs, that's completely idiotic. It should be about topics in normal life. We did a lot of the things I've referenced here, and to this day there still exists, I don't know if you already familiarized yourself with or are familiar with the Movement in Bom Jardim. There, they have a project called Yes to Life, No to Drugs. That was our inspiration.

Yes to Life, No to Drugs provides after school care for youth in neighborhoods with high rates of drug use including art, recreation, and music activities<sup>37</sup>. In a similar vein, Neto told me about the Big House Foundation, an even more targeted program in rural Ceará that empowers kids whose relatives have drug dependency.

They managed to get, in the most recent study done by MEC [Ministry of Education], the highest education index score, the highest education index score, of literacy, in Brazil. The capital Fortaleza, the city of Fortaleza, the capital of Ceará, is in second-to-last place. On the same index. It's the job they do there, through education, they include not only the Portuguese, math part of education, they [also] include art, cinema, photography, theater, music,

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<sup>37</sup> Personal Observation. October 25, 2012.

graphic animation...All of the [kids] have relatives who had problems with alcohol and drugs, and through this treatment they are able to save the lives of the children...for them to be there, their parents have to take literacy classes, and they're able to get the parents and put them into the labor market, businesses.

In short, all of my informants supported additional government investment in prevention programs and education in specific to preempt youth from the drug trade.

## **Harm Reduction**

### A. Contextualizing Harm Reduction

An additional element of discourse over drug sentencing and drug policy revolves around the merits and demerits of **harm reduction** as public policy. The Brazilian government's definition of harm reduction is as follows:

The central strategy of harm reduction is to incentivize crack users to practice self-care, without the condition for this being a complete break in their drug use. It is to reduce problems associated with drug use in social,

health, and economic terms, and these strategies benefit the user, his or her relatives, and the community itself<sup>38</sup>.

Harm reduction as government policy is often associated with changing the focus of the government from no tolerance for drug use to minimizing its negative social effects. Again, implementation of harm reduction in more far-reaching forms (for example providing a supervised injection site for intravenous drug users) implies a change in the legal status of drugs, or at least in enforcement of drug law<sup>39</sup>.

Harm reduction relates to drug sentencing in that both are frequently classified as subtopics within a larger discourse on drug policy, and harm reduction advocates generally support broad legal changes to drug-related public policy, criticizing the negative effects of drug-related incarceration. Dr. Dan Small, Member at Large of the Medical Council of Canada, writes that unsuccessful demand-control drug policy, as practiced by the United States, is marked by criminalization of drugs and discouragement of harm-reduction strategies<sup>40</sup>. The result?

In the United States, incarceration is the most widely available "treatment" response, universally "available" to drug users.

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<sup>38</sup> "Redução de danos". *Crack, é possível vencer*. Brasil,

<sup>39</sup> As is the case in Canada. See Hutchinson, Brian. "B.C. injection site exempt from drug laws: Supreme Court." *National Post*. 2011.

<sup>40</sup> Small, Dan, and Ernest Drucker. "Policy makers ignoring science and scientists ignoring policy: the medical ethical challenges of heroin treatment." 2006.

When asked about the science on needle exchange which US Federal policies does not allow or support one of the lecturers resolutely stated to the group that they [he and his fellow faculty present in the room] "know that needle exchange is efficacious in saving lives but that it will never receive public funding for political reasons.

The approach of the US federal government to needle distribution provides a current example of policy makers ignoring scientific evidence for efficacious population health intervention: with disastrous results.

My decision to include discourse about harm reduction in a monograph on drug sentencing should not be construed as an endorsement of the practice, but rather as an acknowledgement that harm reduction presents an alternative model of government role in the drug market compared to in the context of drug sentencing. Proponents of harm reduction want to see a state role in supplying addicts with drugs to manage the health effects of their addictions, while the very concept of drug sentencing is based on the idea that the government's primary role in dealing with drug use is to in some form punish users it catches.

## B. Discourse on Harm Reduction in Brazil

The Brazilian government officially endorses harm reduction. In 2005, the Ministry of Health issued Directive 1.059 providing financial incentives for the

creation of harm reduction programs at CAPS and other health facilities<sup>41</sup>. The directive specifies that clinics that establish harm reduction programs will receive up to \$25,000 annually to distribute educational literature to drug users about the health effects of drug use, and distribute pipes, needles, and syringes to reduce the spread of HIV and Hepatitis B and C.

Dr. Poti explains that harm reduction facilities at CAPS:

Primarily aim to reach out to drug dependents independent of their interest in ending use. There is no distribution of syringes or other instruments, but psychological and psychiatric support, and therapeutic and educational groups. These groups are [also] used as [venues of] alternative sentences.

According to Dr. Poti, drug use in Ceará is primarily of ingestible or inhalable drugs, and CAPS centers within the state generally do not provide instruments with which to take drugs. However, Dr. Poti characterizes a CAPS program in Bahia to provide artisanal crack pipes to users a “very strange and questionable practice”. In the context of her local work, Dr. Poti offers broad support for harm reduction policies.

I agree substantially with harm reduction, also, my thoughts are that we have to have it, because a drug user should not have any type of door shut, as I like

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<sup>41</sup> *Portaria No. 1.059/GM de 4 de Julho 2005*. Ministério de Saúde. 2005.

to put it...What would be my conception of harm reduction? It would be information about what is happening, I also believe in the possibility of training to minimize use, minimize harm, for example with the use of crack, teaching how to share, the disposal bin, so as not to pass on various diseases, such as hepatitis.

In contrast, several other informants criticized the aims or ultimate outcomes of harm reduction policies.

Dr. Mourão: Where harm reduction has been used, it hasn't had a positive impact. Why? Because drug use has an important dimension called transgression. Transgression is "I have the feeling and pleasure of doing something prohibited." If I go to the health clinic and they give me a syringe, they give me drugs, this is absent.

Neto: Harm reduction won't solve it [addiction]...For me, it's something that can work momentarily, not for a lifetime. I say this not because I think it, but because I see it, I've worked with various cases, inside treatment clinics, and NA, AA, where there's mentoring.

What is the impact of discourse on harm reduction on drug sentencing discourse? Harm reduction is an alternative approach to government interactions with drug users compared to the situation set up in drug sentencing, where the

government sentences those it catches using drugs. Discourse in Fortaleza seems conflicted over harm reduction. The difference between the harm reduction and the current approach to drugs in Brazil is less stark with alternative sentencing programs based on education and community interaction but remains in terms of on what terms drug users and the government interact.

One potential explanation for the difference in opinion on harm reduction is that my informants had in mind different types of harm reduction programs. Dr. Poti made clear her CAPS clinic does not offer needle exchanges and focused her praise on educational outreach programs, while Dr. Mourão and Neto said that providing addicts with drugs was counterproductive. In my mind, that leaves potential room for agreement on harm-reduction strategies that do not involve supplying drugs to users, such as Fortaleza's street consultation program, in which health workers travel by night to communities of alcohol and drug users and provide basic health services such as HIV tests, and education campaigns<sup>42</sup> and could provide alternative contact between government services and drug-using communities outside the context of drug apprehension and sentencing.

### Section 3 Conclusion

The three approaches to drug policy above are similar in that they offer emphases that would allocate attention and resources to deal with drugs other than the current emphasis on drugs and crime. Two of the alternate ways to allocate

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<sup>42</sup> "Curitiba recebe Consultório de Rua do Ministério da Saúde". *Bemparaná*. 2012.

attention and resources to drugs would, at least in some instances, lead to decriminalization of drugs. The third alternative approach, prevention, is the most subtle of the three in that it preemptively tries to forestall drug possession, use, and sale rather than react to it by declaring it partially or entirely unworthy of a response from the legal system or attempting to minimize damage from drug use. Perhaps for that reason, prevention gets the most support from informants while decriminalization and harm reduction have both supporters and opponents.

#### Section 4: Concluding Remarks

Drug sentencing discourse is instructive of how members of the general public as well as members of the research target group evaluate and perceive drug sentencing in Fortaleza. My research suggests differences in tone and emphasis between discourse in the general public and community of interest in drug sentencing. The difference between pro-prison, pro-involuntary internment discourse in the general public and support for alternative sentences combined with skepticism of most forms of involuntary internment among informants will play out in the years ahead as Brazil continues to grapple with high rates of drug use, drug-related crime, overcrowded prisons, and recidivism among convicts and drug dependents.

The relative impact of each discourse on public policy will depend on whether drug sentencing policy in Brazil remains continues to provide an “extensive mandate” of policymaking autonomy for “experts” such as my informants. A determinative factor in whether Brazil policymaking bodies will continue to respect and implement only “reflective” policy preferences of the general public will depend on the relative priority and assigned importance of drug sentencing policy among the general public. Currently, drug sentencing policy appears to be a secondary concern relative to a broader discourse in the general public that drugs are linked to crime and merit repression.

Informants offered three alternative, non crime-related areas of emphasis within the theme of drug possession, use, and trade; evaluating the legal status of

drugs, prevention, and harm reduction. Most informants agreed prevention is both a highly effective public policy in facing drugs, and a public policy that merits additional government resources and attention. Informants registered a variety of opinions on the legal status of drugs, with a “median” opinion of informants of decriminalizing marijuana. Informants also had a split opinion on harm reduction, with Neto and Dr. Poti noting its potential benefit to crack users but most informants, Neto included, critical of the goals of harm reduction. These alternative ways to approach drug policy could serve as broader vehicles of engaging with general public dialogue around drug sentencing in less detailed, legalistic terms.

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## Section 6: Areas of Additional Research

Over the course of the research period, several topics came to light that merit additional research in the future.

I would, first and foremost, like to conduct research on the thoughts of families of those sentenced to incarceration, involuntary internment, and alternative sentences regarding drug sentencing. In particular, I would like to compare similarities and differences between attitudes in families of drug users sentenced to one of the above options and attitudes of families with drug dependents who have not been sentenced. I think that comparative analysis would yield information on how an individual's experience in Brazil's sentencing system, whether criminal or of mental health, impacts the family's views of drug sentencing.

I would also like to study drug sentencing options and discourse among juveniles. How do they perceive a system designed to change their behavior? When are juveniles committed to detention facilities? What aspects of the legal system for juveniles are perceived to work well, and which are perceived to be ineffective?

Finally, I believe Fortaleza's Street Consultation harm reduction program is worthy of further study. Where did the idea come from? How do professionals, users, and convicts see the program?

## Section 7: Appendix

The idea of conducting research on drug sentencing reform came to me as a result of personal interest in initiatives I had witnessed and read about in the United States- namely, Maryland's alternative sentencing program for juveniles apprehended for misdemeanors such as alcohol law violation and possession of marijuana, and an alternative sentencing program for adults in San Francisco devised by California's incumbent attorney general, Kamala Harris.

Though my personal interest in drug sentencing discourse arose initially because of programs in the United States, I wanted to study the discourse in Brazil as well. Federal drug sentencing law in Brazil is different from that in the United States in that it mandates alternative treatment for certain drug offenses, and I wanted to learn more about how alternative sentencing is implemented under a federal law in a country with substantially less money available to spend on the "fall back" option of incarceration. I could have researched sentencing reform discourse in the United States, but I would have interviewed different types of professionals and sources, and would not have gained the same perspectives as I did in Brazil.

The ISP process was radically different from any type of academic learning I have previously experienced. This is the first time I've written a paper without deliberately advocating an implicit or explicit argument to readers; my goal is to let the voices of my interviewees speak with each other on various topics related to drug policy sentencing.

I initially thought I would write a narrowly focused ISP on drug sentencing policy discourse in Fortaleza. However, during the course of my interviews, I came to the conclusion that my interviewees conceptualize drug sentencing policy as a small part of a larger, interlinked issue of drug use, community health, and crime. For that reason, I re-conceptualized my ISP as framing drug sentencing policy in a broad sense, including debates over the legal status of drugs as a whole and drug and crime prevention programs as an alternative discourse to that of drug sentencing to reflect the opinions of my informants.

One of the most difficult aspects of the ISP was that, to the best of my knowledge, no non-governmental organizations dedicated to drug sentencing policy exist in Fortaleza. With the invaluable help of my Academic Director Bill Calhoun, I eventually identified half a dozen individuals whose professional careers lie in topics that intersect with drug sentencing policy, and from those individuals I contacted additional potential sources of information.

A second challenge was time constraints. I did not have time to listen fill in all of the words and expressions I did not understand in the interview/ round table recordings. I did not understand significant parts of the round table discussion because the sound quality on the microphone debate panelists were using was inconsistent; parts of the round table debate I quote in this monograph I did understand, and in some instances I have listened to excerpts a second time with a native speaker of Brazilian Portuguese make sure I understood each word and could translate the sentence accurately.

I owe a tremendous debt of gratitude to the incredibly dedicated staff of SIT Fortaleza for their assistance and support during the research period. I am also grateful for the support, insight, and irrepressible energy of Dr. Alaíde Poti, my academic advisor. Thank you so very, very much.